Federal Court Justices in Frydenberg S.44 Dual Citizenship Case Must Be Alerted To Erroneous 'Stateless Passport' Claims Before Decision

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Solicitor
8 March 2020

Federal Court – No. VID1351/2019 Staindl -v- Frydenberg

The Federal Court is due to hand down a decision on the Hon Joshua Frydenberg MP S.44 Dual Citizenship Petition filed in the High Court (Court of Disputed Returns) by Kooyong constituent Mr Michael Staindl.

The matter was referred to the lower court by Her Honour Justice Gordon of the High Court on 12 December 2019. Justice Gordon relied on s 363A of the *Commonwealth Electoral Act* that provides: '*The Court of Disputed Returns must make its decision on a petition as quickly as is reasonable in the circumstances.*' Her Honour reasoned that the Federal Court would be better positioned to make factual findings in the circumstances, and that such findings could not be divorced from legal questions that related to citizenship laws.

At the Federal Court hearing on 18 February 2020 Frydenberg's lawyers, Arnold Bloch Leibler (ABL) conceded that there is no factual proof or a law to support the claim that Frydenberg's Mother Erica Frydenberg (nee' Strausz) was deprived of her citizenship under Hungarian citizenship law. However, ABL lawyers entreated the 3 Justices to accept the proposition that Erica Frydenberg's family likely renounced their citizenship before emigrating from Hungary in September 1949 to Australia.

According to the ABC report of the hearing

( ) Frydenberg's lawyer conceded, '*We can't produce a piece of paper'* to conclusively prove renunciation.

Joshua Frydenberg's lawyer also claimed that '*the Strausz family believed it had separated from Hungary and described themselves as "stateless" on arrival in Australia.'*

To advance a stateless claim, Frydenberg's lawyers have filed an Expert Opinion of historian Dr Balint that asserts that the Strausz family had obtained a ***Titre d'Identité et de Voyage*** substitute passport in Paris in 1950 upon production of an International Refugee Organisation (IRO) Certificate declaring the family to be 'stateless refugees' and a concern of the IRO.

According to Dr Balint's Expert Opinion (which I uploaded from the High Court registry) -

> 'The *Titre d'Identite et de Voyage* is a travel document that originated after the end of World War Two to both regularise the sojourn in France of refugees while waiting for resettlement options, and to facilitate emigration to a country of resettlement.' (para 34)

Confusingly, Dr Balint has alternatively maintained:

> "The *Titre d'Identite et de Voyage* was thus one of the legal instruments of refugee protection that had its origins in the interwar period, but was revised after World War Two when unprecedented numbers of refugees without national passports were in urgent need of an internationally recognised travel document, one on which entry and exit visas could be affixed." (para37)

Dr Balint makes the observation about the *Titre d'Identité et de Voyage* that:

> 'The issuing of travel documents to stateless persons after World War Two was formalised by the Intergovernmental Commission for Refugees (IGCR), an international body established by the United Nations (UN), that existed between I938 and I947.' (para 35)

The UN Intergovernmental Conference held in London on 15 October I946 adopted a Travel Document, called a ***Titre de Voyage*** in French, for refugees under an agreement relating to the issuance of a travel document to refugees who '***are the concern of the Intergovernmental Committee on Refugees*** (**IGCR**)'. Annexed to the London Agreement is a "*Specimen Travel Document*". The agreement is generally referred to as the '***London Agreement***'. *(**See Tab-1 Tender Bundle**)*

The French title *Titre de Voyage* which translates as '*Travel Document*', is not to be confused with the title *Titre d'Identite et de Voyage* (TIV) that includes the words '*d'Identite et'* and translates as *'Certificate of Identity and Travel Document'*.

The IGCR was taken over by the *International Refugee Organisation* (IRO) in 1947. In 1952, operations of the IRO ceased, and it was replaced by the current Office of the United Nations High Commissioner for Refugees (UNHCR).

Comparing **Images 3** further below of the Strausz 1950 TIV with **Images 4** of an earlier 1941 TIV, reveals **the fact** that the TIV **had not** been revised in response to the 1946 London Agreement, and it remained a discrete French substitute passport. This also suggests that the French government may have generated a new Travel Document to comply with the London Agreement, which would be distinguished from the *Titre d'Identite et de Voyage*.

In fact, the French *Titre d'Identite et de Voyage* (TIV) was a non-Convention certificate of identity and travel document created by the French government (possibly between WW1 and WW2) to substitute as a passport for undocumented persons. It was issued to non-citizen (alien) residents of France who did not have access to passport facilities from their own countries, or were unable to obtain a national passport from their state of nationality (generally refugees).

Article I (1) of the 1946 IGCR London Agreement states:

> *'Subject to the further provisions laid down in Articles 2 and 16, a travel document, in accordance with the provisions of Article 3, shall be issued by the Contracting Governments to refugees who are the concern of the Intergovernmental Committee, provided that **the said refugees are stateless or do not in fact enjoy the protection of any Government**, and that they are staying lawfully in the territory of the Contracting Government concern.'*

The London Agreement obligated France as a contracting government to issue a Travel Document to persons who were able to support a stateless claim by way of a 'stateless refugee' certificate issued by the IRO (substituting for the IGCR). Dr Balint **erroneously conjectures** at paragraph 40 of her Expert Opinion that the French TIV had somehow devolved into the London Agreement Travel Document - ***Titre de Voyage***, and that an IRO certificate was required to obtain the substitute passport. Dr Balint states:

> *'In order to be eligible to hold a **Titre d'Identité et de Voyage** ("**TIV")**, a **holder had to prove statelessness** and lack of protection from their country of origin, as well as lawfully residing in the country where the document was obtained. The TIV was in fact*

> *a standard document issued by the French authorities upon presentation of a* ***certificate from the IRO*** *[UN International Refugee Organisation] asserting the statelessness of the holder. The* ***Strausz IRO certificate has not been located****, despite attempts by ABL solicitors to do so, although it can be reasonably assumed that one must have existed at this point'.* (para 40)

In fact, the Strausz family would not have been entitled to the London Agreement '*Travel Document'* as they had already been issued with a Hungarian passport, and were in possession of a Commonwealth of Australia Landing Permit to migrate to Australia sponsored by Isaac Redelman of Sydney. As such, their particular circumstance did not comply with the conditions of being stateless or not enjoying the protection of any government. This is why ABL Lawyers could not locate the purported IRO certificate. It does not exist.

