

UNITED STATES OF AMERICA  
DEPARTMENT OF JUSTICE  
OFFICE OF ALIEN PROPERTY

In the Matter of:

LAWRENCE FUMIO MIWA, as  
Successor-in-Interest to  
SEIGO MIWA, a/k/a J. S. MIWA

Title Claim No. 36891

Docket No. 57 T 41

RECOMMENDED DECISION OF WILLIAM C. LEVY, HEARING EXAMINER

STATEMENT OF THE CASE

This is a proceeding for the return of vested property under the Trading with the Enemy Act, as amended (50 U.S.C. Appx. 1 - 40), hereinafter called "the Act," and it has been conducted in accordance with the Rules of Procedure for Claims of this Office (8 CFR Part 502). The proceeding was commenced on June 28, 1948 by the timely filing of a notice of claim by the late Seigo Miwa for the return of property vested by Vesting Orders Nos. 2783, 3567, 5183, 7497, 10305, 11596 and 13491. The principal items claimed consist of shares of the capital stock of J. S. Miwa & Company, Ltd., of Honolulu, Hawaii. With the exception of Imperial Japanese Government bonds in the face amount of \$5,000, and a yen certificate of deposit, the vested property has been liquidated realizing the sum of \$150,412.95. The claim is thus an excepted claim within the meaning of section 502.2(h) of the Rules of Procedure for Claims. The aforesaid property was vested upon a finding that it was owned by Seigo Miwa, a resident and national of Japan. Seigo Miwa, the original claimant, died in Japan on May 23, 1954, and the claim is now being maintained by his son, Lawrence Fumio Miwa, an American citizen now residing in New York City, as successor-in-interest. A conflicting claim filed by Shigeru Nakata, Claim No. 4700, docketed for hearing along with the instant claim, was withdrawn at the request of claimant, Shigeru Nakata, and removed from the docket by order dated November 8, 1956.

A pre-hearing conference was held on October 31, 1956, and, pursuant to notice, a hearing was held before me on November 8, 1956. The claimant appeared in person and was represented by Oliver E. Stone, Esquire, Washington, D. C. Richard P. Lott, Trial Attorney, represented the Chief of the Claims Section. The record consists of claimant's testimony, a stipulation of certain facts read into the transcript of the record, and various exhibits received in evidence. A supplementary hearing was held on October 9, 1957 in respect of the admissibility of additional evidence, and briefs were submitted dated January 4, 1957, April 18, 1957 and October 21, 1957. The claim is recommended for disallowance for the reasons hereinafter set forth.

#### PROPOSED FINDINGS OF FACT

1. The late Seigo Miwa was born in Japan on June 25, 1897. He resided there until April 15, 1914 when he proceeded to Hawaii in order to become a part of his father's business. His father was then engaged in importing foodstuffs and agricultural foods to Hawaii from Japan and the United States, the same business which was eventually incorporated as J. S. Miwa & Company, Limited.

2. Between 1914 and September 1, 1943, when he last left for Japan, Seigo Miwa made five trips to Japan. These trips were as follows: Departed for Japan April 21, 1926, returned Honolulu June 22, 1926; departed for Japan August 18, 1933, returned Honolulu October 24, 1933; departed for Japan July 17, 1935, returned Honolulu May 21, 1936; departed for Japan July 6, 1936, returned Honolulu November 22, 1938; departed for Japan April 1, 1941, returned Honolulu October 21, 1941.

3. Seigo Miwa went to Japan in 1936 because his father, who was handling the Japanese export end of the Miwa company, as well as other business interests, had become aged and needed him there. His wife and three children were in Japan at that time. Miwa overstayed the duration of his re-entry permit, which had been issued to him prior to his departure. Consequently, his return to Hawaii in November 1938 was on the basis of a treaty trader visa.

4. His return to Hawaii in October 1941 was authorized on the basis of a visitor's permit valid for six months.

5. He was detained as an "enemy alien" on February 13, 1942. Subsequently, he was transferred to detention camps in the United States. On September 1, 1943 he was returned to Japan. At the time of his departure there was outstanding a warrant of deportation issued on the ground that his presence in the United States was in violation of the Immigration Act of 1924 in that he had remained longer than the six months allowed by the visitor's permit under which he entered on October 21, 1941.

