

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

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In the Matter of the Claim of	}	
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	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-III-030
	}	
	}	Decision No. LIB-III-021
	}	
Against the Great Socialist People’s Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joshua M. Ambush, Esq. Joshua M. Ambush, LLC
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FINAL DECISION

Claimant objects to the Commission’s Proposed Decision denying his mental-pain-and-anguish claim against the Great Socialist People’s Libyan Arab Jamahiriya (“Libya”). That claim was based on the death of ^{5 U.S.C. §552(b)(6)} (“decedent”), who Claimant says was his fiancée. The Commission’s Proposed Decision concluded that Claimant had not established that he was a “close relative” of the decedent, as required by the State Department’s referral letter authorizing the Commission to hear claims in this program.¹ In particular, the Proposed Decision concluded that the term “close relative” does not encompass a fiancé, at least in the absence of objective and verifiable evidence of a legally recognized relationship. On objection, Claimant makes further legal argument in support of his claim. After carefully considering Claimant’s

¹ See Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission (“2013 Referral” or “November 2013 Referral”).

additional arguments, we again conclude that Claimant has not established that he is a “close relative” of the decedent within the meaning of the 2013 Referral. We therefore affirm the denial of this claim.

BACKGROUND

Claimant brought this claim against Libya for mental pain and anguish suffered as a result of ^{5 U.S.C. §552(b)(6)} death in the terrorist attack at Lod Airport in Israel on May 30, 1972. He alleged that he and ^{5 U.S.C. §552(b)(6)} had agreed to be married, that they had a very close relationship, and that he was deeply affected by her death. In a Proposed Decision entered May 12, 2015, the Commission concluded that Claimant had satisfied the requirements for jurisdiction, but denied the claim on the record before it, finding that Claimant had failed to carry his burden to prove he is a “close relative” of the decedent under the terms of Category E of the 2013 Referral. *See* Claim No. LIB-III-030, Decision No. LIB-III-021 (2015) (Proposed Decision).

The Proposed Decision explained that, in previous decisions interpreting the term “close relative,” the Commission has consistently held that the term applies to those relatives who are immediate family to the decedent: “spouses, children, parents[,] and siblings.” Proposed Decision, *supra*, at 7 (*citing* Claim No. LIB-III-028, Decision No. LIB-III-014, at 6-7 (2015); Claim No. LIB-II-044, Decision No. LIB-II-001, at 6 (2010)). Noting that these decisions were expressly limited to the programs in which they arose, and treating the issue before it as one of first impression, the Commission held that the term “close relative” for the purposes of the 2013 Referral, “does not encompass a fiancé, absent documentation of a legally recognized relationship.” Proposed Decision, *supra*, at 8. Such documentation could include “evidence of a formal, legally recognizable marital state, such as a marriage certificate, a joint tax return, or indicia of a common law marriage.” *Id.* at 11. Because Claimant offered no evidence of this sort, the Commission concluded that, while “Claimant

may well have been ‘close’ to the decedent,” he was not her “‘close *relative*’” within the meaning of that phrase in Category E of the 2013 Referral.” *Id.* at 12.

On June 8, 2015, Claimant filed a timely notice of objection and requested an oral hearing. On August 27, 2015, Claimant submitted a brief containing further argument in support of his objection, but did not submit any additional evidence.² The Commission held a hearing on September 17, 2015; the hearing consisted solely of argument by Claimant’s counsel, and the Claimant presented no witnesses for examination.

DISCUSSION

Claimant’s objection rests essentially on two arguments, both of which the Proposed Decision largely addressed. First, Claimant argues that he was the equivalent of ^{5 U.S.C. §552(b)}₍₆₎ spouse and should therefore count as a “close relative” for purposes of this program. Second, Claimant argues that we should adopt a “functional approach” to the term “close relative” in the 2013 Referral and read it to include those fiancés who, like him, were deeply connected to a decedent.

