

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of	}	
	}	
	}	
	}	
LORETA XEXO	}	Claim No. ALB-174
	}	
	}	Decision No. ALB-256(R)
	}	
	}	
Against the Government of Albania	}	
	}	

AMENDED PROPOSED DECISION

This claim against the Government of Albania is based upon the alleged confiscation of real property consisting of 393 square meters of land and a shop located in the city of Korce.

By Proposed Decision entered on January 28, 1997, the Commission denied this claim on the ground that the claimant did not satisfy the residency requirement in the Agreed Minute to the U.S.-Albania Claims Settlement Agreement. *Agreement Between the Government of the United States and the Government of the Republic of Albania on the Settlement of Certain Outstanding Claims*, March 10, 1995 (entered into force April 18, 1995) ("Settlement Agreement"). That provision specified that a claim would not be compensable under the Settlement Agreement unless it was established either that the claimant was residing in the United States as of the agreement's effective date

of April 18, 1995, or that the claim was held continuously by one or more United States nationals residing in the United States for at least half the time between the date the claim arose and April 18, 1995. In the absence of an objection from the claimant, the Commission's Proposed Decision was entered as final on March 25, 1997, in accordance with its regulations.

By letter dated June 7, 2006, the Commission notified the claimant that in a Diplomatic Note dated April 27, 2006, the Albanian Minister of Foreign Affairs had advised the United States Embassy in Albania that it accepted and agreed with a proposal made by the United States Government on November 18, 2005, to delete the residency requirement from the Agreed Minute to the Settlement Agreement.

As a result of this modification of the Settlement Agreement, the Commission reviewed claimant's file again and requested certain additional information and documentation from the claimant in support of the claim for confiscation of the subject property, which is said to have taken place in 1962 and 1967.

On or about August 4, 2006, the Commission received certain additional documents in support of the claim. These documents included evidence of United States nationality of the claimant and her father, Xenophon Dako (aka Ksenofon Dako); a copy of his death certificate; a copy of a decision of an Albanian court identifying claimant as her father's sole heir; and a sworn

statement from the claimant herself regarding certain taxes said to have been imposed on her father in 1948.*

Subsequently, in October 2006, in response to Commission letter of August 11, 2006, claimant submitted additional documents in support of her claim. Included among these was an ownership document pertaining to land owned by Mrs. Sofia Gode, claimant's maternal grandmother. Claimant's contention is that her grandmother conveyed this land as dowry to her daughter (claimant's mother) and her son-in-law (claimant's father) at the time of their marriage which is said to have been in 1937. Also included was an undated photograph of a shop bearing the name "Nikolla Dako" and two affidavits from claimant's cousins making reference to the dowry and the shop. Claimant also submitted an extract from an article which discusses the development of culture and trade in Albania during 1912-1939 and makes references to the business of the Dako Brothers.

The Commission has carefully reviewed the record before it, including the recent submissions. From this review, it appears that claimant, a United States national by birth, seeks compensation for a plot of land measuring 393 square meters and a shop which are said to have been confiscated by the Albanian government in 1962 and 1967, respectively. At that time, according

*More recently, the claimant appears to be asserting an additional claim based on the fact that her father and his brothers operated a business known as Dako Brothers and that the Albanian government imposed an extraordinary tax on the business in 1948.

to the claimant, the property was owned by her father who was naturalized as a United States citizen in 1924.

With regard to the ownership and loss of land and the shop, the research conducted by the Commission's independent consultant in Albania, who has searched the Regional Cadastral Archives for the District of Korce, has failed to disclose any registrations of properties located in the streets identified by the claimant – namely “Revolucioni I Tetorit” and “Vasil Tromara” in the name of claimant's father. The consultant was unable to find any document or contract reflecting any transfer of title from Sofia Gode to either claimant's mother or to claimant's father. Rather, his research has confirmed that the said property is registered in the name of Sofia Gode, claimant's grandmother.

Section 509.5(b) of the Commission's regulations provides:

The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

45 C.F.R. 509.5(b)(2006).

The affidavits of claimant's cousins, Niko Dako and Klio Evangjeli, aver that Mrs. Sofia Gode had “legally conferred” upon her daughter and son-in-law the shop at issue in this claim. However, the Commission is constrained to find that the evidence submitted is insufficient to meet the burden of proof in establishing that claimant's father had any interest in either the shop or the land at

the time of confiscation. On the contrary, it would appear that, in fact, the shop was legally owned by claimant's grandmother, Sofia Gode, an Albanian national, since as early as 1947. In addition, in a letter dated December 12, 2006, the claimant has stated that the land in question was passed by inheritance from Sofia Gode to her three daughters (all now deceased), none of whom was a United States national.

Under the International Claims Settlement Act of 1949, as amended ("ICSA"), the Commission is required to decide claims in accordance with, *inter alia*, "[t]he applicable principles of international law." ICSA section 4(a)(2), 22 U.S.C. 1623(a)(2). It is a well-established principle of the law of international claims, which has been applied without exception by both this Commission and its predecessor, the International Claims Commission, that a claim may be found compensable only if it was continuously held by a United States national from the date it arose until the date of settlement. *See, e.g., Claim of PETER D. JANUS Against Yugoslavia*, Claim No. Y-1721, Decision No. Y-0377 (1954); *Claim of MIA FOSTER Against Czechoslovakia*, Claim No. CZ-2696, Decision No. CZ-0001 (1960); *Claim of RICHARD O. GRAW Against Poland*, Claim No. PO-7595, Decision No. PO-8583 (1965).

