

III-044, Decision No. LIB-III-044 (2016) (“Initial Proposed Decision”), and Claim Nos. LIB-III-036 et al., Decision No. LIB-III-045 (2016) (“Consolidated Proposed Decision”). Because Claimant Estate has not provided evidence or argument sufficient to undermine the Proposed Decision, we affirm the denial of this claim.

BACKGROUND

Together with a group of other claimants known collectively as the Abbott Group, Claimant Estate brought this claim against Libya under Category F of the November 27, 2013 letter from the State Department’s Legal Adviser referring several categories of claims against Libya to this Commission (“2013 Referral”). Category F of the 2013 Referral consists of “commercial claims of U.S. nationals provided that (1) the claim was set forth by a claimant named in *Abbott et al. v. Socialist People’s Libyan Arab Jamahiriya* (D.D.C.) 1:94-cv-02444-SS; and (2) the Commission determines that the claim would be compensable under the applicable legal principles.”¹

Like the other Abbott Group claimants, Claimant Estate alleges that the 1988 Lockerbie bombing ultimately forced Pan Am to cease operations and liquidate in December 1991, resulting in Mr. Wentz losing his job as a pilot for the airline, which in turn caused him to lose several years’ worth of income and benefits that he otherwise would have earned. Claimant Estate asserts that, but for the terrorist bombing, Pan Am would have continued operations, and Mr. Wentz would have continued to work for Pan Am.

The Commission denied the claim in a Proposed Decision dated August 16, 2016, concluding that Claimant Estate had failed to establish that it had standing to bring the claim (“Proposed Decision”). The Commission further determined that Claimant Estate

¹ 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 ¶ 8.

had failed to satisfy the requirement that the claim must have been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement. Finally, the Commission concluded that even if Claimant Estate had standing and had established continuous nationality, it would deny the claim for the same reasons set forth in the Initial Proposed Decision and the Consolidated Proposed Decision: (1) Claimant Estate had failed to demonstrate that its claim was not extinguished by a 2005 Settlement Agreement between Pan Am and Libya; and (2) it had failed to demonstrate that the Lockerbie bombing caused Mr. Wentz's job loss.

On August 19, 2016, Claimant Estate submitted several documents that it asserts address its standing to bring this claim. These include an undated application to admit to probate Mr. Wentz's November 17, 1983 will that was submitted by Rose A. Wentz, the decedent's now-deceased wife, to the Warren County Surrogate's Court; an affidavit dated December 8, 2000 sworn by officers of Chase Manhattan Bank, N.A. renouncing the office of co-executor of Mr. Wentz's estate; a will statement and executor deposition dated January 2, 2001 submitted by Rose A. Wentz to the Warren County Surrogate's Court; a judgment issued on January 2, 2001 by the Warren County Surrogate's Court that admits Mr. Wentz's will to probate and issues letters testamentary to Rose A. Wentz; letters testamentary issued to Rose A. Wentz by the Warren County Surrogate's Court on January 2, 2001 and an annex thereto containing Mr. Wentz's will dated November 17, 1983; a document titled "Acceptance of Testamentary/Trusteeship" sworn by Rose A. Wentz and Beth L. Wentz on June 26, 2002 that declares their acceptance of the trusteeship set forth in the Mr. Wentz's will; a document titled "Authorization To Accept Service of Process Testamentary/Trusteeship" sworn by Rose A. Wentz and Beth L. Wentz on June 26, 2002 that authorizes then Warren County Surrogate Susan L. Dickey and her successors to

accept service of process on behalf of the estate to which they were trustees; and a document titled “Letter of Trusteeship” that was issued by the Warren County Surrogate’s Court on June 28, 2002 and that authorizes Rose A. Wentz and Beth L. Wentz to execute the trust established in Mr. Wentz’s will.

On September 13, 2016, Claimant Estate filed a notice of objection and requested an oral hearing. The notice of objection stated that the supplemental documentation Claimant Estate had provided established that it had standing to pursue the claim and that it satisfied the requirement of continuous U.S. nationality. The notice of objection also incorporated by reference the notice of objection filed by the Abbott Group claimants whose claims were addressed on the merits in the Consolidated Proposed Decision. One month later, on October 14, 2016, Claimant Estate’s counsel submitted two additional documents to the Commission: a document that it asserts is the complete copy of Rose A. Wentz’s last will and testament and a document dated November 17, 1983 that it asserts it a complete copy of Mr. Wentz’s last will and testament.

On November 23, 2016, the Abbott Group claimants, including Claimant Estate, filed a Hearing Brief on behalf of all claimants who had filed objections to their respective Proposed Decisions. The brief included numerous exhibits. The Commission then held an eight-hour consolidated hearing on the objections of all Abbott Group claimants on December 14, 2016 at the E. Barrett Prettyman Federal Courthouse in Washington, D.C. Several witnesses testified at the hearing.²

DISCUSSION

First, Claimant Estate has failed to establish that it has standing to bring this claim.

