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Miss Frances D. McKeown
Clerk, Hearing Examiner
Office of Alien Property
Department of Justice
Washington 25, D. C.

Re: Lawrence Fumio Miwa, as successor-in-interest of Seigo Miwa, a/k/a J. S. Miwa
Title Claim No. 36891, Docket No. 57 T 41

Dear Miss McKeown:

In accordance with our understanding I enclose herewith two copies of my brief in the above matter. A third copy I am mailing under separate cover to Mr. Lott.

Very truly yours,

OES

O. E. Stone

OES:rk
Enclosures
cc: Mr. Richard P. Lott
Room 316
Federal Home Loan Bank Building
101 Indiana Avenue, N. W.
Washington 25, D. C.

117912

LAW OFFICES
OLIVER ELLIS STONE
1025 VERMONT AVENUE, N. W.
WASHINGTON, D. C.

SUITE 510-512

STERLING 3-5764

RECEIVED

3 January 1957

Claim 36891
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OFFICE OF ALIEN PROPERTY,
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FILED
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APR 18 1957

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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/k/a J. S. MIWA

Title Claim No. 36891

Docket No. 57 T 41

BEFORE WILLIAM C. LEVY, HEARING EXAMINER

BRIEF OF LAWRENCE FUMIO MIWA

STATEMENT

This proceeding arises out of a claim filed by the late J. S. Miwa, pursuant to the Trading With the Enemy Act, as amended (50 U. S. C. App. Sec. 1 et seq.), for the return of the property vested by Vesting Orders Nos. 2783, 3567, 5183, 7497, 10305, 11596, and 13491. Claimant herein, Lawrence Fumio Miwa, is successor-in-interest to his father, J. S. Miwa, a. k. a. Seigo Miwa. The vested property has a valuation of approximately $150,412.95. The claim therefore is an "excepted" claim under Section 502.2 (h) Rules of Procedure for Claims. (20 FR 7529, Oct. 8, 1955, Part 502.)

The claim was heard by William C. Levy, Hearing Examiner, on November 8, 1956. O. E. Stone of Washington, D. C. represented claimant and Richard P. Lott appeared as attorney for the Chief of the Claims Section. Lawrence Fumio Miwa testified in support of his claim and documentary evidence was introduced in behalf of both parties.

OLIVER ELLIS STONE
ATTORNEY AT LAW
1025 VERMONT AVE. N.W.
WASHINGTON, D. C.
STERLING 3-5764

QUESTIONS AT ISSUE

1. Whether the physical presence of Seigo Miwa in Japan during part of World War II constituted residence in Japan.

2. Whether the return to Japan by the United States of Seigo Miwa, while under an order of deportation, and after his residing in the United States (Hawaii) for more than twenty-five of the preceding twenty-nine years, constituted duress or other ground for treating him as one who had maintained residence in the United States during the war, and hence entitled to the return of his property pursuant to § 9 (a) of the Act.

3. Whether the persecution of Seigo Miwa as a pro-American, English-speaking Christian, by the Japanese Government authorities and the closing up of his business in Japan during the war qualified him for the return of his property under § 32 (a) (2) of the Act.

SUMMARY OF EVIDENCE AND PROPOSED FINDINGS OF FACT

1. The late Seigo Miwa was born on June 25, 1897 and first came to this country at the age of sixteen, moving from Japan to Hawaii on April 15, 1914 to become a part of his father's business. His father was then engaged in Hawaii in importing foodstuffs and agricultural foods from Japan and the United States, the same business which was eventually incorporated as J. S. Miwa & Company, Limited. (Stipulation No. 1, Transcript, 4.)

2. Since that time of arrival and September 1, 1943, when he last left for Japan while under a deportation order (Stipulation No. 5, Transcript 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, both in Hawaii and in California where he had set up an affiliated trading firm. These business trips were as follows: left for Japan April 21, 1926, arrived Honolulu June 22, 1926; left for Japan August 18, 1933, arrived Honolulu October 24, 1933; left for Japan July 17, 1935, arrived Honolulu May 21, 1936; left for Japan July 6, 1936, arrived Honolulu November 22, 1938; left for Japan April 1, 1941, arrived in Honolulu October 21, 1941. (Stipulation No. 2.)

3. Since 1914, when Seigo Miwa first made his home in Hawaii, he resided at several locations, the last being at 2556 South Beretania Street, Honolulu, since about 1930 (Exhibit 1). All three of his children, two boys and a girl, were born United States citizens in Hawaii (Transcript 7, 26). His successor-in-interest, the present claimant, Lawrence Fumio Miwa, was born in Hawaii in 1931 (Transcript, 7), and, upon doctor's advice, was taken to Osaka, Japan in 1934 because of a respiratory ailment (Transcript, 10).

4. The J. S. Miwa business which Seigo Miwa ran had its main office in Hawaii, where it had about twenty-five employees, with a branch office in San Francisco with about three employees (Transcript, 11). Seigo Miwa's father, who had originally founded the business, was responsible for the affairs in Japan from Hiroshima and had one employee there and maintained an agent at Osaka (Transcript, 11). The course of business required Seigo Miwa to make three trips to Japan in the decade beginning in 1926. But, when his father became ill, in 1936, and was not able to carry the Japanese side of the business, Seigo Miwa left for a more lengthy stay in Japan to settle affairs and to wind up his father's estate (Stipulation No. 3, Transcript, 5).

5. In addition to maintaining his business and a home in Honolulu during this period, Seigo Miwa was classified as a resident of Hawaii as is established by his payment of Poll Tax Receipts for 1931, 1940, 1941 (Exhibit 3) and registration under Social Security (Exhibit 2). His status in Hawaii is further evidenced by the fact that although a Japanese citizen, upon the outbreak of war with Japan, Miwa was appointed one of the food committee by the then Governor Poindexter, on which he worked until his detention as an "enemy alien" on February 13, 1942 (Exhibit 4, page 2).

6. Thereafter he was transferred to internment centers in the United States where he was ordered deported (Exhibit 10) and threatened by the Immigration and Naturalization Service with being forced to return to Japan without the possibility of ever returning, unless he would accept repatriation (¶ 2, page 1, Exhibit 8). He was deported to Japan on September 1, 1943 (Exhibit 8, page 2). His expulsion from the United States under these circumstances constituted duress, and his presence in Japan thenceforth did not constitute a relinquishment of his residence in Hawaii. His residence in Japan during the war was not voluntary.

7. As a consequence of Japanese law discriminating against political and religious groups not in sympathy with the Japanese war effort, Seigo Miwa was the subject of official persecution upon his arrival in Japan, depriving him of the full rights of citizenship in Japan during the war. He was subject immediately to extended questioning by the Secret Police and thereafter to daily surveillance by various police authorities (Transcript, 18, Exhibit 5). His J. S. Miwa business had been terminated at the outbreak of the war (Transcript, 23), he suffered sanctions because of his refusal to become a part of the local community organization for the war effort (Exhibit 6,

Transcript, 21), and his sole means of support was from rental property which had belonged to his father (Transcript, 22). He did no business in Japan during the war (Transcript, 22).

8. Seigo Miwa's prediction as to the outcome of the war having come true (Transcript, 31), as soon as the war ended he attempted to return to his home in Hawaii and resume business (Transcript, 24) but his applications therefor were denied on the ground of his deportation (Exhibit 7). In the meantime, with the United States occupation of Japan, he immediately volunteered for service with the occupation forces in Hiroshima, where he had lived during part of the war and in Kure City (Transcript, 28, 29).

9. However, Seigo Miwa's daughter and his successor-in-interest, Lawrence Fumio Miwa, being citizens of the United States, were allowed to return to Hawaii and in 1947 (Transcript, 25) returned to what they understood to be their family home in Hawaii at 2556 South Beretania Street (Transcript, 31, 33). His sister has remained in Hawaii (Transcript, 33) and Lawrence Miwa ultimately came to the United States after four years in Hawaii (Transcript, 33), completing his high school studies there at the Mid Pacific Institute, the same school that his father, Seigo Miwa, had attended before him (Transcript, 25).

10. Neither Seigo Miwa nor his son, Lawrence Fumio Miwa, claimant herein, has conducted himself in any way as an enemy of or hostile to the United States, and, but for the accident of Seigo Miwa's birth in Japan, the property here involved would not have come within the jurisdiction of the Office of Alien Property.

ARGUMENT

I. Seigo Miwa was not an enemy because he was not a voluntary resident of Japan during the war.

One not an enemy is entitled to the return of his vested property under § 9 (a) of the Trading With the Enemy Act. The initial question therefore is whether Seigo Miwa is an enemy as defined in § 2 (a) of the Act. This in turn depends upon whether he was "resident within" or "doing business within" Japan during the war.

In the first place, the facts of this case afford no basis for a determination that Seigo Miwa was doing business in Japan during the war. His business had either been shut down or taken away from him and he was hard put to maintain his family during the war from modest income received from the rental of his father's properties which had been left to him (Transcript, 22).

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

The facts of this case compel the conclusion that the physical presence of Seigo Miwa in Japan during the war is insufficient to constitute residence under § 2 (a) as interpreted by the courts.

Something more than mere physical presence and something less than domicile is required. Gussefeldt v. McGrath, 342 U. S. 308. In that case Gussefeldt, a German citizen, was unable to return to his residence in Hawaii before the expiration of his reentry permit but the court held that his presence in Germany with his family during eleven years did not make him a resident within Germany under § 2 (a). In the instant case, although Seigo Miwa's reentry permit had expired before his last trip back to Hawaii, and although his wife and children had been back in Japan for some years, his presence in Japan under deportation order from the United States should not make him a resident of Japan. He had visited Japan on business and to see his family on

five occasions since his first arrival in Hawaii in 1914, but these occasional visits did not alter the basic fact of his residence in Hawaii where, in addition to other factors, he was treated as a resident for the purpose of local poll taxes and social security registration (Exhibits 2, 3).

