In the Matter of:

LAWRENCE FUMIO MIWA, as Successor-in-Interest to Seigo Miwa.

OFFICE OF ALIEN PROPERTY

Title Claim No. 36891
Docket No. 37741

BEFORE THE ATTORNEY GENERAL ON REVIEW

The disallowance of this claim is before me for review as to whether it was correctly decided that the deceased owner of the vested property involved, Seigo Miwa, was "resident within" Japan within the meaning of § 2 of the Trading with the Enemy Act, and thus an "enemy" precluded from return by § 9(a) of the Act. It is undisputed that Mr. Miwa was physically present in Japan continuously between November 1943, until the date of his death on May 23, 1954. The property was vested at various times between 1943 and 1949, and has a value of approximately $130,000.

It is contended that Mr. Miwa's presence in Japan was without legal significance because he had "never voluntarily relinquished his residence in Hawaii." The contention and the

supporting arguments have been carefully considered. I do not find them persuasive.

Mr. Miwa, a native of Japan, where he was born in 1897, first came to Hawaii in 1914. There he engaged in a food importing business which his father had founded. He lived in Hawaii continuously until July 1936, except for three visits to Japan in 1926, 1933, and 1935-1936. In July 1936, he left for Japan on another visit, armed with a reentry permit. His purpose in going to Japan was to help his aged father in handling the Japanese end of the American business. At this time his wife and children were also living in Japan. Mr. Miwa did not return to Hawaii within the period covered by the reentry permit. He was permitted to return in November 1938, as a treaty trader. As such he was not considered under the immigration laws as a permanent resident of the United States. In April 1941, he went to Japan again, returning to Hawaii in October as a visitor for business for a period not to exceed six months. The record shows that his purpose in coming to Hawaii at this time was to inspect his business and that he intended to stay about four months. In a report to the Treasury Department concerning his company, executed in October 1941, he described himself, as "residing in Japan since April 1, 1941."

Because of the outbreak of war between Japan and the United States Mr. Miwa could not leave, and in February 1942, he was detained as an "enemy alien." He was transferred to various detention camps on the mainland. While he was in detention, deportation proceedings were instituted, and in July 1943, an order for his deportation was issued on the ground that he had overstayed the period of his admission as a visitor. In these proceedings he testified that he stayed on in the United States "because of conditions over which I have no control." In March 1943, he had applied for permission to depart from the United States at his own expense in lieu of deportation. In the same month he addressed a letter to Mr. Joseph C. Grew, formerly United States Ambassador to Japan, requesting Mr. Grew's assistance in securing his repatriation to Japan. He had received a letter advising him that his mother was ill and wished to see him. He left the United States in September 1943, arriving in Japan in November. After the surrender of Japan he was employed by the allied occupation forces. In 1947 he applied for a visa to reenter the United States as a returning resident. This was denied.

It is true, of course, that physical presence in enemy territory during the war is not necessarily the equivalent of "residence within" such territory within the meaning of the

Trading with the Enemy Act. Guessefeldt v. McGrath, 342 U.S. 308 (1952); Akata v. Brownell, 125 F. Supp. 6 (D.D. Hawaii, 1954); and see Brownell v. Omaichen, 243 F.2d 637 (C.A.D.C., 1957), cert. den., 355 U.S. 842 (1957). Guessefeldt involved a German citizen who was present in Germany from April 1938, to July 1949. Prior to his entry into Germany he had lived continuously in Hawaii since 1896. In April 1938, he took his family to Germany for a vacation. After war broke out in 1939, he could not obtain passage home before March 1940, when his reentry permit expired. After the United States entered the war, he was detained involuntarily in Germany, first by the Germans and later by the Russians, until July 1949, when he returned to the United States. The Supreme Court held that Mr. Guessefeldt, although physically present in Germany during the war, was not "resident within" enemy territory within the meaning of the Act, stating (342 U.S. at 312):

> Guessefeldt retained his American domicile. Moreover, if anything more than mere physical presence in enemy territory is required, it would seem clear that he was not an "enemy" within the meaning of § 2. His stay before the war, as a matter of choice, was short. The circumstances negative any desire for a permanent or long-term connection with Germany. He intended, and indeed attempted, to leave there before this country entered the war. Being there under physical constraint, he is almost literally within the excepted class as authoritatively indicated by

Mr. Montague.* To hold that "resident within" enemy territory implies something more than mere physical presence and something less than domicile is consistent with the emanations of Congressional purpose manifested in the entire Act, and the relevant extrinsic light, including the decisions of lower courts on this issue * * *.

The Akata case involved a Japanese citizen physically present in Japan since December 1945. He had been a permanent resident of Hawaii continuously since 1907, where he was engaged in business and lived with his family. Although urged to do so he refused to return to Japan and he gave to a brother real property in Japan he had inherited from his father. In September 1942, he was interned and then transferred to various detention camps on the mainland. Thereafter his family joined him at the detention camp, and he and the family were repatriated to Japan upon executing applications therefor. The District Court held that Mr. Akata was not "resident within" Japan, stating that "the involuntary nature of * * [his] departure from his settled and permanent place of abode in Honolulu on

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*The reference is to the statement during the debates by one of the managers of the legislation that the statutory language was not intended to include prisoners of war, expeditionary forces, and sojourners.

September 21, 1942, infested whatever actions he took thereafter" (125 F. Supp. at 9).

The distinctions between the present case and those of Guessefeldt and Akata are apparent. Mr. Guessefeldt, a permanent resident of the United States, was caught in Germany by the outbreak of war; Mr. Akata, likewise a permanent resident of the United States, was forced to leave his home in Hawaii by circumstances beyond his control. In contrast, Mr. Hiwa, at the time of his last departure for Japan, was not a permanent resident of the United States. In fact, he was a visitor to the United States unable to return to his home in Japan because war had broken out. Whatever status he had as a permanent resident of the United States had lapsed long before, by the expiration of his reentry permit during the course of his stay in Japan from July 1936, to November 1938. His last entry into the United States was as a visitor from Japan. At the time he could not acquire the status of a permanent resident of the United States, and presumably he would have returned to Japan, as he intended, had not the war intervened. Such an individual clearly cannot rely on deportation to his homeland to defeat his status as an enemy. Matter of Ludwig Gross, Decision of the Deputy Director, August 15, 1957. This case is not controlled by either

Gressefeldt or Akata. There is more than mere physical presence in enemy territory. I conclude that Mr. Miwa was "resident within" such territory and was therefore an "enemy" barred from return of vested property pursuant to § 9(a) of the Act.

The decision disallowing the claim is affirmed.

William P. Rogers

Attorney General

Dated: DEC 12 1958.