

GRANIERO CASE—DECISION No. 186 OF 20 JANUARY 1959 ¹

The Italian-United States Conciliation Commission, established by the Government of the United States of America and the Government of the Italian Republic pursuant to Article 83 of the Treaty of Peace and composed of Messrs. Alexander J. Matturri, Representative of the United States of America, and Antonio Sorrentino, Representative of the Italian Republic, finds it has jurisdiction to adjudicate the rights and obligations of the parties to this dispute.

The dispute between the two Governments arose out of a claim under Article 78 of the Treaty of Peace and the Agreements supplemental thereto or inter-

¹ *Collection of decisions*, vol. VI, case No. 241.

pretative thereof, which was submitted, on March 20, 1952, to the Italian Ministry of the Treasury by Adelaide Comini Graniero through the Embassy of the United States of America at Rome. The Italian Government did not take any action on the claim for more than four years and the United States Agent, considering the delay as tantamount to a rejection, filed a Petition with the Commission on April 23, 1956, in which he alleges the American citizenship of the claimant and damages to the real property owned by her in Italy. The Italian Agent filed an Answer, on June 4, 1956, stating that the Commission lacks jurisdiction because a dispute between the two Governments did not exist. Subsequently, on October 30, 1956, the Interministerial Commission of the Italian Ministry of the Treasury rejected the claim because of the dominant Italian nationality of the claimant and because of her residence in Italy, with her husband, from 1930 to 1948. On December 27, 1956, the Commission ordered the Italian Agent to produce all documentary evidence on which said rejection is based. Thereafter, the Italian Agent filed two statements by the Intendenza di Finanza of Frosinone, one of which states that the claimant's husband was in Italy from 1930 to 1948 and the other of which states that the claimant was married in 1922 and that she emigrated to America in 1946.

The American Agent, in his observations of March 20, 1957, points out that the claimant, in fact, returned to the United States in 1946, and that previously, during their stay in Italy, she was treated as enemy under the laws in force in Italy during the war. He further points out that the claimant and her husband were placed in a concentration camp and were otherwise ill-treated by the Fascist authorities. In support of these allegations, the American Agent submits a letter written by the claimant's American attorney and another letter written by the Pastor of a church in Ausonia. The former sets forth the following facts; Mrs. Graniero went to the United States in 1922 and acquired American citizenship at that time based on her husband's citizenship; she remained in America from 1922 to 1931 and gave birth to three children during that period; in 1931 she went to Italy with her husband and children because her husband's help was needed by his family; in 1939 the claimant made application, at the American Consulate in Rome, to return to the United States and executed the necessary administrative documents; shortly thereafter, and before clearance for her return could be obtained, the war broke out and she and her family were stranded in Italy; prior to the Allied liberation of Rome she and her family were harrassed to the point where they were forced to abandon their home and flee to the hills; subsequently they were placed in a concentration camp in Rome but were able to escape one at a time; shortly after the war the entire family returned to the United States. The Pastor's letter states, in effect, that the Graniero family was ill-treated during the war by the Fascist authorities because they possessed American nationality and that they suffered a great deal "prior to and after the concentration camp".

The Italian Agent, on November 8, 1947, in reply to the American Agent's observations, points out that no concrete proof has been presented that measures were actually taken against the claimant sufficient to establish "treatment as enemy" and that the claimant's Italian nationality is, in any event, her prevalent nationality.

CONSIDERATIONS OF LAW :

The Commission must consider this case under two aspects. The first in light of the claimant's dual nationality and the second under the "treatment as enemy" provision of Article 78, paragraph 9.

Mrs. Graniero was an Italian citizen at birth and by virtue of the Italian

Nationality Law No. 555 of June 13, 1912, she lost said citizenship when she became a naturalized American in 1922. Under the same Italian Law she re-acquired her Italian nationality, by operation of law, in 1933 by residing in Italy for a period in excess of two years. Thus, in 1933 she possessed both American and Italian nationality.

The Commission must then determine which of the two nationalities is dominant. The claimant resided in Italy from 1931 until 1946, the year of her return to the United States. She came to Italy with her children to be with her husband. She alleges that she made an attempt, in 1939, to return to America and in that regard made an application at the American Consulate in Rome. However, before obtaining clearance for her return the war broke out, leaving Mrs. Graniero and her family stranded in Italy. Her attempt to return to America in 1939 is merely set forth in a letter by the claimant's attorney, but no proof is presented to substantiate it. An examination of the Rome Consulate files reveals, on the contrary, that no such application was made by Mrs. Graniero in 1939. Investigation further revealed that, in connexion with a passport application at the same Consulate, Mrs. Graniero executed an affidavit, in March 1946, to overcome the presumption of noncitizenship. She states therein that the reason for her foreign residence was to be with her husband in Italy. She makes no mention whatsoever of any previous application to return to America, even though it would have been most logical to do so at that time. Furthermore, the claimant's husband, in a similar affidavit executed in January 1945, states: that he owned a mill in Italy which he operated during his stay there; that he did not have the intention of returning to the United States until 1945; that the reason he did not previously apply for a passport was because he was not ready to leave Italy; that he also owned some land and a house, in which he and his family lived while in Italy. It should also be pointed out that the claimant's husband lost his American citizenship in 1933 when he manifested a voluntary acceptance of Italian nationality by virtue of his membership in the Fascist Confederation of Artisans. From that date he possessed only Italian nationality.

These facts clearly establish that the claimant, who was in possession of both nationalities but who was married to an Italian, was more closely related since 1931 with Italy than she was with America. Not only her conduct in economic, social, civic and family life, but also her husband's habitual residence, the centre of his business interests and of his professional life, clearly show that she was a dominant Italian national.

With regard to the second aspect of this case, the claimant tries to spell out "treatment as enemy" under the laws in force in Italy during the war. As proof of this fact, she submits a statement made by her American attorney and a statement by the Pastor of a church in Ausonia, Italy. The former merely alleges that the claimant and her family were placed in a concentration camp in Rome and that subsequently they were able to escape therefrom. The latter is a certification that the Graniero family "had much to suffer both at Ausonia and Rome prior to and after the concentration camp", and that they were ill-treated and abused by the Fascist Italian authorities because they possessed American nationality. Both of these statements deal in generalities which are hardly acceptable as a form of proof. The statement by the American attorney is obviously a repetition of what was told to him by the claimant and, as such, is no more than a self-serving declaration. The name and exact location of the concentration camp are omitted, as is also any document to establish the alleged internment, or the reason for same. In any event, the claimant has the burden of establishing treatment as enemy and she must do so by clear and convincing proof. Even if she were not able to produce any document of

her internment she should have explained her failure to do so. Even if it is assumed that she was placed in a concentration camp, there is no evidence that she was so placed because of her American nationality. At the very most there is a remote and very dubious inference that that was the reason. The Pastor's letter is but a very general repetition of the facts alleged by the claimant. It does not refer to any specific act of enemy treatment nor does it furnish the necessary details which would substantiate his statement. Because of this lack of proof the Commission must hold that the claimant has failed to submit sufficient evidence to benefit by the provisions of Article 78, paragraph 9, subparagraph 2 of the Treaty; i.e., she has failed to prove that she was treated as enemy under the laws in force in Italy during the war. Therefore, the Commission

DECIDES :

1. The petition filed by the Agent of the United States of America in behalf of Mrs. Adelaide Comini Graniero is rejected.
2. This Decision is definitive and binding.

Rome, January 20, 1959.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO