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-III-094 Decision No. LIB-III-036

Counsel for Claimant: Israel Melendez, Esq.
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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 her half-brother, 5 U.S.C. §552(b)(6) ("decedent"), who was killed in the terrorist attack at Lod Airport in Israel on May 30, 1972. Because Claimant has established that she is Mr. 5 U.S.C. §552(b)(6) living close relative and satisfies all other legal requirements entitling her to an award of compensation from this Commission, she is entitled to an award of $200,000.00.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that her half-brother was killed in the terrorist attack at Lod Airport in Israel on May 30, 1972, and that Claimant had a close relationship with him and was deeply affected by his death. She says she 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* ("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 she 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, and January 15, 2009, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

On March 15, 2010, the Claimant filed a claim under Categories B and C of the January 15, 2009 State Department referral letter.[1] However, those categories of claims only covered claimants who had been plaintiffs in the Pending Litigation cases listed in an appendix to the 2009 Referral. As Claimant had not been a plaintiff in any of those

[1] *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* ("2009 Referral").

Pending Litigation cases, she withdrew those claims. On May 27, 2010, she filed a new claim under Category E of the 2009 Referral, a category that did not require claimants to have been a plaintiff in one of the Pending Litigation cases. The Commission denied this claim because while Category E of the 2009 Referral included claims for wrongful death arising out of the Lod Airport attack, 5 U.S.C. §552(b)(6) wrongful-death claim had already been paid by the U.S. Department of State to 5 U.S.C. §552(b)(6) estate. *See* Claim No. LIB-II-070, Decision No. LIB-II-035 (2011).

The Legal Adviser subsequently referred an additional set of claims to the Commission on November 27, 2013.[2] One category of claims, 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. We believe and recommend that a fixed amount of $200,000 would be an appropriate level of compensation for a claim that meets the applicable standards under this Category.

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*,

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[2] *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").

78 Fed. Reg. 75,944 (2013). The Claimant subsequently filed a completed Statement of Claim seeking compensation under Category E of the 2013 Referral and evidence supporting that 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 referred to in Attachment 1 of 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. She has provided, among other documents, copies of her Puerto Rico birth certificate and her current U.S. passport. This evidence establishes that this claim was held by a U.S. national at the time 5 U.S.C. §552(b)(6) was killed on May 30, 1972, and was so held continuously until the effective date of the Claims Settlement Agreement.

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 of the 2013 Referral. 2013 Referral, *supra*, ¶ 7. Claimant and her counsel have 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 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 State Department awarded compensation for the wrongful-death claim of Claimant's half-brother under the Claims Settlement Agreement. *See* Claim No. Claim No. Claim No. LIB-II-070, Decision No. LIB-II-035, *supra* at 3-5.

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 and her counsel have represented under penalty of 18 U.S.C. § 1001 that Claimant is not eligible for compensation from the associated wrongful-death claim; that she did not receive any compensation from the wrongful-death claim; that she has not received any compensation under any other

distribution under the Claims Settlement Agreement; and that she does not qualify for any other category of compensation under the 2013 Referral. The Commission has no reason to doubt these representations.[3] 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 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 her birth certificate, and her 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, in this category of claims, the term "close relatives" comprises 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. The Commission has also previously held that when interpreting the term "close relatives" in this category of claims, the term "siblings" includes half-siblings who demonstrate they had the same familial relationship to the

[3] *Cf.* Claim No. LIB-II-070, Decision No. LIB-II-035, *supra* at 6, fn. 6.

decedent as that generally associated with the relationship between full biological siblings. *See* Claim No. LIB-III-027, Decision No. LIB-III-017 at 6-7 (2015). *Cf.*, Claim No. LIB-III-010, Decision No. LIB-III-012 at 6-7 (2015); Claim No. LIB-II-059, Decision No. LIB-II-075 at 5 (2011).

Claimant has established that she was 5 U.S.C. §552(b)(6) half-sister, as evidenced by the Claimant's birth certificate and 5 U.S.C. §552(b)(6) birth certificate, which list the same father. As described in more detail in the next section, in addition to the documentary evidence submitted showing her relationship to 5 U.S.C. §552(b)(6) Claimant has also provided evidence that she had a close, sibling relationship with him. We thus find that she meets the requirement that she be a "close relative" of the decedent.

