

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.

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 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.

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

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3 January 1957