UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

In the Matter of: LAWRENCE FUMIO MIWA, as Successor-in-interest to Seigo Miwa Title Claim No. 36891	Docket No. 57 T 41

BEFORE THE ATTORNEY GENERAL

MEMORANDUM FOR LAWRENCE F. MIWA

By order of October 16, 1958, in this cause, the Attorney General granted a review limited to the issue of whether claimant's father was not resident within Japan within the meaning of the Trading with the Enemy Act, and requested briefs on "the significance of the Gross decision, its applicability to the facts of this case, and whether claimant voluntarily sought repatriation."

The Recommended Decision of the Hearing Examiner, having been adopted by the Deputy Director of the Office of Alien Property, is the decision now under review in these proceedings. In that decision (page 4) it is admitted that claimant, as a native born American citizen, is eligible for return of the approximately $150,000 in proceeds from the seized property of his deceased father, Seigo Miwa. However the eligibility of Seigo Miwa was questioned. Although the Hearing Examiner was willing to assume (Decision, page 6) "...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....", the Examiner felt bound to disallow this claim because:

"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." (Decision, page 6)

FACTS

As found by the Hearing Examiner, or as established without contradiction in the record, the material facts are as follows:

Seigo Miwa was born in Japan and came to Hawaii in 1914 at the age of sixteen to engage in the food importing business which his father (grandfather of present claimant) had founded. (Proposed Finding (P.F.) and Stipulation (St.) 1) Between that time of arrival and September 1, 1943, when he was returned to Japan while under a deportation order (P.F. St. 5), Seigo Miwa made five trips to Japan, spending an aggregate of less than four years in Japan and more than twenty-five years in the United States. (P.F. St. 2) For the first seven years in Hawaii he dwelt with his parents, then he acquired his own home at Waikiki, Honolulu. He married in Hawaii and there his three children, including the present claimant, Lawrence, were born. The family resided for seven more years in the Waikiki district until 1930 when they moved their home to 2556 South Beretania Street behind their Moiliili store (Cl's Exh. 1). In 1934 his wife returned to Japan because of a respiratory ailment of their son, Lawrence. (Tr. 10)

During this period the business expanded so that, aside from the principal office in Hawaii with about twenty-five employees, it maintained three employees in a San Francisco branch, and one employee in Japan under Seigo's father, who had gone there to handle the Japanese export end of the Company. (P.F. St. 3, Transcript (Tr.) 11) His father having become aged and needing him in Japan, Seigo Miwa went there in 1936. (P.F. St. 3) During his trip to Japan his father died suddenly, and Seigo Miwa was obliged to stay there longer in order to settle family and business affairs, even after the expiration of his Reentry Permit (Cl's Exh. 4, seventh paragraph) Consequently his visa for return to Hawaii was issued in the form of a treaty trader status

(P.F. 3). Nearly two and a half years after his return to Hawaii in 1938, he departed for Japan on business (P.F. 2, ¶8 of Cl's Exh. 4). However when he sought to return to Hawaii six months later in September 1941, he found that the mounting tension between the United States and Japan prevented the routine granting of his visa, and he had to get special permission from the Immigration and Naturalization Service (¶8 of Cl's Exh. 4). This came in the form of a visitor's permit valid for six months, and he returned to Hawaii in October 1941 (P.F. 4).

The next events are uncontradicted and are aptly described by Saigo Miwa himself in one of his many letters in which he unsuccessfully sought to return to Hawaii after the War:

> "Suddenly and unexpectedly this hostility started by Japan. Even though being an enemy Alien (not by heart and soul) I was appointed one of the Food Committee representing Japanese community of Honolulu by the then governor Poindexter and worked day and night continuously and diligently inspite of facing hardships until I was detained with some unknown reasons at Sand Island Detention Camp, Honolulu on 13th February 1942." (page 2 of Cl's Exh. 4)

Only the month before and after the outbreak of the war, he had applied for an extension of his visa but the Immigration officials had told him to come back in March. (Cl. Sec. Exh. F, p. 4) That he was unable to do, being detained for transfer to internment in continental United States. So he left Hawaii, where he had lived most of his life, where he maintained his home and his business. (See also Cl's Exh. 3 - Hawaii Poll Tax Receipts, and Cl's Exh. 2 - Social Security registration.)