² The evidence and argument presented in the Hearing Brief and Objection Hearing, as well as two additional exhibits submitted after the hearing, are more fully detailed in our Final Decision affirming the Consolidated Proposed Decision in Claim Nos. LIB-III-036 *et al.*, Decision No. LIB-III-045 (2018).

As the Commission made clear in the Proposed Decision, in the case of claims brought on behalf of deceased individuals, a claimant must provide the Commission with evidence that he or she is legally entitled to bring the claim. *See* Proposed Decision (citing *Claim of ESTATE OF ELIZABETH L. ROOT, DECEASED; JAMES G. ROOT & DAVID H. ROOT, PERSONAL REPRESENTATIVES*, Claim No. LIB-II-040, Decision No. LIB-II-026 (2011)). In the present claim, Claimant Estate has sought to establish its standing as representative of Mr. Wentz’s estate by submitting a number of documents concerning the administration of the decedent’s estate and testamentary trusts that it asserts demonstrate that the decedent’s three adult daughters “can rightfully pursue” the claim after the death of Rose A. Wentz, who had been appointed executrix of the decedent’s estate by the Warren County Surrogate’s Court on January 2, 2001. These documents do not, however, establish that letters testamentary have been provided in the name of a successor executor to Mr. Wentz’s estate. Therefore, because this claim is not being brought by a legally authorized estate representative, the Commission must deny the claim.³

Moreover, even if a legally authorized estate representative had brought this claim, it would have also failed to have met its burden of proving that the alleged harm is compensable under the applicable legal principles, as required under Category F of the 2013 Referral. We considered this exact question in our Final Decision in Claim Nos. LIB-III-036, *et al.*, Decision No. LIB-III-045 (2018) (Final Decision). That decision involved most of the other Abbott Group claimants and was based on allegations, evidence, and legal arguments identical to those relied on by Claimant Estate here. In that decision, we denied

³ As noted above, Claimant Estate’s claim was also denied for failure to satisfy the requirement of continuous U.S. nationality. On objection, Claimant Estate sought to remedy this shortcoming with additional evidence that included proof of citizenship of the decedent’s heirs and various probate documents relating to the decedent’s estate. Because the Commission denies this claim for lack of standing, however, the Commission need not and does not make any determination as to whether this new evidence is sufficient to establish continuous nationality.


the claims of those other Abbott Group claimants. If a legally authorized estate representative had brought this Claim, we would thus have denied it for the same reasons stated in that decision, which we incorporate by reference.

In sum, this Claim must be, and hereby is, denied. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, January 16, 2018
and entered as the Final Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

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

In the Matter of the Claim of	}	
	}	
	}	
	}	
ESTATE OF RICHARD L. WENTZ, DECEASED	}	Claim No. LIB-III-064
	}	
	}	Decision No. LIB-III-049
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joanne W. Young, Esq. Kirstein & Young, PLLC
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PROPOSED DECISION

Claimant Estate brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based on economic losses that Richard L. Wentz allegedly sustained as a result of the bombing of Pan Am Flight 103 over Lockerbie, Scotland, on December 21, 1988. Claimant Estate alleges that the bombing ultimately forced Pan American World Airways, Inc. ("Pan Am") to cease operations nearly three years later, resulting in Mr. Wentz losing his job as a pilot for the airline, which in turn caused him to lose several years' worth of income and benefits that he otherwise would have earned. Claimant Estate asserts that, but for the terrorist bombing, Pan Am would have continued operations, and Mr. Wentz would not have lost his employment and suffered the losses which the Estate now claims. Because Mr. Wentz had died on August 30, 2000, the claim was initially filed in the name of Mr. Wentz's widow and legal representative of the estate, Rose Wentz. Following Ms. Wentz's own death on June 24, 2016, counsel

filed three additional Statements of Claim, one for each of the Wentzes' three children; however, the Estate has not provided evidence of a legal representative to represent it before the Commission. Moreover, Claimant Estate has not satisfied the requirement of continuous U.S. nationality. Therefore, this claim is denied.¹

BACKGROUND AND BASIS OF CLAIM

On December 21, 1988, Pan Am Flight 103, en route from London to New York, exploded in the skies over Lockerbie, Scotland. A Scottish court later found a Libyan intelligence agent guilty of murder for the bombing. Claimant Estate states that, at the time of the bombing, Mr. Wentz was a pilot for Pan American World Airways, Inc. ("Pan Am"). It alleges that "[t]his act of Libyan terrorism ultimately closed [Pan Am] on December 4, 1991[]"—nearly three years after the bombing. As a result, it claims, "the bombing ended [Mr. Wentz's] professional career[] . . . result[ing] in the immediate loss of income" as well as "substantially all [of his] pension and medical benefits."

Mr. Wentz and a number of other former Pan Am flight crew members sued Libya and others in United States federal court in 1994 for, *inter alia*, tortious interference with contractual relations and tortious interference with advantageous business relations.² Libya was dismissed from the case on jurisdictional grounds in 1995.

