

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

JOSEF SCHWAGER

Claim No. Y2- 1754

Decision No. Y2-
159

Under the Yugoslav Claims Agreement of 1964
and Title I of the International Claims
Settlement Act of 1949, as amended

PROPOSED DECISION

This claim, in the amount of \$33,868.00, is based upon the asserted ownership and loss of an interest in real and personal property located in Brestowatz, Yugoslavia. Claimant, JOSEF SCHWAGER, states that he is not a citizen of the United States.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended (64 Stat. 13 (1950), 22 U.S.C. §1623(a) (1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Yugoslav Claims Agreement of November 5, 1964 and the Commission is directed to apply the following in the following order:

- (1) The provisions of the applicable claims agreement as provided in this subsection; and
- (2) the applicable principles of international law, justice and equity,

Among other things, the Agreement provides as follows:

Article I. (a) The Government of Yugoslavia agrees to pay, and the Government of the United States agrees to accept, the sum of \$3,500,000 United States currency in full settlement and discharge of all pecuniary claims of nationals of the United States, whether natural or juridical persons, against the Government of Yugoslavia, on account of the nationalization and other taking of property and of rights and interest in and with respect to property which occurred between July 19, 1948 and the date of this Agreement.

. . .

Article II. The claims of nationals of the United States to which reference is made in Article I of this Agreement refer to claims which were owned by nationals of the United States on the date on which the property and rights and interests in and with respect to property on which they are based was nationalized or taken by the Government of Yugoslavia and on the date of this Agreement. (Agreement between the Government of the United States and the Government of the Socialist Federal Republic of Yugoslavia Regarding Claims of United States Nationals, November 5, 1964, which entered into force on January 20, 1965, 16 U.S.T. & O.I.A. 1965, T.I.A.S. No. 5750 (1964).)

Thus, where property was owned by a natural person at the time of its nationalization or other taking, a claim based upon such loss of property is not compensable under the Agreement unless such person was a national of the United States at the time of nationalization or other taking which must also have occurred between July 19, 1948 and the date of the Agreement.

For a definition of the term "nationals of the United States", reference is made to Section 2(c), Title I, of the International Claims Settlement Act of 1949, as amended (supra), which provides that:

The term "nationals of the United States" includes
 (1) persons who are citizens of the United States, and
 (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

As to item (1), the term citizen of the United States includes all persons born or naturalized in the United States, and subject to the jurisdiction thereof (U.S. Const. Amend. XIV, §1). Also, a person does not become a citizen of the United States by way of naturalization until the procedure of naturalization is fully complied with and the order divesting the person of his former nationality and making him a citizen is signed by the judge of the court having jurisdiction (Petition of Sproule, D. C. Cal. 1937, 19 F Supp. 995).

As to item (2), the Commission has held that persons who though not citizens of the United States owe permanent allegiance to the United States are those who were born in certain outlying insular possessions of the United States or born elsewhere of parents already possessing that

status and does not include an alien who resides in the United States, who is an employee of the United States Government and has sworn allegiance thereto. (See the Claim of Edward Krukowski, Claim No. PO-9532,

Dec. No. PO-927, 21 FCSC Semiann. Rep. 27 [July - Dec. 31, 1964].)

Neither does it include a person who in the course of applying for his United States citizenship filed a declaration of intention and a petition of naturalization and took certain oaths. (See the Final Decision in the Claim of Walter Ludwig Koerber, Claim No. W-3917, Decision No. W-1322.)

In the matter of the Claim of Jacob Meisler, Claim No. PO-4436, Dec. No. PO-286, 16 FCSC Semiann. Rep. 30 [Jan. - June 1962], and the Claim of Vlad Metchik, Claim No. PO-1907, Dec. No. PO-314, 17 FCSC Semiann. Rep. 45 [July - Dec. 31, 1962], the Commission held that the principal of international law regarding the nationality of a claimant seeking espousal by one state of his claim against another, which has also been expressed as requiring that the aggrieved person be a national of the espousing state at the time the claim or loss accrued or arose, applies to claims authorized under Section 4(a) of Title I of the International Claims Settlement Act, as amended (supra).

Claimant indicates that he has no information concerning the date of nationalization or other taking of this property and states that he is not a citizen of the United States. The record in this matter does not warrant a finding that claimant was a national of the United States at any time covered by the Agreement.

In view of the foregoing, the Commission finds that this claim is not a claim of a national of the United States as defined by Articles I and II of the Yugoslav Claims Agreement of November 5, 1964 and it is, accordingly, denied.

The Commission deems it unnecessary to consider other elements of this claim.

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

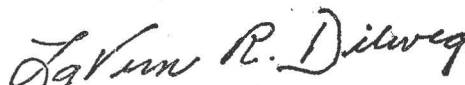
30 NOV 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the 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 Reg., 45 C.F.R. §531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)