Claimant’s first argument is that he was the equivalent of ^{5 U.S.C. §552(b)}₍₆₎ spouse. As noted in the Proposed Decision, Claimant’s Statement of Claim form alleges that he was “in essence ^{5 U.S.C. §552(b)(6)}] spouse” Proposed Decision, *supra*, at 11. Likewise, in his Brief on objection, Claimant contends that he “did all of the things one would expect a spouse to do” when the decedent was killed, such as picking out her funeral clothes, making sure her scars were covered at her funeral, and acting as a pallbearer. In addition, at the objection hearing Claimant’s counsel further argued that the Claimant was the “equivalent” of the decedent’s spouse and should therefore count as a “close relative” for purposes of this program.

² In his Brief, Claimant confirms that he has “no further evidence on this claim other than the uncontroverted, consistent witness statements he has already provided.”

The Proposed Decision explained why this argument fails: Claimant offers no evidence of a common law marriage or of a state otherwise equivalent to marriage. The evidence Claimant submitted does suggest a close, romantic, relationship between Claimant and ^{5 U.S.C.} §552(b)(6) and describes the pain Claimant suffered as a result of her death and we do not question the depth of his anguish. However, as far as we can determine from the evidence submitted, Claimant and ^{5 U.S.C.} §552(b)(6), who were only 21 years old when ^{5 U.S.C.} §552(b)(6) was killed, did not cohabit, did not set a specific wedding date, did not have children together, did not file a joint tax return, were not financially dependent upon each other, and did not own property together. Thus, while Claimant has provided evidence that he and ^{5 U.S.C.} §552(b)(6) acted in some respects as a couple and intended to get married at some point in the future, he has not provided evidence that their relationship was closely similar to marriage.

We also reject Claimant's second argument—that the Commission should apply a “functional approach” in determining whether the term “close relative” in the 2013 Referral includes fiancés. A “functional approach” to the term “close relative” would, according to Claimant, better comport with the principles of “justice and equity,” which we are statutorily required to apply in adjudicating claims.³ According to Claimant, justice and equity mandate a “flexible approach” to defining the term “close relative,” similar to that which he says is required by the law of some domestic U.S. jurisdictions in related contexts. Claimant maintains that, when such an analysis is applied to the facts of

³ The Commission is statutorily required to apply the following sources in the following order in rendering decisions on claims: “(A) The provisions of the applicable claims agreement [and] (B) The applicable principles of international law, justice, and equity. . . .” *See* International Claims Settlement Act of 1949, 22 U.S.C. § 1623(a)(1)(C) (2012).

his claim, he clearly qualifies as a “close living relative” of the decedent for purposes of the 2013 Referral.⁴

We reject this argument for the same two reasons discussed in greater detail in the Proposed Decision. First, we must look to international law, and what international law we have found cuts against Claimant’s proposed “functional approach.” The international law claims programs for family members of deceased victims we have identified do not permit fiancés to recover. *See* Proposed Decision, at 8-9. Second, in the specific context of adjudication before this Commission, which is non-adversarial, eligibility criteria for awards should be as objective and verifiable as possible, and the category of fiancé is too open-ended to be included within the definition of “close relative.” Proposed Decision, at 10-12.

For these reasons, we reaffirm our holding that Claimant was not a “close relative” of ^{5 U.S.C.} §552(b)(6) within the meaning of the 2013 Referral.

⁴ For example, Claimant contends that, in determining whether a fiancé may recover for emotional distress arising from the death of their betrothed, modern U.S. authorities do not apply rigid rules but rather focus on various factors that identify and define the “intimacy and familial nature” of the relationship. *E.g.*, *Dunphy v. Gregor*, 136 N.J. 99, 112 (N.J. 1994). Such factors include “the duration of the relationship, the degree of mutual dependence, the extent of common contributions to a life together, the extent and quality of shared experience, and ... whether the plaintiff and the injured person were members of the same household, their emotional reliance on each other, the particulars of their day-to-day relationship, and the manner in which they related to each other in attending to life's mundane requirements.” *Id.* Along these lines, and in support of his claim here, Claimant emphasizes that he and the decedent “were in a romantic relationship for three-and-a-half years culminating in their engagement,” that they “were inseparable, both emotionally and physically,” and that they “drove to school together every day” and participated in social activities and attended church together “as a couple.”