While refugees and stateless persons are similarly situated, 'statelessness and refugee status are by no means identical phenomena'. Until the United Nation adopted the **1954 '***Convention relating to the Status of Stateless Persons'***,** the only way a person was recognised as 'stateless' was if their country of nationality no longer existed or as a consequence of changes to national borders (usually as a result of wars), or if they were deprived of citizenship under a national citizenship law. There is no evidence that the Strausz family could have met the conditions at the time of 'statelessness'.

As a matter of interest, the 1954 Stateless Convention defined a 'Stateless person' as "*Someone who is not recognized as a national by any state under the operation of its law*."

There is also no palpable evidence that the Strausz family were refugees. They were simply migrants, residing in Paris at the time they were issued with the TIV whilst in transit to Australia.

As the Strausz family had apparently misplaced or decided not to rely on their Hungarian passport, but were the holder of a Hungarian passport, they would ***not*** *have been eligible for a London Agreement Titre de Voyage* BUT would have been eligible for a *Titre d'Identité et de Voyage.*

Dr Balint has muddled the Strausz family's biographical narrative by maintaining with regards to an IRO stateless refugee certificate *"it can be reasonably assumed that one must have existed*." **This is an important issue as** the TIV is the only personal documentary evidence produced, apart from some self-declarations upon arriving in Australia, to give breath to Joshua Frydenberg's narrative that the Strausz family had become stateless refugees upon exiting Hungary, and that accordingly he is not a dual citizen by descent.

The inference of Dr Balint that the Strausz family were deemed to be 'stateless refugees' by the IRO because they were able to obtain a *Titre d'Identité et de Voyage* is in fact **not maintainable, even just based on the contents of the Strausz's TIV alone.**

The *Titre d'Identité et de Voyage* (TIV) obtained by the Strausz family on 24 March 1950 does not provide any details of the family being stateless or being a concern of the IRO. The TIV was not issued with an IRO stamp or noted on any of its pages.

By comparing the Specimen Travel Document below with images of other substitute passports, it is self-evident that the Strausz's *Titre d'Identité et de Voyage* (TIV), although sharing a similar name to the *Titre de Voyage,* remained a discrete 'substitute passport' of the French government and its issuance was not subject to or conditional upon the London Agreement.

The IGCR London Agreement, for example, provides that the Travel Document should state:

I. Page 1 - *The holder of this document is the concern of the Intergovernmental Committee on Refugees. [IRO since 1947]*

2. Page 1 - *This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.*

3. Page 4 - *Document or documents on the basis of which the present document is issued.*

Page 1 of the 1946 London Agreement 'Specimen Travel Document' annexed to the Agreement (**See Tab-1 Tender Bundle for complete agreement**)

ANNEX

SPECIMEN TRAVEL DOCUMENT

The document will be in booklet form (approximately 15 cm. × 10 cm.).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words "Agreement of 15th October 1946" be printed in continuous repetition on each page, in the language of the issuing country.

(Cover of booklet)

TRAVEL DOCUMENT

(Agreement of 15th October 1946)

No.....

(1)

TRAVEL DOCUMENT

(Agreement of 15th October 1946)

This document expires on.....unless its validity is extended or renewed.

Name.....

Forename(s).....

Accompanied by.....child (children).

1. The holder of this document is the concern of the Intergovernmental Committee on Refugees.

2. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

3. The holder is authorised to return to..... (State here the country whose authorities are issuing the document) on or before .....unless some later date is hereafter specified. (The period during which the holder is allowed to return must not be less than three months.)

4. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document.

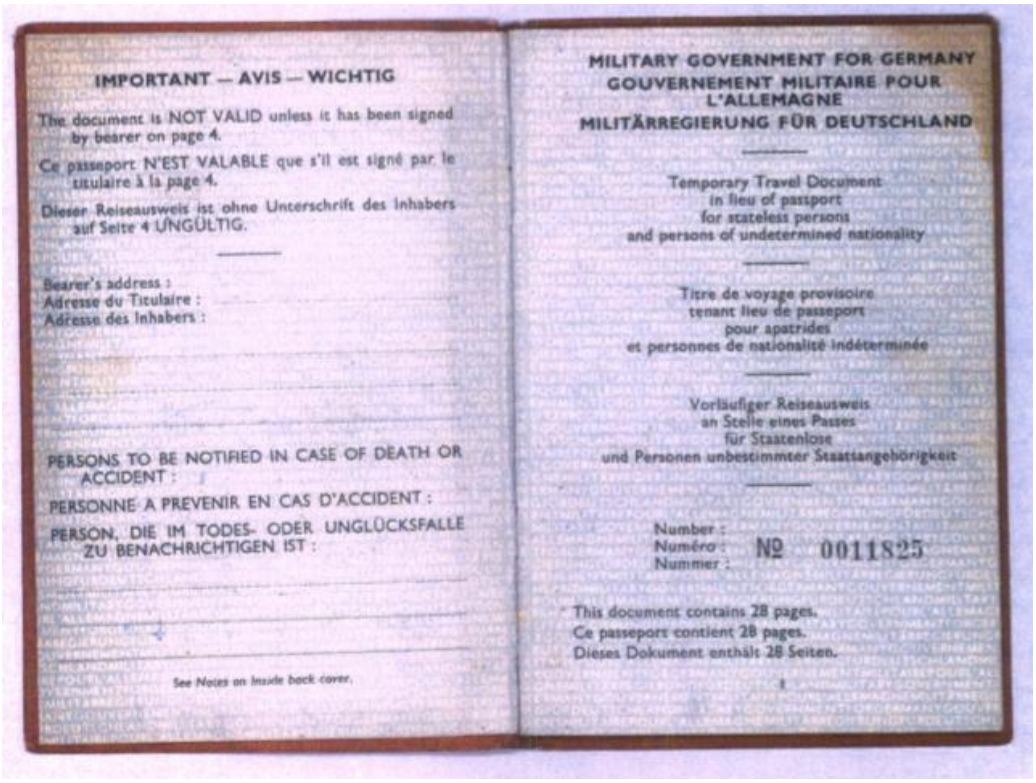
(This document contains 32 pages, exclusive of cover.)