Mental Pain and Anguish Standard

The 2013 Referral Letter requires that a claim meet "the standard adopted by the Commission for mental pain and anguish." 2013 Referral ¶ 7. In adjudicating claims under this category of the 2013 Referral, the Commission has presumed that all spouses, children, parents, and full siblings of a decedent suffered mental pain and anguish. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 7. While Claimant does not enjoy this presumption because she was 5 U.S.C. §552(b)(6) *half*-sister, she has provided compelling evidence, including a newspaper article with a picture of Claimant at 5 U.S.C. §552(b)(6) funeral. She has also provided her own affidavit describing her close relationship with 5 U.S.C. §552(b)(6) Claimant has thereby provided evidence of her close, sibling relationship with the decedent and has thus satisfied the standard adopted by the Commission for mental pain and anguish. *See* Claim No. LIB-III-027, Decision No. LIB-III-017, *supra* at 7; *see also,* Claim No. LIB-III-010, Decision No. LIB-III-012, *supra,* at 7.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation. The 2013 Referral recommends a fixed amount of $200,000 for claims that meet the applicable standard under Category E. 2013 Referral, *supra* ¶ 7. This is the same fixed amount that was recommended for compensable claims in the two other mental-pain-and-anguish categories of these Libyan claims programs, Category B of the 2013 Referral and Category B of the 2009 Referral. In its first decision addressing compensation for mental pain and anguish under the 2009 Referral, the Commission carefully reviewed its prior claims programs, as well as those of other tribunals and commissions that had adjudicated wrongful-death claims, including the September 11th Victim Compensation Fund of 2001. The Commission noted the nature and tragedy of the events associated with the Pending Litigation cases and determined that $200,000 was an appropriate amount of compensation for mental-pain-and-anguish claims. *See* Claim No. LIB-II-044, Decision No. LIB-II-001, at 9-10 (2010). This fixed sum was therefore awarded to all claimants under the 2009 Referral with compensable mental-pain-and-anguish claims. The same $200,000 fixed amount has been awarded to all other mental-pain-and-anguish claims in the 2013 Referral, *see* Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 7-9, including in other Category E claims, *see* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 7-8. The Commission has also previously determined, based on consideration of the applicable principles of international law and its own precedent, that it will not award interest in this category of claims. *Id.* Accordingly, Claimant is entitled to an award of $200,000.00, and this amount constitutes the entirety of the compensation to which the Claimant is entitled in the present claim.

Claimant argues that she should be awarded more than the $200,000 awarded to all other mental-pain-and-anguish claimants because it has been so long since her half-brother's death and her pain continues; the media coverage of the death was traumatic; the nature of the death was shocking; and Claimant has made considerable effort to pursue compensation. The Commission has previously addressed similar situations and rejected similar arguments made by other mental-pain-and-anguish claimants. *See, e.g.*, Claim No. LIB-III-010, Decision No. LIB-III-012, *supra*, at 8-9; Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 8-9; Claim No. LIB-II-125, Decision No. LIB-II-022 at 4-5 (2012).[4]

Claimant also argues that she should be awarded greater compensation than has been awarded to other mental-pain-and-anguish claimants because 5 U.S.C. §552(b)(6) full siblings "were compensated in a much higher amount under the Libya Claims Program." Claimant has not provided us with any evidence about the amounts 5 U.S.C. §552(b)(6) full siblings each received, and we have no other information about those amounts, because none of his full siblings have ever been before the Commission. The only payment related to 5 U.S.C. §552(b)(6) death of which we are aware is a $10 million payment made by the State Department to 5 U.S.C. §552(b)(6) estate. If 5 U.S.C. §552(b)(6) full siblings received more than $200,000 (and, we reiterate, we have no evidence to that effect), we can only presume those payments were made because they were heirs of 5 U.S.C. §552(b)(6) estate. *See* Claim No. LIB-II-070, Decision No. LIB-II-035, *supra* at 6. Moreover, in contrast to this mental-pain-and-anguish claim, the $10 million covered any and all claims of 5 U.S.C. §552(b)(6) estate and the heirs, including, among others, the wrongful-death claim, not just mental-pain-and-anguish claims. The amount of compensation that 5 U.S.C. §552(b)(6) full siblings may have

[4] *Cf.* Claim No. LIB-II-042, Decision No. LIB-II-018, Order dated April 15, 2013.

received from that payment is therefore not a basis for awarding additional compensation in this claim. In rejecting Claimant's arguments for additional compensation, we do so understanding that no amount of money can truly "compensate" for the death of a loved one in such horrific circumstances.

In sum, we conclude that Claimant is entitled to an award of $200,000.00. The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27 (2012).

AWARD

Claimant is entitled to an award in the amount of Two Hundred Thousand Dollars ($200,000.00).

Dated at Washington, DC, October 15, 2015
and entered as the Proposed Decision
of the Commission.

This decision was entered as the Commission's Final Decision on

January 4, 2016

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).