

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

In the Matter of the Claim of	}	
	}	
	}	
ILLO FOTO	}	Claim No. ALB-295
	}	
	}	Decision No. ALB-280(R)
	}	
Against the Government of Albania	}	
	}	

AMENDED PROPOSED DECISION

This claim against the Government of Albania is based upon the confiscation of real and personal property located in the village of Terbuq, in the District of Gjirokaster.

By Proposed Decision entered on February 24, 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.

It appears that documentation submitted in support of his claim could have supported findings as to the United States nationality of the claimant and his father, and the ownership, expropriation, and value of the property on which the claim was based and the inheritance of the claim after it arose. However, the Commission found itself constrained to reach its decision on the claim without considering the claim on its merits.

In the absence of an objection from the claimant, the Commission's Proposed Decision was entered as final on May 6, 1997, in accordance with its regulations. However, the Commission has now been informed that in a Diplomatic Note dated April 27, 2006, the Albanian Minister of Foreign Affairs advised the United States Embassy in Albania that it accepted and agreed with the proposal made by the United States Government on November 18, 2005, to delete the residency requirement from the Agreed Minute to the Settlement Agreement. Based on this modification of the Settlement Agreement, the Commission concludes that claimant ILLO FOTO is now entitled to consideration of his claim on the merits.

The documentation and other evidence submitted by the claimant indicates that his father, Kico Foto, a United States citizen naturalized in 1928, had owned a total of 8,500 square meters (about 2.1 acres) of farmland, vineyard, and fruit orchard in the vicinity of the village of Terbuq, District of Gjirokaster, and that this property was confiscated from him by the Albanian Communist regime in 1967, when it established the agricultural collective in Terbuq. In addition, the documentation indicates that the authorities confiscated from him a plow ox, a plow and a cart at that time. The documentation further reflects that Kico Foto died in Albania in October 1968, survived by the claimant and the claimant's sister, Leno Vardhami, also a United States citizen by birth (claimant's mother had died in March 1968), and that claimant's sister died in Albania in 1973. Claimant has not indicated whether his sister had any children, but the evidence indicates that she was married at the time of her death.

Based on the evidence submitted, and having reviewed the verification report provided by its independent consultant in Albania, the Commission finds that claimant's father, Kico Foto, was a United States national by naturalization as a United States citizen in 1928, that he owned 8,500 square meters (about 2.1 acres) of farmland, vineyard and orchard in the vicinity of the village of

Terbuq, District of Gjirokaster, as well as a plow ox, a plow, and a cart, and that all of this property was taken by the Government of Albania without payment of compensation in 1967. In the absence of a precise date, the taking will be deemed to have occurred as of January 1, 1967. The Commission further finds that Kico Foto subsequently died in Albania in October 1968, and in the absence of evidence to the contrary, that his claim for the taking of his real and personal property passed at the time of his death to the claimant and the claimant's sister in equal shares, in accordance with the inheritance laws of Albania. Accordingly, claimant is entitled to an award for the loss of one-half of the value of the property taken from his father, dating from January 1, 1967.

Claimant has asserted that his father's land, including the portions planted in vineyard and orchard, had a value of \$11,000 at the time of taking. However, he has provided no evidence or source of information to support this figure. Based on comparisons with similar property for which it has granted awards in other claims, the Commission finds that the land, vineyard, and orchard in question would have had a value of \$1,500.00 at the time of loss. In addition, the Commission finds that the ox, plow, and cart would reasonably have had a value at the time of loss of \$200.00. Accordingly, claimant is entitled to an award in the principal amount of \$850.00 based on his inherited

right to claim for one-half of the value of his father's property, dating from January 1, 1967.

In accordance with applicable principles of international law and its decisions in previous claims programs, the Commission further concludes that the claimant is entitled to interest as part of his award, amounting to 6 percent simple interest per annum from the date of loss to the effective date of the Settlement Agreement. Accordingly, claimant is also entitled to an interest award of 169.8 percent of his principal award, or \$1,443.30.

Under the terms of the U.S.-Albania Settlement Agreement, the United States Government has agreed to advise the Albanian authorities of the issuance of the Commission's awards so as to prevent any double recovery. A copy of this decision thus will be forwarded to the Albanian government in due course.

Accordingly, the Commission withdraws its previous decision denying this claim and makes the following award, which will be certified to the Secretary of the Treasury for payment in accordance with sections 5, 7, and 8 of Title I of the International Claims Settlement Act of 1949, as amended (22 U.S.C. §§1624, 1626, and 1627).