Thus the actual facts of his long-established residence in Hawaii should control. See In the Matter of Insolvent Account of Yokohoma Specie Bank, Ltd. Debtor, David Latuf claimant Debt Claim No. 1218, Docket No. 53 D 20 in which the Deputy Director accepted the analogous proposition that "the phrase 'residents of the United States' in Section 34 (a) should not be construed as 'residents of the United States lawfully admitted for permanent residence'".

Furthermore, the facts of this case are such as clearly bring it within the doctrine of Nagano v. McGrath, 342 U. S. 916, affirming without opinion 187 F. 2(d) 759. (Also see 212 F. 2(d) 262.) There Mrs. Nagano went to Japan to educate her children, after only a nine year residence in the United States. She remained in Japan from 1924 to 1932 and returned to Japan in 1934 to remain there until 1950. Summarized, out of the thirty-five years from 1915 when she first lived in the United States Mrs. Nagano lived twenty-four in Japan. The Seventh Circuit held that these facts did not make her resident within Japan during hostilities. The same result should follow in the instant case wherein Seigo Miwa, in the period between his initial arrival in 1914 and 1943 when the United States Government shipped him to Japan never to allow him to return, spent twenty-five years out of those twenty-nine years in the United States.

Here also the alternative basis of the holding in the Nagano case (187 F. 2(d) at 768) is applicable because the

facts of the record, taken as a whole, show that Seigo Miwa was not, "in any true sense, a member of the nation of Japan." Seigo Miwa could not come to the United States as an immigrant for permanent residence because as a Japanese he was barred under the racial restrictions in the immigration laws then in effect. Similarly he could not adjust his status to that of a permanent resident under immigration law notwithstanding the fact that for the major part of his adult life he had resided in Hawaii, voluntarily departing the United States only for business reasons in connection with his import business and family business in Japan during that period. The record is clear that Seigo Miwa did all that he could to remain in the United States as long as he could and that he sought to return here as soon as he could. Aside from his family, which, as in the Nagano case, was being educated in Japan, his interests were all in the United States and specifically in Hawaii where his children were born and where was located his principal place of business and his livelihood as well as his residence.

His intention to return to Hawaii is amply supported by his actions prior to his deportation to Japan and throughout his years of absence in Japan during the war. He made known to his family his intention to return to Hawaii and his belief that the United States would win the war. Although he was a prominent merchant and businessman who might normally have been expected to contribute to Japan's war effort upon his arrival there during the war, he refused to cooperate and sat out the war relatively idle and satisfied himself with a small fixed income from rental properties. Throughout his life Hawaii had been his principal place of business and abode. There he kept his principal assets and there he maintained his abode. There he repeatedly sought to

return once the war was over. His actions during the crucial years when considered with the fact that he had made several previous trips to Japan during his long residence in this country should, we submit, readily confirm an undeviating intention to resume his place of actual residence in Hawaii.

B. Even if Seigo Miwa lost his residence in Hawaii, this was done under coercion and duress and did not constitute voluntary acquisition of a new residence in Japan in time of war.

The physical presence of Seigo Miwa in Japan during part of the war years does not stand alone; it is important to note the full circumstances of his return. Right after the outbreak of the war he had been appointed by the Governor of Hawaii to serve on a local food committee (Exhibit 4, page 2), As a well established importer of foodstuffs he was a natural selection for such an important task in time of crisis notwithstanding the fact that he was classifiable as an "enemy alien". However, the same crisis did not permit individual treatment at that time of Japanese residents, and so 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. See Sarthow v. Clark, 78 F. Supp. 139, 142 (S. D. Cal. 1948) to the effect that residence within is " . . . indicative of a settled and permanent place of abode, volitionally acquired and voluntarily assumed." (Emphasis added)

II. Even assuming Seigo Miwa may be classified as an enemy, he is entitled to a return of his property as a persecutee under § 32 (a) (2) of the Act.

At the outbreak of the war Seigo Miwa was in Hawaii, carrying on his food and importing business. From that time until his arrival in Japan nearly two years later, he enjoyed no rights of citizenship in Japan, being a Japanese citizen who lived outside of Japan and whose loyalties were American rather than Japanese (Transcript, 31). Thus upon his arrival back in Japan during the war, he was immediately held and interrogated at length (Transcript, 18). Routine and regular investigations by police authorities took place throughout the war years pursuant to the general security laws and regulations of the Japanese Government (Exhibit 5). In addition Seigo Miwa as a known Christian was the subject of political and economic discrimination. He did not vote in Japanese elections (Transcript, 23); his commercial operations were shut down and he was forced to live in semi-retirement idly whiling away the time (Transcript, 22). Taken all together, these facts constitute a deprivation of the full rights of Japanese citizenship under Japanese war legislation during the war aimed at eliminating interference with the Japanese war effort on the part of political or religious groups who, like Miwa, were opposed politically and by Christian religion to the conduct of the war.

CONCLUSION

Seigo Miwa was entitled to a return of his property under the Trading With the Enemy Act, and the claim of his successor-in-interest, Lawrence Fumio Miwa, should therefore be allowed.

Respectfully submitted,

O. E. Stone
Attorney for Lawrence Fumio Miwa

3 January 1957

Claim 36891
ARS:AJG:RPL:ESC

APR 18 1957

Mr. Oliver Ellis Stone
1025 Vermont Avenue, N. W.
Washington, D. C.

Dear Mr. Stone: Re: Lawrence Kunio Hiwa, as Successor-in-Interest to Seigo Hiwa, also known as K. S. Hiwa.

I am enclosing herewith a copy of the Brief of the Chief of the Claims Section in the above entitled matter. The original has this day been filed with William C. Levy, Hearing Examiner.

Very truly yours,
(Signed) Arthur R. Schor

Arthur R. Schor
Chief, Claims Section
Office of Alien Property

Encl.

FILED
LMC
APR 18 1957

SIGNED AND MAILED
APR 18 1957

William C. Levy
Hearing Examiner

Arthur R. Schor
Chief, Claims Section.

(Signed) Arthur R. Schor

ARS:AJG:RFL:ESC

APR 18 1957

Claim 36891
Lawrence Fumio Miwa, as Successor-in-Interest
to Seigo Miwa, also known as J. S. Miwa.

I am transmitting the Brief of the Chief of the Claims Section in the above entitled matter.

I have mailed a copy of the Brief to:

Mr. Oliver Ellis Stone
1025 Vermont Avenue, N. W.
Washington, D. C.

[illegible]

May 1, 1957

File
RL

Oliver Ellis Stone, Esq.,
1025 Vermont Avenue, N. W.
Washington, D. C.

Re: [illegible]
Interest of [illegible]
Title Claim No. [illegible], Docket No. [illegible]

Dear Mr. Stone:

This will acknowledge receipt of your letter dated April 29, 1957 stating your intention to file a reply brief in the above-entitled proceeding on or before May 15, 1957.

Very truly yours,

William [illegible]
Acting [illegible]

cc: Chief, Claims Section

[illegible]
OCT 1 1957

grey file copy

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
OFFICE OF ALIEN PROPERTY
WASHINGTON, D. C.

IN THE MATTER OF:	
[illegible], as successor-in-interest to [illegible], also known as [illegible]	Claim No. [illegible]
	Docket No. [illegible]

BEFORE WILLIAM G. [illegible], HEARING EXAMINER

BRIEF OF THE CHIEF OF THE CLAIMS SECTION

STATEMENT

This proceeding arises out of a claim filed on June [illegible], 194[illegible], pursuant to the Trading with the Enemy Act, as amended (50 U. S. C. App. 1, et seq.), for the return of property vested by Vesting Order Nos. [illegible], [illegible], [illegible], [illegible], [illegible], [illegible] and [illegible]. The principal item claimed consists of shares of the capital stock of [illegible] & Company, Ltd. of Honolulu, Hawaii, amounting to approximately [illegible]% of the outstanding shares of that corporation. These shares were liquidated after vesting and the sum of $[illegible] represents the proceeds upon liquidation. The other assets vested were of a miscellaneous nature, including various indebtedness, Japanese Government bonds, and certain household furniture and furnishings as described in an Exhibit attached to Vesting Order No. [illegible]. The claim is 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, 1934 and the claim is prosecuted by Lawrence Fumio Miwa, as successor-in-interest to his father.

Hearing on the claim was held on November 8, 1956 before William G. Levy, Hearing Examiner. The claimant appeared in person and testified and was represented by Mr. Oliver E. Stone, 1025 Vermont Avenue, N. W., Washington, D. C. The Chief of the Claims Section appeared by Richard P. Lott, Trial Attorney.

At the hearing there was introduced a stipulation of certain facts which was read into the transcript of the record at pages 4-6 thereof. The record consists of the Notice of Claim and attachments thereto, the transcript of the hearing, including the stipulation as aforesaid, and various documents admitted into evidence.

SUMMARY OF EVIDENCE AND PROPOSED FINDINGS OF FACT

1. The late Seigo Miwa was born in Japan on June 23, 1897. He resided there until April 15, 1914 when he proceeded to Hawaii in order to participate in his father's business. His father was then engaged in importing foodstuffs and agricultural feeds to Hawaii from Japan and the United States, an activity which was eventually incorporated as J. S. Miwa & Company, Limited. Stip. 1.

2. Seigo Miwa married and had three children, Katherine born in 1923, Henry born in 1926, and Lawrence F. Miwa born in 1931.

All three children were born in Hawaii. Tr. 27.

3. Seigo Hiwa made brief visits to Japan in 1926, 1933 and 1935. He returned to Japan in July of 1936 after remaining in Hawaii about seven weeks. Stip. 2. At the time of his departure he was in possession of a Reentry Permit. His wife and three children had them been living in Japan since 1930. Stip. 2, Tr. 10. His father was then residing in Japan where he managed the export business of J.S. Hiwa & Company, Ltd., which had purchasing offices in Hiroshima, Osaka, and Yokohama. A purpose of Seigo Hiwa in going to Japan at that time was to take over the business activities there of his father who wished to retire. His father died in 1937 and Seigo Hiwa was obliged to settle the family affairs. During this time Seigo Hiwa's Reentry Permit expired. There is no evidence that Seigo Hiwa sought an extension of his Reentry Permit. Ex. F, p. 3; Ex. 4.

