

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

In the Matter of the Claims of	}	
	}	
	}	
	}	
ESTATE OF MOSTAFA KARIM, DECEASED	}	Claim No. LIB-II-184
SANDRA SIMPSON, EXECUTRIX	}	
	}	Decision No. LIB-II-114
	}	
Against the Great Socialist People's	}	
Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:

Mark N. Bravin, Esq.
Winston & Strawn LLP

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on the hostage-taking or unlawful detention of Mostafa Karim in Libya beginning on or about February 10, 1987.

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 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 (Nov. 5, 2008), 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).

By Proposed Decision entered on October 16, 2009, the Commission denied the claimant's physical injury claim submitted pursuant to the December 2008 Referral Letter. Specifically, the Commission denied the claim for lack of jurisdiction on nationality grounds because the evidence in the claim indicated that the claimant was not a U.S. national on the date of the alleged injury, and did not become a national of the United States until 1993. *Claim of ESTATE OF MOSTAFA KARIM, DECEASED, SANDRA SIMPSON, EXECUTRIX*, Claim No. LIB-I-052, Decision No. LIB-I-023 (2009) (entered as final on December 2, 2011).

BASIS OF THE PRESENT CLAIM

On July 12, 2010, the Commission received from claimant a completed Statement of Claim in which it asserts a claim under Category A of the January Referral Letter, along with exhibits supporting the elements of its claim, postmarked

July 7, 2010.¹ This submission included evidence that in early February 1987, decedent Mr. Karim was detained by the Libyan authorities and held for approximately sixteen months. Further, the claimant has submitted evidence that Mr. Karim was a citizen of Egypt by birth, and that by virtue of his naturalization he became a U.S. national on August 23, 1993 — some six years after the events giving rise to this claim.

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) are named parties in a Pending Litigation case against Libya which has been dismissed; (3) set forth a claim for injury other than emotional distress alone in the Pending Litigation; and (4) did not receive an award pursuant to the December 11, 2008 referral letter. January Referral Letter, *supra*, ¶ 3.

Nationality

In the *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 in order 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

¹ The Commission notes that in its letter dated July 22, 2010 acknowledging receipt of the claim, it classified this claim under both Categories A and D of the January Referral; however, the Statement of Claim only refers to a claim under Category A.

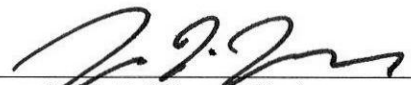
claim arose until the date of the Claims Settlement Agreement. In the case of claims brought by estates on behalf of beneficiaries, it is a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors, the War Claims Commission and the International Claims Commission, that, for purposes of determining the nationality of a claim, the nationality of the injured person as well as the beneficiaries of his or her estate must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.² Applying this well-settled jurisprudence here, in order for this claim to be compensable, Mr. Karim and the beneficiaries of his estate must have been U.S. nationals from the date the claim arose in 1987 through the date of the Claims Settlement Agreement. However, as noted above, the Commission determined in its decision on claimant's physical injury claim under the December Referral that Mr. Karim did not become a U.S. national until 1993. No evidence has been submitted in this claim to persuade the Commission to alter its prior determination.

Therefore, the Commission concludes that because the claim has not been held by U.S. nationals continuously from the date the claim arose through the date of the Claims Settlement Agreement, this claim is not compensable under the January Referral Letter. Accordingly, this claim must be and it is hereby denied.

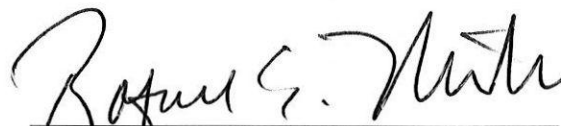
² See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

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

Dated at Washington, DC, December 15, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

**This decision was entered as the
Commission's Final Decision on**
JAN 18 2012

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).