

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

In the Matter of the Claims of

5 U.S.C. §552(b)(6)

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-192

Decision No. LIB-II-127

Counsel for Claimant:

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PROPOSED DECISION

This multi-part claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") are brought by 5 U.S.C. §552(b)(6) in connection with 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”).

The present claim is made under Categories A, B, and E. According to the January Referral, 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. 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. Finally, 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 lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral, as well as a December 11, 2008 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. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On September 7, 2010, the Commission received from the claimant a completed Statement of Claim, in which he asserts claims under Categories A, B, and E of the

January Referral, along with an affidavit describing his experience in connection with the hijacking of Pan Am Flight 73—a flight on which his wife and daughters were allegedly passengers.

In his affidavit, claimant states that “[i]t was the evening of September 4, 1986 in California and I was watching TV when I first saw the news flash about the hijacking of a Pan Am flight at Karachi airport.” Claimant goes on to discuss the ordeal that his wife and daughters allegedly endured during and after the hijacking, but at no point does the claimant state that he was present on Pan Am flight 73, that he was held hostage, that a close relative of his was killed in the incident, that he was injured in any way relating to the hijacking, or that he was a named party in the Pending Litigation against Libya.

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. As noted above, Categories A, B, and E of the January Referral all require that the claimant be a U.S. national. January Referral, *supra*, ¶ 3-4, 7. Categories A and B further require that the claimant be a named party in a Pending Litigation case against Libya which has been dismissed. *Id.* ¶ 3-4.

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 claim arose until the date of the Claims Settlement Agreement.

The claimant asserts in his Statement of Claim that he became a naturalized U.S. citizen in 1984 (approximately two years prior to the terrorist incident); however, he has not provided any evidence in support of this assertion. Although claimant's Statement of Claim notes that documentation of claimant's nationality would follow, nothing has been submitted in the year since this claim was filed. Given the absence of any documentation to support claimant's assertion of U.S. nationality, the claimant has failed to establish that these claims were ever owned by a U.S. national. On this basis, the Commission concludes that claimant fails to meet the jurisdictional requirements established under the January Referral, and that his claims are not eligible for adjudication on the merits.*

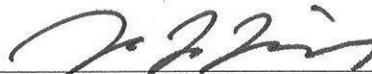
CONCLUSION

Given that the claimant has failed to meet the jurisdictional requirements for his claims, and while the Commission sympathizes with the suffering endured by claimant and his family, the Commission determines that the present claims are not within the Commission's jurisdiction and therefore must be, and hereby are, denied.

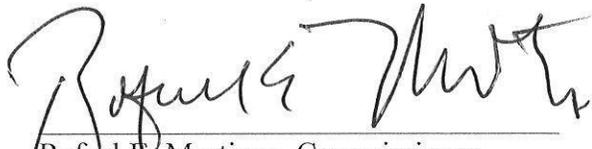
* In addition, as noted above, Categories A and B of the January Referral require that the claimant be a named party in one of the Pending Litigations listed in Attachment 1 to the January Referral, and must provide evidence that the Pending Litigation against Libya has been dismissed. January Referral, *supra*, ¶ 3-4. Claimant has provided no evidence that he was a named party in the Pending Litigation. Accordingly, the Commission concludes that the claimant's claims under Categories A and B are not eligible for adjudication on the merits for the separate and distinct reason that claimant has failed to establish that he was a named party in a Pending Litigation case against Libya.

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

Dated at Washington, DC, December ~~10~~ 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).