UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE: HOLOCAUST VICTIM ASSETS LITIGATION	Case No. CV 96-4849 (ERK)(MDG) (Consolidated with CV 96-5161 and CV 97-461)
	MEMORANDUM & ORDER
This Document Relates to: All Cases	

KORMAN, Chief Judge.

By letter dated October 19, 2006, CRT Special Master Dr. Helen B. Junz has proposed an amendment to Article 28 of the Rules Governing the Claims Resolution Process (the "CRT Rules"). I had appointed Ms. Junz to serve as CRT Special Master on April 13, 2004. Since that time, she has had primary responsibility for reviewing awards and denials recommended by the CRT, including where necessary analyzing all of the underlying bank records and other documentation relevant to each claim. Prior to her appointment Dr. Junz, who is an economist, had a distinguished career as a national and international public servant. She served in senior positions at the Board of Governors of the Federal Reserve System of the United States, at the Economic Council of the President in the White House; as Deputy Assistant Secretary at the Department of the Treasury and subsequently at the International Monetary Fund. Her involvement with the analysis of Holocaust era asset questions came in 1997 when Paul Volcker asked her to produce a study of the wealth of the Jewish population in Europe at the eve of the Nazi era to provide a touchstone against which he and the Independent Committee of Eminent

Persons ("ICEP"), which he chaired, could assess the results of their audit of Swiss banks. The study was published as a book entitled, *"Where did all the money go?" Pre-Nazi Era Wealth of European* Jewry (Staempfli Publishers Ltd., Berne, 2002). Subsequently she guided the economic and financial research for the U.S. Presidential Advisory Commission on Holocaust Era Assets, served as a member of the Independent Commission of Experts Switzerland-Second World War (the Bergier Commission); advised the van Kemenade Commission (Dutch commission) on aspects of Jewish-owned wealth in the Netherlands; produced, in collaboration with her co-authors, a study for the Austrian Historical Commission and was a fellow at the Center for Advanced Holocaust Studies at the U.S. Holocaust Memorial Museum.

Until Ms. Junz's appointment in April 2004, Michael Bradfield, an extremely capable lawyer who was General Counsel of the Federal Reserve Board and was counsel to the ICEP (Volcker) Commission, and is now in private practice focusing on international banking and finance, served as CRT Special Master and in that capacity supervised the CRT and reviewed its recommendations in connection with particular awards and denials. At my request, upon Ms. Junz's appointment, Mr. Bradfield assumed responsibility for CRT appeals while Ms. Junz was charged with oversight of the CRT's awards and denials.

Among the issues that have been raised with Special Master Bradfield in connection with the appeals is the continuing viability of Article 28(a)(i) of the CRT Rules, the "Swiss visa requirement." Indeed, on March 28, 2006, Mr. Bradfield wrote to Ms. Junz, to ask for her "help to assist [him] ... to resolve appeals that turn on the application of Swiss visa requirements to Jews entering Switzerland during the period in which the Swiss visa policy was in effect." While the letter acknowledged Ms. Junz's special expertise in this area, Mr. Bradfield ultimately disagreed with Ms. Junz, as reflected in an exchange of correspondence that I discuss below. I

find Ms. Junz's analysis of the issue more compelling and persuasive. Indeed, in a letter dated October 3, 2006, outlining the concerns he had with Ms. Junz's response to his March 28, 2006, letter, Mr. Bradfield acknowledged that "Ms. Junz's analysis is persuasive." I annex copies of the correspondence, which I discuss in some detail below.

Article 28 sets forth "presumptions relating to claims to certain closed accounts." Special Master Junz explains that the purpose of her proposed amendment "is not to request a change in policy practice, but rather to make clear what longstanding practice has been" and to "formalize a policy that has long been in place; a policy that has been authorized by the Court in its orders adopting the CRT's recommendations to approve or deny individual awards." Specifically, Special Master Junz recommends that "Article 28 of the CRT Rules be amended to eliminate the reference to Swiss visa requirements, as Article 28(a)(i) of the CRT Rules has been found not to be appropriate and, therefore has for a long time already not been a factor in the award process." As Special Master Junz has established, the facts of the time, evidenced amply in the CRT's experience and research, are that Switzerland's imposition of additional visa requirements applying to "emigrants" in January 1939 is not germane to the issue whether an owner had control over his or her account. This is so because the management of an account did not require the physical presence of the owner in Switzerland, as the account could have been managed and closed at will from abroad or through third parties. Thus, the relevant time frame begins with the date the Reich gained control over the account owner's country of residence, whether by incorporation into the Reich, occupation or formal alliance. That is the date upon which it is appropriate to presume that the owner lost control over his/her Swiss account to the Nazi regime. It is the Nazi Regime -- as distinct from other regimes, which adopted persecution measures

preceding or parallel to, but not at the direction of the Reich -- that is relevant under the terms of the Settlement Agreement.[1]

I have carefully considered the reasons laid out for retaining the Swiss visa provision, most recently explained by Special Master Bradfield in a letter of October 3, 2006, as well as those underlying Special Master Junz's amendment proposal, as set out in her letter to the Court of October 19, 2006 and her response to Special Master Bradfield of October 10, 2006. For the reasons discussed below, I concur with Special Master Junz's analysis and hereby adopt her recommendation to amend the CRT Rules.

Special Master Junz's letter to the Court of October 19, 2006 explains that the decision to include in the CRT Rules a reference to "the imposition of Swiss visa requirements on January 20, 1939" was made "at the beginning of the review process, before the CRT Special Masters and staff had the opportunity to test [the Rules] against reality." In "an effort to provide the broadest possible sweep of presumptive rules to do justice to the widely varying circumstances of thousands of claimed account owners, rules and guidelines [were] formulated that later, in the light of further consideration and experience, would need to be re-interpreted or amended."

The reconsideration of these rules and guidelines has ensured equal treatment of claimants and in many, though obviously not all, cases also has resulted in the payment of more claims and/or larger awards than would have been permissible without these revisions. Special

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[1] Under the Settlement Agreement, to be a member of one of more of the five settlement classes, one must be a "Victim[] or Target[] of Nazi Persecution." A "Victim or Target of Nazi Persecution" is defined as "any individual, or other entity persecuted or targeted for persecution by the *Nazi Regime* because they were or were believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped" (italics supplied). As to "Nazi Regime," that term, while quite broad, nevertheless mandates that there be some historical connection between the perpetrator of the wrongdoing and Nazi Germany. Thus, according to the terms of the Settlement Agreement, "Nazi Regime means the National Socialist government of Germany from 1933 through 1945 and its instrumentalities, agents, and allies (including, without limitation, all other Axis countries), all occupied countries, and all other individuals or entities in any way affiliated or associated with, or acting for or on behalf or under the control or influence of, the Nazi Regime, including, without limitation, the Accused Organizations and Individuals in the Nurnberg Trial, 6 F.R.D. 69 (1946)."

Master Junz includes with her letter an Appendix that sets forth a number of examples of this continuing reexamination of the standards by which CRT claims are reviewed as assessment experience, confirmed by historical and documentary information, continually broadens the perceptions of the Special Masters and the CRT.

With respect to Article 28(a)(i), Special Master Junz explains that the imposition of additional Swiss visa requirements on "emigrants" on January 20, 1939 is not relevant to whether it may be presumed that an owner did, or did not, receive the proceeds of his or her account.[2] As Special Master Junz points out, "though in certain circumstances entry even for short-term stays may have been impeded at times, this does not mean that thereby access to, and full management of, assets held in Swiss banks by account owners who were Nazi persecutees was circumscribed. This was so because such management did not require the physical presence of the account owner in Switzerland .... These facts are borne out in the thousands of bank documents related to some of the 105,000 claims that have been filed with the CRT, as well as by continuing archival and other research."