Subsequently in the United States he was shunted from detention camp to detention camp (P.F. 5) and interrogated (e.g., Cl. Sec. Exh. F) and told that even if he refused to go to Japan, the Government would force him to go there and he could not then return to the United States (P.F. 8, Cl's Exh. 8, ¶2), and ultimately ordered deported on 23 July 1943 (Cl's Exh. 10 - Warrant of Deportation). Less than six weeks later, on September 1st he was returned to Japan (P.F. 5).

In Japan he was subject to surveillance from time to time for his support of the American cause in the war (Tr. 24) his Christian religion and his refusal to head up the Tonari Gumi, devoted to the Japanese war effort (Tr. 21, P.F. 9). He served the occupation forces in Japan after the war (P.F. 10) and in 1947 began a series of attempts to be allowed to return to Hawaii.

These were all denied by the State Department and by the Immigration and Naturalization Service on the ground of his record of having been deported from the United States (P.F. 11). He died May 23, 1954 (P.F. 6). His son, Lawrence F. Miwa, the present claimant, returned to Hawaii in 1947 and has lived in the United States since (P.F. 12).

CLAIMANT'S POSITION

On principle, on the basis of decisions of the Office of Alien Property, and on the basis of pertinent federal court decisions, of which the two most in point (Nagano v. McGrath, 342 US 916 affirming without opinion 187 F 2(d) 759, and Akata v. Brownell, 125 F Supp. 6) have not heretofore been mentioned in the briefs of the Claims Section, the claimant submits:

1. Seigo Miwa never voluntarily relinquished his residence in Hawaii although he was physically present in Japan during part of the War.

2. The Gross decision involving the deportation of one whose only extended stay in and ties with the United States occurred because of and subsequent to his arrest and internment here should not be extended to the facts at hand involving one who had spent the greater part of his life before internment in business in the United States (Hawaii).

3. Assuming arguendo that the Gross decision is applicable, it should be overruled because it ignores the involuntary nature of departure from the United States after deportation proceedings.

ARGUMENT

I. Seigo Miwa never voluntarily relinquished his residence in Hawaii although he was physically present in Japan during part of the war.

The personal eligibility of the present claimant to return of the family property is admitted in this case, and, as to his father and predecessor-

in-interest, Seigo Miwa, the question of "doing business" in Japan is not in issue and there has been no suggestion of "enemy taint". Therefore the only issue is whether Seigo Miwa was technically an "enemy" under the Act on the ground that he was "resident within" Japan during the war.

The fact that he was "in" Japan during part of the war is insufficient to bring him within the statutory language -- especially when viewed in the context of his whole life pattern as a second generation businessman in Hawaii who suddenly found himself thrust into detention and ordered deported. We submit that his going to Japan was under the duress of the internment and of the warrant of deportation, and was therefore involuntary, and not a proper basis for the United States government keeping the proceeds of the sale of his property.

Seigo Miwa came to Hawaii in 1914 to take up the business which his father had established before him. He married and had his family in Hawaii. Less than four of the following twenty nine years did he spend in Japan. Aside from his last voyage to Japan, arranged by the United States Government while he was under order of deportation, his several trips to Japan were primarily on business matters. They were for brief periods and special purposes and did not and were not intended to derogate from his personal status as a resident of Hawaii.

It is true that on his last two returns to Hawaii he was successively admitted there as a treaty trader and as a visitor. This is explained by the exigencies which kept him in Japan after expiration of his reentry permit and by the increasing tension between the United States and Japan during that period. Although his last visa was technically "temporary", he did what he could to get it extended in January 1942 -- and this attempt, it should be noted, was by a Japanese citizen, in Hawaii, and after Pearl Harbor. In any event, residence under the Trading with the Enemy Act is not the equivalent of permanent legal residence under the Immigration laws and consequently the actual facts of Miwa's long-established residence in Hawaii should control. (See Decision of the Deputy Director in the Matter of David Latuf, of July

15, 1955.)