Since we reject Claimant’s argument that we should rely on this domestic U.S. jurisprudence, we need not address the question of whether he would satisfy the standard he proposes. As we noted in the Proposed Decision, however, it is not clear that he could prevail even under this “flexible approach.” *See* Proposed Decision at 11 n.10.

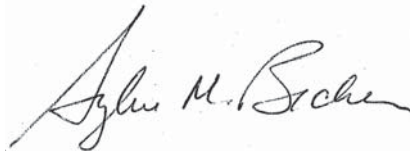
CONCLUSION

In sum, for the reasons discussed above and in the Proposed Decision, Claimant is not a “close relative[] of a decedent whose death formed the basis of a death claim compensated under the Claims Settlement Agreement,” within the meaning of the 2013 Referral. While we sympathize with all that Claimant has suffered, the claim is thus not compensable under Category E of the 2013 Referral Letter. Accordingly, the denial set forth in the Proposed Decision in this claim must be and is hereby affirmed. This constitutes the Commission’s final determination in this claim.

Dated at Washington, DC, February 12, 2016
and entered as the Final Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

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Counsel for Claimant: Joshua M. Ambush, Esq.
Joshua M. Ambush, LLC

PROPOSED DECISION

Claimant brings this claim against the Great Socialist People’s Libyan Arab Jamahiriya (“Libya”) for mental pain and anguish suffered as a result of the death of 5 U.S.C. §552(b)(6) (“decedent”), who was killed in the terrorist attack at Lod Airport in Israel on May 30, 1972 and who Claimant says was his fiancée. Although we are sympathetic to all that Claimant has endured, Claimant has not established that he is a “close relative” of the decedent as required under the terms of this program. Therefore, the claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant brings this claim against Libya for mental pain and anguish based on the killing of the decedent in the terrorist attack at Lod Airport in Israel on May 30, 1972. He alleges that he and the decedent had agreed to be married, that they had a very close

relationship, and that he was deeply affected by her death. He contends that he is thus entitled to compensation from Libya.

In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya. Included among those settled claims were all claims for mental pain and anguish based on wrongful death arising out of various terrorist attacks, including the one at Lod Airport. *See Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* (“Libyan Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008; *see also* Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). Thus, although Claimant had not brought a lawsuit against Libya, the U.S. and Libya settled any claim he might have had arising out of that terrorist attack. In October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission. *See* International Claims Settlement Act of 1949 (“ICSA”), 22 U.S.C. § 1623(a)(1)(C)(2012). The Secretary has delegated that authority to the State Department’s Legal Adviser, who, by letters dated December 11, 2008, January 15, 2009, and November 27, 2013, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

The third of these referral letters is at issue here. *See Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement*

Commission (“2013 Referral” or “November 2013 Referral”). One category of claims from the 2013 Referral, known as Category E, states as follows:

This category 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 under the Claims Settlement Agreement, provided that (1) the claimant was not a plaintiff 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 claim meets the standard adopted by the Commission for mental pain and anguish; and (4) the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral. . . .

Id. at ¶ 7. Attachment 1 to the 2013 Referral lists the suits comprising the Pending Litigation.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of this third Libya claims program pursuant to Title I of ICSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On June 3, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category E of the 2013 Referral, and on February 25, 2015, Claimant submitted additional evidence supporting his claim.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission’s jurisdiction here is limited to the category of claims defined in the 2013 Referral; namely, the claims of individuals who (1) are U.S. nationals; (2) were not a named party in any of the Pending Litigation cases listed in Attachment 1 to the 2013 Referral; (3) have a close relative whose death formed the basis of a death claim compensated under the Claims Settlement Agreement; (4) are not eligible for compensation from the associated wrongful-death claim, and did

not receive any compensation from the wrongful-death claim; and (5) have not received any compensation under any other distribution under the Claims Settlement Agreement and do not qualify for any other category of compensation under the 2013 Referral. 2013 Referral, *supra*, ¶ 7.