Special Master Junz's October 10, 2006 letter, in which she responds specifically to Special Master Bradfield's letter of October 3, 2006, explains in detail the various means by which, prior to the date upon which the account owner's country was occupied by or allied with Nazi Germany, the owner could have accessed his or her account.

First, the account owner, unless a resident of the Reich, could have traveled to Switzerland under restrictions that were not notably different from those already in effect prior to the imposition of additional visa requirements on January 20, 1939. Although Special Master

[2] An "emigrant" was defined as a foreigner "who under pressure of political or economic circumstances has left, or is forced to leave, his residence abroad, and cannot, or does not want to, return there.", Unabhängige Expertenkommission Schweiz-Zweiter Weltkrieg, *Die Schweiz und die Flüchtlinge*, Study No. 17, Chronos, Zurich 2001, p. 141.

Bradfield's October 3, 2006 letter refers to the Swiss targeting of Jewish refugees, as Special Master Junz notes in her October 10, 2006 letter:

> The very sad fact of the Swiss treatment of refugees, which often consigned them to the death camps in the period after Nazi Germany overran Europe, is of course well documented, and [Special Master Bradfield] cite[s] one of these sources with respect to the record between 1940 and 1945. But the discussion here concerns the extent to which it was possible for account owners outside the Reich and Italy (for which dates on which account holders may be deemed to have lost control over the assets in their accounts, absent evidence to the contrary, precede January 20, 1939) to manage their accounts between January 20, 1939 and the date their country was occupied by the Reich or allied itself to the Reich and how this ability or otherwise fits into the confines of the Settlement Agreement. The point here is that, though entry restrictions had been tightened, the travel status of East and South-Eastern European Jews remained unaltered – that is general visa requirements had been applied to them for many years.

Second, an account owner unable or unwilling physically to enter Switzerland could have accessed his/her account by other means. Special Master Junz notes in her October 10, 2006 letter that "there is ... considerable evidence of couriers being used, especially from Eastern European countries. For example, in Hungary after the imposition of exchange controls, the Fascist press continually complained about the country being robbed by Jews moving their assets abroad and court records show that the majority of convictions for offenses against the currency restrictions concerned Jews. Thus, in February 1939 a court reported that one Jeno Schwartz had managed to travel abroad 188 times between 1934 and 1938 and personally smuggled assets worth 2 million pengö out of Hungary before he was caught.[3] And there are many more such examples." In any event, "most people used more sophisticated means to furnish and then manage their accounts from a distance, so that physical presence was not necessary and difficulty of entry does not come into play." Thus, "the broad flows of funds into Switzerland, and then in many cases again from Switzerland to other destinations, were managed not by courier...but by mail,

[3] Bosnyak Zoltan, *Magyarorszag elzsidosodasa,* (The Judaisation of Hungary), Budapest 1938; and *A zsidokerdes,* (The Jewish Question), Budapest, 1940 (cited in Special Master Junz's letter of October 10, 2006).

telephone, wire, letter and through third persons; in addition many of the ways we are familiar with from today's circumvention of exchange restrictions and evasion of taxes, such as over/under invoicing, etc. were also used."

Although Special Master Bradfield's October 3, 2006 letter indicates that it is implausible to presume that owners would have closed their accounts only to subject the funds to expropriation under the anti-Semitic practices of many Eastern European nations prior to their alliance with or occupation by Nazi Germany, Special Master Junz's October 10, 2006 letter explains that the funds likely were not repatriated, but sent abroad to safe havens:

> [A] prominent reason for closure would have been to move the funds to destinations considered safer than Switzerland and/or destinations the account owners hoped to be able to flee to themselves. Thus main destinations would have been the United States, the United Kingdom and Palestine. For example, Hug and Perrenoud note in their discussion of Swiss compensation agreements with East Bloc countries that "Other documents show that Romanian Jews entrusted their assets to Swiss banks, especially when moving abroad or for transferring them to Israel [sic]."[4] We have many such examples in the claims resolution experience. One such is *in re Accounts of Henryk Ruziewicz and Zofja Ruziewicz,* where Account Owner Zofja Ruziewicz' accounts at the Swiss bank were closed by written order in April 1939 and the assets, including US $8,350.00 in gold coins, transferred to the *Chase National Bank* in London. A second example, involving a transfer of funds to Palestine is *in re Accounts of Wilhelm Weinberger and Leonora Weinbergerova.* Here Account Owner Weinbergerova, who lived in Vienna, held a significant number of gold coins in a custody account at the Swiss bank. On January 10, 1939 the account was closed with an unspecified number of coins transferred to *Barclays Bank*, Haifa, Palestine and the remainder to an account at the Zurich headquarters of the bank. Account Owner Weinbergerova emigrated to Palestine in 1939.

Finally, as Special Master Junz's letter explains, "the fact that an account owner might have been able to dispose of the proceeds of his/her account(s) before his country fell under the power or direct influence of the Reich in no way indicates that he did not in the end perish in the Holocaust." In fact, there are many examples where account owners moved their assets to

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[4] Peter Hug and Marc Perrenoud, *In der Schweiz liegende Vermögenswerte von Nazi-Opfern und Entschädigungsabkommen mit Oststaaten*, Bundesarchiv Dossier 4, Bern 13 December 1996/January 1997, p. 144 (cited in Special Master Junz's letter of October 10, 2006).

safety, but were never able to gain safety themselves. Thus, an account owner's ultimately tragic fate once his/her country fell under the sway of the Reich does not mean that he or she could not have accessed the account before that time.

The purpose of Article 28 is to provide the CRT with general guidelines to help streamline the processing of claims, particularly where crucial documentation has been destroyed. Specifically, Article 28 is intended to offer guidance to the CRT in analyzing claims to accounts for which enough documentation remains to show that the account existed during the Holocaust era, but the documents that would demonstrate whether the owner received the proceeds have been destroyed. I already have explained that under these circumstances, and *absent other evidence to the contrary* -- a proviso also included in Article 28 -- it is appropriate to draw an adverse inference in favor of the claimant, who should not be held responsible for the banks' destruction of documentation. *In re Holocaust Victim Assets Lit.*, 319 F. Supp. 2d 301 (E.D.N.Y. 2004). As Article 28 makes clear, one important element in determining whether the adverse inference applies or, instead, whether there is evidence to the contrary, is the date upon which the account was closed. Thus, to date, Article 28(a) has indicated that two different time frames are relevant to this analysis: (1) whether the account was closed after Switzerland's January 20, 1939 imposition of additional visa requirements; (2) whether the account was closed after the account owner's country of residence was occupied by Nazi Germany.[5] Each element of Article 28(a) was intended to support an inference that, absent evidence to the contrary, the account owner could not have received the proceeds of an account if it was closed on or after the earlier of either the "visa date" or the occupation/alliance date.

[5] The latter provision has been interpreted to include both the date of occupation by or incorporation into the Reich, and the date of alliance with the Reich. This is being made explicit in the amendment below.

For all the reasons cited above, and for the other reasons set forth by Special Master Junz, Article 28(a)(i) is not reflective of its purpose, and I have approved numerous Certified Awards and Certified Denials in recognition of that fact.