A W A R D

Claimant ILLO FOTO is entitled to an award in the principal amount of Eight Hundred Fifty Dollars (\$850.00), plus interest from January 1, 1967, to April 18, 1995, in the amount of One Thousand Four Hundred Forty-Three Dollars and Thirty Cents (\$1,443.30), for a total award of Two Thousand Two Hundred Ninety-Three Dollars and Thirty Cents (\$2,293.30).

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

JUL 20 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).

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

In the Matter of the Claim of

ILLO FOTO

Against the Government of Albania

Claim No. ALB-295

Decision No. ALB-280

PROPOSED DECISION

This claim against the Government of Albania is based upon the alleged confiscation of real and personal property located in Terbuq, in the District of Gjirokaster.

As a preliminary matter, the Commission notes that this claim was received by the Commission after the expiration of the Commission's filing deadline of December 29, 1995. The Commission nevertheless has decided to accept the claim for consideration.

Under section 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render final decisions with respect to claims of . . . nationals of the United States included within the terms of . . . any claims agreement on and after March 10, 1954, concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the

existence of a state of war during World War II) . . . providing for the settlement and discharge of claims of . . . nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof.

22 U.S.C. 1623(a) (1994).

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, a United States national by birth, seeks compensation for a two-family house (with basement), a bake-house and cheese dairy, an ox-stable (with equipment), a distillery, a sewing machine, a wardrobe and clothing, and crockery -- all said to have been burned by German forces in June 1944. In addition, claimant seeks compensation for 0.85 hectares of land, 28 fruit trees, a cow, and a plow and a cart, said to have been expropriated by the Albanian government when the agricultural cooperative was formed in Terbuq in 1967. At the time of the losses, according to claimant, the property was owned by his father, Christos Stavro (Kico Foto), who was naturalized as a United States citizen in 1928. Claimant inherited the right to claim for the property upon the death of his father in Albania in 1968.

In support of his claim, claimant has submitted a copy of his United States passport; his birth certificate; his family certificate; the death certificates of his mother, father and sister; a March 21, 1996 certificate issued by the District of Gjirokaster, attesting to the ownership and confiscation of certain property; and two affidavits from individuals in Albania, attesting to the ownership and confiscation of the same property.

Unfortunately, as explained in the Commission's letter to claimant dated October 17, 1996 and discussed below, the evidence and information provided by claimant are not sufficient to establish his right to compensation.

Claimant's claim for losses due to World War II military operations are beyond the scope of the Commission's jurisdiction. The Settlement Agreement covers only claims against the Government of Albania; claims for losses suffered at the hands of German forces are beyond the scope of the Settlement Agreement. Accordingly, claimant's claim for property destroyed in June 1944 must be and is hereby denied.

Claimant fares no better on his claim for the 1967 losses. It appears that claimant is a dual U.S.-Albanian national, because his father was an Albanian citizen. Under Albanian law, claimant retains Albanian nationality notwithstanding his 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.

The claim form indicates that claimant began living in the United States on June 30, 1995; thus, claimant was not living in the U.S. on April 18, 1995 (the effective date of the Settlement Agreement). Further, claimant's November 26, 1996 letter to the Commission indicates that his father lived in the United States only until 1956, and the property at issue was confiscated in 1967; it therefore cannot be said that the owner of the claim (first claimant's father, then – upon his death – claimant) lived in the U.S. for at least half the time between April 1995 and the date of expropriation. The residency requirement in the Settlement Agreement thus is not satisfied and the Commission lacks jurisdiction over the second part of the claim as well.

Accordingly, while the Commission sympathizes with claimant for the loss of his family's property, the claim must be and is hereby denied.

Although this Commission has no jurisdiction to consider the claim, claimant should be entitled to seek relief through the Albanian government for the real property expropriated in 1967. The Government of Albania is obligated by the Settlement Agreement to afford U.S. nationals the same rights it affords Albanian nationals to pursue and receive compensation, restitution or any other

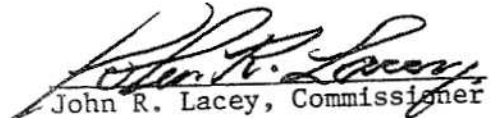
remedy available under the domestic restitution and compensation procedures established by the Albanian Government. Settlement Agreement, Article 6. The Commission's October 17, 1996 letter to claimant advised him to contact the Albanian authorities directly if he wishes to pursue such a claim.

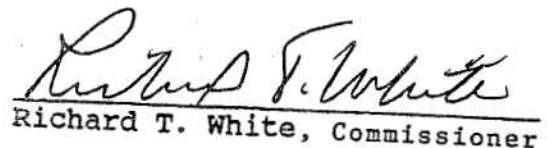
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

FEB 24 1997


Delissa A. Ridgway, Chair


John R. Lacey, Commissioner


Richard T. White, Commissioner

This decision was entered as the Commission's
Final Decision on MAY 06 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).