No. 150

Such text is not included in the Strausz's *Titre d'Identité et de Voyage* as revealed in the images below. The following images also clarify the differences between the two types of travel documents.

Images 1(a) – (d) below - The ***Titre de Voyage*** (London Agreement) was issued in Germany on 23 November 1950. The complete Titre de Voyage is annexed to Dr Balint's Affidavit.

1(a) – Page 1 (right hand page) identifies the document as a "*Temporary Titre de Voyage in lieu of passport for stateless persons and persons of undetermined nationality*"



IMPORTANT — AVIS — WICHTIG

The document is NOT VALID unless it has been signed by bearer on page 4.

Ce passeport N'EST VALABLE que s'il est signé par le titulaire à la page 4.

Dieser Reiseausweis ist ohne Unterschrift des Inhabers auf Seite 4 UNGÜLTIG.

Bearer's address :
Adresse du Titulaire :
Adresse des Inhabers :

PERSONS TO BE NOTIFIED IN CASE OF DEATH OR ACCIDENT :
PERSONNE A PREVENIR EN CAS D'ACCIDENT :
PERSON, DIE IM TODES- ODER UNGLÜCKSFALLE ZU BENACHRICHTIGEN IST :

See Notes on Inside back cover.

MILITARY GOVERNMENT FOR GERMANY
GOUVERNEMENT MILITAIRE POUR L'ALLEMAGNE
MILITÄRREGIERUNG FÜR DEUTSCHLAND

Temporary Travel Document
in lieu of passport
for stateless persons
and persons of undetermined nationality

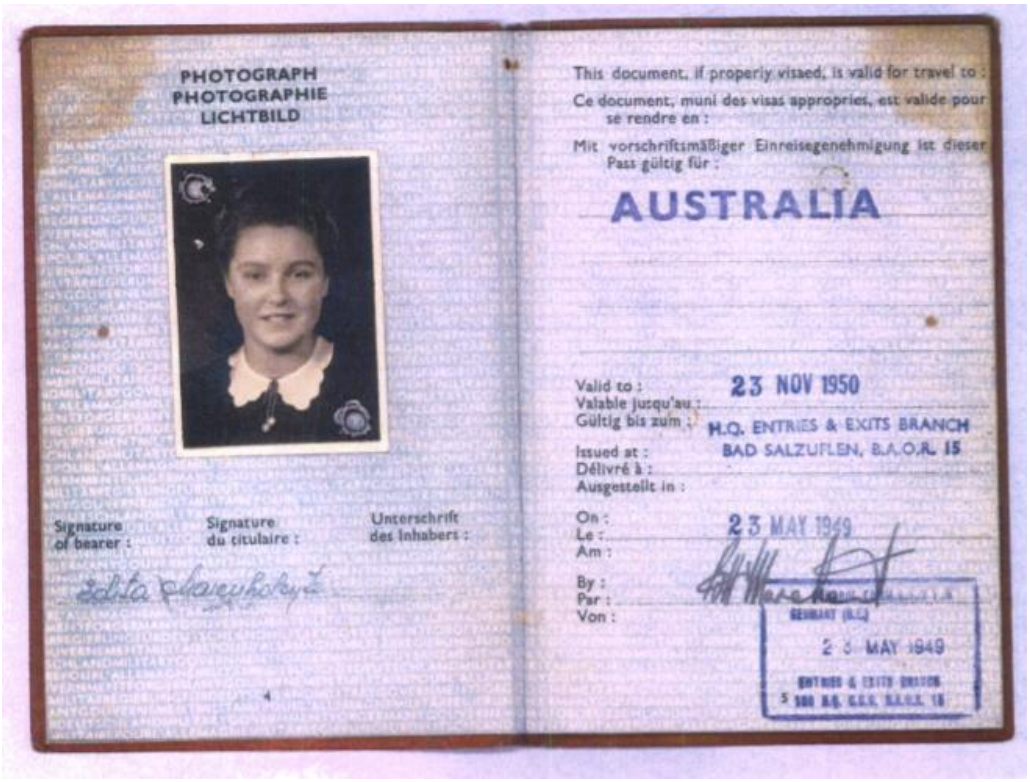
Titre de voyage provisoire
tenant lieu de passeport
pour apatrides
et personnes de nationalité indéterminée

Vorläufiger Reiseausweis
an Stelle eines Passes
für Staatenlose
und Personen unbestimmter Staatsangehörigkeit

Number :
Numéro : № 0011825
Nummer :

This document contains 28 pages.
Ce passeport contient 28 pages.
Dieses Dokument enthält 28 Seiten.