Accordingly, I adopt Special Master Junz's proposal and hereby amend Article 28(a) of the CRT Rules to read as follows:

Article 28 Presumptions Relating to Claims to Certain Closed Accounts

In order to make an Award under Article 22 for claims to Accounts that were categorized by ICEP as "closed unknown by whom", a determination shall be made as to whether the Account Owners or their heirs received the proceeds of the Account prior to the time when the claim was submitted to the CRT. In the absence of evidence to the contrary, the CRT presumes that neither the Account Owners, nor the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances [footnote not reproduced herein]:

a) the Account was closed and the Account records show evidence of persecution, or the Account was closed after the date of occupation by or incorporation into the Reich or the date of alliance with the Reich of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the Swiss authorities' freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later); [Remainder of Article 28 is unchanged].

Special Master Junz also annexes to her proposed amendment of Article 28 an appendix setting forth the "Occupation, Incorporation and Alliance dates as used by the CRT to establish deemed dates of loss of control over financial assets." The dates "are relevant to the CRT's determination of the date upon which account owners resident in and/or nationals of the affected countries, in the absence of evidence to the contrary, would be deemed to have lost control over their accounts."

Special Master Junz correctly observes that the amendment of this Article will not be detrimental to claimants, as the amendment formalizes the policy that has been in place for

several years. I agree with Special Master Junz that it was an unfortunate oversight that Article 28 was not previously amended to eliminate the reference to Swiss visa requirements. However, the continuing reference in the Rules to the visa requirements has not had a practical impact upon the claims process, and has not deleteriously affected claimants or appellants. As Special Master Junz observes in her October 19, 2006 letter:

> That a claimant or his/her representatives may or may not have made reference to Article 28(a)(i) in his/her claim form or appeal is irrelevant to the CRT's careful examination of the circumstances surrounding the opening, management, and closure of the account at issue, as well as all available facts bearing upon the fate of the claimed account owner. The CRT's recommendations of awards, and Special Master Bradfield's recommendations on appeal, do not hinge upon claimants' interpretation of the CRT Rules but, rather, upon the determined effort to locate accounts and return them to their proper owners – even where claimants may not have originally asserted ownership to those accounts.

CRT claimants have been offered every opportunity to elaborate upon their claims. Where relevant data were not originally provided by the claimants or available from the bank records, the CRT has sought such information on its own initiative, ranging from direct communications with claimants and family members, to exhaustive archival research in Austria, Germany, Switzerland and elsewhere. The CRT also continues to pursue "Voluntary Assistance" from the defendant banks to obtain additional data, and in many instances has received relevant materials.

It is extremely unlikely that any claimant has modified or limited the information he or she provided to the CRT, whether initially or on appeal, because of Article 28's inclusion of a reference to Swiss visa requirements. It also is extremely unlikely that the CRT did not seek to amplify such information if it appeared to be incomplete and/or insufficient to perform the exhaustive analysis underlying any decision regarding proper closure of an account by the account owner, and thus whether or not the account is awardable under the Settlement

Agreement. Nevertheless, I have instructed the CRT to re-examine the 44 or so decisions that I have been made aware as having been issued to date in which accounts were denied because they were closed prior to the date upon which the owner's country of residence was occupied by or entered into an alliance with Nazi Germany, but on or after the imposition of additional Swiss visa requirements on "emigrants" on January 20, 1939. I have further instructed the CRT to continue to exercise special care when assessing such future cases.

Dated: Brooklyn, New York
November 29, 2006

SO ORDERED:

Edward R. Korman
United States District Judge

Appendix A. Selected amendments and clarifications to the rules and guidelines used by the CRT in the claims resolution process.

- On July 30, 2001, the Court adopted the recommendation of CRT Special Masters Volcker and Bradfield to permit the use of Initial Questionnaires as claim forms in the claims resolution process for Deposited Assets. The Court noted that "many Respondents erroneously understood that the IQ is a claim form and that no other claim form had to be submitted to qualify for a Deposited Asset award under the Claims Resolution Process. To correct this situation and to assure that Class Members with Deposited Assets claims are not precluded by technical procedural requirements from having fairly and timely presented claims fairly adjudicated, ... [r]esponses to the IQs shall be treated as timely submitted Deposited Assets Class claim forms for purposes of the Claims Resolution Process."

- On August 15, 2001, April 8, 2003 and December 30, 2004, respectively, the Court extended the filing deadline for CRT claims to ensure that the often elderly claimants had every opportunity to participate in the CRT claims process.

- On April 25, 2003, the Court expanded upon the presumptions utilized by the CRT by adopting CRT Rules Appendix C, thus providing that the deemed date on or after which the CRT would presume that a German account owner no longer had control over his/her financial assets was January 20, 1933 (the date of Hitler's accession).

- On October 12, 2004, the Court adopted Special Master Junz' recommendation of to utilize presumptive values rather than those reported by Nazi victims in the1938 Census of Jewish-owned assets if these values were lower than the CRT's presumptive (average) values (see Article 29), recognizing the "existence of evidence that respondents to the 1938 Census tended not to declare all the assets they held and/or to undervalue declared assets in an effort to safeguard some of their wealth for the future." The Court also adopted her recommendation to "suspend deduction of interest accruals when determining account valuation absent bank documentation showing interest actually having been credited to the account owner over the period in question." The result of each of these amendments was to increase the amounts awarded to many claimants.

- On December 30, 2004, the Court authorized the CRT to treat as timely CRT-II claim forms "all claims previously submitted to but not treated by CRT I, ICEP, or ATAG Ernst & Young," because as with the Initial Questionnaires, many claimants erroneously had believed that the CRT-I, ICEP and ATAG claim forms were sufficient for claiming under the Settlement Agreement.

- On January 7, 2005, the Court adopted Special Master Junz' recommendation to increase the sums awarded to many claimants by authorizing the CRT to calculate

payments to claimants based upon presumptive values, where the account values reported in the bank records are lower than the presumptive values used by the CRT because of the body of evidence that the amounts in the banks' records could not in all cases be relied upon.

- On February 17, 2006, the Court adopted Special Master Gribetz' recommendation to issue payments to claimants with plausible but undocumented claims, in accordance with the Court's continuing effort "to compensate for the burdens imposed upon claimants due to the massive destruction of documents, and the restrictions placed upon the CRT's access to the remaining records."

- On March 22, 2006, Special Master Junz reported to the Court her recommendation to adjust upward the presumptive values currently in use by the CRT. As more fully described in her report, this recommendation was based upon her extensive study of the presumptive values currently in use as determined by the ICEP auditors (see Article 29), as compared with (1) the average values of known value accounts that have been awarded to date, and (2) the average values of known value accounts in the Account History Database (i.e., the accounts to which the CRT has access, of the some 4.1 million Holocaust-era Swiss bank accounts). The recommendation, which is pending before the Court, would result in payment to claimants – past and future – of a significant amount of additional compensation.

Appendix B. Occupation, Incorporation and Alliance dates as used by the CRT to establish deemed dates of loss of control over financial assets.

The following is a list of the dates of occupation or incorporation by the Reich and of alliance with the Reich currently employed by the CRT. The dates are relevant to the CRT's determination of the date upon which account owners resident in or nationals of the affected countries, in the absence of evidence to the contrary, would be deemed to have lost control over their accounts.

