

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-158
	}	Decision No. LIB-II-065
Against the Great Socialist People's Libyan Arab Jamahiriya	}	

Counsel for Claimant: John F. Baker, Esq.
Magana, Cathcart & McCarthy

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon physical injuries said to have been sustained by ^{5 U.S.C. §552(b)(6)} during the September 5, 1986 hijacking of Pan Am flight 73 in Karachi, Pakistan.

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 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 (“January Referral Letter”).

The present claim is made under Category E. According to the January Referral Letter, Category E consists of

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

Id. at ¶ 7. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

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 July 6, 2010, the Commission received from the claimant a completed Statement of Claim, in which he asserts a claim under Category E of the January Referral Letter, along with accompanying exhibits supporting his claim, including evidence of his physical injuries and his narrative of the traumatic events of the hijacking. Specifically, the claimant states that on September 5, 1986, he was a California high school student on-board Pan Am flight 73 when it was hijacked. He asserts that in the course of the hijacking, he was segregated from other passengers because of his presumed American nationality and so held for fifteen hours. He was then taken back to the main cabin, and placed in the aisle in the front row, in front of the terrorists. Shortly thereafter, the generators powering lighting in the plane ceased working, and the terrorists opened fire with guns and grenades into the crowd of hostages. In the course of this attack, the claimant alleges that he was shot repeatedly, resulting in multiple injuries including the loss of his leg.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined under the January Referral Letter; namely, claims of individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral Letter, *supra* ¶ 7.

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 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. The Commission's decision in *Claim of* 5 U.S.C. §552(b)(6)

is consistent with its past jurisprudence and generally accepted principles of international law.¹

The claimant states that he was born in England in 1969, but that he moved to the United States in 1976 and was raised in California; and that at the time of the hijacking he was living in California. A July 2, 2010 narrative letter written by claimant's counsel and appended to the claimant's Statement of Claim asserts that:

5 U.S.C.
While §552(b)(6) may have been born in England and was on paper a legal resident of the United States, on September 5, 1986, he was in every other

¹ See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of ILONA CZIKE against Hungary*, Claim No. HUNG-2-0784, Decision No. HUNG-2-191 (1976); and *Claim of JOSEPH REISS against the German Democratic Republic*, Claim No. G-2853, Decision No. G-2499 (1981).

sense a typical American teenager from Cerritos, California. ^{5 U.S.C. §552(b)(6)} was American enough for the terrorists to separate him for execution. ^{5 U.S.C. §552(b)(6)} was a minor at the time, and was unable to apply for citizenship on his own prior to September 5, 1986. But for the happenstance that the terrorists attacked a few months before his parents' citizenship applications finished making their way through the I.N.S. bureaucracy, Sanjay would have been a formalized American citizen.

July 2, 2010 letter at pages 3-4.

The horrific actions of the hijackers, and the claimant's partial upbringing in the United States notwithstanding, the claimant acknowledges that he did not become a U.S. citizen until May 26, 2000, nearly fourteen years after the hijacking.² While the Commission is sensitive to the facts asserted by the claimant, it notes that claimant was not a national of the United States when his claim arose in 1986. Therefore, while the Commission sympathizes with the tremendous suffering the claimant experienced, and the loss he continues to bear, under U.S. practice and the applicable principles of international law, including its own jurisprudence, the Commission is constrained to conclude that his claim is not compensable under the January Referral Letter. *See, Richard B. Lillich & Gordon A. Christenson, International Claims: Their Preparation and Presentation* 8-9 (1962) ("The most important condition precedent to securing government espousal of an individual's grievance is the requirement that it have been owned by a United States national at the time of loss or injury. The Foreign Claims Settlement Commission, like the Department of State, has consistently held this position."); and *Chytil v. Powell*, 15 Fed. Appx. 515, 516 (9th Cir. 2001) (unpublished) ("Because in espousing a claim a sovereign takes the claim on as its own, a sovereign cannot espouse claims for people who were not citizens of that sovereign at the time the

² The claimant further states that his parents' effort to themselves become U.S. citizens was delayed by the need to care for the claimant after the hijacking, and that as a result they, likewise, did not become U.S. citizens until after the hijacking.

injury was inflicted.”). Accordingly, the Commission determines that, consistent with the ICSA and the January Referral Letter, the present claim is not within its jurisdiction and, therefore, this claim must be and is hereby denied.

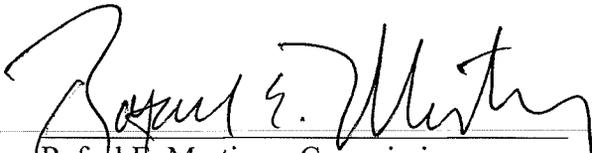
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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



Timothy J. Felghery, 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).