4. On November 22, 1938 Seigo Hiwa again reentered the United States at Honolulu, presenting a visa issued under Section 3(6) of the Immigration Act of 1924, as a treaty merchant. He remained in Hawaii until April 1, 1941 when he again departed for Japan. Stip. 2, 3; Ex. F, p. 3.

5. Seigo Hiwa last entered the United States on October 2, 1941 with a visitor's visa valid for six months. Stip. 4. The purpose of his visit was to inspect the office of J. S. Hiwa & Company, Ltd. in Hawaii. He came alone on this trip, his wife and children remaining at the family home in Hiroshima, Japan. Ex. F, p. 1; Ex. 4, p. 2. At that time he planned to stay in

Hawaii for about two months and in San Francisco, California, for about two months, or four months in all. Ex. F, p. 3.

6. After the outbreak of war, Seigo Miwa inquired of the Immigration authorities in Hawaii in the latter part of January 1942 relative to an extension of his stay as a visitor and was told to inquire again in about two months. Ex. F, p. 4.

7. On February 13, 1942 Seigo Miwa was apprehended and detained as an enemy alien and transferred to various detention camps on the United States mainland. Stip. 3; Ex. 4, p. 1.

8. On or prior to December 4, 1942 Seigo Miwa applied for repatriation to Japan. Ex. H. While interned he had received word from Japan that his mother was ill and wished to see him and he was otherwise worried about his family and business in Japan. Ex. 4, p. 2; Notice of Claim enclosure, copy of letter to United States Consul, Nov. 26, 1947.

9. He was repatriated to Japan on the exchange vessel "Gripsholm", sailing from New York on September 1, 1943, arriving in Japan on November 14, 1943. Notice of Claim enclosure, copy of letter to United States Consul, November 26, 1947; Ex. 4.

10. While interned at Lordsburg, New Mexico, Seigo Miwa was examined on November 16, 1942 relative to his right to be and remain in the United States with reference to the Immigration Laws. Ex. F. Proceedings for his deportation ensued, resulting in the issuance of a Warrant of Deportation on July 23, 1943 on the basis of an order that he was subject to deportation under the Immigration Act of

May 26, 1924 in that, after admission as a visitor, he had remained in the United States for a longer time than permitted under said Act or regulations made thereunder. Ex. 10. It does not appear that the Warrant of Deportation was ever executed, although it was outstanding at the time of his departure on September 1, 1943. Ex. 7, 10.

11. On Seigo Miwa's arrival in Japan in November 1943 he was interrogated by police officers and thereafter at intervals was interrogated by the police and kept under some degree of surveillance. It is not alleged that he was ever arrested or restricted in his movements, that his rations were curtailed, or that his civil rights were in any way impaired. Seigo Miwa lived a life of leisure in Japan, maintaining his family and himself from the rentals of 12 or more houses he 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. Ex. 6; Tr. 21.

12. There were no laws, decrees, or regulations of the Japanese Government at any time between December 7, 1941 and March 8, 1946 which discriminated against Japanese nationals who had formerly resided in the United States. Ex. A, B, C.

13. Claimant's father applied for a returning resident's visa on November 26, 1947. It was denied 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. Stip. 6.

14. Lawrence Fumio Miwa is the successor-in-interest by operation of law of his deceased father by virtue of the will of Seigo Miwa duly probated in Japan.

15. Lawrence Fumio Miwa was born in Hawaii, July 2, 1931. He was taken to Japan by his mother in 1934 and thereafter lived in the parental home in Japan until July 1947 when he came to Hawaii in possession of a United States passport. He now lives in New York. Tr. 7, 10, 24.

QUESTIONS PRESENTED

1. Was Seigo Miwa resident within Japan while the United States was at war with that country and therefore an "enemy" under Section 2 of the Act who would have been ineligible for a return of vested property under Section 9(a) of the Act?

2. Was Lawrence Fumio Miwa resident within Japan after December 7, 1941, and therefore an "enemy" under Section 2 of the Act and ineligible for a return of vested property under Section 9(a) of the Act?

3. Assuming that Seigo Miwa was not an enemy or ally of enemy, and would have been eligible for a return of vested property under Section 9(a) of the Act, and assuming further that claimant was an enemy and is not eligible for a return of vested property under that Section, whether nonetheless he is entitled to recover

as a citizen of the United States under the provisions of Section 32(a)(2)(C) or (D).

4. Whether claimant has established that Seigo Niwa failed to enjoy full rights of Japanese citizenship at all times after December 7, 1941 within the meaning of the first proviso of Section 32(a)(2)(D) of the Act?

Argument

I

SEIGO NIWA AND LAURENCE FUMIO NIWA WERE RESIDENT WITHIN JAPAN WHILE THE UNITED STATES WAS AT WAR WITH THAT COUNTRY AND THEREFORE ENEMIES UNDER SECTION 2 OF THE ACT AND INELIGIBLE FOR A RETURN OF VESTED PROPERTY UNDER SECTION 9(a).

Seigo Niwa, sometimes known as J. S. Niwa, came to the United States from his native Japan at the age of 13; he completed his schooling in Hawaii and went into his father's business. This business was the importation of foods and agricultural feeds to Hawaii from Japan and the United States. It was eventually incorporated as J. S. Niwa & Company, Ltd. The business prospered; Seigo Niwa married and had three children, all born in Hawaii. His father returned to Japan at some undisclosed date and managed the export end of the business there. As early as 1935 it appears that the management of the business in Hawaii no longer required Seigo Niwa's full time and attention. In 1935 he made a trip to Japan and was absent 10 months. He returned to Hawaii in May of 1936 for a stay of less than two months and then went back to Japan.

With reference to his removal to Japan in 1936 Seigo Miwa was asked in the course of immigration proceedings in 1942: "If you owned your business in Hawaii why did you return to Japan [in 1936] to reside?" He replied that it was because his father had decided to retire and wanted him in Japan to take care of his business interests there. Ex. F, p. 3. Apparently he did take over his father's business responsibilities in Japan (Tr. 10-12) and then or some time later also assumed the presidency of a rubber manufacturing company in Japan known as the Marusan Rubber Company (Tr. 33) from which he retired in March 1941. Aside from the fact of his wife and children being in Japan in 1936, his activity in business interests requiring his presence there was sufficient to establish his residence in Japan at that time. Matter of F. K. Intelmann, Dir. Febr. 10, 1956, reversing H. E. Febr. 24, 1955.

Seigo Miwa next came to Hawaii in November 1938. His immigration documentation was as a treaty merchant under Section 3(6) of the Immigration Act of 1924. He left his wife and children behind in Japan. He remained in Hawaii until April 1, 1941. Claimant apparently argues that despite Seigo Miwa's family and business interests in Japan during this November 1938 -April 1941 period, his residence was in Hawaii, since claimant offered in evidence a Social Security card issued to Miwa dated February 21, 1939 (Ex. 2), and three poll tax receipts issued on May 31, 1939, May 15, 1940 and January 27, 1941. This poll tax of $5.00

was levied pursuant to Sections 2125- 2135, Revised Laws of Hawaii 1935, and was collected by an employee withholding system. It may be noted the 1941 receipt was for delinquent 1938 tax. Ex. 3. These documents prove that Seigo Miwa was employed in Hawaii during this period but the fact of employment does not conclusively establish the fact of residence. And certainly the fact of employment at that

time did not preclude the acquisition of residence in Japan after April 1, 1941 when Seigo Miwa again rejoined his family in Japan.

Seigo Miwa made his last trip to Hawaii, sailing from Yokohama on October 14, 1941 and arriving in Honolulu on October 21, 1941. This was a business trip undertaken for the purpose of inspecting the operations of J. S. Miwa & Company, Ltd. in Hawaii, with an expected duration of two months in Hawaii and two months in San Francisco. He came alone. His departure from Japan was in hurried circumstances since his visitor's visa was obtained by cable and on advice of its receipt Miwa "immediately proceeded to Kobe from my home (we already shifted to Hiroshima) and received a special visa from Mr. Osbourne, being classified as a temporary visitor." Ex. 4. If there can be any doubt that Miwa's residence remained in Japan, it is resolved by the statement which he made under oath on October 30, 1941 a few days after his arrival in Hawaii in which he described himself as "residing in Japan since April 1, 1941." Ex. E.

On February 13, 1942 Seigo Miwa was apprehended and interned as an alien enemy. He was transferred to the mainland United States and was successively in detention at San Antonio, Texas, Lordsburg, New Mexico, and Santa Fe, New Mexico. In a document dated December 4, 1942 bearing his signature, Seigo Miwa stated that he had applied for repatriation. Ex. H. In a letter to the Acting Assistant Commissioner of Immigration, almost ten years later, dated April 14, 1952, Seigo Miwa explained the reasons which prompted him to apply for repatriation, that his ill mother had expressed a desire to see

him and that he was worried about his family and business in Japan. Ex. 4. He was repatriated on the S. S. "Gripsholm" sailing from New York on September 1, 1943 and arriving in Japan the following November 14, 1943. Thus his wishes to return to Japan were fulfilled upon the granting of his request for repatriation. Whatever his prior resident status may have been it indisputably became residence within Japan upon his arrival in that country pursuant to repatriation. Matter of Scherer, Dir., Jan. 8, 1954; Matter of Nakamura, I.E., July 27, 1954; and even if on his repatriation he intended to return to the United States on the cessation of hostilities he nevertheless became resident within enemy territory. Brownell vs. Gehmichen, (CA, DC, Febr. 28, 1957). Seigo Miwa soon after the termination of hostilities applied unsuccessfully for permission to return to the United States. In comparison with Gehmichen, Mrs. Gehmichen likewise applied soon after the termination of hostilities for a visa to return to the United States and was successful in obtaining a visa and returning to the United States. This circumstance, however, did not alter the Court's conclusion that upon her return to Germany pursuant to her requested repatriation she became resident there.

