UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
OFFICE OF ALIEN PROPERTY

In the Matter of: LAWRENCE FUMIO MIWA, AS SUCCESSOR-IN-INTEREST OF SEIGO MIWA, a/l/a J.S.MIWA	Title Claim No. 36891 Docket No. 57 T 41

BEFORE THE DIRECTOR

STATEMENT

This appeal to the Director is from the Hearing Examiner's Recommended Decision, denying the excepted claim of a United States citizen, Lawrence Fumio Miwa, for the return of $150,412.95, being the amount realized from the liquidation of the vested property of his father, the late Seigo Miwa.

QUESTIONS PRESENTED

The principal issue surviving the hearing is whether Seigo Miwa's physical presence in Japan during part of World War II was volitionally acquired and voluntarily assumed, in view of the fact that the United States Government thrust him into internment shortly after the outbreak of the war and returned him to Japan under deportation order during the war.

Also at issue is the question of whether the original claimant, Seigo Miwa, would have qualified for the return of his property under §32 (a) (2) because of the closing up of his business in Japan and of his persecution as a pro-American, English-speaking Christian, by the Japanese authorities during the war.

The qualification of present claimant as successor-in-interest to Seigo Miwa, and the absence of any trace of enemy taint is unquestioned in these proceedings.

FACTS

In addition to the Proposed Findings of Fact of the Hearing Officer, the following material particulars are undisputed in the record.

Seigo Miwa settled in Hawaii in 1914 at the age of sixteen. For the first seven years he lived with his parents, near the first Miwa store, founded by claimant's grandfather, then he lived for three years in his own home at Waikiki, Honolulu. The next seven years he and his family also dwelt in the Waikiki district until 1930 when the family moved to its home at 2556 So. Boretania Street behind their Moilili store. (Cl's Exh.1). He married in Hawaii and there his three children, including the present claimant, were born.

In addition to his principal occupation in Hawaii in the food sale and importing business, Seigo Miwa's ties to this United States territory are evidenced by his payment of T.H. Poll Taxes (Cl's Exh.3), his registration under United States social security (Cl's Exh.2), and his appointment, even after Pearl Harbor, to a food committee by Governor Pondexter (Cl's Exh.4,p.2, first full paragraph).

Then, on February 13, 1942, he was arrested and involuntarily interned as an enemy alien. Subsequently he was shunted from intern-ment camp to internment camp, during the course of which, deportation proceedings were held, and he was ordered deported on the solemn ground that "he has remained in the United States for a longer time than per-mitted". (Cl's Exh.10-Warrant of deportation). Consequently, he was returned to Japan in 1943. Although Miwa might have felt that joining his family in Japan had some attractions as contrasted with continued rigors of internment in the United States, it is clear that he had no choice in the matter: "One of the then immigration officers of El Paso told me that if I denied to go back to Japan at that time, the United States Government would force me to return to Japan and I would never be able to come back to the United States". (Cl's Exh.8, ¶2).

Once in Japan, he was immediately detained for questioning by the Secret Police (Tr.18),and even after his release was subjected to daily surveillance by various Japanese authorities. (Cl's Exh.5,Tr.18). He was forced to close his business (Tr.23) and throughout suffered official and unofficial sanctions because of his political espousal

of the American cause (Tr.24), his Christian religion, and his refusal to become a part of the local community organization for the Japanese war effort. (Exh.6, Tr. 21).

As soon as possible after the war, Seigo Miwa volunteered his services to the American Occuptation Forces and worked for the United States authorities in Hiroshima and Kure City (Tr.28). At the same time he immediately sought to return to Hawaii (Tr.29) but this was repeatedly denied by the Immigration and Naturalization Service of the United States Department of Justice on the grounds of his prior deportation. As American citizens, his daughter and son, Lawrence, the present claimant, were allowed repatriation to the United States.(Tr.24).

ARGUMENT

I. Against the background of involuntary incarceration and an order of deportation against him, Seigo Miwa's return to Japan was under duress and therefore his physical presence in Japan did not constitute residence which must have been voluntary if this claim is to be denied.

The principal arguments that the physical presence of Seigo Miwa within Japan during part of the war was for a special purpose and a brief period and under duress were covered in Claimant's Reply Brief of June 3, 1957, and will not be reiterated here. However, since the subsequent Reply Memorandum of the Claims Section, dated October 21, 1957, relied on the Deputy Director's August 15, 1957, decision in the Matter of Ludwig Gross, and the Hearing Examiner hinged his recommended decision on the Gross case, consideration here will be confined to the applicability, if any, of the Gross doctrine.

A. On the facts, the Gross decision is inapplicable, given the particulars of duress established in Miwa.

At the outset two facts should be noted which distinguish the Miwa case from Gross. Seigo Miwa had lived most of his life in United

States territory, unlike the German seaman whose only extended stay in the United States was after his arrest and internment. Miwa's principal place of the business which he took over from his father was in Hawaii; there he had his home, and there his children were born. Miwa's ties with the United States were firm and established long before his internment, whereas Gross' ties were developed after internment. In fact, but for his internment and parole, Gross would not have had an opportunity for contracting his ties with America.

