

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-160

Decision No. LIB-II-077

Counsel for Claimant:

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on the hijacking of Pan Am Flight 73 at Karachi International Airport in Karachi, Pakistan, on September 5, 1986.

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 A. According to the January Referral Letter, Category A consists of

claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, provided that (1) the claimant meets the standard for such claims adopted by the Commission; (2) the claim was set forth as a claim for injury other than emotional distress alone by the claimant named in the Pending Litigation; (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission; and (4) the claimant did not receive an award pursuant to the [Secretary of State's] referral of December 11, 2008.

*Id.* at ¶ 3. 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 July 6, 2010, the Commission received from the claimant a completed Statement of Claim asserting a claim under Category A of the January Referral Letter, together with exhibits supporting the claim. Claimant states that he was a passenger on Pan Am Flight 73 when it was hijacked on September 5, 1986. He asserts that he was forced by gunmen for 16 hours to keep his head down and remain motionless, and that after electrical power to the plane ceased working, the hijackers opened fire with guns into the crowd of passengers. Claimant states that he escaped from the plane through an emergency exit by jumping onto the wing of the airplane, and then onto the tarmac 36 feet below, resulting in injuries to both his legs and his back. On August 27, 2010, the claimant provided additional information and records regarding the injuries he sustained as a result of the hijacking of Pan Am Flight 73, which included the fracture of a bone and the dislocation of a joint.

The claimant informed the Commission that he became a citizen of the United States through naturalization on August 18, 1994. He also advised the Commission that he was not a litigant in any Pending Litigation.

#### 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 (in this case, as noted earlier, Category A); namely the claims of individuals who: (1) are U.S. nationals; (2)

meet the standard adopted by the Commission for hostage-taking or illegal detention; (3) set forth a claim for injury other than emotional distress alone in the Pending Litigation; (4) are named parties in a Pending Litigation case against Libya which has been dismissed; and (5) did not receive an award pursuant to the December Referral Letter. January Referral Letter, *supra*, ¶ 3.

#### *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.<sup>1</sup>

By the claimant's own acknowledgement, he does not meet this nationality requirement; claimant states that he did not become a U.S. citizen until August 18, 1994, nearly eight years after the hijacking.<sup>2</sup> Consequently, while the Commission sympathizes with the suffering claimant describes, it is constrained to conclude that his claim is not

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<sup>1</sup> 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). See also, 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 injury was inflicted.").

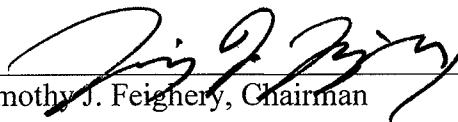
<sup>2</sup> Claimant has sought to argue instead that the Commission should allow his claim because other hijacking victims who were not U.S. nationals at the time their claims arose have succeeded in receiving compensation through a privately made, joint prosecution pooling agreement with parties to the Pending Litigation who were U.S. nationals. Even if claimant is correct, any such distributions have no bearing on the Commission's interpretation of the nationality requirement of Category A of the January Referral Letter.

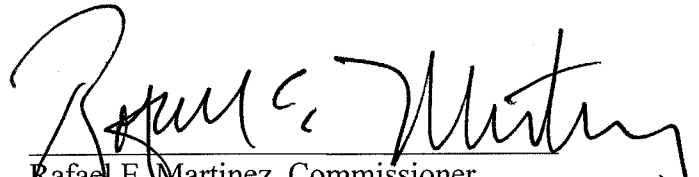
compensable under the January Referral Letter. Accordingly, the Commission determines that the present claim is not within its jurisdiction and, therefore, this claim must be and is hereby denied.

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

Dated at Washington, DC, September 7, 2011  
and entered as the Proposed Decision  
of the Commission.

  
Timothy J. Feighery, 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) (2010).