UNITED STATES DEPARTMENT OF JUSTICE
Executive Office for Immigration Review
26 Federal Plaza
New York, N.Y. 10278

File: A8 085 626 April 9, 1985

In the Matter of)

Karl Linnas) IN DEPORTATION PROCEEDINGS

Respondent)

On Behalf of Respondent:

Ivars Berzins, Esq.
484 W. Montauk Hghwy
Babylon, N.Y. 11702

On Behalf of Service:

Office of Special Investigations
by Jeffrey Mausner, Esq. of Counsel
Aaron Goldberg, Esq. of Counsel

DECISION OF THE IMMIGRATION JUDGE

The Board of Immigration Appeals on July 31, 1984 remanded on the issue of country of deportation.

Section 243(a) of the Immigration and Nationality Act ("Act") provide for a three step process for accomplishing deportation:

> Step 1 is to seek deportation to any country properly designated by the respondent -- the respondent designated the Republic of Estonia. The Offices of the free Republic of Estonia is in the United States. Deportation must be to a country which has been defined as any place possessing a government with authority to accept an alien deported from the United States. Chan Chuen v. Esperdy 285 F 2d 353(CA 21960).
>
> Under the circumstances, seeking deportation to the Republic of Estonia would be a nugatory act and would be fruitless.
>
> Step 2 is reached when Step 1 cannot result in deportation to any country of which the deportee is a national or citizen -- The respondent claims that he is a citizen of the Republic of Estonia. However, the Republic of Estonia does not constitute a country of deportation within the meaning of Section 243(a) of the Act. Chan Chuen v. Esperdy, supra.
>
> Step 3 is reached when neither of the first two steps is productive. Section 243(a) of the Act setsforth seven categories of countries without giving any priority or preference because of the order as setforth:- See Matter of Chow, 10 I&N Dec. 469(BIA 1964).

(4) to the country in which the place of his birth is situated at the time he is ordered deported.

(7) if deportation to any of the foregoing places or countries is impracticable, inadvi-able, or impossible, then to any country which is willing to accept such alien into its territory.

At the original deportation hearing I designated the USSR under paragraph (4) above. I believe it is still a proper designation in view of the obvious failure of steps 1 and 2. It has been decided that deportation can be to acountry succeeding to the sovereignty of a district where alien resided and from which he came. See Seif v. Nagle, 14 F2d 416 (CA 9 1926).

The Board remanded to determine the reasonableness of the designation of the USSR so that I may consider the implications of the United States refusal to recognize the Soviet annexation of Estonia. The respondent presented several witnesses who testified that the nonrecognition policy of this country would be jeopardized by deporting an emigree from any of the Baltic states. (Luthuania, Lativia and Estonia) including Estonia. They reasoned that the nonrecognition policy was more important to the morale of Baltic emigrees in this country and persons presently residing there, than deporting an alleged war criminal in violation of said policy. However, Davis R. Robinson, the Legal Advisor of the Department of State submitted an affidavit (Attachment 4 - Exhibit R3) wherein he stated .... " the deportation of Mr. Linnas under 8 USC 1253(a)(7) to a place which we regard as within the territory of the USSR would not as a matter of law contravene the longstanding and firmly held United States policy of nonrecognition of the forcible incorporation of Estonia into the USSR." This judg ment is in variance with Professor Aun's analysis of "nonrecognition" (Exh R-11). The latter confused extradition vis-a-vis deportation. In addition his comments concern a foreign policy decision of the United States and as such I choose to follow the Legal advisor of the Department of State.

The respondent also claimed that his due process rights will be violated by returning him to the USSR where he has been sentenced to death in absentia. I cannot find that either procedural or substantive due process was denied to the respondent. With respect to

procedural due process the Supreme Court in Landon v. Plasencia, 459 US 21, 32 (1982) held that an alien is entitled to a full and fair deportation hearing. No claim has been made that the hearing was neither full nor fair.

His claim that the conviction in absentia (Ex R-7) lacked due process begs the question. There is no lack of due process in the United States by designating as a country of deportation a place where by our standards, due process may have been violated. The respondent was unable to find any statutory basis for a finding of a denial of substantive due process. The contrary is evident by the process of designating the USSR under section 243(a) of the Act.

In view of the USSR's willingness to accept the respondent as a deportee I redesignate the USSR as the country of deportation under step 3 --- paragraph 4 or 7.

IT IS SO ORDERED

HOWARD I. COHEN
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Date: April 10, 1985

File: A - 8 085 626

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MATTER OF
KARL LINNAS

XX Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals by returning to this office on or before April 23, 1985 the enclosed copies of Form I-290A, Notice of Appeal, properly executed, together with a fee of fifty dollars ($50.00).

☐ Attached is an information copy of the oral decision of the Immigration Judge made on _____

☐ Attached, as requested, is a transcript of the testimony of record, pages ___ to ___ _____ which is being loaned to you.

☐ You are advised that on _____ the Immigration Judge entered an order, which is final, granting the application for adjustment of status to that of a permanent resident under Section _____ of the Immigration and Nationality Act. A Form I-151, Alien Registration Receipt Card will be delivered in due course.

☐ You are granted additional time until _____ to submit a brief to this office in support of your appeal.

Very truly yours,

Court Clerk

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