The claimant argues that because a Warrant of Deportation was outstanding at the time of Seigo Miwa's last return to Japan in 1943 his departure was involuntary and everything thereafter was involuntary including retention or resumption or acquisition of Japanese residence.

On November 16, 1942 deportation proceedings were instituted against Seigo Miwa culminating in the issuance on July 23, 1943 of a Warrant of Deportation on the ground that under the Immigration Act of May 26, 1924 he had remained in the United States for a longer time than the six months permitted by his visitor's visa. Ex. 10. The Warrant, though issued, was never executed in view of Miwa's departure as a repatriate. By Statute (45 Stat. 1551, 8 U.S.C. 1101(g) and 1326) it is provided that an alien who departs from the United States while a warrant for his deportation is outstanding, though, like Miwa, not actually deported, nevertheless shall be deemed deported with respect to the requirement that for return to the United States he must have special permission to reapply for admission. This Statute, according to claimant's argument, equates Seigo Miwa's sought-for return to Japan in 1943 to a forced and involuntary expulsion. This line of reasoning leads to the conclusion that the mere issuance of the Warrant of Deportation consigned Seigo Miwa to residential limbo, ignoring the fact that in 1943 Seigo Miwa rejoined his family in Japan, pursuant to his voluntary request that he be permitted to repatriate to that country.

Lawrence Fumio Miwa, the successor-in-interest to his late father, was taken to Japan in 1934 when three years of age. He testifies that the occasion for his removal to Japan was a pulmonary weakness. In Japan he lived with his mother, brother and sister. The family was joined by the father in 1935 and 1936, and after an absence of a little over two years the father again rejoined the family in April 1941. In June 1947 Lawrence Fumio Miwa

come to the United States where he has since remained. It needs no argument to conclude that Lawrence Fumio Hiwa's presence in Japan from 1934 to 1947 where he was reared in the parental home constituted residence. He therefore was an "enemy" under Section 2 of the Act ineligible for a return under Section 9(a) of the Act.

II.

LAWRENCE FUMIO HIWA, WHOSE ELIGIBILITY FOR RETURN IS BASED ON SECTION 32(a) OF THE ACT, CANNOT QUALIFY FOR RETURN AS SUCCESSOR-in-INTEREST TO HIS LATE FATHER UNLESS THE FATHER ALSO WOULD HAVE BEEN ELIGIBLE UNDER SECTION 32(a).

Section 32(a)(2) of the Act requires for a return that the owner of the claimed property immediately prior to vesting, "and legal representative or successor-in-interest, if any, are not - " in the categories prescribed in the subdivisions (A) through (E). It will be demonstrated below that Seigo Hiwa, the prevesting owner, was ineligible under Section 32(a)(2)(E); therefore the conjunctive requirement of Section 32(a)(2) is not satisfied even though Lawrence Hiwa, the successor claimant, as a United States citizen, qualifies under the applicable provisos of subsections (C) and (D).

With respect to eligibility of both the original claimant and a claimant as successor by operation of law the Director in the Matter of Eva and Kate Ponder-Haugland (Successors-in-Interest to Mrs. Kate Schultz, deceased), October 31, 1955, ruled squarely that the ineligibility of the predecessor claimant precluded return to the otherwise eligible successor claimants.

The proposition is likewise true with respect to Section 9(a) of the Act that both the predecessor and successor claimants must be eligible thereunder. Though that Section contains no specific provision with respect to successors-in-interest of claimants, it does speak in the present tense of "any person not an enemy or ally of enemy claiming . . . ." Thus when a claimant dies, obviously his successor-in-interest becomes the "person . . . claiming," who must not be an enemy or ally of an enemy.

The eligibility of the person beneficially interested in claimed property is the test applied in returns under Section 9 of the Act. Miller v. Schutte, 287 F. 604, 608 (C.A., D. C., 1923), app. dismissed 263 U. S. 730; Farmers Loan & Trust Co. v. Hicks, 9 F. 2d 848 (C.A., 2, 1925), cert. den. 269 U. S. 583; Sturchler v. Sutherland, 19 F. (2d) 999 (E.D., N.Y., 1927), reversed on other grounds 23 F. (2d) 414; Central Hanover Trust Co. v. Markham, 68 F. Supp. 829 (S.D., N.Y., 1946). And if such beneficial interest arises upon the death of an eligible claimant, the rule is the same. Cordero v. United States, 117 F. Supp. 336 (S.D., N.Y., 1953); affd. Cordero v. Brownell, 211 F. 2d 90.

Section 32(a) in providing grounds for eligibility for return different from those contained in Section 9(a) in no way relates itself to that Section. On the contrary, the conjunctive requirement respecting predecessors and successors-in-interest contained in Section 32(a)(1) precludes any interchange of eligibility between the two Sections. It follows that no return may be made

unless the eligibility of both the predecessor and successor-in-interest be established under the same section of the Act.

IV

SEIGO MIWA DID NOT FAIL TO ENJOY FULL RIGHTS OF JAPANESE CITIZENSHIP AT ANY TIME AFTER DECEMBER 7, 1941, WITHIN THE MEANING OF THE FIRST PROVISO TO SECTION 32(a)(2)(D) OF THE TRADING WITH THE ENEMY ACT, AS AMENDED.

Seigo Miwa, in his affidavit of January 15, 1948 submitted with this Notice of Claim, refers to the Law Maintaining Public Order and the General Mobilization Act as the statutes pursuant to which he was from time to time interrogated and kept under surveillance allegedly in derogation of his rights of Japanese citizenship. The texts of these laws here not been submitted but from their very titles it is apparent that they were laws of general application in wartime Japan and were not of a discriminatory character. It appears that the only circumstance which set Seigo Miwa apart from the general Japanese people was his prior residence in the United States. There were, however, no Japanese laws, decrees, or regulations at any time after December 7, 1941 directed at the deprivation of any rights of citizenship of Japanese nationals who had formerly resided in the United States. Exs. A, B, C. Indeed, the only acts of oppression asserted in behalf of Seigo Miwa are police

interrogations and surveillance, which have been held insufficient to constitute the substantial deprivation of rights of citizenship required by the proviso. Matter of Abrikossow, Dir., Dec. 21, 1952; Matter of Maeda, Dir., Febr. 3, 1954; Matter of von Schierholz, A.E. Nov. 30, 1933, pet. rev. den. Sept. 28, 1934.

CONCLUSIONS OF LAW

1. Seigo Miwa was a Japanese citizen present in Japan after December 7, 1941. He suffered no deprivation of rights of Japanese citizenship after December 7, 1941. He therefore would have been ineligible for a return of vested property under Section 32(a)(2)(D) of the Act.

2. 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 and would have been ineligible for a return under Section 9(a) of the Act.

3. Lawrence Fumio 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 and is ineligible for a return under Section 9(a) of the Act.

4. Though Lawrence Fumio Miwa was a United States citizen at all times ater December 7, 1941 and therefore eligible for a

return of vested property under Section 32(a)(2)(C) or Section 32(a)(2)(D) of the Act, he cannot recover the property claimed in this proceeding because his predecessor-in-interest, the late Seigo Hino, would have been ineligible as a claimant under Section 32(a)(2)(D) of the Act, had he survived.

5. The claim should be disallowed.

Respectfully submitted,

(Signed) Arthur R. Schoz

Arthur R. Schoz
Chief, Claims Section
Office of Alien Property

Date: APR 18 1957

Arthur J. Gong
Chief, Trial Unit

Richard E. Lett
Trial Attorney

Lott

LAW OFFICES
OLIVER ELLIS STONE
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SUITE 510-512

STERLING 3-5764

3 June 1957

Mr. William C. Levy
Hearing Examiner
Office of Alien Property
Department of Justice
Washington 25, D. C.

Re: Lawrence Fumio Miwa, as successor-in-interest of Seigo Miwa, a/k/a J. S. Miwa
Title Claim No. 36891, Docket No. 57 I 41

Dear Mr. Levy:

In accordance with our personal conversations last week, I enclose herewith my Reply Brief on the above subject.

I am sending a copy of this enclosure under separate cover to Mr. Richard Lott, attorney for the Claims Section.

Very truly yours,

O. E. Stone

OES:rk
Enclosure

cc: Mr. Richard P. Lott
Room 316
Federal Home Loan Bank Building
101 Indiana Avenue, N. W.
Washington 25, D. C.

121861

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/k/a J. S. MIWA

Title Claim No. 36891

Docket No. 57 T 41

BEFORE WILLIAM C. LEVY, HEARING EXAMINER

REPLY BRIEF OF LAWRENCE FUMIO MIWA

1. The physical presence of Seigo Miwa within Japan during part of the time while the United States was at war with that country was for a special purpose and a brief period, and was a deportation in effect and therefore under duress.

Without specifically challenging the evidence adduced in establishing that the late Seigo Miwa retained residence in Hawaii continuously from his first entry in 1914, the Claims Section suggests that Miwa's occasional sojourns in Japan for family business matters constituted his taking up residence in that country. This approach ignores the over-all pattern of Seigo Miwa's life, which was essentially that of an Hawaiian business man who had branch offices in the United States and in Japan.

The occasional business and family purposes which prompted Seigo Miwa's six trips to Japan were limited and specific ones which, we submit, did not and were not intended to derogate from the continuity of his status as a resident of Hawaii. The circumstances of this case are not analogous to those in the Matter of F. K. Antelmann, Dir. Febr. 10, 1956, reversing H. E. Febr. 24, 1955, cited on page 8 of the brief of the Claims

Section. In that case Antelmann was assigned to manage the sales branch of his employers in Breslau, Germany and moved there with his family in 1933, retaining that position until 1945. This had been occasioned by a decrease of his employers' business in Czechoslovakia and during that period Antelmann had no responsibilities outside of Germany.

By contrast, the main holdings and business interests of Seigo Miwa always remained at his main office in Hawaii (Tr. 11, 12); in fact, after the outbreak of the war, his Japanese business practically evaporated and he was forced to rely on a very modest income from a few rental properties (Tr. 23).