6. He applied on November 26, 1947 for a returning resident's visa, which was denied him on the ground that his last entry into the United States was as a treaty merchant. He renewed his application for a visa in 1949 or 1950 and this application was denied because his departure in 1943 was with a warrant of deportation outstanding. His application for permission to reapply for entry into the United States was denied on March 19, 1953. He died in Japan on May 23, 1954.<sup>1/</sup>

7. While interned at Lordsburg, New Mexico, Seigo Miwa was examined and interrogated on November 16, 1942, relative to his right to be and remain in the United States. Proceedings for his deportation ensued, resulting in the issuance of a warrant of deportation on July 23, 1943, which found him subject to deportation "in that, after admission as a visitor, he has remained in the United States for a longer time than permitted by said act or regulations made thereunder."

8. Subsequent to his interrogation on November 16, 1942 and prior to his departure for Japan on September 1, 1943, Seigo Miwa executed a "Petition for Reuniting Family in Family Internment Center" dated December 4, 1942. While interned, he had been informed by letter that his mother was hopelessly ill and wished to see him. She died on April 4, 1943 prior to his return. He was also worried about his wife and three minor children in Japan. He also stated that he was told by one of the immigration officers at El Paso that if he did not agree to return to Japan, he would

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<sup>1/</sup> Proposed Findings of Fact 1 through 6 are based on the stipulation of the parties, Tr. pp. 4-6.

be forced to return and would never be readmitted to the United States. On March 29, 1943, he wrote to Joseph C. Grew, former Ambassador to Japan, setting forth his situation as a Japanese internee at Lordsburg, and requesting his assistance in getting the authorities to permit him to leave.

9. He arrived in Japan in November 1943 and was interrogated by police officers, and from time to time was subject to surveillance. He was not arrested or restricted in any way and lived quietly maintaining his family from the rental of property inherited from his father. He was asked, but declined, to become the head of the Tonari Gumi, a community organization devoted to the Japanese war effort.

10. Seigo Miwa worked for the allied occupation forces in Hiroshima and Kure City where he lived during the war.

11. In 1947, he applied for a returning resident's visa to permit him to return to the United States. His application was denied by the State Department on the ground that its records indicated that he was deported from the United States. His appeals to the Immigration and Naturalization Service were ultimately denied on the same ground.

12. However, his daughter and his son, Lawrence Fumio Miwa, the present claimant, being citizens of the United States, were allowed to return to Hawaii in 1947 and claimant, after completing his high school studies in Hawaii, now resides in New York City.

#### PROPOSED CONCLUSIONS OF LAW

Claimant, Lawrence Fumio Miwa, is eligible for return as a citizen of the United States under section 32 of the Act. However, he cannot recover unless his late father, Seigo Miwa, the owner of the claimed property immediately prior to vesting, was also eligible. The Claims Section contends that Seigo Miwa was resident within Japan while the United States was at war with that country and therefore was an "enemy" under section 2 of the Act ineligible for return. This is the critical issue in the case.<sup>2/</sup>

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<sup>2/</sup> The Claims Section docketing memorandum also took the position that Miwa was doing business in Japan. However, this position is not maintained in its brief dated April 18, 1957, nor in its proposed findings and conclusions dated April 18, 1957, or in its reply memorandum of October 21, 1957.

Claimant argues that Seigo Miwa spent the war years in Japan against his will as a result of his deportation to Japan. Consequently, he was not resident within Japan during the war within the meaning of the Trading with the Enemy Act, citing Guessefeldt v. McGrath, 342 U.S. 308; Nagano v. McGrath, 187 F. 2d 759 and 212 F. 2d 262 and Matter of Insolvent Account of Yokohama Specie Bank, Ltd., Debtor, David Latuf, Decision of the Deputy Director dated July 15, 1955.