Nationality

This claims program is limited to “claims of U.S. nationals.” Here, this means that a claimant must have been a national of the United States continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, at 4 (2015).

Claimant satisfies this requirement. He has provided copies of his Puerto Rico birth certificate and his current U.S. passport. This evidence thus establishes that this claim was held by a U.S. national at the time the decedent was killed on May 30, 1972, and was so held continuously until the effective date of the Claims Settlement Agreement, August 14, 2008.

Pending Litigation

To be eligible for compensation under Category E of the 2013 Referral, the claimant must not have been a named party in any of the Pending Litigation cases listed in Attachment 1 to the 2013 Referral. 2013 Referral, *supra*, ¶ 7. Claimant has represented to the Commission under penalty of 18 U.S.C. § 1001, a statute akin to a perjury statute, and the Commission has verified, that the Claimant was not a named party in any of the Pending Litigation cases listed in Attachment 1 of the 2013 Referral. Claimant’s claim thus satisfies this requirement.

Death Claim Compensated Under the Claims Settlement Agreement

Category E of the 2013 Referral also requires that the death for which Claimant seeks mental-pain-and-anguish compensation have been the basis of a death claim

compensated under the Claims Settlement Agreement. Here, this element of jurisdiction has been satisfied: the Commission awarded compensation for the wrongful-death claim of Virgen Milagros Flores pursuant to an earlier referral letter under the same Claims Settlement Agreement. *See* Claim No. LIB-II-065, Decision No. LIB-II-043 (2011).

Other Compensation

Category E of the 2013 Referral is limited to claims where the claimant is not eligible for compensation from the associated wrongful-death claim; the claimant did not receive any compensation from the wrongful-death claim; the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement; and the claimant does not qualify for any other category of compensation under the 2013 Referral. 2013 Referral, *supra*, ¶ 7. Claimant here was not a beneficiary of the award made by the Commission in the wrongful-death claim arising out of Ms. Milagros Flores's death. *See* Claim No. LIB-II-065, Decision No. LIB-II-043, *supra*, at 4. Claimant has further represented under penalty of 18 U.S.C. § 1001, a statute akin to a perjury statute, that Claimant is not eligible for compensation from the associated wrongful-death claim; that Claimant did not receive any compensation from the wrongful-death claim; that Claimant has not received any compensation under any other distribution under the Claims Settlement Agreement; and that Claimant does not qualify for any other category of compensation under the 2013 Referral. The Commission has no reason to doubt these representations. Claimant thus satisfies these final jurisdictional requirements.

In summary, therefore, the Commission concludes that this claim is within the Commission's jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

Merits

Claimant Must Have Been Living at the Time of the 2013 Referral

To be eligible for compensation under Category E, the 2013 Referral states that a claimant must be a “living” close relative of a decedent. The Commission has previously held that in order to qualify for compensation under this category, a claimant must have been living as of the date of the relevant referral from the State Department as well as at the time of the incident which served as the basis of the Pending Litigation case and caused the mental pain and anguish. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 6. Claimant has satisfied this requirement, as evidenced by his birth certificate, and his signed and dated claim form.

Claimant Must Be a Close Relative of the Decedent

The 2013 Referral Letter also requires a Category E Claimant to be a “close relative” of a decedent. The Commission has previously held that the term “close relative” in this category of claims comprises those relatives who are immediate family to the decedent: spouses, children, parents, and siblings. Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 6-7. Claimant does not contend that he was the decedent’s spouse, child, parent or sibling. He argues, however, that he was her fiancé and that a fiancé should be considered within the degree of immediacy required to be considered a “close relative” for purposes of this program. In essence, he argues either that “fiancé” should be added to the list of close relatives or, put in slightly different terms, that, as decedent’s fiancé, he was effectively close enough to being her spouse that he should count as a “close relative” for purposes of this program. To support his claim, Claimant has submitted evidence to establish that he was in fact decedent’s fiancé. That evidence consists of his own affidavit as well as affidavits from decedent’s family members attesting to Claimant’s close relationship with the decedent, to the emotional harm he

suffered as the result of decedent's death, and that Claimant and decedent planned to get married.