Viewing his life as a whole, one reasonably concludes that the sympathies, activities, and statements of the late Seigo Miwa centered more in Hawaii than anywhere else. Although he languished for a year and a half in various American internment camps and was then returned to Japan while under deportation order, as soon as the war was over he sought to return to his home in Hawaii. Failing this, he placed his services at the disposal of the United States occupation forces and served America in this way (Tr. 28, 29). There is no trace of enemy taint to defeat his claim and, in fact, this is not even suggested by the Claims Section.

Instead, the primary basis for contesting this claim is the contention that Seigo Miwa is an enemy on the technical ground of residence in Japan during the war. But for his removal from the United States under order of deportation, this contention would not exist. The Immigration and Naturalization Service relied upon this deportation in denying Seigo Miwa's application to return to Hawaii. Admittedly, this deportation effected the physical presence of Seigo Miwa in Japan during part of the war

but this action should not be held to have done any more than just that - it should not be treated as having made his home in Hawaii (from which he was forcefully uprooted and to which he wanted to return) any the less his residence during the period in question.

The Claims Section seeks to palliate the duress of deportation by characterizing Seigo Miwa's return to Japan as pursuant to a request for repatriation. This contention relies (Claims Section Brief, pp. 9, 10) on secondary evidence and on conjecture; upon Exhibit H entitled "Petition for Reuniting Family in Family Internment Center", and upon Exhibit 4, which was a letter from Seigo Miwa in 1932 asking review of his application to be allowed to return to Hawaii. A careful reading en the latter document in no way discloses a statement that Seigo Miwa had applied for repatriation; it merely summarized his immigration status during his several exits and entries from Hawaii in the twenty-seven years before Pearl Harbor and then reported concerning his internment and return to Japan as follows:

"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. From Honolulu, I was transferred to San Antonio Detention Camp, San Antonio, Texas, then to the Lordsburg Internment Camp, Lordsburg, New Mexico and finally to Santa Fe Detention Camp, Santa Fe, New Mexico until I was repatriated on 1st September 1943 from New York to Japan via South America, Port Elizabeth, Goa, Singapore and Manila.

"During my intern at Lordsburg, I received a letter from Japan through Swiss Red Cross, stating that my mother was so ill and wanted to see me at her bedside. One day I talked with our Commanding Officer, Captain Dole of the Camp about my family and business in Japan, which made me worries day and night. Soon after, I was called by one of the Immigration officers of El

> Paso and was told by the investigator that there might be an exchange boat sailing very shortly. After a few days passed away, we were shifted to the Santa Fe Detention Camp where the most of Japanese internees were detained."

Moreover, the suggestion that Seige Miwa had applied for repatriation depends not upon the best evidence (Tr. 44), which would be the production of a repatriation application in the name of Seigo Miwa, but upon a form which he signed while in Lordsburg Internment Camp. This form (Exhibit H) recites that Miwa's "last residence address" was "1765 B Lusitana St., Honolulu, T. H.", and the word "(not)" appears to have been crossed out in the sentence "I have (not) applied for repatriation." We submit that, if this alleged filing of an application for repatriation be material, it should have been proven by introducing the application form itself, a document peculiarly within the Government's possession. Furthermore, if this form is accepted as evidence of such application, it should also be accepted as evidence that Seigo Miwa's residence was in Hawaii and not in Japan as the Claims Section suggests.

If, however, it be decided that the filing of a repatriation application, if proven, would be material under Brownell v. Oehmichen (CA, DC, Feb. 28, 1957 cited p. 10 of Claims Section Brief), the additional facts upon which the decision in that case hinged are not here present. For example, the opinion in Oehmichen makes clear that in addition to repeated requests (proved by documentary evidence) of Oehmichen for repatriation to Germany, Mr. Oehmichen wanted to go to Germany so much that he even wrote the United States authorities that he would not accept parole in the United States. As the Circuit Court commented: "Thus he refused freedom in America." By contrast, the freedom in America, which was taken from Seigo Miwa by his

internment, was the thing that he sought first, last, and always, subject only to the exigencies which sometimes called for his travel on business or on family matters outside of Hawaii.

Moreover, even if it be found that the evidence of this record justifies a finding that Seigo Miwa applied for repatriation, this does not establish that such application was voluntary. At the Hearing counsel objected to the admission of documents and reports originating during the incarceration of Seigo Miwa in various internment camps to which he was transferred and re-transferred, because of the force and duress implicit in that situation. Just as the more extreme action of renunciation of citizenship under the pressures of the Tule Lake situation were held in Acheson v. Murakami, 176 F (2) 953 (9th Cir. 1949) to be void because of duress, so here we submit that the alleged lesser act of Seigo Miwa under the circumstances of his incarceration should be attributed to duress and his application, for the purposes of the Act, treated as though he had never left the United States. See Akata v. Brownell, 125 F. Supp. 6 (D. Hawaii 1954)

Ignores that his entry to Hawaii in October 1941 was on a visitor's permit for 6 mos.

Aside from this, the Brief of the Claims Section relies upon a description of Seigo Miwa as "residing in Japan since April 1, 1941" appearing in a J. S. Miwa Co., Ltd. report (Exhibit E) signed by Seigo Miwa as President on October 30, 1941. No significance should be attached to this language in a corporate report for the Treasury with regard to the issuance of securities. Without extraneous evidence the document itself proves nothing. There is no showing who prepared this document whether in the Corporation's offices or those of the Treasury Department, or that Seigo Miwa gave any particular personal attention to its

contents other than just another form to be signed by a busy corporate executive. Furthermore, the specific language in question here does not appear to have any connection with the question to which it purports to be an answer; this surplusage obviously had not been carefully thought out and should be ignored. Finally, and perhaps most important, there is no evidence that the connations of that word "residing" were the same as those given to the word residence as interpreted and defined in decisions under the Trading with the Enemy Act. "Residing" frequently connotes merely "living in" or "being physically present in", and this is the connotation which we believe was there intended.

Finally, on the broad factual questions of fact concerning duress, there is the similar situation presented in Akata v. Brownell, 125 F. Supp. 6 (D. C. Hawaii 1954) wherein a Japanese salesman from Hawaii was held not to have disqualified himself under (2) (a) and 9 (a) from recovery of his vested property, even though he and his family had all requested and accepted repatriation to Japan during the war. This decision realistically analyzes the situation of such responsible, pro-American Japanese in Hawaii who found themselves interned shortly after Pearl Harbor, and it concludes, on a basis of facts in some respects not so strong as those of the instant case, that there was no such acquiring of Japanese residence as to bar recovery. The same result should follow here.

2. Lawrence Fumio Miwa, Successor-in-Interest to Seigo Miwa, is eligible for return of vested property under Section 9 (a) of the Act because his physical presence within Japan while the United States was at war with that country was not such residence as would make him an enemy under Section 2.

Residence in an enemy country in order to bar recovery must have been freely and voluntarily acquired. Claimant here was a native born American citizen. Because of his health, family custom or other reasons over which he had no control, he was taken to Japan at the age of three. He returned to his place of birth, Hawaii, as soon as he could. "Residence being mostly a matter of intention" and the earliest effected intention which Lawrence Fumio Miwa had, being to return to the United States, he should not be barred under Section 9 (a). Nagano v. McGrath, 187 F. (2) 739, 764 (C.A. 7. 1951). Also see Sarthow v. Clark, 78 F. Supp. 139, 142 (S. D. Cal. 1948).

In summary, it is our contention that within the meaning of Sections 2 (a) and 32 (a) of the Act, neither Seigo Miwa nor Lawrence Fumio Miwa, his Successer-in-Interest, was either resident in, present in, or engaged in business in Japan during the war because in neither case was the presence voluntary. With respect to Seigo Miwa there is the background of forced incarceration in internment camps which, when coupled with the circumstances of his transmission to Japan, spells out duress. With respect to Lawrence Fumio Miwa, the fact that he had no choice about whether he should leave his American birthplace at the age of three and go to Japan, when added to the fact that he left Japan forever at the first opportunity he got, establishes that by no free voluntary act of his own did he ever live in or reside in Japan.

3. If, as admitted by the Claims Section, Lawrence Fumio Miwa is eligible for return under Section 32 (a) (2) (C) or (D) of the Act, he can qualify for return if his predecessor in interest was eligible only under Section 9 (a).

It is agreed by both sides in this proceeding that

Lawrence Fumio Miwa is eligible under Section 32 (a) (2) (C) or (D) (Conclusion of Law 4, Claims Section Brief pp. 15, 16). His eligibility under Section 9 (a) and his father's eligibility under Section 32 have been urged above, but assuming arguendo that such contention is overruled, the Claims Section raises the proposition that Lawrence Fumio Miwa's eligibility under Section 32 avails him nothing if his predecessor in interest could take under 9 (a) but not under 32.

No decision squarely on this particular point is cited nor is any legislative history adduced to establish that Congress in enacting Section 32 considered and rejected our instant contention that if Seigo Miwa had been entitled to return under 9 (a) because not an "enemy", his Successor-in-Interest can recover under 32 (a) because of his United States citizenship.

In considering what appears to be a novel question under the Trading with the Enemy Act, the counsel of Justice Frankfurter in the majority opinion in Guessefeldt v. McGrath, 342 U. S. 308, 319, should be followed. "Instead of a carefully matured enactment, the legislation was a makeshift patchwork. Such legislation strongly counsels against literalness of application. It favors a wise latitude of construction in enforcing its purposes." More specifically favoring claimant's contention in this particular context is Judge Kaufman's expression in Cordero v. United States, 111 F. Supp. 556, 558, that the judicial interpretations of the Trading with the Enemy Act " . . . all lead to the conclusion that the status of the beneficial owners is crucial." Here the claimant and beneficial owner, Lawrence Fumio Miwa, admittedly can take under one provision of the Act, and if his predecessor in interest can take

under a different section, the return of the property should not be defeated by an attempted literalness of construction not solidly supported by decision or legislative history. Thus the Cordero case, holding as it does that there can be no recovery under Section 9 where the ultimate beneficial owners were not qualified under Section 9 because enemies as defined in Section 2 (a) is consistent with the result here sought, and does not, as indicated in the Brief of the Claims Section, page 13, support the proposition that a beneficial owner eligible under 32 (a) cannot recover where his predecessor qualified under Section 9.