Image (b)



PHOTOGRAPH
PHOTOGRAPHIE
LICHTBILD

Signature of bearer :
Signature du titulaire :
Unterschrift des Inhabers :

This document, if properly visaed, is valid for travel to :
Ce document, muni des visas appropriés, est valide pour se rendre en :
Mit vorschriftsmäßiger Einreisegenehmigung ist dieser Pass gültig für :

AUSTRALIA

Valid to :
Valable jusqu'au :
Gültig bis zum :
23 NOV 1950

Issued at :
Délivré à :
Ausgestellt in :
H.Q. ENTRIES & EXITS BRANCH
BAD SALZUFLEN, B.A.O.R. 15

On :
Le :
Am :
23 MAY 1949

By :
Par :
Von :

23 MAY 1949

Image 1(c) – Page 27 is STAMPED '***The Bearer of this document comes within the Mandate of the International Refugee Organisation*** and is dated 2 June 1950. The IRO took over the role and functions of the IGCR in 1947. Hence, the reference to the IRO is consistent with the London Agreement that required '*Document or documents on the basis of which the present document is issued.'*

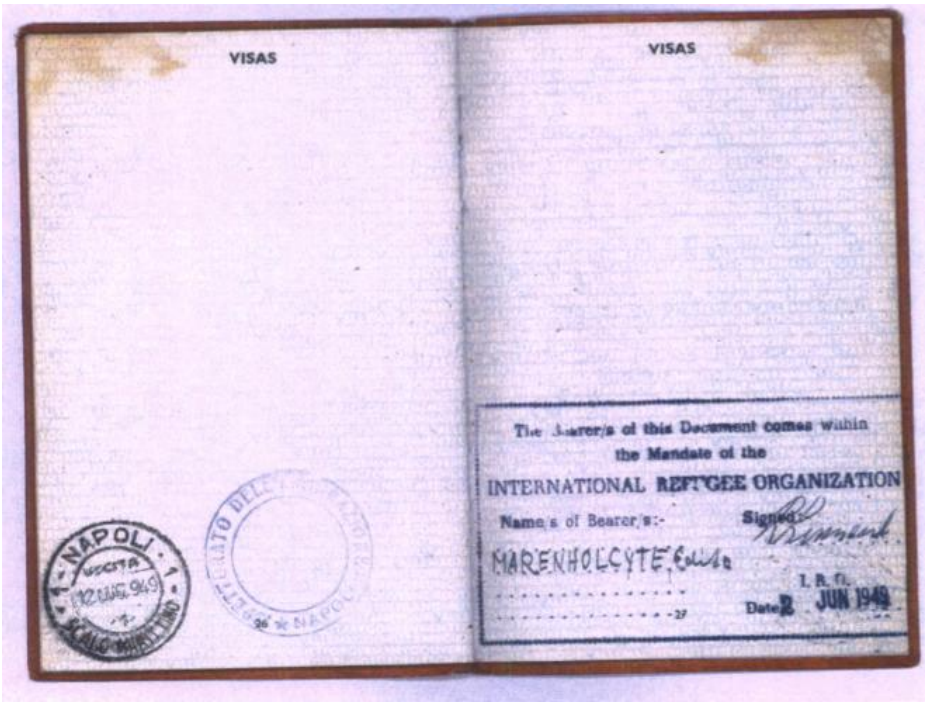
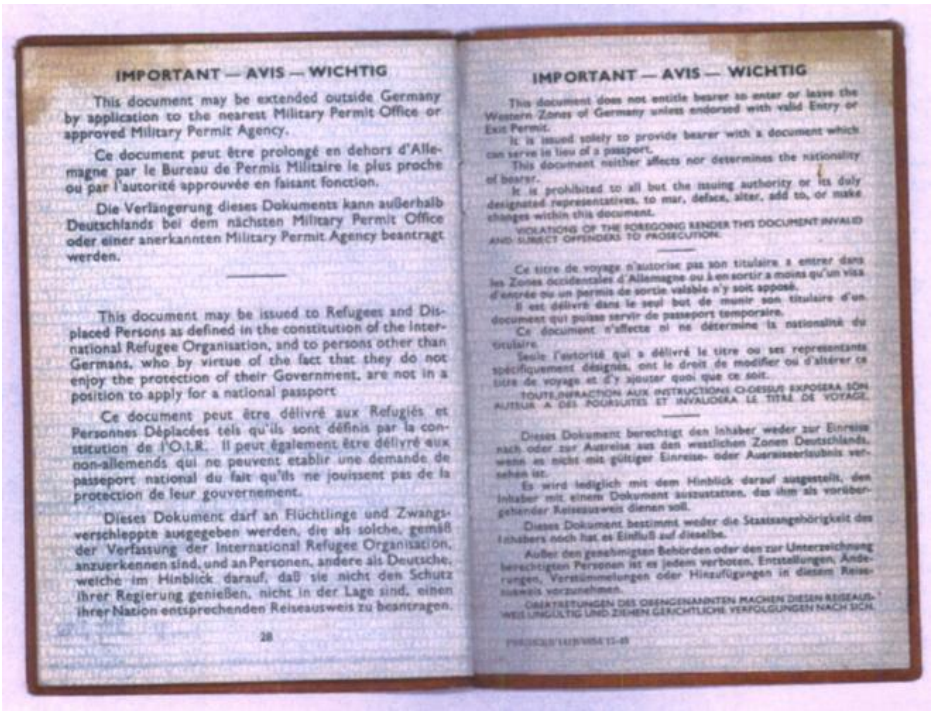
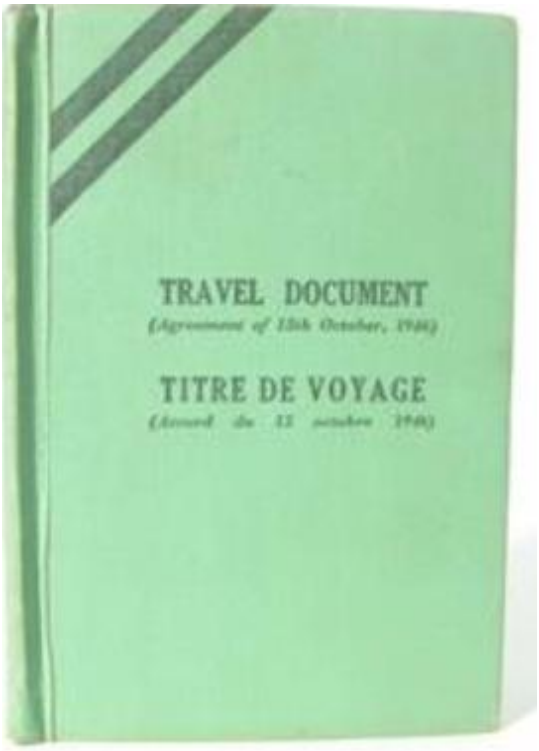