In deciding claims, the Commission is directed to apply, in the following order, "the provisions of the applicable claims agreement" and "the applicable principles of international law, justice and equity." 22 U.S.C. § 1623(a)(2) (2012). The "applicable claims agreement" here is the Libyan Claims Settlement Agreement, but it contains nothing relevant on the question of who qualifies as a "close relative" of a decedent. Therefore, pursuant to the ICSA, the Commission must turn to "the applicable principles of international law, justice and equity" to define the term "close relative." In the trio of "international law, justice and equity," the Commission turns first to international law to determine whether a fiancé constitutes a "close relative" within the meaning of the 2013 Referral.

In previous decisions interpreting the term "close relative," including in this very category of claims, the Commission has consistently held that the term applies to those relatives who are immediate family to the decedent: "spouses, children, parents[,] and siblings." *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 6-7; *see also*, *e.g.*, Claim No. LIB-II-044, Decision No. LIB-II-001, at 6 (2010). If we were simply to apply this interpretation literally, Claimant would of course fail to satisfy the standard of a "close relative": he is not a spouse, child, parent, or sibling. However, in its first decision interpreting the term in one of the earlier Libyan claims programs, the Commission made clear that its holding was "for the limited purpose only of the unique parameters of Category B of this claims program, and without setting precedent for other categories or other claims programs." Claim No. LIB-II-044, Decision No. LIB-II-001, at 6. We did extend this interpretation to this very category of claims in this very claims program (i.e., Category E of this 2013 Referral), but that was in the context of a claim

from a decedent's sister. Since the Commission has not previously had to face the question of whether to expand the definition of "close relative" to include fiancés in any other mental-pain-and-anguish claim, we turn now to that question.

We hold that the term "close relative" for the purposes of Category E of the 2013 Referral does not encompass a fiancé, absent documentation of a legally recognized relationship. Two factors are of importance here. First, the sparse international-law authority we have found provides no support for expanding the definition to include fiancés. Second, in the specific context of adjudication before this Commission, which is non-adversarial, it is vital that eligibility for awards be tied, where possible, to objective and verifiable criteria. The category of fiancé is too open-ended to include within the definition of "close relative," particularly in the context of the facts of this claim. We emphasize, however, as we did in claims addressing the interpretation of "close relative" in an earlier Libyan claims program, that this holding is "for the limited purpose only of the unique parameters ... of this claims program and without setting precedent for ... other claims programs." *Id.*

First, our research has uncovered no compelling international-law authority defining "close relative" to include a fiancé in a program where claimants were able to file claims for additional compensation beyond the wrongful-death compensation paid to the decedent's estate. Nor have we identified any compelling international-law authority permitting fiancés to recover for mental pain and anguish. For example, in claims before the United Nations Compensation Commission ("UNCC"),¹ the UNCC determined that only spouses, children, and parents were eligible for compensation for wrongful death.

¹ The UNCC was created in 1991 as a subsidiary organ of the United Nations Security Council to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's 1990–1991 invasion and occupation of Kuwait.

Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category “B” Claims), S/AC.26/1994/1 (May 26, 1994); *Report and Recommendations Made by the Panel of Commissioners Concerning Part One the First Installment of Individual Claims for Damages Up To US \$100,000 (Category “C” Claims)*, S/AC.26/1994/3 (Dec. 21, 1994), at pages 16-18; *Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Installment of Individual Claims for Damages Above US \$100,000 (Category “D” Claims)*, S/AC.26/1998/1 (Feb. 3, 1998), at page 42.