Germany:	January 30, 1933
Italy:	October 25, 1936
Austria:	March 12, 1938
Czechoslovakia/ Sudetenland:	September 30, 1938
Czechoslovakia/ Remainder:	March 15, 1939
Poland:	September 1, 1939
Denmark:	April 9, 1940
Norway:	April 9, 1940
Belgium:	May 10, 1940
France:	May 10, 1940
Luxembourg:	May 10, 1940
Netherlands:	May 10, 1940
Greece:	October 28, 1940
Hungary:	November 20, 1940
Romania:	November 20, 1940
Bulgaria:	March 1, 1941
Yugoslavia:	March 25, 1941

Michael Bradfield
Special Master
Holocaust Victim Assets Litigation
Case No. CV 96-4849
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
United States of America

March 28, 2006

Helen B. Junz
Special Master
Holocaust Victim Assets Litigation
P.O. Box 9564
8036 Zurich
Switzerland

Dear Helen:

I am writing to ask for your help to assist me in helping the Court to resolve appeals that turn on the application of Swiss visa requirements to Jews entering Switzerland during the period in which the Swiss visa policy was in effect.

We have received appeals in which the appellant argues that although an account was closed prior to the Nazi invasion of a particular country, the account closure came after the imposition of Swiss visa requirements. These appellants assert that even if a Jewish account owner had been able to travel to Switzerland, entry into the country was blocked due to the visa requirements, and the account owner was therefore unable to close the account himself. In these cases the CRT has taken the position that since the account was closed before Nazi invasion of the country in which the Account Owner resided, it must be assumed that the Account Owner received the proceeds of the account when it was closed.

Current research indicates that as of February 10, 1939, the Swiss visa requirement applied only to emigrants and Jewish people resident in the German Reich, which at that time consisted of Germany and (former) Austria. According to relevant Swiss law, 'emigrants' were defined as those 'who have left their homes abroad or must do so under the pressure of political and economic events and either cannot return or do not wish to do so.' Thus, if an account owner did not fit this definition, it could be argued that the denial of his or her account was correct and that the account owner could have entered Switzerland and closed his account.

However, it is possible that as a practical operational matter all Jewish persons attempting to enter Switzerland were considered emigrants, regardless of the intended duration of their stay, and were consequently prohibited from entering the country. Alternatively, even if Jewish

persons seeking entry into Switzerland were not considered emigrants, they nevertheless could have suffered mistreatment at the border that would have precluded their entry. There is at least anecdotal evidence of the mistreatment of Jewish persons attempting to enter Switzerland as a result of actions by individual Swiss border guards. If this was a widespread practice, there would be validity to the assertions that the imposition of visa requirements provide a basis for an award in the appellants' favor.

As you know well, one of the Bergier Commission staff reports written in German contains an extensive review of the immigration policies and actions of the Swiss government, including entry into Switzerland of Jewish persons. I would very much appreciate it if you could review this information, as well as other sources readily available to you, to determine whether all or most Jewish persons attempting to enter Switzerland were considered emigrants, and whether there were elements of mistreatment of Jews trying to enter Switzerland as non-emigrants during the period in which the Swiss visa policy was in effect.

Given your facility in German and your familiarity with the work of the Bergier Commission I would not think that my request should constitute an excessive burden on your time. Please let me know if you are able to do it. Many thanks and best wishes.

Sincerely,

Michael Bradfield

Michael Bradfield
Special Master
Holocaust Victim Assets Litigation
Case No. CV 96-4849
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-4697
(202) 626-1700

October 3, 2006

The Honorable Edward R. Korman
United States District Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza, East
Brooklyn, NY 11201

Dear Judge Korman:

When we spoke about the Swiss visa issue in August when you were at Montauk Point, you told me about your meeting earlier in the summer with NYLAG. You indicated that the discussion had focused on the position that the presumption in the CRT Rules that a Holocaust Victim account owner did not receive the proceeds of his or her account if that account was closed after the imposition of Swiss visa requirements on Jewish refugees seeking to enter Switzerland on or after January 20, 1939, only applied to residents of the German Reich. In our conversation, you noted that Special Master Helen Junz had examined this question and had concluded that the Swiss visa presumption should not apply to residents of countries other than Germany.

At that time I informed you that a different view could be taken of the rationale for applying the Swiss Visa presumption. While I recognized the importance of the points presented by Special Master Junz, I said that I would like to bring the considerations that I had in mind to your attention so that you could give them consideration together with the analysis presented by Special Master Junz. I would now like to do that in this letter.

Ms. Junz based her conclusions on her understanding that although Swiss entry requirements were implemented more strictly against Jews, these requirements were aimed at those suspected of having the intent to remain in the country (i.e., refugees). In contrast with the strict requirements for "refugees," Ms. Junz indicated that, in general, Jewish account owners from Poland and other European countries not yet dominated by the German Reich were nevertheless able to enter Switzerland for short-term stays. She also concluded that it was not necessary to be present in Switzerland to manage or close an account, as there is evidence of transactions conducted by mail or telegraph, and

activity carried out by intermediaries, including couriers. Ms. Junz further stated that transactions could have been carried out via banks in an account owner's own country of residence and/or third country banking systems.

Although Ms. Junz's analysis is persuasive, it is appropriate to point out, as she noted, that Jewish "refugees" were specifically targeted at the Swiss border as foreign exchange restrictions and anti-Semitic activity increased across Europe. As you are well aware, severe restrictions and anti-Semitic acts were directed at Jews in many countries, such as Hungary and Poland, prior to their occupation or dominance by the German Reich. For example, Hungary, a country that did not become formally allied with the German Reich until 1940, promulgated Anti-Jewish laws in 1938 and 1939 that severely restricted the participation of Jews in the economy. In Poland, universities imposed quotas on Jews in the 1930s and excluded them from employment in certain sectors. In most countries, Jews were increasingly targets of violent crime as an already prevalent anti-Semitism gained momentum. From the point of view of the Swiss, Jews who sought "short-term entry" from these countries would have had a motive for overstaying their visas – even if their country of origin was not yet occupied or dominated by the German Reich.

According to Swiss, possibly understated, statistics, approximately 24,500 refugees were turned away at the border between January 1940 and May 1945, although the real number may be higher.[1] Moreover, in December 1938, two months after the adoption of the German-Swiss Protocol on October 4, 1938 aimed at German and Austrian Jews (i.e., the German Reich at that time), the Swiss Legation in Rome proposed to Bern that measures be taken to avoid the "danger" of Jews entering Switzerland from Italy.[2] And on January 27, 1939, one week after the imposition of Swiss visa requirements, Heinrich Rothmund, head of the Swiss alien police, stated that "we haven't spent twenty years fighting excessive foreign influence and especially "Jewification" (*Verjudung*) in Switzerland with everything the Police for Foreigners has at its disposal, just to have emigrants forced upon us today." This information, and other reports of mistreatment of refugees at the Swiss border, suggests that, in light of Swiss concerns about Jews across Europe seeking refuge in Switzerland, there were practical limitations placed in the way of Jews, including potential Jewish depositors, seeking to enter the country.

This view is supported by a number of Appellants, some with first-hand knowledge of events. They stated in documents that it would have been "madness" for a Jew to travel across Nazi-dominated territory, or through their own anti-Semitic country of residence, cash in hand, to attempt entry into Switzerland where many were turned away at the border and their assets confiscated. In at least one case, the Appellant stated that the account owner never left his or her country of residence during the year in which an account was closed, and that he spoke of his Swiss bank account while interned in a concentration camp, where he perished. There were many just like him. Of the 45 cases

[1] Independent Commission of Experts Switzerland – Second World War: Switzerland and Refugees in the Nazi Era 20 (1999).
[2] *See infra* p.84 and notes 51-52.

already identified in which claims were denied even though the account was closed after the imposition of Swiss visa requirements, we are aware of at least 22 cases where the account owners perished during the Holocaust or survived internment in a Nazi concentration camp.