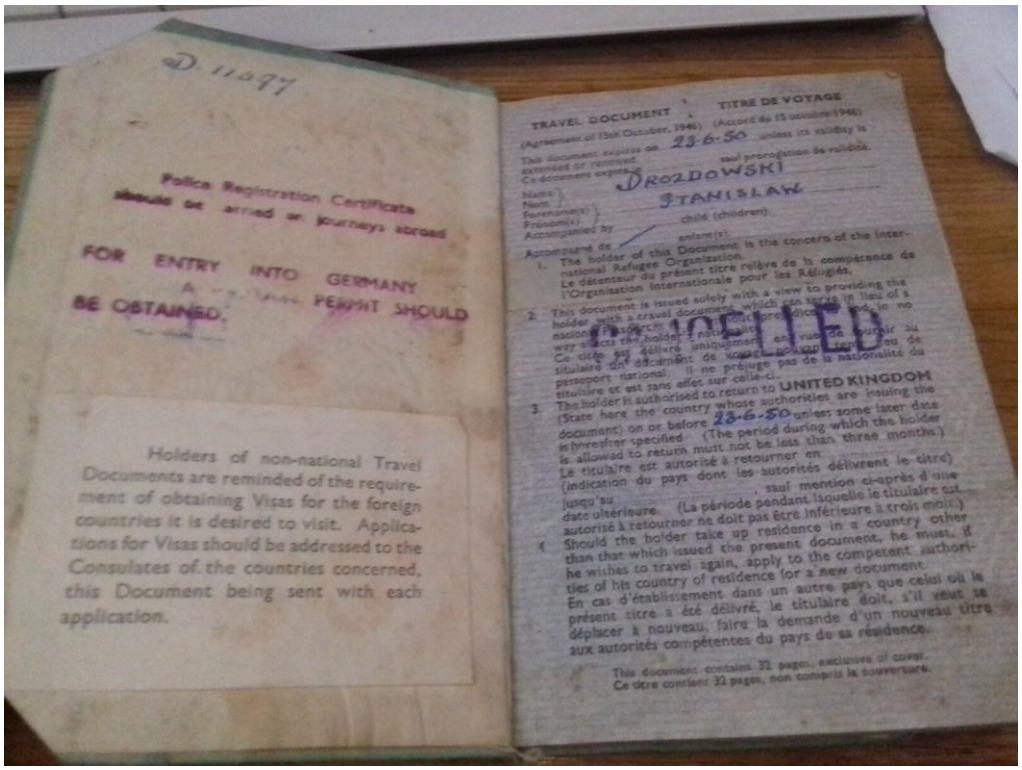
Image 1(d) – page 28 – Consistent with the IGCR Specimen Travel Document, the *Titre de Voyage* states: '***This document may be issued to Refugees and Displaced Persons as defined in the constitution of the International Refugee Organisation and to persons other than Germans, who by virtue of the fact that they do not enjoy the protection of their Government, are not in a position to apply for a national passport.***'



Images 2 below - ***Titre de Voyage*** – issued on 23/06/1950.

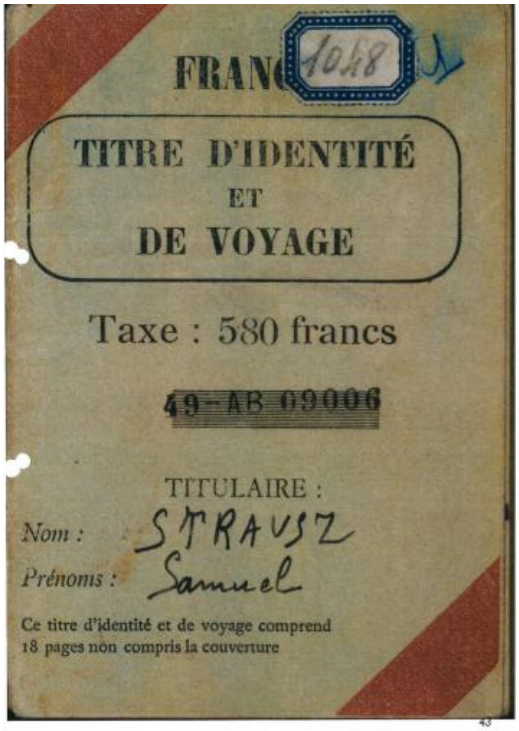


Page 2 under the heading '*Travel Document Titre de Voyage*' reads '*Agreement of 15 October 1946*' representing the date of the London Agreement. Paragraph 2 reads, '**The holder of this document is the concern of the International Refugee Organisation.**' The text on this page has been adopted from the IGCR *Specimen Travel Document* in compliance with the IGCR Agreement.



Images 3 below – SAMUEL STRAUSZ *Titre d'Identité et de Voyage - 24/03/1950* – filed in the High Court. (**See Tab-6 Tender Bundle for the complete TIV**)

There is no text in Samuel Strausz's TIV that references, or complies with the London Agreement '*Specimen Travel Document*', or references the IRO (that replaced the IGCR) throughout the document. There is no reference to the family being **'Stateless'** for which the **French word is** '**Apatride**'. There is no IRO stamp documenting the issuance of an IRO certificate evidencing that the family was the concern of the International Refugee Organisation.