Similarly, the ruling of the Director in the Matter of Eva and Kate Tonder-Haugland, October 31, 1955, (cited in Brief of Claims Section, page 12) is not in point because, although there as here the successor was qualified under Section 32 (a) (2), the original claimant, Mrs. Schultz, was found not to be eligible for return under any section of the Act. In fact, in that case the Hearing Examiner's Decision of February 16, 1955, which was not overruled by the Director, stated flatly: "Sections 9 (a) and 32 of the Act bars a return of vested property unless it is established that both the owner of the property at the time of vesting and her successors-in-interest by inheritance, devise, bequest or operation of law are eligible for such return." This is what we contend. Both are eligible and the successor thereof should take.

Respectfully submitted,

O. E. Stone

O. E. Stone

June 3, 1957

Claim 36891
AES:AJG:RPL:ESC

JUN 19 1957

Mr. Oliver Ellis Stone
1025 Vermont Avenue, N. W.
Washington, D. C.

Re: Lawrence Fumio Hiwa, as successor-in-interest of Seigo Hiwa
Docket No. 57 I 41

Dear Mr. Stone:

This will acknowledge a copy of your letter of June 3, 1957, enclosing a copy of the claimant's Reply Brief. Hearing Examiner William C. Levy has granted permission to the Chief of the Claims Section to file a Reply Brief, which will be prepared in due course.

RL
6/18/57

It is noted that the claimant expresses dissatisfaction with the quality of the proof offered by the Chief of the Claims Section on the point that Seigo Hiwa applied for repatriation to Japan and pursuant to his request was repatriated in September of 1943. The Claims Section considers that the present proof is certainly adequate to establish that Seigo Hiwa was repatriated pursuant to his voluntary request. However, in view of the apparent dissatisfaction expressed in behalf of the claimant efforts are now under way to obtain additional proof on this point. It is believed that these efforts may be concluded within a very short time. You will be notified of the results thereof and consideration can then be given to offering any information obtained to the Hearing Examiner for inclusion in the record of this proceeding and thereafter closing the record with the filing of a Reply Memorandum of the Chief of the Claims Section.

In the circumstances an exact date for the submission of additional material and the closing of the record cannot at the present time be fixed but you may be assured that I am anxious to conclude the record for final submission to the Hearing Examiner.

Very truly yours,
Arthur R. Schor

Arthur R. Schor
Chief, Claims Section
Office of Alien Property

12161

SIGNED AND MAILED
JUN 19 1957

FILED
BY
On JUN 20 1957

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/k/a J. S. MIWA

Title Claim No. 36891

Docket No. 57 T 41

BEFORE WILLIAM C. LEVY, HEARING EXAMINER

BRIEF OF LAWRENCE FUMIO MIWA

STATEMENT

This proceeding arises out of a claim filed by the late J. S. Miwa, pursuant to the Trading With the Enemy Act, as amended (50 U. S. C. App. Sec. 1 et seq.), for the return of the property vested by Vesting Orders Nos. 2783, 3567, 5133, 7497, 10305, 11596, and 13491. Claimant herein, Lawrence Fumio Miwa, is successor-in-interest to his father, J. S. Miwa, a. k. a. Seigo Miwa. The vested property has a valuation of approximately $150,412.95. The claim therefore is an "excepted" claim under Section 502.2 (h) Rules of Procedure for Claims. (20 FR 7529, Oct. 8, 1955, Part 502.)

The claim was heard by William C. Levy, Hearing Examiner, on November 8, 1956. O. E. Stone of Washington, D. C. represented claimant and Richard P. Lott appeared as attorney for the Chief of the Claims Section. Lawrence Fumio Miwa testified in support of his claim and documentary evidence was introduced in behalf of both parties.

OLIVER ELLIS STONE
ATTORNEY AT LAW
925 VERMONT AVE. N.W.
WASHINGTON, D. C.
STERLING 3-5764

QUESTIONS AT ISSUE

1. Whether the physical presence of Seigo Miwa in Japan during part of World War II constituted residence in Japan.

2. Whether the return to Japan by the United States of Seigo Miwa, while under an order of deportation, and after his residing in the United States (Hawaii) for more than twenty-five of the preceding twenty-nine years, constituted duress or other ground for treating him as one who had maintained residence in the United States during the war, and hence entitled to the return of his property pursuant to § 9 (a) of the Act.

3. Whether the persecution of Seigo Miwa as a pro-American, English-speaking Christian, by the Japanese Government authorities and the closing up of his business in Japan during the war qualified him for the return of his property under § 32 (a) (2) of the Act.

SUMMARY OF EVIDENCE AND PROPOSED FINDINGS OF FACT

1. The late Seigo Miwa was born on June 25, 1897 and first came to this country at the age of sixteen, moving from Japan to Hawaii on April 15, 1914 to become a part of his father's business. His father was then engaged in Hawaii in importing foodstuffs and agricultural foods from Japan and the United States, the same business which was eventually incorporated as J. S. Miwa & Company, Limited. (Stipulation No. 1, Transcript, 4.)

2. Since that time of arrival and September 1, 1943, when he last left for Japan while under a deportation order (Stipulation No. 5, Transcript 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, both in Hawaii and in California where he had set up an affiliated trading firm. These business trips were as follows: left for Japan April 21, 1926, arrived Honolulu June 22, 1926; left for Japan August 18, 1933, arrived Honolulu October 24, 1933; left for Japan July 17, 1935, arrived Honolulu May 21, 1936; left for Japan July 6, 1936, arrived Honolulu November 22, 1938; left for Japan April 1, 1941, arrived in Honolulu October 21, 1941. (Stipulation No. 2.)

3. Since 1914, when Seigo Miwa first made his home in Hawaii, he resided at several locations, the last being at 2556 South Beretania Street, Honolulu, since about 1930 (Exhibit 1). All three of his children, two boys and a girl, were born United States citizens in Hawaii (Transcript 7, 26). His successor-in-interest, the present claimant, Lawrence Fumio Miwa, was born in Hawaii in 1931 (Transcript, 7), and, upon doctor's advice, was taken to Osaka, Japan in 1934 because of a respiratory ailment (Transcript, 10).

4. The J. S. Miwa business which Seigo Miwa ran had its main office in Hawaii, where it had about twenty-five employees, with a branch office in San Francisco with about three employees (Transcript, 11). Seigo Miwa's father, who had originally founded the business, was responsible for the affairs in Japan from Hiroshima and had one employee there and maintained an agent at Osaka (Transcript, 11). The course of business required Seigo Miwa to make three trips to Japan in the decade beginning in 1926. But, when his father became ill, in 1936, and was not able to carry the Japanese side of the business, Seigo Miwa left for a more lengthy stay in Japan to settle affairs and to wind up his father's estate (Stipulation No. 3, Transcript, 5).

5. In addition to maintaining his business and a home in Honolulu during this period, Seigo Miwa was classified as a resident of Hawaii as is established by his payment of Poll Tax Receipts for 1931, 1940, 1941 (Exhibit 3) and registration under Social Security (Exhibit 2). His status in Hawaii is further evidenced by the fact that although a Japanese citizen, upon the outbreak of war with Japan, Miwa was appointed one of the food committee by the then Governor Poindexter, on which he worked until his detention as an "enemy alien" on February 13, 1942 (Exhibit 4, page 2).

6. Thereafter he was transferred to internment centers in the United States where he was ordered deported (Exhibit 10) and threatened by the Immigration and Naturalization Service with being forced to return to Japan without the possibility of ever returning, unless he would accept repatriation (¶ 2, page 1, Exhibit 8). He was deported to Japan on September 1, 1943 (Exhibit 8, page 2). His expulsion from the United States under these circumstances constituted duress, and his presence in Japan thenceforth did not constitute a relinquishment of his residence in Hawaii. His residence in Japan during the war was not voluntary.

7. As a consequence of Japanese law discriminating against political and religious groups not in sympathy with the Japanese war effort, Seigo Miwa was the subject of official persecution upon his arrival in Japan, depriving him of the full rights of citizenship in Japan during the war. He was subject immediately to extended questioning by the Secret Police and thereafter to daily surveillance by various police authorities (Transcript, 18, Exhibit 5). His J. S. Miwa business had been terminated at the outbreak of the war (Transcript, 23). he suffered sanctions because of his refusal to become a part of the local community organization for the war effort (Exhibit 6,

Transcript, 21), and his sole means of support was from rental property which had belonged to his father (Transcript, 22). He did no business in Japan during the war (Transcript, 22).

8. Seigo Miwa's prediction as to the outcome of the war having come true (Transcript, 31), as soon as the war ended he attempted to return to his home in Hawaii and resume business (Transcript, 24) but his applications therefor were denied on the ground of his deportation (Exhibit 7). In the meantime, with the United States occupation of Japan, he immediately volunteered for service with the occupation forces in Hiroshima, where he had lived during part of the war and in Kure City (Transcript, 28, 29).

9. However, Seigo Miwa's daughter and his successor-in-interest, Lawrence Fumio Miwa, being citizens of the United States, were allowed to return to Hawaii and in 1947 (Transcript, 25) returned to what they understood to be their family home in Hawaii at 2556 South Beretania Street (Transcript, 31, 33). His sister has remained in Hawaii (Transcript, 33) and Lawrence Miwa ultimately came to the United States after four years in Hawaii (Transcript, 33), completing his high school studies there at the Mid Pacific Institute, the same school that his father, Seigo Miwa, had attended before him (Transcript, 25).

10. Neither Seigo Miwa nor his son, Lawrence Fumio Miwa, claimant herein, has conducted himself in any way as an enemy of or hostile to the United States, and, but for the accident of Seigo Miwa's birth in Japan, the property here involved would not have come within the jurisdiction of the Office of Alien Property.