In these circumstances, it is unlikely that Jewish residents of Hungary, Poland, and other countries not yet dominated by the Nazis, would have been able to enter Switzerland, or even attempted to make the trip to Switzerland. They would have also hesitated to have attempted to withdraw funds deposited for safekeeping in Switzerland through inter-bank channels for fear of exposing their assets and subjecting them to official confiscation or unofficial theft.

Ms. Junz also notes that account owners could have used couriers to conduct banking transactions on their behalf. While some transactions occurred as a result of use of a courier, it does not seem that account owners in general, many of whom were deported to concentration camps or otherwise subject to persecution, would have wanted to remove funds placed in a Swiss bank account for safekeeping. It is unlikely that Jewish account owners would have removed their funds from Switzerland for remittance back to a country with a strong anti-Semitic environment. To have transferred funds to an anti-Semitic home country would have exposed them to confiscation that was officially or unofficially sanctioned. Moreover, even if an account owner retained a courier, it is necessary to take into account all of the uncertainties surrounding courier transactions, including the ability of the courier to successfully transact business on the account owner's behalf with the relevant Swiss bank, faithlessness by the courier, interception by Nazi authorities, and the likely unwillingness of Swiss banks to accept unorthodox transfer instructions. While repatriating funds from safekeeping in Switzerland may have been an attractive idea for those who hoped to use these resources to purchase their way out Nazi or other persecution, the risks of a successful transfer were very high given the obstacles outlined above.

I would also like to point out that there are at least ten, and probably as many as 12 or 13, precedents for CRT awards that rely on the Swiss visa presumption. I can make a list of these awards, together with a summary of their contents, available to you if you think it would be useful to you to review them.

It has been suggested that not all of these precedents are relevant since only four or five of them relied solely on the Swiss visa presumption, and the remainder did not involve an account with a known closure date, consequently providing other reasons to explain the award in addition to the fact that the CRT gave the Swiss visa requirements as one of the justifications for the issuance of the awards. Considering that the imposition of Swiss visa requirements is included as a Presumption in Article 28 of the Rules and has been used in awards with both known and unknown closure dates, it certainly suggests that the CRT took the position at the time the awards were issued that the existence of Swiss visa requirements constituted a bar to the ability of Jewish account owners to close their Swiss bank accounts. Consequently, while I would readily acknowledge the discretion of the CRT and/or the Court to modify, in the light of

experience, a position taken at earlier stages in the claims resolution process, it would not seem appropriate to simply dismiss as irrelevant cases involving an unknown closure date coupled with reliance upon the Swiss visa presumption.

The spirit in which the whole claims resolution process has been applied under your direction and authorization has been to broadly interpret qualification criteria in keeping with the remedial objective of the Settlement. In these circumstances and based on the considerations outlined above, you may wish to consider that it is consistent with the plausibility relaxed standard of proof that is applied in the claims resolution process to give claimants the benefit of the doubt by presuming that an account owner suffering under some form of Nazi inspired persecution did not receive the proceeds of an account closed after the imposition of Swiss visa requirements and prior to the date of Nazi invasion or dominance of a particular country absent additional supporting information in the bank records or claim form that an account owner received the proceeds of an account or transferred their assets to a banking system outside of Nazi control.

Respectfully submitted,

Michael Bradfield

Helen B. Junz
Special Master
Holocaust Victim Assets Litigation
Case No. CV 96-4849
P.O. Box 9564
8036 Zurich
Switzerland

October 10, 2006

Michael Bradfield
Jones, Day, Reavis and Pogue
51 Louisiana Avenue N.W.
Washington, DC 20001-2113
USA

Dear Mike:

Your letter to Judge Korman, dated October 3, 2006, regarding the Swiss visa requirements issue was passed on to me for comment.

First, let me say that we all share the sense of commitment you express in your letter regarding the need to at least set right what still can be set right of the wrongs suffered by the victims of the Holocaust and obviously, also the indignation that it took three generations before we could try to restore Swiss-held assets to their proper owners.

However, as you well know, as much as we would like to have everyone, who was victimized because of race hatred and religious persecution, compensated at least in some measure, the Settlement Agreement confines restoration of Swiss held bank assets under the CRT to owners and heirs of owners who were victims of the deprivation of life, liberty and property perpetrated by the Nazi Reich. Thus, as I understand it, it is not feasible under this Agreement to include those, who were exposed to equally heinous persecution preceding the reach for power by Hitler Germany and/or to measures adopted in parallel with, but not under the direct imposition or direction of the Reich. In efforts to widen the range of action of the restoration of property under the Agreement as much as possible, "direct imposition or direction of the Reich" has been interpreted to include all those regimes that had an alliance with the Reich. But, unfortunately, those who suffered the imposition and tightening of exclusionary laws, the expropriation of property and who were forced into hard labor in countries such as Hungary, Poland, Romania, and let us not forget the Soviet Union, cannot be folded into the activities of the CRT, except where and when these countries came under the sway of the Reich, either through occupation or formal alliance. It is hardly necessary to say again that we wish it were otherwise, but the husbanding of the Settlement funds requires

the observation of these strictures, not the least because the Judge has already earmarked any remainder for the support of the neediest Holocaust survivors.

Having said this, let me turn to the specific points raised in your letter. First, a small correction of what you say in your first paragraph, a correction which however is relevant to much of what follows. You say that in examining the visa question I had concluded "that the visa **presumption** should not apply to residents of countries other than Germany." That is a misinterpretation in as much as the central point is that the visa presumption as a whole is not applicable. You probably are referring to my point that visa **restrictions** adopted by the Swiss on the January 20, 1939 vis-à-vis "emigrants", as defined by the Swiss authorities, did not change the entry status of Eastern and South-Eastern European passport holders, but did so for some nationals of the Reich.

The foregoing is fully explained in a couple of notes I provided, at your request, early this year. In these I explained that such visa restrictions existed for virtually all of Eastern and South-Eastern Europe (Czechoslovakia excepted) since the end of World War I and were in large part a reflection of ingrained xenophobic and anti-Semitic attitudes of the Swiss authorities. I also noted, in that context, that the Swiss authorities already at that time affixed the notorious "J" stamp to some of their internal dossiers. By contrast, visa provisions for Western and Central European travelers, including from Germany and Austria, had been lifted shortly after World War I. Following the incorporation of Austria into the Reich, the Swiss, on March 28, 1938 re-imposed visa requirements on holders of Austrian passports and in April began negotiations with the Germans regarding the introduction of the "J" stamp. On August 18/19, 1938 they decided to reject all refugees without a visa, and on October 4, 1938, with agreement reached on the adoption of the "J" stamp, they imposed visa requirements on German "non-Aryans."[1]

I am citing this detailed time line because there seems to be confusion in your letter regarding the dates relevant to the whole visa question. The very sad fact of the Swiss treatment of refugees, which often consigned them to the death camps in the period after Nazi Germany overran Europe, is of course well documented, and you cite one of these sources with respect to the record between 1940 and 1945. But the discussion here concerns the extent to which it was possible for account owners outside the Reich and Italy (for which dates on which account holders may be deemed to have lost control over the assets in their accounts, absent evidence to the contrary, precede January 20, 1939) to manage their accounts between January 20, 1939 and the date their country was occupied by the Reich or

[1] Of course, in the implementation of these restrictions, the bureaucratic attitudes were juxtaposed to economic/financial interests, especially of the tourist industry, which depended on the continued possibility of short term stays within Switzerland. See for example Swiss Federal Archive, E 7 800/1/105, Minutes of a conference on the question of entry into Switzerland of non-Aryans between the authorities and the representatives of the tourist industry held in Bern on October 20, 1938.

allied itself to the Reich and how this ability or otherwise fits into the confines of the Settlement Agreement. The point here is that, though entry restrictions had been tightened, the travel status of East and South-Eastern European Jews remained unaltered – that is general visa requirements had been applied to them for many years.[2] Nevertheless, and I will return to this below, it is evident that people from these countries could open bank accounts in Switzerland and manage them as well.