Moreover, so far as concerns the degree of coercion constituting duress there is a great difference between the deportation at the height of the war with Japan of Miwa, a member of the hated Japanese race, and our returning Gross to the German fatherland after the fighting was over. For two years before he went back to Germany, Gross had been out on parole - a far cry from the harsh conditions of internment imposed on Miwa until his very departure. In view of these material factual differences in the two cases, we agree that "the Examiner's reliance on Ludwig Gross was misplaced". In reaching this same conclusion in its May 8, 1958, memorandum to the Director re Miwa, the Claims Section reverted to its position that this is simply a repatriation case and should not be treated as a deportation matter.

We submit that this facile characterizing of the case as repatriation rather than deportation does not dispose of the matter. There remains the question of whether the return to Japan was of Miwa's own free will, an issue dealt with in this and the other two briefs for claimant. And finally on this point we assert that the Department of Justice should be precluded from asserting now that this was repatriation and not deportation. That was the original position taken by the Justice Department's official, James E. Riley, of the Immigration and Naturalization Service, in his May 4, 1950, letter to Seigo Miwa, but on 12 July 1951 Mr. Riley admitted that mistake and wrote Miwa that it had been deportation all along. (Cl's Exh.7). That final determination caused Justice to deny Seigo

Miwa permission to return to Hawaii, and Justice should not now reverse that determination in order to deny the return of his property.

B. Even if Gross be deemed to apply to the Miwa situation, it should not control the result here.

The result in the Gross case was that a German, who had never spent any appreciable time in the United States until he was arrested and interned, lost his $840.00. That obviously harsh result never had the benefit of review by the Attorney General. The one court case on the subject, Akata v. Brownell, 125 F. Supp. 6 (D.C.Hawaii 1954) is contra. It was nowhere cited. Thus we suggest that upon a thorough reconsideration of the principles involved, the Gross doctrine should be overruled; at any event it should not be extended to deny Lawrence Miwa his $150,000 patrimony: the untainted accumulation of the toil of his father and of his grandfather in United States territory.

II. Even if Seigo Miwa were technically an enemy, he was also a persecutee entitled to return of his property pursuant to §32 (a)(2).

"To authorize the return of vested property to innocent victims of Axis aggression who may have been nationals or residents of enemy countries" the Act of August 8, 1946, (60 Stat.930) added provisos to §32 (a)(2)(C) and (D). (Statement of Purposes of the Bill, H.Rpt. No. 2389, 1946 U.S.Code Cong.Service pp.14678). The record of Seigo Miwa's interrogations and regular surveillance by police officers, of his business retrenchment and restricted life bring him within the scope of this general purpose. The provisos themselves are more specific and require a showing of deprival of the "full rights of citizenship" by national law, decree, or regulation. It is clear that the persecution of Miwa in Japan was by Japanese Government Officials acting pursuant to Japanese laws and regulations discriminating against political and religious groups not in sympathy with the war effort.

The specific laws, decrees or regulations, we submit, need not be cited because the purpose of the proviso was to differentiate governmental action from merely private or individual action. Here there were governmental pressures and actions impairing the freedom and livelihood of Seigo Miwa. Although the methods of dealing with religious and political dissidents differed somewhat in Italy and Germany as compared with Japan, the Office of Alien Property may not conclude therefrom that the 1946 provisos were intended to apply only to persecutees in Europe. The House Report's discussion (1946 U.S.Code, Cong.Service pp.1484-5) does not so limit the applicability, but instead refers continually to victims of Axis oppression. The Axis included Japan, and Japanese persecutees should not be excluded from the benefits of this legislation.

Finally, the Court's opinions in Nagano v. McGrath, 187 F 2d 759 and 212 F. 2d 262 suggest another basis for the conclusion that Seigo Miwa should not be deprived of his property on the technical ground that he is an enemy alien. In that case there was a parallel situation of a Japanese citizen who had lived in Japan for twenty-nine years. Judge Lindley held that she was not a citizen or a national of Japan so as to defeat her claim, saying, ibid 187 F. 2d 759, 768: "Thus, though literally speaking, plaintiff is a citizen of Japan, she is not a citizen within the meaning of the word and its connotation recognized by judicial decisions. We ordinarily think of a citizen as one who owes allegiance to a state and has a reciprocal right to protection by it". We submit that here also "... it cannot be said that [Miwa was] ... in any true sense a member of the nation of Japan".

Wherefore the competence which Seigo Miwa and his father before him had acquired in over sixty years of residence in the United States should be returned to Lawrence Miwa, the present claimant and successor-in-interet.

Respectfully submitted

Oliver Ellis Stone