ARGUMENT

I. Seigo Miwa was not an enemy because he was not a voluntary resident of Japan during the war.

One not an enemy is entitled to the return of his vested property under § 9 (a) of the Trading With the Enemy Act. The initial question therefore is whether Seigo Miwa is an enemy as defined in § 2 (a) of the Act. This in turn depends upon whether he was "resident within" or "doing business within" Japan during the war.

In the first place, the facts of this case afford no basis for a determination that Seigo Miwa was doing business in Japan during the war. His business had either been shut down or taken away from him and he was hard put to maintain his family during the war from modest income received from the rental of his father's properties which had been left to him (Transcript, 22).

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

The facts of this case compel the conclusion that the physical presence of Seigo Miwa in Japan during the war is insufficient to constitute residence under § 2 (a) as interpreted by the courts.

Something more than mere physical presence and something less than domicile is required. Gussefeldt v. McGrath, 342 U. S. 308. In that case Gussefeldt, a German citizen, was unable to return to his residence in Hawaii before the expiration of his reentry permit but the court held that his presence in Germany with his family during eleven years did not make him a resident within Germany under § 2 (c). In the instant case, although Seigo Miwa's reentry permit had expired before his last trip back to Hawaii, and although his wife and children had been back in Japan for some years, his presence in Japan under deportation order from the United States should not make him a resident of Japan. He had visited Japan on business and to see his family on

five occasions since his first arrival in Hawaii in 1914, but these occasional visits did not alter the basic fact of his residence in Hawaii where, in addition to other factors, he was treated as a resident for the purpose of local poll taxes and social security registration (Exhibits 2, 3).

Thus the actual facts of his long-established residence in Hawaii should control. See In the Matter of Insolvent Account of Yokohama Specie Bank, Ltd. Debtor, David Latuf claimant Debt Claim No. 1218, Docket No. 53 D 20 in which the Deputy Director accepted the analogous proposition that "the phrase 'residents of the United States' in Section 34 (a) should not be construed as 'residents of the United States lawfully admitted for permanent residence'".

Furthermore, the facts of this case are such as clearly bring it within the doctrine of Nagano v. McGrath, 342 U. S. 916, affirming without opinion 187 F. 2(d) 759. (Also see 212 F. 2(d) 262.) There Mrs. Nagano went to Japan to educate her children, after only a nine year residence in the United States. She remained in Japan from 1924 to 1932 and returned to Japan in 1934 to remain there until 1950. Summarized, out of the thirty-five years from 1915 when she first lived in the United States Mrs. Nagano lived twenty-four in Japan. The Seventh Circuit held that these facts did not make her resident within Japan during hostilities. The same result should follow in the instant case wherein Seigo Miwa, in the period between his initial arrival in 1914 and 1943 when the United States Government shipped him to Japan never to allow him to return, spent twenty-five years out of those twenty-nine years in the United States.

Here also the alternative basis of the holding in the Nagano case (187 F. 2(d) at 768) is applicable because the

facts of the record, taken as a whole, show that Seigo Miwa was not, "in any true sense, a member of the nation of Japan." Seigo Miwa could not come to the United States as an immigrant for permanent residence because as a Japanese he was barred under the racial restrictions in the immigration laws then in effect. Similarly he could not adjust his status to that of a permanent resident under immigration law notwithstanding the fact that for the major part of his adult life he had resided in Hawaii, voluntarily departing the United States only for business reasons in connection with his import business and family business in Japan during that period. The record is clear that Seigo Miwa did all that he could to remain in the United States as long as he could and that he sought to return here as soon as he could. Aside from his family, which, as in the Nagano case, was being educated in Japan, his interests were all in the United States and specifically in Hawaii where his children were born and where was located his principal place of business and his livelihood as well as his residence.

when he left in 1936 R/P refile

His intention to return to Hawaii is amply supported by his actions prior to his deportation to Japan and throughout his years of absence in Japan during the war. He made known to his family his intention to return to Hawaii and his belief that the United States would win the war. Although he was a prominent merchant and businessman who might normally have been expected to contribute to Japan's war effort upon his arrival there during the war, he refused to cooperate and sat out the war relatively idle and satisfied himself with a small fixed income from rental properties. Throughout his life Hawaii had been his principal place of business and abode. There he kept his principal assets and there he maintained his abode. There he repeatedly sought to

return once the war was over. His actions during the crucial years when considered with the fact that he had made several previous trips to Japan during his long residence in this country should, we submit, readily confirm an undeviating intention to resume his place of actual residence in Hawaii.

B. Even if Seigo Miwa lost his residence in Hawaii, this was done under coercion and duress and did not constitute voluntary acquisition of a new residence in Japan in time of war.

The physical presence of Seigo Miwa in Japan during part of the war years does not stand alone; it is important to note the full circumstances of his return. Right after the outbreak of the war he had been appointed by the Governor of Hawaii to serve on a local food committee (Exhibit 4, page 2). As a well established importer of foodstuffs he was a natural selection for such an important task in time of crisis notwithstanding the fact that he was classifiable as an "enemy alien". However, the same crisis did not permit individual treatment at that time of Japanese residents, and so 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. See Earthew v. Clark, 78 F. Supp. 139, 142 (S. D. Cal. 1948) to the effect that residence within is " . . . indicative of a settled and permanent place of abode, volitionally acquired and voluntarily assumed." (Emphasis added)

II. Even assuming Seigo Miwa may be classified as an enemy, he is entitled to a return of his property as a persecutee under § 32.(a) (2) of the Act.

At the outbreak of the war Seigo Miwa was in Hawaii, carrying on his food and importing business. From that time until his arrival in Japan nearly two years later, he enjoyed no rights of citizenship in Japan, being a Japanese citizen who lived outside of Japan and whose loyalties were American rather than Japanese (Transcript, 31). Thus upon his arrival back in Japan during the war, he was immediately held and interrogated at length (Transcript, 18). Routine and regular investigations by police authorities took place throughout the war years pursuant to the general security laws and regulations of the Japanese Government (Exhibit 5). In addition Seigo Miwa as a known Christian was the subject of political and economic discrimination. He did not vote in Japanese elections (Transcript, 23); his commercial operations were shut down and he was forced to live in semi-retirement idly whiling away the time (Transcript, 22). Taken all together, these facts constitute a deprivation of the full rights of Japanese citizenship under Japanese war legislation during the war aimed at eliminating interference with the Japanese war effort on the part of political or religious groups who, like Miwa, were opposed politically and by Christian religion to the conduct of the war.

CONCLUSION

Seigo Miwa was entitled to a return of his property under the Trading With the Enemy Act, and the claim of his successor-in-interest, Lawrence Fumio Miwa, should therefore be allowed.

Respectfully submitted,

O. E. Stone

O. E. Stone
Attorney for Lawrence Fumio Miwa

3 January 1957

Claim 36891
ARS:AJG:RPL:ESC

Department of State
Washington 25, D. C.

Attention Mrs. Rosemary Davenport

Dear Sirs:

Re: Seigo Miwa, also known as
J. S. Miwa

A claim is pending in this Office for the return of property vested as the property of Seigo Miwa, a Japanese national.

RL 8/14/57

Seigo Miwa was interned as a dangerous alien enemy and while in internment in 1942 or 1943 it is believed that he applied for repatriation to Japan. It has recently been indicated that the files of the Department of State contain a letter written by Seigo Miwa pleading for permission to return to Japan. His repatriation did follow with Miwa sailing on the September 2, 1943 departure of the exchange vessel "Gripsholm".

In the defense of the claim for the return of Miwa's property, this letter would prove of value to the Office of Alien Property. It will be appreciated, therefore, if copies of it could be supplied to this Office.

Very truly yours,

(Signed) Arthur R. Scher

Arthur R. Scher
Chief, Claims Section
Office of Alien Property

SIGNED AND MAILED
AUG 19 1957

AUG 19 1957

ADDRESS OFFICIAL COMMUNICATIONS TO
THE SECRETARY OF STATE
WASHINGTON 25, D. C.

DEPARTMENT OF STATE
WASHINGTON

In reply refer to
SCS 211.9441-Miwa,
Seigo/8-1957

September 20 1957

Dear Mr. Scher:

I refer to your letter of August 19, 1957 (Claim 36891 ARS:AJG:RPL:ESG) requesting a copy of a letter signed by Mr. Seigo Miwa, a Japanese national, regarding his desire to be repatriated to Japan.

There are enclosed two copies of a letter from Mr. Seigo Miwa, dated March 29, 1943, addressed to Mr. Joseph C. Grew, formerly Ambassador to Japan, in which he requested Mr. Grew's assistance in his repatriation. The records of the Department indicate that Seigo Miwa was interned at Lordsburg, New Mexico and was repatriated to Japan on the "Gripsholm" which sailed from New York, September 2, 1943.

Sincerely yours,

V. Harwood Blocker
Acting Director
Office of Special Consular Services

Enclosure:

From Mr. Miwa,
March 29, 1943,
in duplicate.

Mr. Arthur R. Scher,
Chief, Claims Section,
Office of Alien Property,
Department of Justice.

Postage Free

INTERNEE

PRISONER OF WAR

Miwa, Seigo
ISN-HJ-291-CI
K2-Co. 5-B6
Lordsburg Internment Camp
Box 20 General Post Office
New York, N. Y.

Hon. Joseph C. Grew
Ex-Ambassador to Japan
State Department
Washington, D. C.

(E)

DO NOT WRITE HERE!
NICHT HIER SCHREIBEN!
NON SCRIVETE QUI!
書勿レ

DO NOT WRITE HERE!
NICHT HIER SCHREIBEN!
NON SCRIVETE QUI!
書勿レ

Hon. Joseph C. Grew
Ex-Ambassador to Tokyo
State Department
Washington, D. C.

Miwa, Seigo
ISN-HJ-291-CI
K2-Co. 5-B6
Lordsburg Internment Camp
Box 20 General Post Office
New York, N. Y.
March 29, 1943.