You note that you concur with the view that "it would have been madness for a Jew to travel across Nazi-denominated territory, or through his own anti-Semitic country, cash in hand, to attempt entry into Switzerland..." Exactly, that is why most people used more sophisticated means to furnish and then manage their accounts from a distance, so that physical presence was not necessary and difficulty of entry does not come into play. Nevertheless, there is also considerable evidence of couriers being used, especially from Eastern European countries. For example, in Hungary after the imposition of exchange controls, the Fascist press continually complained about the country being robbed by Jews moving their assets abroad and court records show that the majority of convictions for offenses against the currency restrictions concerned Jews. Thus, in February 1939 a court reported that one Jeno Schwartz had managed to travel abroad 188 times between 1934 and 1938 and personally smuggle assets worth 2 million pengö out of Hungary before he was caught.[3] And there are many more such examples.

But the broad flows of funds into Switzerland, and then in many cases again from Switzerland to other destinations, were managed not by courier – on which you chose to focus – but by mail, telephone, wire, letter and through third persons; in addition many of the ways we are familiar with from today's circumvention of exchange restrictions and evasion of taxes, such as over/under invoicing, etc. were also used.

Further, for reasons that remain entirely unclear to me, you seem to believe that the only grounds for closing an account after January 20, 1939 would have been to repatriate the proceeds and you, quite correctly, doubt that people would have wanted to do that under the circumstances. Contrary to your assertion, a prominent reason for closure would have been to move the funds to destinations considered safer than Switzerland and/or destinations the account owners hoped to be able to flee to themselves. Thus main destinations would have been the United States, the United Kingdom and Palestine. For example, Hug and Perrenoud

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[2] As evidenced by your own quote of Rothmund's statement re "we haven't spent twenty years fighting...Verjudung in Switzerland", p. 2 of your letter. In fact there are more explicit references in a letter dated January 15, 1938, Unabhängige Experten Kommission Schweiz-Zweiter Weltkrieg, *Die Schweiz und die Flüchtinge*, Chronos Verlag, Zurich, 2001, vol. 17, p. 64. It may also be noted that Rothmund in 1939, having been appointed in 1919, had headed the *Fremdenpolizei* (alien police) for twenty years.

[3] Bosnyak Zoltan, *Magyarorszag elzsidosodasa,* (The Judaisation of Hungary), Budapest 1938; and *A zsidokerdes,* (The Jewish Question), Budapest, 1940.

note in their discussion of Swiss compensation agreements with East Bloc countries that "Other documents show that Romanian Jews entrusted their assets to Swiss banks, especially when moving abroad or for transferring them to Israel [sic]."[4] We have many such examples in the claims resolution experience. One such is *in re Accounts of Henryk Ruziewicz and Zofja Ruziewicz,* where Account Owner Zofja Ruziewicz' accounts at the Swiss bank were closed by written order in April 1939 and the assets, including US $8,350.00 in gold coins, transferred to the *Chase National Bank* in London. A second example, involving a transfer of funds to Palestine is *in re Accounts of Wilhelm Weinberger and Leonora Weinbergerova.* Here Account Owner Weinbergerova, who lived in Vienna, held a significant number of gold coins in a custody account at the Swiss bank. On January 10, 1939 the account was closed with an unspecified number of coins transferred to *Barclays Bank*, Haifa, Palestine and the remainder to an account at the Zurich headquarters of the bank. Account Owner Weinbergerova emigrated to Palestine in 1939.

Your view that "...Jewish residents of Hungary, Poland and other countries not yet dominated be the Nazis...would also have hesitated...to withdraw funds...through inter-bank channels for fear of exposing their assets..." also seems to spring from this unexplained belief that with account closure repatriation of funds was intended (as well as perhaps from a misinterpretation of what I posited). I had noted that people, as they do today, could use inter-bank transfers in managing their accounts – and cited as evidence of this ability the fact that this was the main channel used when people complied with the imposition of exchange restrictions – but that, in cases of interest here, the Swiss bank would be directed in writing to transfer the funds to third country banks, e.g. in England, the United States, Palestine, etc. Examples of this are cited above.

I also am struck by your statement that: "Of the 45 cases already identified in which claims were denied even though an account was closed after the imposition of Swiss visa requirements, we are aware of at least 22 cases were the account owners perished during the Holocaust or survived internment in a Nazi concentration camp." Of course, I take it that you mean to say that we have seen many cases, where an account owner closed his/her account in Switzerland and sent the funds to a safe(r) destination, but never was able to make his/her way to safety. We have numerous such examples, in addition to those where people managed to flee to France, the Netherlands or Belgium, only to get caught there again and to perish in a concentration camp while their funds were in safety in the United States or the United Kingdom. One such is *in re Account of Ferenc Csángó,* where the Account Owner, a Hungarian resident using a Paris address, instructed the Swiss bank to transfer a significant amount of money to its London branch. The Account Owner later was forced into a

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[4] Peter Hug and Marc Perrenoud, *In der Schweiz liegende Vermögenswerte von Nazi-Opfern und Entschädigungsabkommen mit Oststaaten*, Bundesarchiv Dossier 4, Bern 13 December 1996/January 1997, p. 144.

Hungarian labor battalion and perished in 1943. A second example, with the destination of the funds Palestine, is *in re Account of Marco Cohen.* The Swiss bank transferred on April 29, 1938 a significant amount in Pound Sterling to an account of Marco Cohen at the *Anglo-Palestine Bank Limited*, Tel-Aviv. The Account Owner lived in Vienna and in 1942 was deported to Maly Trostinec, Poland, where he perished.

Thus, the fact that an account owner might have been able to dispose of the proceeds of his/her account(s) before his country fell under the power or direct influence of the Reich in no way indicates that he did not in the end perish in the Holocaust. In this connection, you will of course also recall the seemingly endless struggle (waged so persistently by among others Saul Kagan on behalf of the Jewish Restitution Successor Organization) for the release to the victim community of "heirless" assets that had belonged to Nazi victims and had been vested by the U.S. Federal Government under the Trading with the Enemy Act. At the time estimates, later confirmed as plausible in the researches of the US Presidential Advisory Commission on Holocaust Assets in the United States, put the amount involved at about US$ 2 million.[5] The amounts that might have escheated to the Unclaimed Property Offices of individual States remain yet to be discovered.

Finally, I am quite at a loss at your conclusion that "it would not seem appropriate to simply dismiss as irrelevant cases involving an unknown closure date coupled with reliance upon the Swiss visa presumption." As you well know, all accounts that existed during the relevant period and that have an unknown closure date are, absent evidence to the contrary, awarded as long as the Claimant can satisfactorily identify the account owner as his/her relative and as a victim of Nazi persecution. Furthermore, if the date of closure is unknown it is hard to see how the Swiss visa presumption can come into play as obviously it then cannot be established whether an account was closed "unknown to whom" before or after January 20, 1939.

To recap: I cannot follow the argumentation you proffer in support of the need to retain the "Swiss visa requirements" presumption. Neither the points regarding physical entry nor those attempting to establish January 20, 1939 as the starting date of victim status for purposes of the Settlement Agreement for countries not yet under the domination of the Reich, appear applicable.