Our reading of the term “close relative” is also consistent with the practice of the 9/11 Victims Fund, which, although not a source of international-law jurisprudence *per se*, has informed the Commission’s decisions in previous Libya claims programs.² Among the goals Congress had when establishing the 9/11 Victims Fund was to compensate the “relatives” of a deceased victim, a term that is, if anything, broader than the term “*close* relative” that we interpret here.³ Beyond the noneconomic damages awarded to the estate of all victims who died in the 9/11 attack, the Fund provided additional compensation to the decedents’ spouses and dependents.⁴ In determining who qualified as a victim’s spouse, the Fund limited recovery to “the person reported as spouse on the victim’s Federal tax return for the year prior to the year of the victim’s death.”⁵ Only “[m]arriage certificates, recent joint tax returns and other similar evidence

² See, e.g., Claim No. LIB-II-044, Decision No. LIB-II-001, *supra*, at 9-10.

³ Congress established the 9/11 Victims Fund “to provide compensation to any individual (or *relatives* of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001.” *Air Transportation Safety and System Stabilization Act*, Pub. L. No. 107-42, § 403, 115 Stat. 230, 237 (2001) (emphasis added). *Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001*, p. 40.

⁴ *Id.*

⁵ 28 CFR §104.3(c).

were accepted as presumptive proof of marriage.”⁶ Fiancés were thus not entitled to the non-economic damages specially targeted for spouses and dependents.

Second, limiting claims to those with a legally recognized relationship that can be proven with objective and verifiable evidence is important for the functioning of a non-adversarial process such as the Commission’s.⁷ The categories within our current interpretation of “close relative” (*i.e.* spouses, children, parents and siblings) can all be verified with relatively straightforward evidence of the legal relationship. In contrast, expanding the definition to include fiancés, at least those who do not have documentation of a legally recognized relationship with the decedent, could require the Commission to inquire into intimate personal details of the decedent’s relationships without any means of verifying those details.⁸ Claimant argues that the Commission should adopt a “functional approach” to define who is a family member, citing Section 46 of the Restatement (Third) of Torts: Physical and Emotional Harm. We disagree. For one, this “functional approach” to defining “close relative” does not appear to have any support in international law.⁹ Furthermore, this “functional approach” would open the door to not

⁶ *Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001*, p. 41

⁷ *Cf.* Claim No. LIB-II-039, Decision No. LIB-II-015, at 6-7 (2010); and Claim No. LIB-II-132, Decision No. LIB-II-049, at 6 (2012) (requiring medical documentation as objective and verifiable evidence to establish that a claimant suffered a physical injury).

⁸ *Cf.* Claim No. LIB-II-166, Decision No. LIB-II-172 (2013) (denying recovery when there was conflicting evidence about the identity of the decedent’s legal wife); *cf. also* Claim No. LIB-III-007, Decision No. LIB-III-008, at 7 (2014) (noting the presumption that all close relatives have suffered mental pain and anguish).

⁹ The Restatement of Torts is a restatement of *United States* law, and we are bound by statute to look to international law, not United States law. *See* 22 U.S.C. § 1623(a)(2)(B). Claimant notes that, in prior decisions in the Libya II Program, the Commission cited Section 46 of the *Second* Restatement of Torts, amongst other sources, in a footnote to support its definition of “close relative” as including spouses, children, parents and siblings. *See* Claim No. LIB-II-009, Decision No. LIB-II-007 (2009) at 6, n.3. Thus, Claimant argues, the Commission should now adopt the revised reasoning articulated in that same section of the *Third* Restatement. Although Claimant is correct that the Commission cited a domestic source (*i.e.*, the *Second* Restatement), the same footnote includes citations from several international-law decisions. The reference to the *Second* Restatement merely provided additional support for the Commission’s interpretation of the term “close relative.” Moreover, the provision of the Restatement cited by Claimant does not apply here, as it covers only situations in which the person seeking recovery “contemporaneously perceive[d] the event.” Restatement (Third) of Torts: Physical and Emotional Harm Sec. 46 comment m.

