

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579**

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-II-097
	}	
	}	Decision No. IRQ-II-002
Against the Republic of Iraq	}	
	}	

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq violated international law when a car with an Iraqi military plate hit him while he was in Kuwait City during the 1990-91 Iraqi occupation of Kuwait. Because Claimant was not a U.S. national at the time, however, this Commission lacks jurisdiction over his claim. For this reason, his claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that, on October 28, 1990, during the Iraqi occupation of Kuwait, he was hit by a car with an Iraqi military license plate while he was waiting at a gas station in Kuwait City. Claimant further alleges that as a result he suffered physical injuries to his right leg and back, spent four days in the hospital, subsequently needed to use a walker and then a cane, and still suffers pain related to the injuries.

A number of plaintiffs sued Iraq (and others) in federal court for, among other things, assaults alleged to have occurred during the 1990-91 Iraqi occupation of Kuwait.¹ Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.² The Agreement, which entered into force in May 2011, covered a number of personal injury claims of “U.S. nationals” arising from acts of the former Iraqi regime occurring prior to October 7, 2004, including certain physical-injury claims.³ The Agreement defined “U.S. nationals” as “natural and juridical persons who were U.S. nationals at the time their claim arose and through the date of entry into force of this Agreement.”⁴

Under the International Claims Settlement Act of 1949 (“ICSA”), the Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission.⁵ The Secretary has delegated that authority to the State Department’s Legal Adviser, who, by letter dated October 7, 2014, referred three categories of claims to this Commission for adjudication and certification.⁶ This was the State Department’s second referral of claims to the Commission under the Iraq Claims Settlement Agreement.

One category of claims from the 2014 Referral is relevant here. That category, known as Category C, consists of

¹ See, e.g., *Seyam v. Republic of Iraq*, No. 1:03-cv-00888 (D.D.C.); *Simon v. Republic of Iraq*, No.1:03-cv-00691.

² See *Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 (“Claims Settlement Agreement” or “Agreement”).

³ *Id.* art. III(1)(a)(ii).

⁴ *Id.* art. I(2).

⁵ See 22 U.S.C. § 1623(a)(1)(C) (2012).

⁶ See *Letter dated October 7, 2014, 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* (“2014 Referral” or “October 2014 Referral”).

claims of U.S. nationals for any personal injury resulting from physical harm to the claimant caused by Iraq in violation of international law prior to October 7, 2004, provided that the claimant: 1) had pending litigation against Iraq arising out of acts other than hostage taking; 2) has not already been compensated pursuant to the Claims Settlement Agreement; and 3) does not have a valid claim under and has not received compensation pursuant to Category B of this referral. If the Commission decides to award compensation for these claims, we recommend that the Commission award an amount commensurate with the injury but no more than \$1 million per claim.

2014 Referral at ¶ 5.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSCA and the 2014 Referral. *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (2014).

On September 4, 2015, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category C of the 2014 Referral, together with exhibits to support the elements of his claim.

DISCUSSION

This Commission's authority to hear claims—known in the legal vernacular as its “jurisdiction”—is limited to the category of claims referred to it by the United States Department of State.⁷ Here, therefore, we must look to the language of the “Category C” paragraph of the 2014 Referral to determine our jurisdiction. That language limits our jurisdiction to claims of (1) “U.S. nationals,” provided that the claimant (2) had pending litigation against Iraq arising out of acts other than hostage taking; (3) has not already been compensated pursuant to the Claims Settlement Agreement; and (4) does not have a

⁷ See 22 U.S.C. § 1623(a)(1)(C) (2012).

valid claim under and has not received compensation pursuant to Category B of the same 2014 Referral. 2014 Referral ¶ 5.

This claim fails to satisfy the first requirement—that it be brought by a “U.S. national.” The term “U.S. national” has a specific legal meaning in this context. When the Commission interprets terms such as “U.S. national,” Congress has directed us to look first to “the provisions of the applicable claims agreement.”⁸ Here, that means we must turn first to the Claims Settlement Agreement. That Agreement expressly provides a definition of “U.S. nationals.” Article I of the Agreement states that “[r]eference to ‘U.S. nationals’ shall mean natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement.”⁹ As the Commission has recognized in its previous decisions, the U.S. nationality requirement in these Iraqi claims programs thus means that a claimant must have been a national of the United States when the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force.¹⁰

According to the documents that Claimant has submitted in this claim, he was not a U.S. national on October 28, 1990, when his claim arose. U.S. nationality can be acquired “only by birth or by naturalization under the process set by Congress.”¹¹ Here, Claimant has submitted a naturalization certificate indicating that he did not become a U.S. citizen until October 5, 1994—nearly four years after Iraq allegedly caused him physical harm. Thus, the evidence establishes that Claimant was not a U.S. citizen when

⁸ 22 U.S.C. § 1623(a)(2) (2012).

⁹ Claims Settlement Agreement, art. I(2) (emphasis added).

¹⁰ See Claim No. IRQ-I-005, Decision No. IRQ-I-001(Proposed Decision), at 5-6 (2014).

¹¹ See Claim No. IRQ-II-322, Decision No. IRQ-II-001 at 5 (Proposed Decision) (2016); see also Claim No. LIB-I-044, Decision No. LIB-I-017 (Final Decision), at 7 (2011) (*citing Abou-Haidar v. Gonzalez*, 437 F.3d 206, 207 (1st Cir. 2006)).

the claim arose and is thus not a “U.S. national” within the meaning of the Claims Settlement Agreement and 2014 Referral.

Therefore, the Commission is constrained to conclude that it has no jurisdiction to decide the present claim under the 2014 Referral. In other words, the Commission has no authority or power to decide the merits of this claim. Accordingly, this claim must be and is hereby denied for lack of jurisdiction. The Commission makes no determinations about any other aspect of this claim.

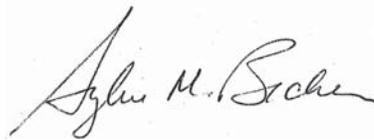
Dated at Washington, DC, June 1, 2016
and entered as the Proposed Decision
of the Commission.

**This decision was entered as the
Commission’s Final Decision on**

July 18, 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) (2015).