

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

In the Matter of the Claim of	}	
	}	
	}	
	}	
AFRODITI DIMULAS BOTSIS	}	Claim No. ALB-315
	}	
	}	Decision No. ALB-301
	}	
Against the Government of Albania	}	
	}	

Hearing on the record held on January 11, 1999.

FINAL DECISION

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

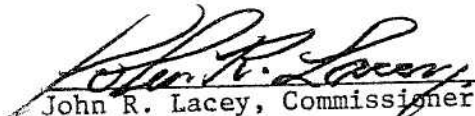
By Proposed Decision entered on April 16, 1998, the Commission denied this claim on the ground that claimant had failed to establish that the property for which she had claimed was owned by a national of the United States at the time of confiscation, namely 1954.

In telephone calls made to the Commission on June 9 and June 10, 1998, claimant requested that her file be kept open in order to enable her to document her father's United States nationality. The Commission honored claimant's request, and treated the June 1998 communication as an objection.

By letter dated July 9, 1998, claimant submitted a copy of her father's death certificate noting that he had lived in the United States for eight years prior to his death. Unfortunately, however, no evidence of United States nationality was submitted. By letter dated July 20, 1998, the Commission advised claimant to forward any additional evidence in support of the claim as soon as possible. It also advised the claimant that the Commission itself had contacted the Department of State in an attempt to verify her father's United States citizenship but that Department had indicated that it had no records of a United States passport having been issued in the name of claimant's father. To date, no other substantive response has been received from the claimant.

In the absence of any further evidence, the Commission is constrained to conclude that there is no basis on which to change the result reached in the Commission's April 16, 1998, Proposed Decision in this claim. The denial set forth in the Proposed Decision therefore must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

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


John R. Lacey, Commissioner

JAN 11 1999


Richard T. White, Commissioner

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PROPOSED DECISION

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

As a preliminary matter, the Commission notes that this claim was received after the December 29, 1995 filing deadline. 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) (1998).

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).

According to claimant, her grandfather, John Dimulas, entered the United States in 1911 and sponsored the entrance of his son (claimant's father), Harry John Dimulas, in 1914. Claimant's father returned to Albania in 1926, married claimant's mother and returned to the United States later that same year. Her father is said to have planned to bring his wife and daughter to the U.S.; but he fell ill and died in 1929. Claimant states that the property at issue then passed to her mother, Paraskevi Dimula (an Albanian citizen). Claimant also avers that

the Albanian Communist regime confiscated the property in 1954, imprisoning her mother for one year and exiling her for five years. Claimant further attests that she herself acquired U.S. citizenship by naturalization in 1961, that the property at issue has been in her family for four generations, and that she is now the sole survivor of her family.

By letter dated June 18, 1997, the Commission requested additional information from claimant and advised her that the Settlement Agreement covers only cases where the property at issue was owned by a U.S. national at the time of confiscation, *and* the claim for the property has been continuously held by one or more U.S. nationals from the date of the confiscation until April 18, 1995 (the effective date of the Settlement Agreement). Claimant was further advised that if she could establish that she acquired U.S. nationality at birth, through her father, and that she acquired an interest in his property at the time of his death in 1929, then the Commission could find her entitled to compensation for an interest in the confiscated property.

In a March 11, 1998 telephone conversation with the Deputy Chief Counsel of the Commission, claimant's representative advised that claimant does not believe that her father ever acquired U.S. citizenship and that, upon his death, the property passed to her mother, an Albanian national.

The ICSA mandates that the Commission decide claims in accordance with, *inter alia*, "[t]he applicable principles of international law." ICSA §4(a)(2), 22 U.S.C. 1623(a)(2). It is a well-established principle of international law, which this Commission has applied without exception, that a claim may be found compensable only if the property which is the subject of the claim was owned by a national of the United States when the property was expropriated or otherwise taken. *See, e.g., Claim of EUGENIA D. STUPNIKOV Against Yugoslavia*, Claim No. Y-2-0071, Decision No. Y-2-0003 (1967); *Claim of ILONA CZIKE Against Hungary*, Claim No. HUNG-2-0784, Decision No. HUNG-2-191 (1976); *Claim of JOSEPH REISS Against the German Democratic Republic*, Claim No. G-2853, Decision No. G-2499 (1981); *Claim of TRANG KIM Against Vietnam*, Claim No. V-0014, Decision No. V-0001 (1982). This principle has also been recognized by the courts of the United States. *See, e.g., Haas v. Humphrey*, 246 F.2d 682 (D.C. Cir. 1957), *cert. denied*, 355 U.S. 854 (1957).

In this case, it is undisputed that, at the time the property in question was assertedly confiscated, it was not owned by a national of the United States. Accordingly, while the Commission sympathizes with claimant for the loss of her

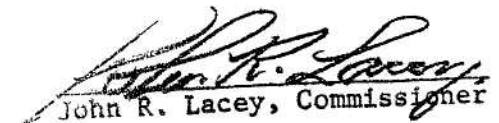
family's property, it must conclude that her claim is not compensable under the terms of the Settlement Agreement.* The claim therefore must be and is hereby denied.

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.

APR 16 1998


Delissa A. Midgway, Chair


John R. Lacey, Commissioner


Richard T. White, 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. 531.5 (e) and (g) (1997).

*Because the Commission lacks jurisdiction over this case, claimant should be entitled to relief through the restitution and compensation program being administered by the Government of Albania (if it is not too late to file a claim there). Indeed, the Settlement Agreement between the U.S. and Albania requires that the Government of Albania afford such U.S. nationals the same rights that it affords Albanian nationals to pursue and receive compensation, restitution or any other remedy available under the domestic restitution and compensation procedures established by that government.