FRANCE

TITRE D'IDENTITÉ
ET
DE VOYAGE

Taxe : 580 francs

49 - AB 09006

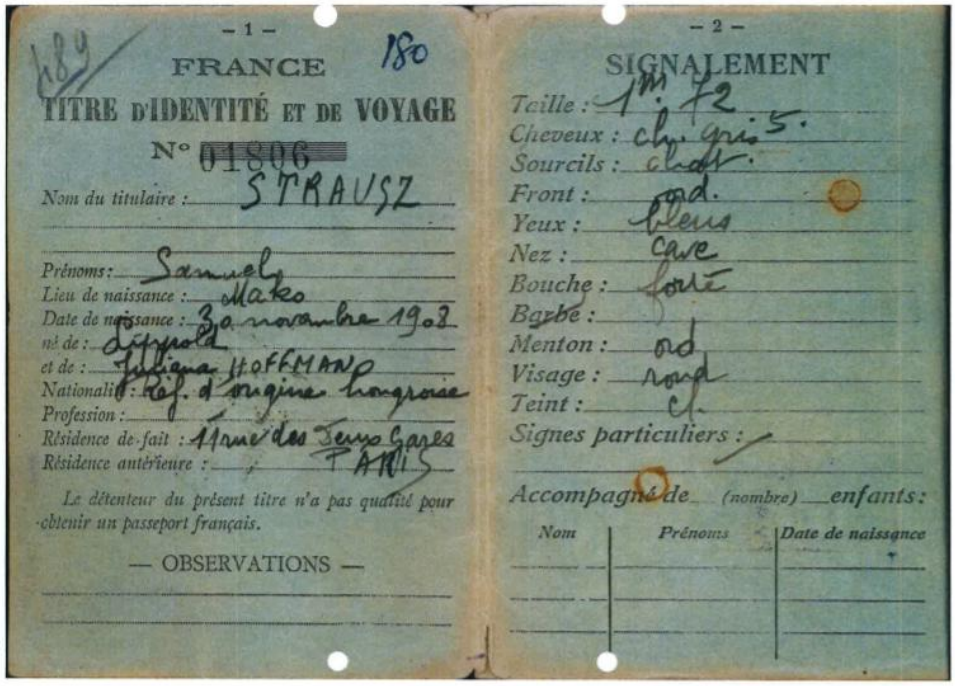
TITULAIRE :

Nom : STRAUSZ

Prénoms : Samuel

Ce titre d'identité et de voyage comprend
18 pages non compris la couverture

Pages 1-2


– 1 –

FRANCE

TITRE D'IDENTITÉ ET DE VOYAGE

N° 01806

Nom du titulaire : STRAUSZ

Prénoms : Samuel

Lieu de naissance : Mako

Date de naissance : 30 novembre 1903

né de : Leopold

et de : Juliana HOFFMAN

Nationalité : Réf. d'origine hongroise

Profession :

Résidence de fait : 11 rue des Terres Cuites PARIS

Résidence antérieure :

Le détenteur du présent titre n'a pas qualité pour obtenir un passeport français.

— OBSERVATIONS —

– 2 –

SIGNALEMENT

Taille : 1m 72

Cheveux : ch. gris.

Sourcils : châtr.

Front : ord.

Yeux : bleus

Nez : cave

Bouche : forte

Barbe :

Menton : ord

Visage : rond

Teint : cl.

Signes particuliers :

Accompagné de (nombre) enfants :

Nom	Prénoms	Date de naissance

Pages 3-4

– 3 –

Photographie du titulaire et, le cas échéant, photographies des enfants qui l'accompagnent.

Signature du titulaire.

– 4 –

PAYS *pour lesquels le présent titre est délivré :*

Tous pays d'Amérique
Australie

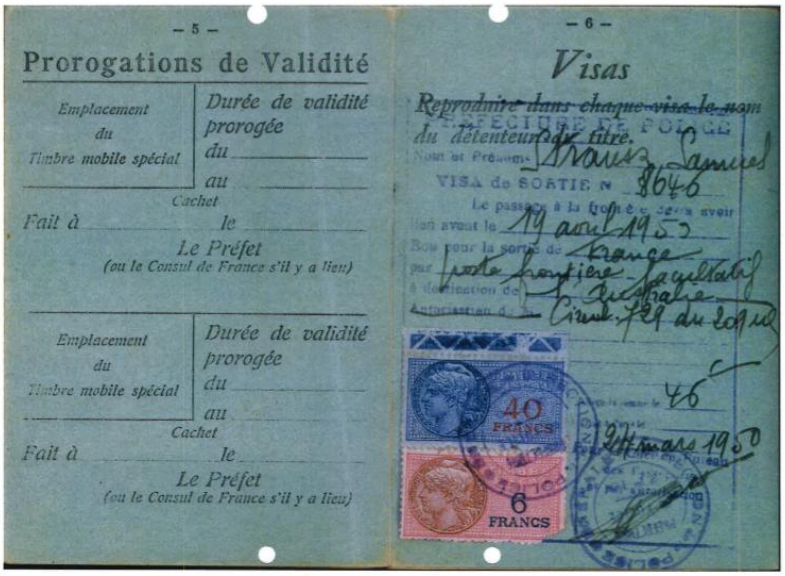
VALABLE DU 24 mars 1950
AU 23 mars 1951
Sauf renouvellement.

Délivré à Paris

Date, le 24 mars 1950

Le Préfet
LE PRÉFET de POLICE

Pages 5-6



– 5 –

Prorogations de Validité

Emplacement du Timbre mobile spécial	*Durée de validité prorogée* du … au …

Cachet

Fait à … *le* …

Le Préfet
(ou le Consul de France s'il y a lieu)

Emplacement du Timbre mobile spécial	*Durée de validité prorogée* du … au …

Cachet

Fait à … *le* …

Le Préfet
(ou le Consul de France s'il y a lieu)

– 6 –

Visas

~~Reproduire dans chaque visa le nom du détenteur du titre.~~

PRÉFECTURE DE POLICE

Nom et Prénoms Strauss Samuel

VISA de SORTIE N 8646

Le passeport à la frontière devra avoir lieu avant le 19 août 1950

Bon pour la sortie de France

par voie terrestre facultatif

à destination de Australie

Autorisation du Cirnl. 129 du 10 août

40 FRANCS

6 FRANCS

46

Paris, le 24 mars 1950

Pages 7-8

– 7 –

Visas

Reproduire dans chaque visa le nom du détenteur du titre.

