

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

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

}
} Claim No. LIB-II-042
} Decision No. LIB-II-018

}
} Claim No. LIB-II-043
} Decision No. LIB-II-008

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} Claim No. LIB-II-044
} Decision No. LIB-II-001

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} Claim No. LIB-II-045
} Decision No. LIB-II-009

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} Claim No. LIB-II-056
} Decision No. LIB-II-019

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} Claim No. LIB-II-057
} Decision No. LIB-II-025

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} Claim No. LIB-II-059
} Decision No. LIB-II-075

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} Claim No. LIB-II-060
} Decision No. LIB-II-063

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} Claim No. LIB-II-061
} Decision No. LIB-II-064

Against the Great Socialist People's
Libyan Arab Jamahiriya

Counsel for Claimant:

Zoe Salzman, Esq.
Emery Celli Brinckerhoff & Abady LLP

ORDER

On March 21, 2013, the above-referenced claimants,

5 U.S.C. §552(b)(6)

(collectively, the “claimants”), filed Petitions to Reopen their respective claims against the Great Socialist People’s Libyan Arab Jamahiriya (“Libya”) based upon mental pain and anguish suffered as a result of the death of family members who were killed on board Pan Am Flight 103 on December 21, 1988. The underlying claims were made pursuant to Category B of the *Letter dated January 15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission*, and each of the claimants was awarded \$200,000 in decisions that have now become final.

The claimants state that the Petitions to Reopen are “[b]ased on new evidence that there is a surplus of funds available following the Commission’s resolution of all claims and appeals . . .” The claimants further argue that the awards of \$200,000 per claimant fail to properly compensate them for their pain and suffering.

The Commission’s regulations, 45 C.F.R. § 509.5(*l*), govern petitions to reopen before the Commission. Among other requirements, the petition must be based on “newly discovered evidence” and it must appear “that reconsideration of the matter on the basis of that evidence would produce a different decision.”

These Petitions to Reopen fail to satisfy the requirements of 45 C.F.R. § 509.5(*l*). To start, it is not clear that the asserted new evidence—that there might be money remaining in the Libya settlement fund—is the type of “newly discovered evidence” that would warrant a petition to reopen. The “evidence” is not directly relevant to the injury that claimants suffered. But even accepting it as “newly discovered evidence” for purposes of this petition, the consideration of this evidence would not “produce a different decision.” Whenever the Commission has decided the amount of compensation for claims in the Libya Claims Program, the amount of money in the Libya settlement fund was simply not a factor. Rather, in determining the amount that successful Category B claimants were to recover, the

factors the Commission took into account were the State Department's recommendation, international law principles, and the September 11th Compensation Fund's awards for similar losses. *See, e.g., Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-II-044, Decision No. LIB-II-001, PD at 9-10 (2009), and *Claim of* 5 U.S.C. §552(b)(6) ; Claim No. LIB-II-125, Decision No. LIB-II-022, FD at 4-5 (2012). Claimants' decisions are now final, and the Commission sees no reason to change its approach to deciding these claims now. Because the Commission carefully considered all the factors it viewed as relevant in determining claimants' compensation and because the amount of money in the Libya settlement fund was not one of the relevant factors, "reconsideration of the matter on the basis of" the amount of money in the fund would not "produce a different decision."

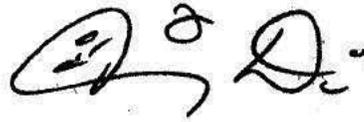
The Commission reiterates its sympathy for the pain and suffering claimants have endured, and does so with full knowledge that no amount of money can truly compensate for the death of a loved one in such horrific circumstances. These Petitions to Reopen must be denied, however, because they fail to satisfy the requirement in the Commission's regulations that consideration of newly submitted evidence "would produce a different decision."

Accordingly, it is ORDERED that the Petitions to Reopen these claims for further consideration be and they are hereby denied.