\* \* \* Seigo Miwa was interned and interrogated and asked to apply for repatriation and ordered deported and ultimately sent back to Japan. Under these circumstances he did not have freedom of choice with respect to whether he might stay in Hawaii as he wanted, or return to Japan: he was sent back to Japan because he was deportable and actually under order of deportation. The fact of the matter is that he wasn't wanted here and his return to Japan while under deportation order was the equivalent of deportation under the Immigration Act of March 4, 1929, providing that for immigration purposes " \* \* \* any alien ordered deported \* \* \* who has left the United States shall be considered to have been deported in pursuance of law \* \* \* . "

This fact of deportation was later to prevent his application for return after the war. He has been penalized as a deportee and it can not now be contended that his was a "voluntary departure" so as to attenuate the duress upon him to leave the United States for Japan during war conditions \* \* \* . (Cl. Br. p. 9)

The Claims Section disputes the allegation that Seigo Miwa was repatriated to Japan in 1943 against his will and that the deportation proceedings were the cause of his repatriation rather than his desire to be reunited with his family. Further, argues the Claims Section, even if he were deported to Japan against his will, Seigo Miwa became resident there after his arrival since he had no lawful status as a resident of the United States on December 7, 1941, being in Hawaii on a visitor's visa, citing Matter of Ludwig Gross, Decision of the Deputy Director dated August 15, 1957.

In that case the Hearing Examiner recommended allowance of the claim on the ground that Ludwig Gross, a German seaman stranded in New York at the outbreak of World War II in September 1939, was deported to Germany in December 1945 involuntarily. Gross had been paroled during the war by order of the Attorney General after apprehension on May 7, 1941 and the issuance of a warrant of deportation, and permitted to reside and accept employment

in New York City. In 1945 contemplating marriage to an American resident, he initiated proceedings to legalize his immigration status and requested cancellation of his parole and outright release. On September 5, 1945 he was again taken into custody and on December 7, 1945 deported to Germany. Nevertheless, the Deputy Director found that he became resident within Germany upon his deportation to that country.

Assuming, therefore, that Seigo Miwa did all that he could to remain in the United States and left only under the duress of deportation proceedings which later prevented his return after the war since he was classified by the State Department and the Immigration and Naturalization Service as having been deported, he would still be ineligible under the doctrine of the Gross decision. Under that ruling, it becomes legally irrelevant as to whether he left internment voluntarily in 1943 or was in fact deported against his will. Seigo Miwa was in Hawaii on December 7, 1941 with a visitor's visa valid for six months and not as a legal resident. The warrant of deportation issued on July 23, 1943 was based on the fact that Miwa had remained in the United States for a longer time than the six months permitted by his visitor's visa. I am compelled therefore to accept the position of the Claims Section that, under the decision of the Deputy Director in the Matter of Ludwig Gross, Seigo Miwa became resident within Japan upon his arrival in 1943, even assuming he did not leave the United States voluntarily.

Claimant also asserts his eligibility under the first proviso to section 32(a)(2)(D) of the Act on the ground that Seigo Miwa was the subject of official persecution upon his arrival in Japan as a consequence of Japanese law discriminating against political and religious groups not in sympathy with the Japanese war effort. No specific Japanese laws, decrees or regulations directed at Japanese nationals who formerly resided in the United States are cited, nor is there any evidence of any such substantial deprivation of citizenship rights by reason of official action. It is true that Miwa upon his return to Japan was subject to police interrogations and surveillance and that he was apparently criticized for his refusal to

participate in the Tonari Gumi, a community organization devoted to the Japanese war effort. However, he was not arrested, his property was not seized, and he lived quietly on the proceeds of rental property inherited from his father without engaging in any business enterprise.

I therefore propose the following conclusions of law:

1. Seigo Miwa was a Japanese citizen and resident of Japan after December 7, 1941 and did not fail to enjoy full rights of Japanese citizenship as a consequence of any law, decree or regulation of Japan discriminating against political, racial or religious groups.

2. Lawrence Miwa was a citizen of the United States at all times after December 1941 and therefore personally eligible for a return of vested property under section 32(a) of the Act. He cannot recover the property claimed in this proceeding, however, because his predecessor-in-interest and the owner of the property at the time of vesting, the late Seigo Miwa, is ineligible under section 9(a) of the Act as an individual resident within Japan while the United States was at war with that country and therefore "an enemy" under section 2 of the Act.

ACCORDINGLY, it is recommended that Title Claim No. 36891, Docket No. 57 T 41 be disallowed.

*William C. Levy*

William C. Levy  
Hearing Examiner

APR 8 1958

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(Date)