Regarding physical entry: We know that Eastern and South-Eastern European Jews faced strict visa requirements since the end of World War I and that, therefore, the January 20, 1939 requirements did not change their status.

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[5] Congress appropriated eventually, in 1962, only US$ 500,000 for this purpose.

Regarding victim status: The points marshaled to support January 20, 1939 as the starting date of the loss of control over Swiss-held accounts for residents of countries not yet dominated by the Reich imply that physical presence was necessary to be able to receive the proceeds of an account.

The ability of the account owner to close accounts and direct the transfer of their proceeds from afar is not addressed except to assume that such closures would involve repatriation of the funds. However, even if that were true, closures involving repatriation and subsequent confiscation by the authorities in the country of the account owner's residence, if before the date of occupation or alliance, would not have been for the benefit of the Reich and, therefore, would not fall within the parameters of the Settlement Agreement.

However, there is ample evidence, as shown above, of funds being directed by their proper owners or representatives to third destinations.

Thus, as much as one would wish that it could be otherwise, the presumptions under which circumstances of the closure of an account are interpreted, I always understood cannot overrule the definition of the victim status of an account owner for purposes of the Settlement Agreement. The latter depends on the date his/her country of residence came under the sway of the Reich. Thus the imposition and implementation of anti-Semitic legislation in a country outside the Reich's influence, or before the date of domination or alliance, unfortunately does not convey victim status in the sense of the claims resolution process.

I very much hope that this clarifies the thinking behind my recommendation that the Swiss visa requirements presumption be eliminated and that you now can see the merit thereof.

With best regards,

Helen B. Junz

cc: The Honorable Judge Korman
Judah Gribetz

Helen B. Junz

Special Master
Holocaust Victim Assets Litigation
Case No. CV 96-4849
P.O. Box 9564
8036 Zurich
Switzerland

October 19, 2006

The Honorable Edward R. Korman
United States District Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
United States

Dear Judge Korman:

I have written from time to time to request the Court's approval of the resolution of policy issues that required either the clarification of, or amendments to, the rules and guidelines under which the CRT formulates award decisions. On the whole, these issues have involved a relaxation and/or broadening of the guidelines and, to ensure equal treatment of Claimants therefore, also required the Court to approve the release of funds to top-up already approved awards.

An example of an issue requiring a change in guidelines is the Court's adoption of my recommendation that the CRT recognize the evidence that respondents to the 1938 Census of Jewish-owned assets tended not to declare all the assets they held and/or to undervalue declared assets in an effort to safeguard some of their wealth for the future. Accordingly, the CRT is awarding presumptive values in cases where victims of Nazi persecution reported Swiss bank account values in their 1938 Census declarations that were below the CRT's presumptive (average) values.

Examples of clarification of rules or guidelines include the identification of the dates on which the existence of persecution leading to loss of control over assets is to be presumed. Thus the date for occupied countries and countries or territories incorporated into the Reich was set as the date of occupation or incorporation and that of countries

allied to the Axis as that of the alliance agreement. I note here that in each of these countries, these dates precede the date on which the Nazi authorities actually promulgated laws that aimed at the dispossession of persecutees.

I attach in Appendix A, for your convenience, a list of selected such amendments and clarifications to the rules and guidelines and in Appendix B a list of the dates of occupation and alliance agreements.

On this occasion, I write to request your approval yet again for a clarification of the rules. However, this time, it is not to request a change in policy practice, but rather to make clear what longstanding practice has been. As the Court is aware, questions have recently been raised concerning the application of Article 28, a) sub i) of the Rules Governing the Claims Resolution Process (the "Rules") relating to the imposition of additional visa requirements by Switzerland on January 20, 1939. Specifically, Article 28, "Presumptions Relating to Claims to Certain Closed Accounts," states as follows:

> " .... In the absence of evidence to the contrary, the CRT presumes that neither the Account Owners, nor the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances [footnote not reproduced here]:
>
> a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later); ...."
> [Remainder of Article 28 not reproduced here].

The Rules were drafted and approved by the Court at the beginning of the review process, before the CRT Special Masters and staff had the opportunity to test them against reality. It is thus not surprising that, in an effort to provide the broadest possible sweep of presumptive rules to do justice to the widely varying circumstances of thousands of claimed account owners, rules and guidelines would be formulated that later, in the light of further consideration and experience, would need to be re-interpreted or amended. I have referred to some of these above. The presumption relating to the imposition of the Swiss visa requirements is one such.

For the reasons set out below, I recommend at this time, that Article 28 of the Rules be amended to eliminate the reference to Swiss visa requirements, as Article 28(a)

(i) of the Rules has been found not to be appropriate and, therefore has for a long time already not been a factor in the award process. In fact, as I noted above, the amendment I am currently proposing is intended to formalize a policy that has long been in place; a policy that has been authorized by the Court in its orders adopting the CRT's recommendations to approve or deny individual awards. As far as I can ascertain there have been very few awards made solely on basis of the Swiss visa requirements presumption and that was at an early stage of the award process.[1] I do not recommend that the Court now seek to recoup any such awards, given that the awards were made on the basis of the information and the bank records then available to the CRT, so that the claimants in question should not be held responsible. In a few later cases, though still relatively early ones, the visa presumption was cited, but in none of these was it the sole basis for awarding an account. It, therefore, would seem that already at the beginning of the gathering of claim assessing experience this particular presumption was found not to be appropriate.

Indeed, even at the time the Rules were first adopted, on February 5, 2001, there must have been a question regarding the intent of the Swiss visa requirements presumption. There is no indication in the phrasing of Art. 28 (a) that indicates any ordinal relation between item (i), relating to the Swiss visa requirements and item (ii), relating to the occupation dates. However, it is clear that the inclusion of the Swiss visa requirements as item (a) (i) in Art. 28 could not be taken as being a sufficient condition in the award process as this would have made item (a) (ii) redundant in as much all occupation dates post-date January 20, 1939.[2] On the other hand, it was equally clear that item (a) (ii), by referring to occupation dates only, covered its ground incompletely and that there must have been the intent to include the dates of countries formally allied with the Reich as well.

As noted above, the Special Masters and the CRT determined quite early in the claims resolution process that it was inappropriate to recommend an award solely on the basis of the fact that an account was closed after the imposition of Swiss visa requirements, but prior to the relevant alliance or occupation date of the owner's country of residence and/or nationality, because it was clear that the visa restrictions did not limit the owner's ability to manage his or her account. The reasons, which are amply

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[1] In reviewing a large number, though not all the 2,166 awards the CRT has certified for Court approval to date, I have found only one case that relied entirely on the application of Art. 28 (a) (i) as the basis for awarding an account, see *In re Jakob Fränkel*, Batch 9 dated August 28, 2002.

[2] The date on which a persecutee would be deemed to have lost control over his/her account would have been 20 January 1939 for all countries, except the Reich itself (incl. Austria and the Sudetenland, which were incorporated into the Reich in 1938), and Italy, for which earlier dates rule.

supported by evidence gathered during the claims resolution process, very briefly are twofold:

a) first, with regard to the restrictive effect of the adoption of the visa requirements: the imposition of these restrictions did not alter the travel status of nationals of the main Eastern and Southeastern European countries; it did change that status of some nationals of the Reich; and
b) second, with regard to the ability of an account owner to manage his/her account, physical presence was not necessary to do so. Much as today, people could manage their accounts at a distance and transactions could be performed upon orders received from the account owners, or power of attorney holders, in writing, by wire or by telephone.

