FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

ALBERT BELA BAUER AND CLARA BAUER
7056 Wentworth Avenue
Chicago 21, Illinois

Claim No. HUNG-20,962

Decision No. HUNG- 508

Under the International Claims Settlement
Act of 1949, as amended

GPO 16—72126-1

Counsel for Claimant:

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PROPOSED DECISION

These are claims under the provisions of Section 303(1) of the International Claims Settlement Act of 1949, as amended, against the Government of Hungary by ALBERT BELA BAUER and CLARA BAUER, based upon the destruction of certain personalty in Csepel, Hungary by allied bombing on April 24, 1944; and under the provisions of Section 303(2) of the Act also against the Government of Hungary but solely by CLARA BAUER for the taking of a one half interest in the realty known as "Toeke Villa" in Balatonszemes, Hungary in 1948 or 1949. Claimants allege that they were nationals of the United Kingdom in 1945, and that they became citizens of the United States by naturalization on August 4, 1953.

Section 303(1) of the Act authorizes, inter alia, receipt and determination of claims of United States nationals for failure of the Government of Hungary to restore or pay compensation for property of nationals of the United States as required by Article 26 of the Treaty of Peace with Hungary signed at Paris, France, February 10, 1947. Article 26 of the Treaty provided for the restoration of rights and return of property of the United Nations and their nationals, and United Nations nationality depended upon nationality in any one of the United Nations on January 20, 1945, the date of the armistice with Hungary. Claims under Section 303(1) of the International Claims Settlement Act are restricted by the language of the Act itself to those owned by United

States nationals. However, as to these claims, through incorporation of certain terms of the Treaty, the well established requirement of international law as to the national character of the claim has been modified so as to require ownership of claims against Hungary by a national or nationals of the United States on the date of the armistice with Hungary, and continuously thereafter. In the instant case, it is found that claimants became citizens of the United States by naturalization on August 4, 1953. Consequently, the claim was not owned by a national or nationals of the United States on January 20, 1945, the date of the armistice with Hungary, and it may not, therefore, be considered compensable under Section 303(1) of the Act.

The Commission finds no merit in the argument advanced by counsel for claimants that since claimants in 1945 were nationals of the United Kingdom and are now citizens of the United States, their claim is justified and the Act did not intend to deprive one in the claimant's position of compensation.

United States nationality is clearly required at the time of filing the claim, since it is only the claims of "nationals of the United States" that the Commission is authorized to receive and determine under the opening sentence of Section 303. Had it been the intention of Congress to require no more than this, the phrase "nationals of the United States" need not have been repeated in the ensuing paragraphs; and Section 303(1) need only have referred to failure to "restore or pay compensation for property" as required by the treaty. The repetition of the phrase "nationals of the United States" in each of the sub-sections of Section 303 must have some effect other than to require such nationality at the time of filing the claim, or each such usage is superfluous; and it is elementary that a statute must be so construed as to avoid surplusage and to give effect to every word, clause, and sentence.

The language of Section 303(1), in its ordinary import would appear to embrace persons who, while nationals of the United States, suffered property losses later provided for in the treaties of peace. This reading is altogether consistent with application of the customary rule of international law requiring United States ownership of a claim at the time of loss and continuously thereafter. The Commission, however, adopted a modification which should prove less stringent in most, if not all, cases---that of requiring United States nationality on the

date of the armistice---a rule for which ample support is found in the history of the legislation culminating in the enactment of the amendment to the International Claims Settlement Act of 1949 which included, among other things, Section 303.

At one stage of the legislative process, the bill contained the so-called Dodd amendment, adding to Section 303(1) the following language:

> No claim under this paragraph shall be denied on the sole ground that the natural person who originally suffered the loss was not a national of the United States if on the date of the armistice with the country with respect to which his claim is asserted and continuously thereafter until September 15, 1947, such person was a permanent resident of the United States, and if he had at any time prior to the date of such armistice formally declared his intention of becoming a citizen of the United States and had become a citizen of the United States by September 15, 1947. (Section 303 of H.R. 6382, 84th Congress.)