Viewing his life as a whole, one must conclude that Seigo Miwa's activities and sympathies centered more in Hawaii than anywhere else. His main holdings and business interests always remained at his main office which was in Hawaii. Although he languished for a year and a half being shunted around in various American internment camps, and was then returned to Japan while under deportation order, as soon as the war was over he repeatedly sought to return to his home in Hawaii.

Hawaii was his place of residence and Hawaii remained his place of residence as long as he had freedom of choice in the matter. Had he not been uprooted and interned and returned to Japan by United States Government authorities no question could arise in this case as to whether his presence in Japan constituted residence. As it happened, he lacked control over the events.

At the time of his seizure for internment in February 1942, we submit that the full background facts of his life establish that Seigo Miwa's status in Hawaii was the "something more than physical presence" referred to in Gussefeldt v. McGrath, 342 US 308, 312. After internment, he was not a free agent. The evidence on these two points does not bear out the suggestions of the Claims Section that Seigo Miwa's last two trips to Hawaii were mere sojourns and that the duress implicit in internment was subsequently palliated by his alleged application for repatriation. Such suggestions do not square with the facts that Hawaii was always Seigo Miwa's principal place of business where he maintained residences on Beretania and Lusitana (Cl. Sec. Exh. H) Streets; that even after the outbreak of the war he did what he could to extend his stay in Hawaii; and that after internment he was told he would be sent to Japan whether or not he applied for repatriation. (P.F. 8)

Voluntary repatriation was not here involved and, although called upon to describe the last trip to Japan as "repatriation" in the briefs of the Claims Section (see also Cl. Sec. proposed finding of fact No. 9) the findings approved by the Director reach no such conclusion. This may have been because no repatriation application (a document which, if it existed, would be

peculiarly within the Government's possession) was introduced into evidence, or, as is more likely, because the pressures and duress which led Miwa to the repatriation he was warned would take place anyway, vitiated the required voluntary nature of his return to Japan. This is developed in detail on pages 3-5 inclusive in the Reply Brief of Claimant, distinguishing the Oehmichen case relied upon by the Claims Section.

On voluntary residence, aside from the Guessefeldt principles cited above, the two cases most similar factually to the matter at hand are both cited in this Brownell v. Oehmichen, 243 F 2d 637, 639 (C.A. D.C. 1957), cert. den. 355 U.S. 842, but are avoided and ignored by the presentation of the Claims Section. These two cases are Akata v. Brownell, 125 F. Supp. 6 (D.C. Hawaii 1954) and Nagano v. McGrath, 187 F 2d 759 (C.A. 7, 1951, affirmed 342 U.S. 916) and 212 F 2d 262.

The Akata case involves a realistic analysis and evaluation of the situation confronting pro-American business people of Japanese nationality in Hawaii who found themselves interned shortly after Pearl Harbor, and it held that a Japanese salesman in Hawaii had not disqualified himself under §§2(a) and 9(a) of the Act from return of his vested property, even though he and his family had all requested and accepted repatriation to Japan during the war. Thus, on a basis of this and other facts in some respects not so strong as those of the instant case, it was ruled that Japanese residence was not acquired so as to bar recovery.

Similarly the Nagano doctrine amply covers the facts at hand. There Mrs. Nagano had lived in Japan twenty four out of the thirty five years after 1915 when she first lived in the United States, having returned to Japan after only a nine year residence here. To secure a Japanese education and Japanese spouses for her children she remained in Japan from 1924 to 1932 and returned to Japan in 1934 to stay there until 1950. These facts the Seventh Circuit held did not make her resident within Japan during hostilities and the Supreme Court affirmed without opinion. The same result should follow in the case at hand.

