

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of

ESTATE OF MALCOLM PUGH, DECEASED;
AMBASSADOR ROBERT L. PUGH,
EXECUTOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-026

Decision No. LIB-II-012

Counsel for Claimant:

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the ESTATE OF MALCOLM PUGH, DECEASED, based on mental pain and anguish suffered by the late Malcolm Pugh as the result of the death of his mother, Bonnie Barnes Pugh, who was killed on board UTA Flight 772 on September 19, 1989.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

On January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication six categories of claims of United States nationals against Libya. *Letter from the*

Honorable John B. Bellinger, III, Legal Adviser, Department of State, to Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission (“January Referral Letter”).

Category B of the claims referred consists of

claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State provided that (1) the claim was set forth as a claim for emotional distress, solatium, or similar emotional injury by the claimant named in the Pending Litigation; (2) the claimant is not eligible for compensation from the associated wrongful death claim, and the claimant did not receive any compensation from the wrongful death claim; (3) the claimant has not received any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral; and (4) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 4. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation.

The January Referral Letter, as well as a December 11, 2008 referral letter from the State Department’s Legal Adviser to the Commission (“December Referral Letter”), followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 14, 2008, the United States and Libya concluded the *Claims Settlement Agreement Between the United States of America and the Great Socialist People’s Libyan Arab Jamahiriya* (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72. On October 31, 2008, the Secretary of State certified, pursuant to the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008), that the United States Government “has received funds pursuant to the claims agreement that are sufficient to ensure . . . payment of the settlements referred to in section 654(b) of division J of the Consolidated Appropriations Act, 2008 (Public Law 110-161; 121 Stat. 2342); and . . . fair compensation of claims of nationals of the United States for wrongful death or physical injury in cases pending on the date of enactment of this Act against Libya” January Referral Letter, *supra*, ¶ 1. On the same day, the President

issued Executive Order No. 13477, 73 Fed. Reg. 65,965 (Oct. 31, 2008), espousing the claims of United States nationals coming within the terms of the Claims Settlement Agreement, barring United States nationals from asserting or maintaining such claims, terminating any pending suit within the terms of the Claims Settlement Agreement, and directing the Secretary of State to establish procedures governing claims by United States nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

I. BASIS OF THE PRESENT CLAIM

On September 9, 2009, the Commission received a completed Statement of Claim and accompanying exhibits filed by counsel for the ESTATE OF MALCOLM PUGH, DECEASED, including evidence that: the late Malcolm Pugh was born in the United States; the ESTATE OF MALCOLM PUGH, DECEASED, was included as a named party in the complaint filed in *Pugh, et al. v. Socialist People's Libyan Arab Jamahiriya*, 02-cv-2026 (D.D.C.), part of the Pending Litigation referred to in Attachment 1 of the January Referral Letter, and set forth a claim for emotional distress, solatium, or similar injury; *Pugh* was dismissed; and that Malcolm Pugh died in October 1992. A declaration by Ambassador Robert L. Pugh, the executor of the ESTATE OF MALCOLM PUGH, DECEASED, included in the exhibits, states that the late Malcolm Pugh was devastated by the death of his mother and that he subsequently committed suicide. In further support of the claim, claimant's counsel has submitted a brief that argues that the ESTATE OF MALCOLM PUGH, DECEASED, has the same entitlement to compensation as claimants who are still living.

II. DISCUSSION

The Commission must consider whether this claim falls within the category of claims referred to it by the Department of State. As discussed above, the Commission's jurisdiction under Category B of the January Referral Letter is limited to claims of individuals: (1) who are United States nationals; (2) who are living; (3) who are close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State; (4) who, as named parties, made claims for emotional distress, solatium, or similar emotional injury in a Pending Litigation case which has been dismissed; and (5) who are not eligible for compensation from the wrongful death claim, have not received any compensation from the wrongful death claim, have not received any compensation under any other part of the Claims Settlement Agreement, and do not qualify for any other category of compensation pursuant to the January referral. January Referral Letter, *supra*, ¶ 4.

The Commission notes that the January Referral Letter specifically states that Category B shall consist of claims of U.S. nationals for mental pain and anguish "who are living" close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State. In light of this fact, the Commission holds that in order to qualify for compensation under Category B, a claimant must have been living as of the date of the January Referral Letter as well as at the time of the incident which served as the basis of the Pending Litigation and caused the mental pain and anguish. In its supporting brief the claimant argues that the ESTATE OF MALCOLM PUGH, DECEASED, has the same entitlement to compensation as claimants who are still living. Claimant further asserts that when the January Referral Letter states that Category B shall consist of claims of U.S. nationals for mental pain and anguish "who are living" close relatives of a decedent whose death formed the basis of a death claim compensated by the

Department of State, it should be understood to mean claimants who were living at the time of the decedent's death. However, the Commission notes that the January Referral Letter plainly refers to claimants "who are living" and not "who are, or were, living." Having given careful consideration to claimant's arguments, the Commission is not persuaded that the category of claims being referred, namely Category B, was meant to include individuals who were not living at the time of the January Referral Letter. The Commission, as a consequence, finds that because Malcolm Pugh was not living on the date of the January Referral Letter, the claimant does not meet the jurisdictional requirements of Category B of the January Referral Letter.

Accordingly, while the Commission recognizes the loss suffered by the claimant estate, the Commission is constrained to conclude that the claim is not compensable under Category B of the January Referral Letter. Therefore, this claim must be, and hereby is, denied. The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, DC, and
entered as the Proposed Decision
of the Commission.

DEC 18 2009

**This decision was entered as the
Commission's Final Decision on**

JAN 26 2010


Mauricio J. Tamargo, Chairman


Rafael E. Martinez, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2008).