Dated at Washington, DC, April 25, 2013
and entered as the Order of the Commission.



Rafael E. Martinez, Commissioner



Anuj C. Desai, Commissioner

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

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-061

Decision No. LIB-II-064

Counsel for Claimant:

Emery Celli Brinckerhoff & Abady LLP

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on mental pain and anguish suffered by 5 U.S.C. §552(b)(6) as a result of the death of his half-brother, 5 U.S.C. §552(b)(6) who was killed on board Pan Am Flight 103 on December 21, 1988.

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 U.S. nationals against Libya. *Letter from the Honorable John*

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

The present claim is made under Category B. According to the January Referral Letter, Category B 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 (“December Referral Letter”) from the State Department, 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 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and 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, entered into force Aug. 14, 2008. On October 31, 2008, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965, which, *inter alia*, espoused the claims of U.S. nationals coming within the terms of the Claims Settlement Agreement, barred U.S. nationals from asserting or maintaining such claims, terminated any pending suit within the terms of the

Claims Settlement Agreement, and directed the Secretary of State to establish procedures governing claims by U.S. 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).

BASIS OF THE PRESENT CLAIM

On February 3, 2010, the Commission received from the claimant a completed Statement of Claim, in which the claimant asserts a claim under Category B of the January Referral Letter, along with exhibits in support of the claim. This submission included evidence of: claimant's U.S. nationality; his inclusion as a named party in the Pending Litigation referred to in Attachment 1 of the January Referral Letter, in which he set forth a claim for emotional distress, loss of solatium, or similar injury; and the dismissal of the Pending Litigation against Libya. The claimant states that he is the half-brother of ⁵ U.S.C. §552(b) ₍₆₎ who was killed on December 21, 1988, on Pan Am Flight 103, and that he had a very close relationship with his half-brother and was deeply affected by his death.

DISCUSSION Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined in the January Referral Letter; namely the claims of individuals who: (1) are U.S. nationals; (2) are living; (3) are close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State; (4) as named parties, made claims for emotional distress, loss of solatium, or similar

emotional injury in a Pending Litigation case which has been dismissed; and (5) are not eligible for compensation from the associated 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.

Nationality

In *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that to meet the nationality requirement, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. To meet this requirement, the claimant has provided copies of his New York birth certificate and of his current U.S. passport. Based on this evidence, the Commission finds that this claim was held by a U.S. national at the time 5 U.S.C. §552(b)(6) was killed on December 21, 1988, and continuously thereafter, including on the effective date of the Claims Settlement Agreement.

Claimant Must Have Been Living at the Time of the January Referral Letter

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. In this program, the Commission has held in *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-II-044, Decision No. LIB-II-001 (2010), 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. The Commission finds that claimant has satisfied this requirement, as evidenced by his birth certificate and his notarized declaration in support of his Statement of Claim dated January 13, 2010.

Claimant Must Be a Close Relative of the Decedent

The January Referral Letter also 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.¹ The Commission held in *Claim of* 5 U.S.C. §552(b)(6) *supra*, that for the limited purpose of Category B of this claims program, the term “close relatives” comprises the relatives of a decedent who are within one step of immediacy to the decedent, namely spouses, children, parents and siblings. The Commission finds that the claimant has established that he is a close relative of 5 U.S.C. §552(b)(6) as evidenced by: claimant’s birth certificate and 5 U.S.C. §552(b)(6) birth certificate, both of which list the same mother, 5 U.S.C. §552(b)(6) the January 31, 2010 notarized declaration of 5 U.S.C. §552(b)(6) which states that she is the biological mother of both the claimant and 5 U.S.C. §552(b)(6) and that they lived in the same home in the United States “in a manner consistent with their relationship . . . [as] true and full brother[s];” and the claimant’s own written declaration in support of his claim, wherein he states that 5 U.S.C. §552(b)(6) was his dedicated older brother who helped raise him and served as his role model, and that they had a very close relationship.