Finally we submit that even aside from all of the foregoing, the Department of Justice should be precluded from asserting that this was repatriation

and not deportation. That was the initial position taken by the Justice Department official, James E. Riley, of the Immigration and Naturalization Service, in his May 4, 1950 letter to Seigo Miwa. However on 12 July 1951 Mr. Riley admitted his mistake and wrote Miwa that it had been deportation all along (Cl's Exh. 7). Because of that latter determination, the Department denied Miwa permission to return to Hawaii, and Justice should not now reverse that determination in order to deny Miwa's son the return of his patrimony. (See also the quotation page 5 of Examiner's Decision).

II. The Gross decision involving the deportation of one whose only extended stay in and ties with the United States occurred because of and subsequent to his arrest and internment here should not be extended to the facts at hand involving one who had spent the greater part of his life before internment in business in the United States (Hawaii).

Aside from the deportation element in each case the facts here are so substantially different from those in the Gross case as to call for a different result. The complex of ties binding Miwa to Hawaii over the greater part of his lifetime and his development of his father's business enterprises there and in San Francisco and in Japan have already been set forth at length. By contrast, Gross was a German seaman who always had his residence in Germany between sailings. Until his arrest and internment as an enemy alien in the United States, Gross had developed no residence or ties here. What ties Gross developed here were developed only because the Government interned him and forced him to remain for the duration of the shooting war. During that period he was not allowed to ply his trade or to return to Germany. The shooting war over, the Government left him as it found him as a German resident with home port in Germany. The internment and deportation proceedings, though unpleasant in themselves deprived him of no rights which he had before they were instituted.

On the other hand the same proceedings cost Miwa his fortune and his livelihood and deprived him of the right to return to Hawaii where he had dwelt most of his life building up this livelihood and this modest fortune.

Although both Miwa and Gross did what they could to remain in the United States, the degree of duress is markedly different in each case. Contrast

the difference between our deporting Gross to the German fatherland after the war was over and our sending Miwa, a member of the hated Japanese race, back to Japan at the height of our war with Japan. For two years before going back to Germany, Gross had been released on parole -- a far cry from the internment imposed on Miwa until the day of his departure.

Finally, in submitting that the Gross doctrine is here inapplicable, we would call attention to the conclusion of the May 8, 1958 memorandum of the Claims Section to the Director that "...the Examiner's reliance on Ludwig Gross was misplaced."

III. Assuming arguendo that the Gross decision is applicable, it should be overruled because it ignores the involuntary nature of departure from the United States after deportation proceedings.

It is understandable why the Claims Section after having argued the applicability of the Gross doctrine before the Hearing Examiner, sought in its memorandum to the Director just cited, to avoid hinging this decision on that case. For the Director's Decision in Gross is obviously a harsh result. It would have been an unnecessary result had the decision heeded "a wise latitude of construction" favored by Mr. Justice Frankfurter in enforcing the purposes of the Trading with the Enemy Act. (Guessefeldt v. McGrath, 342 US 308, 312) And, for the reasons detailed in the Recommended Decision of the Hearing Examiner (Matter of Ludwig Gross, Title Claim No. 44795, Docket No. 57 T 14, January 24, 1957 - reversed by the Deputy Director August 15, 1957) we submit it was the wrong result.

As pointed out in the Examiner's Opinion, the cases cited to defeat return to Gross related to "doing business" or "enemy taint" or did not involve the salient question of coercion or duress. "Enemy taint" and "doing business" were not involved in Gross, but coercion and duress were. These points are nowhere met in the Deputy Director's Decision nor were any administrative or court decisions cited therein.

Finally, we submit that both principle and precedent for the Gross doctrine is lacking, and that the holdings and the reasoning of the Akata and the Nagano cases dealt with above, are strong authority for a contrary

decision. We believe that these authorities would prevail over Gross in a court action, and we ask the Attorney General to decide this case in the light of the considerations there presented.

CONCLUSION

It is respectfully submitted that this claim should be allowed and that the Deputy Director's decision adopting the Hearing Examiner's recommendation should be reversed.

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Date: 28 November 1958