PARIS

AUSTRALIAN EMBASSY

VISA FOR Samuel Strauss

APPLIED FOR ON 6 Mar 1950

AUSTRALIAN EMBASSY CONSULAR SECTION PARIS

See page 8

The validity of this visa is hereby extended 9 months from date of issue

15 NOV 1950

– 8 –

Visas

Reproduire dans chaque visa le nom du détenteur du titre.

COMMONWEALTH OF AUSTRALIA

Visa granted to: Samuel STRAUSS

No. 03366 Date 24/5/1950

Seen at the Consular Section, Australian Embassy, Paris, and good for the single journey to Australia.

Valid for 6 months from date of issue.

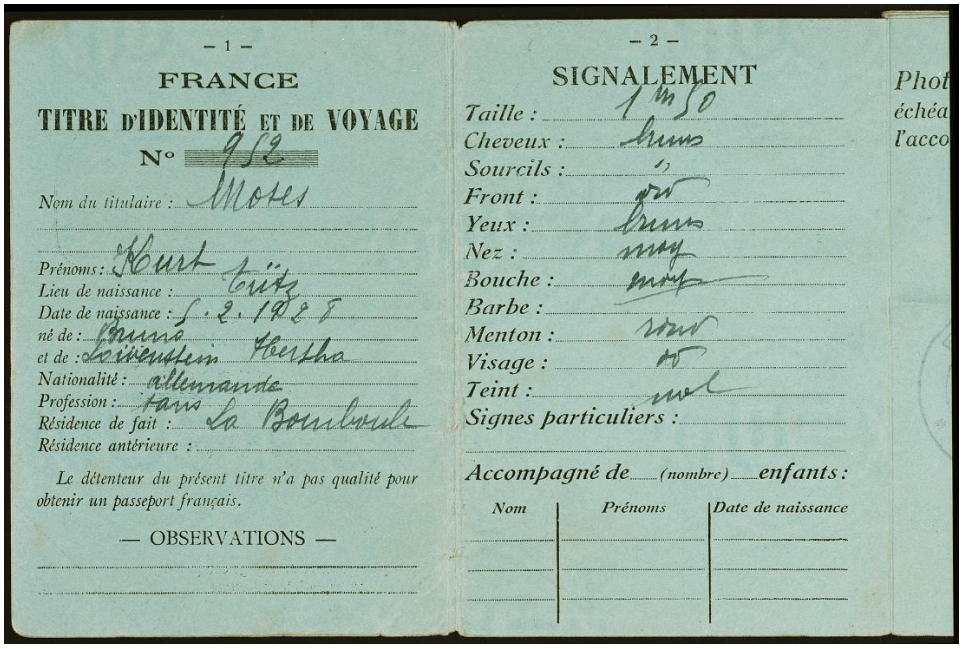
Henry G. Nelson
For the Ambassador.

AUSTRALIAN EMBASSY PARIS

Fee: 800 fr.

Landing Permit No. C 17602

Images 4 (a) - (b) below – The ***Titre d'Identité et de Voyage*** was **issued in 1941** to Kurt Moses in France prior to his voyage to the United States. This proves that the *Titre d'Identité et de Voyage* (TIV) was not a travel document that originated after the end of WW2 as product of the London Agreement. It is not the legal equivalent of a *Titre de Voyage* (TV). The form and content of the 1950 Strausz TIV is identical to the 1941 Moses TIV which was issued well before the London Agreement obligation for the contracting states to issue a Travel Document for stateless persons.



– 1 –

FRANCE

TITRE D'IDENTITÉ ET DE VOYAGE

N° 952

Nom du titulaire : Moses

Prénoms : Kurt

Lieu de naissance : Crefeld

Date de naissance : 5.2.1925

né de : Bruno

et de : Leibenstein Martha

Nationalité : allemande

Profession : sans

Résidence de fait : La Bourboule

Résidence antérieure :

Le détenteur du présent titre n'a pas qualité pour obtenir un passeport français.

— OBSERVATIONS —

– 2 –

SIGNALEMENT

Taille : 1m50

Cheveux : bruns

Sourcils :

Front :

Yeux : bruns

Nez :

Bouche :

Barbe :

Menton :

Visage :