¹ The Commission takes notice that the death of 5 U.S.C. §552(b)(6) formed the basis of a death claim compensated by the Department of State. (6)

² The Commission notes that it has previously found that Mary Porter’s legal name is 5 U.S.C. §552(b)(6) *See, Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-II-056, Decision No. LIB-II-019 (2010). (6)

Pending Litigation and its Dismissal

To be eligible for compensation under Category B of the claims referred to the Commission, the claimant must also be a named party who made a claim for emotional distress, loss of solatium, or similar emotional injury in a Pending Litigation case listed in Attachment 1 to the January Referral Letter and must provide evidence that the Pending Litigation against Libya has been dismissed. January Referral Letter, *supra*, ¶ 4. The claimant has provided a copy of the complaint in *Hagerman v. Socialist People's Libyan Arab Jamahiriya*, 02-cv-2147, filed in the U.S. District Court for the District of Columbia, which names him as a party and states a claim for emotional and psychological pain and suffering. Additionally, the claimant has provided the District Court's May 7, 2009 Order dismissing with prejudice the litigation, which included claimant's claim, as evidence of the dismissal of this Pending Litigation. Based on this evidence, the Commission finds that the claimant was a named party who made a claim for emotional distress, loss of solatium, or similar emotional injury in the Pending Litigation and that the Pending Litigation has been properly dismissed.

*Claimant Must Not be Eligible For, and Must Not Have Received,
Any Compensation from the Associated Wrongful Death Claim*

To fall within Category B of the claims referred to the Commission, the claimant must also be ineligible for compensation from the wrongful death claim, must not have received any compensation from the wrongful death claim, must not have received any compensation under any other part of the Claims Settlement Agreement, and must not qualify for any other category of compensation pursuant to the January Referral Letter. January Referral Letter, *supra*, ¶ 4. Claimant has represented to the Commission, under penalty of perjury, that he has not received, and that he is not eligible to receive, aside from under Category B, compensation from the Department of State or from the

Commission, pursuant to either the December Referral Letter or the January Referral Letter. Claimant has also submitted, in support of his sworn claim, a declaration by his attorney, also made under penalty of perjury, which states that claimant “has not received any money from the \$10 million settlement between ^{5 U.S.C.} estate and Libya. Nor has _{§552(b)(6)} he received any money from any other source as a result of his brother’s death.” On this basis, the Commission finds that the claimant was not eligible for compensation from the associated wrongful death claim, did not receive any compensation from the associated wrongful death claim, did not receive any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation under the January Referral Letter.

Accordingly, the Commission finds that this claim is within the Commission’s jurisdiction and that the claimant has satisfied the elements required for compensation pursuant to Category B of the January Referral Letter.

COMPENSATION

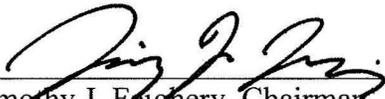
In *Claim of* ^{5 U.S.C. §552(b)(6)} *supra*, the Commission held that, in this program, the recommended fixed award of \$200,000 is the appropriate amount of compensation for eligible claims under Category B of the January Referral Letter, and that interest is not to be applied. Accordingly, the Commission determines that the claimant, ^{5 U.S.C. §552(b)(6)} is entitled herein to an award of \$200,000, and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

The Commission, therefore, enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27 (2006).

AWARD

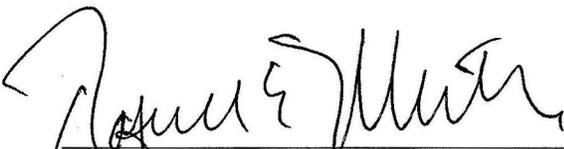
Claimant 5 U.S.C. §552(b)(6) is entitled to an award in the amount of Two Hundred Thousand Dollars (\$200,000.00).

Dated at Washington, DC, July 12, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman

**This decision was entered as the
Commission's Final Decision on**
AUG 18 2011



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) (2010).