With respect to a) the visa requirements, it may be useful to look at the development of Swiss entry requirements over a somewhat longer perspective. Basically, their development and implementation reflected restrictive attitudes that stemmed from the fear of foreign penetration (Überfremdung), a xenophobia, that was combined with anti-Semitism, especially vis-à-vis "Eastern Jews", and economic protectionism, all of which long pre-dated the Hitler era. Thus, the basic policies regarding the treatment of foreigners date from 1917.[3] Following World War I, Switzerland had abrogated visa requirements for nationals of many European countries including Germany. But they continued to be maintained vis-à-vis others, including much of Eastern Europe.

Starting in 1933 discussions regarding the treatment that was to be accorded refugees heralded a continuous tightening of the rules for anyone remaining in Switzerland for more than a short period of time, especially for persons who were stateless or for whom it was clear that they could not return to the country of their nationality. This culminated in the March 28, 1938 decision to reintroduce visa requirements for holders of Austrian passports, the notorious negotiations between Switzerland and Germany regarding the introduction of the "J" stamp in the passports of Jewish nationals of the Reich, which was finally agreed on September 29, 1938 and the introduction of visa requirements for all German "non-Aryans" on October 4, 1938."[4] From January 20, 1939, entry permits were required for all "emigrants." An "emigrant"

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[3] See *Switzerland, National Socialism and the second World War*, Final report of the Independent Commission of Experts Switzerland-Second World War (henceforth Bergier Commissison), Pendo, Zurich 2002, English Edition, pp. 120-125. The Fremdenpolizei (Police for Foreigners) was headed from 1919 by Herinrich Rothmund, whose notoriously anti-Semitic statements, especially relating to "Eastern Jews" are rife throughout the period.

[4] The use of such a stamp was nothing new for the Swiss , who since 1916 marked files of Jewish naturalization candidates as such and in 1919 used a Star of David stamp for the purpose. Source: Bergier Commisssion, *Die Schweiz und die Flüchtlinge*, Study No. 17, Chronos, Zurich 2001, p. 97.

was defined as a foreigner "who under pressure of political or economic circumstances has left, or is forced to leave, his residence abroad, and cannot, or does not want to, return there."[5]

Even with the introduction of the "emigrants" visa requirements, entry into Switzerland for nationals from countries outside the Reich could generally be effected smoothly if and when it was clear that the stay was to be short and not motivated by circumstances that would put in question whether a traveler could or would return to his country of residence or/and the country of which he was a passport holder.

However, though in certain circumstances entry even for short-term stays may have been impeded at times, this does not mean that thereby access to, and full management of, assets held in Swiss banks by account owners who were Nazi persecutees was circumscribed. This was so because such management did not require the physical presence of the account owner in Switzerland. Even in the circumstances of tightening exchange controls through much of Europe,[6] there is ample evidence of continuous border crossings by couriers, who deposited funds for their clients, of people opening, closing or transferring accounts by written order, by telephone or wire, or by communication via third persons, to sharply distinguish the period before Nazi dominance of a country or territory from that thereafter - even for countries, whose Jewish nationals had not been welcome in Switzerland well before the advent of the Nazi regime. And there is no evidence that the imposition of the visa requirements on 20 January 1939 altered this in any way.

These facts are borne out in the thousands of bank documents related to some of the 105,000 claims that have been filed with the CRT, as well as by continuing archival and other research. One example, as seen in many of the bank records that have been analyzed since the claims resolution process commenced, is the flood of transfers of accounts to the United States agencies of Swiss banks or to their correspondent banks in response to the worsening political situation, most of which apparently was based on instructions not given in person. Another example is found in the many awards that have been issued where the bank records document transfers into the Reich, or into countries dominated by or associated with the Reich, on the basis of the owner's written instructions – sometimes most sadly with a return address showing a concentration camp.

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[5] Ibid, p. 141.

[6] Note in this context that Poland was among the last in Central Europe to impose exchange restrictions. When controls were promulgated on April 26, 1936 they were seemingly very strict, but were implemented only patchily and furthermore had been widely anticipated. See Helen B. Junz, *Where did all the money go? - Pre-Nazi Era Wealth of European Jewry, Staempfli Publishers Ltd., Berne, 2002, p. 127.*

More generally, transfers in compliance with the imposition of exchange restrictions that required repatriation of foreign-held funds normally ran via the Swiss and the recipient country's banking systems upon written order of the account holder.

Given the facts set out above, it is clear that the Swiss imposition of visa requirements on "emigrants" was not germane to the issue of whether an account owner, who was resident in or a national of a country not under the sway of, or allied to, the Reich, was able to close his or her account at will. Accordingly, I propose that Article 28(a) of the Rules be amended to read as follows:

Article 28 Presumptions Relating to Claims to Certain Closed Accounts

In order to make an Award under Article 22 for claims to Accounts that were categorized by ICEP as "closed unknown by whom", a determination shall be made as to whether the Account Owners or their heirs received the proceeds of the Account prior to the time when the claim was submitted to the CRT. In the absence of evidence to the contrary, the CRT presumes that neither the Account Owners, nor the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances [footnote not reproduced here]:

a) the Account was closed and the Account records show evidence of persecution, or the Account was closed after the date of occupation or incorporation by the Reich or alliance with the Reich of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the Swiss authorities' freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);

[Remainder of Article 28 is unchanged].

The amendment of this Article will not be detrimental to claimants, as the amendment formalizes a policy that has been authorized by the Court for some time by virtue of its approval of CRT awards and denials. Although it was an unfortunate oversight that Article 28 was not previously amended to eliminate the reference to Swiss visa requirements, the reference in the Rules to the visa issue has not had an impact upon the process, and has not deleteriously affected claimants or appellants. As the Court is aware, all claims and appeals are scrutinized with great care – and where necessary, there

is extensive written and verbal follow-up with claimants and appellants – to ensure that every basis for a possible award is explored before a claim to a particular account is denied. That a claimant or his/her representatives may or may not have made reference to Article 28(a) (i) in his/her claim form or appeal is irrelevant to the CRT's careful examination of the circumstances surrounding the opening, management, and closure of the account at issue, as well as all available facts bearing upon the fate of the claimed account owner. The CRT's recommendations of awards, and Special Master Bradfield's recommendations on appeal, do not hinge upon claimants' interpretation of the Rules but, rather, upon the determined effort to locate accounts and return them to their proper owners – even where claimants may not have originally asserted ownership to those accounts. See, e.g., *In re Accounts of Marguerite Hirsch* (awarding one account owned by the claimant's grandmother, even though the claimant claimed accounts belonging to her grandfather); and *In re Accounts of L. Berliner* (awarding accounts held by a person who named the claimants' relatives as beneficiaries in his will, even though the claimants, who are unrelated, were unaware of the account owner's relationship to their families). In each of these cases, the claimant had been unaware of these specific accounts and/or had not filed a claim to accounts held in those names; the CRT located and awarded these accounts nevertheless. There are many more examples of similar awards to unclaimed accounts located by the CRT and ultimately returned to their rightful owners.

Finally, it may be worthwhile to recall that the presumption as set out in Art. 28 (a) as amended is that the date on which an owner of a Swiss bank account is deemed to have lost control of the account, absent evidence to the contrary, is the date of occupation or incorporation by the Reich or of an alliance being formed with the Axis Powers. Other claim programs generally date their "no special proof of confiscation or improper transfer" requirements from the date on which the Nazi regime promulgated legislation that restricted a persecutee's access to his/her financial assets.

I am available to receive comments or answer questions.

Respectfully submitted,

Helen B. Junz

cc. Judah Gribetz
Michael Bradfield