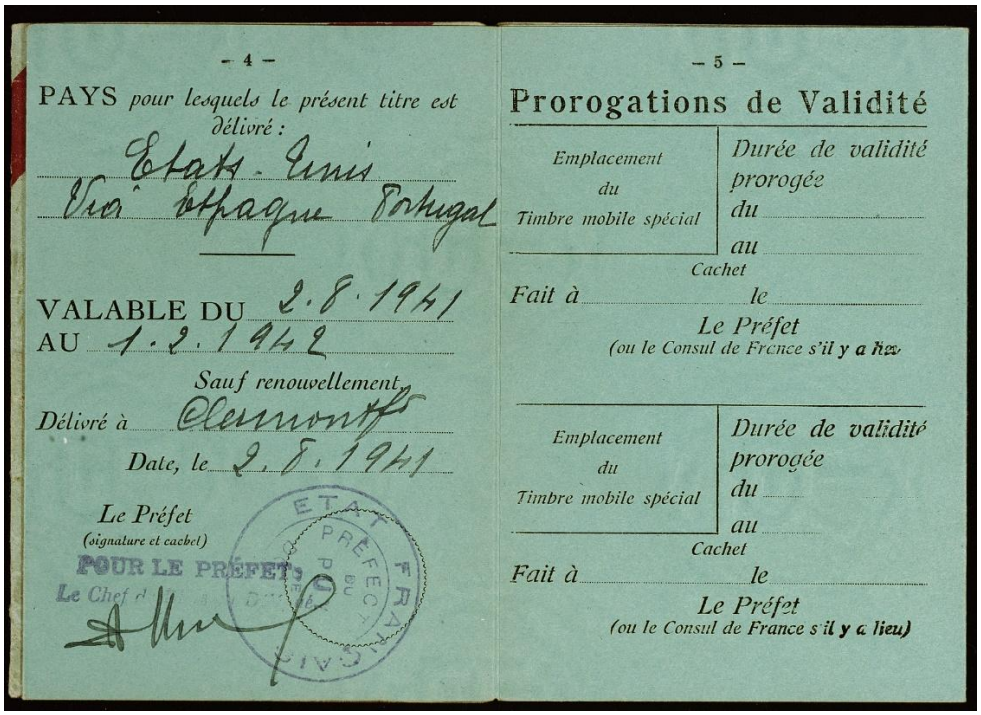
Teint :

Signes particuliers :

Accompagné de ... (nombre) ... enfants :

Nom	Prénoms	Date de naissance

Phot
échéa
l'acco



– 4 –

PAYS pour lesquels le présent titre est délivré :

Etats-Unis

Voir Espagne Portugal

VALABLE DU 2.8.1941

AU 1.2.1942

Sauf renouvellement

Délivré à Clermont-Fd

Date, le 2.8.1941

Le Préfet

(signature et cachet)

POUR LE PRÉFET :

Le Chef d

– 5 –

Prorogations de Validité

Emplacement du Timbre mobile spécial	Durée de validité prorogée du ... au ...

Cachet

Fait à ... le ...

Le Préfet

(ou le Consul de France s'il y a lieu)

Emplacement du Timbre mobile spécial	Durée de validité prorogée du ... au ...

Cachet

Fait à ... le ...

Le Préfet

(ou le Consul de France s'il y a lieu)

SS Surriento Passenger List

The fact that the family was **not recorded** as being 'under the care of IRO" on the Passenger List of the SS Surriento (**TAB-7 of the Tender Bundle**) that took the Strausz family to

Australia, unlike a number of other passengers on the ship who are listed as being '*under the care of the IRO*', is further evidence that there is no likelihood that the family was issued with an IRO Certificate declaring the family stateless refugees.

***American Jewish Joint Distribution Committee* (AJDC)**

Unlike other countries within the Soviet orbit at the time, Hungary had not completely halted the operations of the Jewish welfare organization, the *American Jewish Joint Distribution Committee* (AJDC). The AJDC (now known as JDC) is an independent NGO with its main purpose being to offer aid to the Jewish populations in central and eastern Europe as well as the Middle East through a network of social and community assistance programs.

The Strausz family were issued with a Commonwealth Landing Permit in 1949 to migrate to Australia whilst still in Hungary, having been sponsored by Isaac Redelman of Sydney. The lawyers for the parties have agreed that the family was issued with a Hungarian emigrant class passport prior to emigrating from Hungary. (It is not known why the Strausz family did not rely on their Hungarian passport for migrating to Australia after exiting Hungary, although one can speculate.)

Upon leaving Hungary in September 1949, the Strausz family were registered as Hungarian nationals with the *AJDC - Emigration Service* in Vienna where the family stayed for 10 days before travelling to Paris. (**See Tab-3 of the Tender Bundle**.) It is highly likely that the AJDC provided assistance with the Strausz family's emigration whilst they were still residing in Hungary, and without harassment from the Hungarian government that had issued the emigration passport.

It is also likely the AJDC Paris Office assisted the Strausz family to obtain the *Titre d'Identité et de Voyage* from the French authorities by attending as a companion of the family at the *Le Préfet de Police* office on 24 March 1950. It is also likely that the AJDC, in accordance with the organisation's purposes, assisted the family with other administrative requirements for completing their migration to Australia and provided financial support for travel costs,

In contrast, there is no evidence whatsoever that the International Refugee Organisation (IRO) had any involvement in the Strausz family's passage to Australia.

Reviewing evidence of Dr Balint

Dr Balint was not called as a witness by ABL Lawyers at the hearing on 18 February 2020. The Petitioner Michael Staindl's lawyers did not file an opinion in response to Dr Balint's Expert Opinion and chose not to require her attendance for cross-examination. As such, it can be assumed that the lawyers acting for the Petitioner opted to not dispute the controversial TIV claims, and may in fact have embraced the fiction. Regrettably, the 3 presiding Justices, **Chief Justice Allsop**, **Justice Kenny** and **Justice Robertson** would not have had an opportunity to inquire into Dr Balint's opinion, and may now be accepting it on face value.

In fact, it would have been sensible for the parties prior to the hearing to have obtained an opinion from a person at the French Embassy (Canberra) who has a reliable and informed knowledge of the generic *Titre d'Identité et de Voyage* issued prior to the adoption of the 1954 '*Convention relating to the Status of Stateless Persons'.*

Bleyer Lawyers for the Petitioner, **Arnold Bloch Leibler Lawyers** for the Respondent, and the **Commonwealth Attorney General The Hon Christian Porter** (who is a party to the case) ought to now alert the Federal Court Justices of the evidential discrepancies surrounding the TIV before the Justices hand down their decision with their reasons for the decision.

Trevor Poulton

8/03/2020

(Trevor Poulton, solicitor – also author of '*Frydenberg Case – Legal Opinion*' dated 11 July 2019)
http://www.teamlaw.net.au/uploads/1/7/4/9/17498055/frydenberg_case_-_dual_citizen___11_07_2019___legal_opinion_by_trevor_poulton__solicitor_.pdf