The drafters of the foregoing quite obviously anticipated that unless the bill were specifically made to provide otherwise, the Commission would be compelled to combine the nationality requirements of the treaty and the Act with a resultant exclusion of all who were not United States nationals on the date of the armistice. The Senate Committee on Foreign Relations rejected this liberalizing amendment, stating in its report (No. 1050, 84th Congress, 1st Session, July 20, 1955):

> The general principle controlling the eligibility of a natural person to file a claim against another government is the familiar rule of international law that such a claim must be continuously owned by a national of the claimant State from the time the claim arose until the date of its presentation. This principle is followed in the bill as it passed the House with respect to the Russian and Italian claims, as well as for claims based upon nationalization and compulsory liquidation of property in the territory of Bulgaria, Hungary, and Rumania. It is not followed with respect to war damage claims or claims of American stockholders in foreign owned corporations. (See sec. 5 above) Thus, the bill as approved by the House does not contain a uniform standard of eligibility, and consequently discriminates in principle between various categories of claimants.
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> In the draft bill originally submitted by the administration to the House Committee on Foreign Affairs, the same principle was applied to claims based upon war damage in those three countries. As reported by the Committee, however, and passed by the House, the principle was abandoned for such claims. Instead, section 303 declares that the claimant need not have been an American citizen when the loss was suffered, provided that he was (a) a person who had declared his intention to become an American citizen at the time of the armistice, (b) had become a citizen by September 15, 1947 (the date of the peace treaty), and (c) resided in the United States permanently from the date of the armistice to the date of the peace treaty.

As to the second part of the claim which is made solely by CLARA BAUER, claimants' argument in effect states that a declaration of intention (first paper) qualifies a person as a national of the United States, within the meaning of the Act. It appears, however, that the Senate Committee on Foreign Relations

specifically considered a proposal to bring such persons within the purview of the Act but rejected same with the following comments:

> The committee has carefully considered the arguments advanced in support of the proposed extension of eligibility which, if adopted, would mark the first time in claims history of the United States that a declaration of intention was equated with citizenship. After weighing all pertinent factors, the committee has concluded that such a precedent is not desirable. While sympathetic to the plight of those unfortunate individuals who were not American citizens when they sustained war losses, the committee has had to keep uppermost in view the interest of those individuals who did possess American nationality at the time of loss. It is these persons who have paramount claim to any funds which may be available. Even without the addition of the class here questioned, the funds will be insufficient to meet the claims of otherwise qualified claimants, except possibly in the case of the Bulgarian and Italian assets. . . .

The Committee then acted upon its conclusion by deleting the last sentence of Section 303(1) of H.R. 6382, 84th Congress, explaining that the deletion:

> would have the effect of limiting the eligible class to claimants who were American citizens at the date the loss was sustained. 1/

The history of the bill is replete with other proposed amendments designed to liberalize the nationality requirements and to broaden the class of eligible claimants, all of which were eventually rejected. From all of this, it is clear that the Congress, in determining prospective beneficiaries of the funds involved in this legislation, was not satisfied with the treaty requirements for nationality. Rather, the Congress insisted upon nothing less than United States nationality at the time the claim arose, whether that be viewed as the date of loss (often extremely difficult or impossible to determine with exactitude) or, as in the treaty, the more administratively feasible date of the armistice.

The Commission is of the opinion that under Section 303(1) the less stringent requirement of United States nationality on the armistice date should be the standard used. Thus, it may be said that whereas the treaty requires United Nations nationality on the date of armistice, the statute provides relief only to those who had United Nations nationality by virtue of United States nationality. To this extent, the customary rule of international law may be regarded as having been modified by the treaty and by the International Claims Settlement Act.

The Commission concludes that in order for an award to be made under Section 303(1) of the Act, the property forming the basis of the claim, or the claim arising from its loss, must have been owned by a national or nationals of the United States on the date of the armistice with the country against which the claim is filed.

1/ Report of the Committee on Foreign Relations of the United States Senate on H.R. 6382, 84th Congress, First Session Report No. 1050(July 20, 1955).

The Commission also concludes that there is no possibility of placing on the pertinent provisions of the Act an interpretation which would bring within its purview, in addition to nationals of the United States, persons who, at the time of the loss on which their claims are based, had merely declared their intentions to become citizens of the United States, without having obtained such status at such time.

For the foregoing reasons these claims are denied.

A. K. B.

Dated at Washington, D. C.

JUL 17 1957

FOR THE COMMISSION:

Donald G. Benn

Donald G. Benn, Director
Balkan Claims Division