only fiancés but also others who have purportedly “close” relationships with a decedent. This would make the determination of who is a “close relative” subjective and less certain, thereby making the adjudication of claims programs more difficult, and potentially increasing the risk of exaggeration, fraud and abuse.¹⁰

The evidence Claimant has submitted to support his claim illustrates the difficulty of relying on criteria that are not objectively verifiable with concrete documentation. In his Statement of Claim form, Claimant states that he was “in essence the [decedent’s] spouse” He offers no evidence of a formal, legally recognizable marital state, such as a marriage certificate, a joint tax return, or indicia of a common law marriage.¹¹ The evidence Claimant submitted does suggest a close relationship between Claimant and the decedent and describes the pain Claimant suffered as a result of the decedent’s death. However, Claimant and the decedent, who were only 21 years old when the decedent was killed, did not cohabit, did not have children together, and did not own property together. Nor had they set a specific wedding date. Weighing various facts of this sort to determine how close Claimant and decedent were, in the absence of affirmative evidence

¹⁰ Even if the Commission were to apply U.S. law, it is an open question as to whether a fiancé could recover for this type of claim. *See, e.g., Surrette v. Islamic Republic of Iran*, 231 F. Supp. 2d 260, 270 (D.D.C. 2002) (“Although the Court is not aware of any case brought under the FSIA in which a court has awarded solatium damages to a victim’s partner to whom he or she is not legally married, the Court nonetheless concludes that such an award is appropriate in this case. This result is justified by the nature and closeness of the relationship between [Plaintiff] and [decedent] *for over twenty years, a bond that was the functional equivalent of a legal marriage.*) (emphasis added); *Holland v. Islamic Republic of Iran*, 496 F.Supp.2d 1 (D.D.C. 2005) (only surviving spouse and minor children had viable causes-of-action against Iran for the wrongful death of American serviceman killed by suicide bombing of a United States Marine barracks in Beirut, Lebanon; because serviceman was not a minor at the time of his death, his parents could not recover, and because servicemen left children surviving him, his sister did not qualify); and *Jenco v. Islamic Republic of Iran*, 154 F. Supp.2d 27, 36, n.8 (D.D.C. 2001) (limiting recovery under tort of intentional infliction of emotional distress to “immediate family” and defining “immediate family” as spouses, parents, siblings and children). *See also Williams v. City of Minneola*, 575 So.2d 683, 690 (Fla. App. 1991) (holding that only spouses, children, parents and siblings can sue for the tort of intentional infliction of emotional distress).

¹¹ Frequently someone with a legally recognized marital relationship with a decedent would be a beneficiary of the decedent’s estate. Claimant was not a beneficiary of decedent’s estate, an estate to which the Commission awarded \$10 million in an earlier Libya claims program. *See* Claim No. LIB-II-065, Decision No. LIB-II-043, *supra*, at 4. This is yet another reason suggesting that Claimant had no legally cognizable spousal relationship with the decedent.

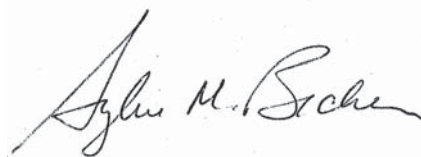
of a marital or comparable status, would complicate the eligibility criteria for a category of claims that is better seen as delineating a fixed-sum recovery for a specific set of individuals related to decedent by law. In short, Claimant may well have been “close” to the decedent, but he was not her “close *relative*” within the meaning of that phrase in Category E of the 2013 Referral.

Accordingly, while the Commission sympathizes with all that Claimant has suffered, the Commission is constrained to conclude that the claim is not compensable under Category E of the 2013 Referral Letter. Therefore, this claim must be, and hereby is, denied.

Dated at Washington, DC, May 12, 2015
and entered as the Proposed Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery 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 delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2014).