Your Excellency: I am one of the Japanese internees, the best friend of Mr. Y. Terada of Hiroshima, Japan, who is the father-in-law of Mr. Fujimoto who used to work under you at Tokyo as a secretary. I have a business enterprise with Mr. Terada, at Hiroshima, Japan and also another at Honolulu, T. H. My business at Honolulu has been operated for the last forty-years, since my father started. I filed my income tax-return of 1942, ammounting $14000.00 due to the U. S. Treasury. A month ago I filed my application of departing your country with my own expenses by the courtesy of El Paso Immigration Station. Because my pass-port under Sec. 3 P-2 under the Immigration Act of 1924, visaed at Kobe, Japan, on Oct. 12, 1941, expired on April 23, 1942, with the deepest regret that was beyond my control. I will be 46 years of age and have never had no military obligation in Japan yet. Now I desire to go back to Japan with my own expenses via neutral countries in order to enlist as an interpretor to work for among you American internees either in Japan or elsewhere in the orient.- Having being educated in the U. S. A. and lived in Honolulu from 1914 to 1934, I believe that it is my obligation to do so. I shall be very much gratified and grateful, if Your Excellency could help me by seeing the responsible authorities for granting my application. My personal reference was known among your ex-officials stationed at Kobe.

Wishing you the excellent health and thank in advance.

Seigo Miwa

Richard Lott
Jim. 316

WGLiren

October 9, 1957

Oliver Ellis Stone, Esq.
1025 Vermont Avenue, N. W.
Washington, D. C.

Re: [redacted], as successor-in-interest of Seigo Nisa, a/k/a J. S. Nisa
Claim No. 36891 - Docket No. 57 I 41

Dear Mr. Stone:

This is with reference to the supplementary hearing held before me today on the admissibility of Claims Section Proposed Exhibit No. 11, consisting of a photostat of a letter from the claimant, Seigo Nisa, to Mr. Joseph Grew, formerly Ambassador to Japan, dated March 29, 1943, and a covering transmittal letter dated September 20, 1957 from L. Harwood Blocker, Acting Director, Office of Special Consular Services, Department of State.

You objected to the receipt in evidence of Claims Section Exhibit No. 11 on the ground that the evidence comes too late and should have been submitted at the hearing on November 8, 1956, that the best evidence as to whether claimant applied for repatriation would be a copy of his repatriation application, that the proposed exhibit is on its face a privileged personal communication, and that no proper foundation for its admission has been laid. I have considered the objections made by you at the hearing today and the oral arguments of Mr. Lott in support of its admissibility and have decided to admit the proposed exhibit as Claims Section Exhibit No. 11 in evidence. The Claims Section will have until Friday, October 25, 1957, to submit any further reply brief or memorandum, and you will have fifteen days from the receipt thereof to respond thereto.

Very truly yours,

William G. Levy
Hearing Examiner

cc: Chief, Claims Section
Attn: Richard F. Lott

FILED
JUG
Oct 09 1957
BY

Claims Section

I object to the receipt in evidence of Exhibit 11

on the following grounds:

1. This evidence comes too late. This evidence was equally available to the Claims Section at the time of hearing and should not now be received nearly a year later, and more than five months after the submission of the last brief to the Hearing Examiner.

2. This evidence should be rejected on the basis of the best evidence rule. As brought out at the hearing the best evidence as to whether Seigo Miwa applied for repatriation would admittedly be a copy of his repatriation application. No such copy has been produced nor has there been any showing as to the reasons for its non-production, if indeed such application ever was made.

3. This evidence should not be received because of it is on its face a privileged personal communication to one not affirmatively shown to be in the employment of the Government at the time.

4. This evidence should be rejected because no proper background for its admission has been laid. This proposed evidence purports to be a photo copy of a communication signed by Seigo Miwa; there has been no showing as to why the original communication itself is not available nor has there been any proffer of proof as to the validity of the signature or the circumstances which resulted in such alleged communication being made.

Claim 36891
ARS:AJG:RPL:ESC

OCT 21 1957

RL
10/17/57

Mr. Oliver Ellis Stone
1025 Vermont Avenue, N. W.
Washington, D. C.

Dear Mr. Stone:

Re: Lawrence Fumio Miwa, as successor-in-interest to Seigo Miwa, a/k/a J.S. Miwa
Docket No. 57 T 41

Enclosed is a copy of the Reply Memorandum of the Chief of the Claims Section.

The letter of Seigo Miwa to Mr. Grew, dated March 29, 1943, with my request therefor and the transmittal letter from the Acting Director, Office of Special Consular Services, of September 20, 1957, were first noted as Claims Section Exhibit 11. This has been corrected and now entered in the record as Claims Section Exhibit I.

Very truly yours,

(Signed) Arthur R. Schor

Arthur R. Schor
Chief, Claims Section
Office of Alien Property

Encl.

FILED
BY JHG
On OCT 22 1957

SIGNED AND MAILED
OCT 21 1957

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, also known as J. S. MIWA	Claim No. 36891 Docket No. 37 T 41

REPLY MEMORANDUM OF THE CHIEF OF THE CLAIMS SECTION

This Reply Memorandum is submitted with the consent of the Hearing Examiner, granted at the supplementary hearing held on October 9, 1957.

The Reply Brief of the claimant concludes that the presence of Seigo Miwa, claimant's father, in Japan commencing in November 1943, was not residence within the intendment of Section 2 of the Act, but rather represented a temporary visit or sojourn in Japan. This conclusion is based on the premise that Seigo Miwa had his home in Hawaii and was a resident there at the time of his internment in February of 1942, and on the further premise that he was involuntarily expelled from the United States against his wishes when he was repatriated to Japan on September 2, 1943.

Seigo Miwa came to Hawaii in October 1941 as a business visitor with the expectation of remaining only two months in Hawaii. In a letter to former Ambassador Grew dated March 29, 1943, he described himself as "having lived in Hawaii from 1914 to 1934." Exh. 1. It is a fair inference from that language that he did not live in

Hawaii after the year 1934, when he and his family moved to Japan, and that he changed his place of residence at that time. In his Report TFR-300 of October 30, 1941 (Exh. E) claimant's father had already demonstrated his awareness of the change in personal circumstances that had taken place in 1934 by acknowledging under oath that he "had been residing in Japan since April 1, 1941", although he was at the time he made that Report physically present in Hawaii.

The proposition that Seigo Miwa was involuntarily expelled from the United States and sent to Japan is belied by the letter to former Ambassador Joseph C. Grew, in which claimant's father sought Mr. Grew's assistance in his return to Japan. If the evidence heretofore found in Exhibits 4 and H left any doubt that Seigo Miwa both desired and applied for repatriation, that doubt is now removed.

The claimant's Reply Brief repeats the argument that because there was a warrant for Seigo Miwa's deportation outstanding, his departure was involuntary, and he did not acquire a residence in Japan. The answer to the argument is that there is no evidence that the issuance of the warrant of deportation brought about his repatriation, or that his request that he be permitted to return to Japan was made to avoid eventual deportation under our immigration laws. But even if he was deported to Japan against his will, Seigo Miwa was resident there after his arrival, since he had no lawful status as a resident of the United States but was a resident of Japan on a visit to this country when war broke out. See

Matter of Ludwig Gross, H.E. Jan. 24, 1957, rev. and dis., Dep. Dir. Aug. 15, 1957. From the Hearing Examiner's recommended decision in that case it appears that Ludwig Gross, who contemplated marriage to an American resident and who was taking steps to regularize his immigration status with the view of eventual naturalization, returned to Germany involuntarily. Yet the Deputy Director found that he became resident within Germany on his deportation to that country, because he had no legal status in this country. Seigo Miwa was not deported but urgently sought repatriation and was permitted to rejoin his family in Japan. A fortiori he was resident within Japan after he arrived there.

Claimant argues that, as successor-in-interest to Seigo Miwa, he was not resident within Japan within the meaning of Section 2, since he was taken to that country from Hawaii when an infant of three years of age and an intention to establish residence in Japan should not be attributed to him. The short answer to this argument is that in the case of an infant residence is not a matter of his own intention but derives from the status of the parent or parents in whose custody he is placed. In the case of Lawrence Fumio Miwa his parents in 1934 decided that he should go with his mother to Japan to assume a residence there. Upon his arrival in Japan, he acquired the same residence states that his mother and father enjoyed. Matter of Monsrud, Dep. Dir. May 29, 1953.

Claimant urges that since he is in any event eligible for return under Section 32 of the Act, if it should be found that Seigo Miwa would have been eligible under Section 9(a) of the Act,

a recovery should be permitted. He does not, however, tell us under which Section of the Act the claim should be allowed. The difficulty with the argument for a liberal construction of the Act, based on the comments of the Court in Guessefeldt vs. McGrath, 342 U.S. 308, 319 (1952), is that it would require us to ignore the plain language of Section 32(a). It is an argument better addressed to the Congress rather than the agency charged with the administration of the Act as written. In any case, the problem is largely academic since, as we have seen, claimant's residence status is inextricably linked with that of his deceased father and there is little likelihood that the former would be held to be a resident of Japan upon the outbreak of war while the latter was not.

Respectfully submitted,

Dated:

Arthur R. Schor
Chief, Claims Section
Office of Alien Property

Arthur J. Gang
Chief, Trial Unit

Richard P. Lott
Trial Attorney

William C. Levy
Hearing Examiner

Arthur R. Schor
Chief, Claims Section

(Signed) Arthur R. Schor

ARS:AJG:RPL:ESC

OCT 21 1957

Claim 36891
Lawrence Fumio Miwa, as successor-in-interest of Seigo Miwa, also known as J. S. Miwa.
Docket No. 57 T 41

I am transmitting the Reply Memorandum of the Chief of the Claims Section in the above entitled matter.

I have mailed a copy of the Reply Memorandum to:

Mr. Oliver Ellis Stone
1025 Vermont Avenue, N. W.
Washington, D. C.