Accordingly, since it is not established that claimant's grandmother ever acquired United States nationality, the claimant could not be said to have a valid claim before the Commission for the loss of any of the property in

question. While the Commission sympathizes with the claimant for the loss of her family's property, it must conclude that this portion of her claim is not compensable under the terms of the Settlement Agreement.

Claimant's other claim is for the imposition of extraordinary taxes on certain individuals including her father. She has stated that the "business of Dako brothers was taxed 800,000.00 *Lek* by the Department of Finance of the Executive Committee of Korca due to a tax law issued July 20, 1948." In support of this portion of her claim, however, she has only submitted her own affidavit.

Section 509.5(b) of the Commission's regulations provides:

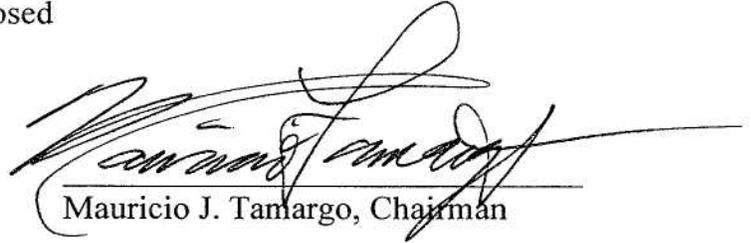
The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

45 C.F.R. 509.5(b)(2006).

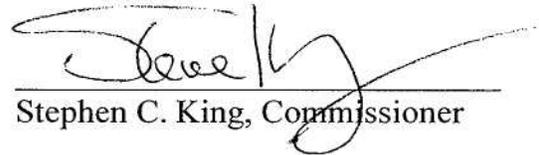
In light of the paucity of evidence in this regard, the Commission is constrained to find that the claimant has not met the burden of proof in establishing that the imposition on and payment by claimant's father of the tax in question amounted to a confiscation by the Albanian government. Accordingly, this portion of the claim must also be and is hereby denied.

Dated at Washington, DC and
entered as the Amended Proposed
Decision of the Commission.

FEB 22 2007



Mauricio J. Tamargo, Chairman



Stephen C. King, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. 509.5 (e) and (g) (2006).

The Governments of the United States and Albania concluded an agreement for en bloc settlement of claims of United States nationals against Albania on March 10, 1995. *Agreement Between the Government of the United States and the Government of the Republic of Albania on the Settlement of Certain Outstanding Claims*, March 10, 1995 (entered into force April 18, 1995) ("Settlement Agreement"). Claims covered by the Settlement Agreement are

the claims of United States nationals (including natural and juridical persons) against Albania arising from any nationalization, expropriation, intervention, or other taking of, or measures affecting, property of nationals of the United States prior to the date of this agreement[.]

Settlement Agreement, Article 1(a).

The Agreed Minute to the Settlement Agreement further provides:

For purposes of article 1, the term "United States nationals" shall include dual United States-Albanian nationals only if those nationals are domiciled in the United States currently or for at least half the period of time between when the property was taken and the date of entry into force of the agreement.

In effect, this residency requirement limits the Commission's jurisdiction over the claims of dual nationals to those cases where the owner of the claim either (1) was domiciled in the United States on April 18, 1995 (the effective date of the Settlement Agreement), or (2) was domiciled in the United States for at

least half the period of time between the date the property was expropriated and April 18, 1995.

Claimant here, assertedly a United States national by birth, seeks compensation for 393 square meters of land said to have been expropriated by the Albanian government in 1962, and a shop said to have been expropriated in 1967. At that time, according to claimant, the properties were owned by her father, Xenophon Dako, who was naturalized as a United States citizen in 1924. The claimant states that she inherited the right to claim for the properties upon the death of her father.

Unfortunately, the information provided by claimant to date is not sufficient to establish her right to compensation. It appears that claimant is a dual U.S.-Albanian national, because her father was an Albanian citizen. Under Albanian law, claimant retains Albanian nationality notwithstanding her U.S. nationality by birth.

Because claimant is a dual United States-Albanian national, the Commission is constrained to apply the residency requirement in the Agreed Minute to the Settlement Agreement. However, there is no indication that claimant was living in the United States on April 18, 1995, the effective date of the Settlement Agreement. Nor is there any indication that the owner of the claim (first claimant's father, then -- after his death -- claimant) lived in the

United States for at least half the time between the expropriations and April 18, 1995.

Section 531.6(d) of the Commission's regulations provides:

The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his or her claim.

45 C.F.R. 531.6(d) (1995).

The Commission finds that claimant here has not met the burden of proof in that she has failed to provide information to establish either that she was living in the United States on April 18, 1995 or that the claim was owned by someone living in the United States for at least half the time between April 18, 1995 and the dates the claim arose. In the absence of such evidence, the Commission is unable to find that the residency requirement in the Agreed Minute to the Settlement Agreement is satisfied.

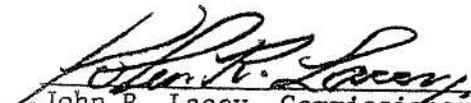
Accordingly, while the Commission sympathizes with claimant for the loss of her family's property, it cannot find -- on the evidence submitted to date -- that this claim is compensable under the terms of the Settlement Agreement. The claim therefore must be and is hereby denied.

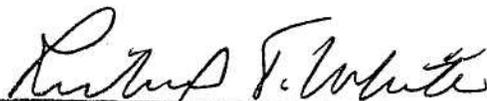
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, DC and entered as the Proposed Decision of the Commission.

JAN 28 1997


Delissa A. Ridgway, Chair


John R. Lacey, Commissioner


Richard T. White, Commissioner

This decision was entered as the Commission's
Final Decision on MAR 25 1997

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. 531.5 (e) and (g) (1995).