In 1993, Pan Am too had sued Libya, though in Scotland, for both the destruction of its aircraft as well as a variety of other direct and consequential damages allegedly suffered because of the Lockerbie bombing. Among the claims Pan Am made was one based on a theory of causation similar to that advanced by the Claimant Estate here—that

¹ Under Commission regulations, where, as here, an estate representative fails to qualify for substitution following the death of an individual claimant, the Commission may issue its decision in the name of the estate of the deceased. *See* 45 C.F.R. § 509.5(j)(1) (2015). Accordingly, this Proposed Decision is issued in the name of the ESTATE OF RICHARD L. WENTZ, DECEASED.

² *See Abbott v. Socialist People's Libyan Arab Jamahiriya*, No. 1:94cv2444 (D.D.C.).

the Lockerbie bombing caused Pan Am to go out of business. In 2005, Pan Am and Libya settled that case.

A few years later, in August 2008, the United States and Libya concluded an agreement (the “Claims Settlement Agreement”) that settled numerous claims of U.S. nationals against Libya, including claims “aris[ing] from . . . property loss caused by . . . aircraft sabotage . . . or the provision of material support or resources for such an act”³ Two months later, 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.⁴

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission.⁵ The Secretary 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.

It is the third of those referral letters, the 2013 Referral, that is relevant here.⁶ In particular, one of the 2013 Referral’s categories of claims, Category F, is at issue in this case. That category consists of “commercial claims of U.S. nationals provided that (1) the claim was set forth by a claimant named in *Abbott et al. v. Socialist People’s*

³ *Claims Settlement Agreement Between the United States of America and the Great Socialist People’s Libyan Arab Jamahiriya* Art. I (“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).

⁴ *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

⁵ *See* International Claims Settlement Act of 1949 (“ICSA”), 22 U.S.C. § 1623(a)(1)(C) (2012).

⁶ *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”).

Libyan Arab Jamahiriya (D.D.C.) 1:94-cv-02444-SS; and (2) the Commission determines that the claim would be compensable under the applicable legal principles.”⁷

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of the third Libya Claims Program pursuant to the ICOSA and the 2013 Referral.⁸

On June 11, 2014, the Commission received from Claimant Estate a completed Statement of Claim seeking compensation under Category F of the 2013 Referral, together with exhibits supporting the elements of its claim.

DISCUSSION

Standing

Claimants before the Commission must establish their standing as the proper claimants in their claims. *Claim of ESTATE OF ELIZABETH L. ROOT, DECEASED; JAMES G. ROOT & DAVID H. ROOT, PERSONAL REPRESENTATIVES*, Claim No. LIB-II-040, Decision No. LIB-II-026 (2011). In the case of claims brought on behalf of deceased individuals, a claimant must provide the Commission with evidence that he or she is legally entitled to bring the claim. Claim Nos. LIB-II-113 & LIB-II-117, Decision No. LIB-II-177 (2012) (Proposed Decision).

Claimant Estate has failed to establish it has standing. Mr. Wentz died on August 30, 2000. As evidence of this, Claimant Estate has provided a certified copy of Mr. Wentz’s death certificate. The Commission staff mailed two letters to counsel of record, on February 6, 2015, and November 9, 2015, requesting that she provide for estate claims, such as the present claim, legal proof of the identity of the personal representative (e.g., letters testamentary or letters of administration issued by the appropriate court or

⁷ 2013 Referral, *supra* note 6, at ¶ 8.

⁸ *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

judge as proof of the representative's authority to act on behalf of the estate). In response, Counsel submitted a Certificate from the Warren County, New Jersey, Surrogate's Court, issuing letters testamentary to Rose A. Wentz on June 28, 2002,. However, now that Ms. Wentz has also died, she can no longer be the Executrix of Mr. Wentz's estate. As yet, no letters testamentary have been provided in the name of a successor executor to Mr. Wentz's estate. Accordingly, the Commission determines that this claim is not being brought by a legally authorized estate representative. On this basis alone, the claim must fail.

Nationality

This claims program is limited to "claims of U.S. nationals." Here, that 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.⁹ 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 party 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.¹⁰ To meet this requirement, Claimant Estate has provided, *inter alia*, a copy of Mr. Wentz's birth certificate and cancelled U.S. passport (valid from January 1983 to January 1993), which together

⁹ See Claim No. LIB-III-001, Decision No. LIB-III-001, at 5-6 (2014).

¹⁰ See, e.g., *Claim of ESTATE OF ELIZABETH ROOT, DECEASED*, Claim No. LIB-II-040, Decision No. LIB-II-026, at 5 (2011); *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).

evidence his birth in the United States and continuous U.S. nationality until his death; Mr. Wentz's death certificate, evidencing his death on August 30, 2000; a copy of Rose Wentz's birth certificate and U.S. passport valid from May 2006 to May 2016; a copy of Ms. Wentz's death certificate, evidencing her death on June 24, 2016; and a non-probated copy of Mr. Wentz's last will and testament, dated November 17, 1983.

The Certificate issuing letters testamentary issued to Rose Wentz on June 28, 2002, authorizing her to administer the estate of her late husband, simultaneously indicates that probate was granted on January 2, 2001. However, the Certificate does not identify the will by date, and the copy of Mr. Wentz's will provided to the Commission does not bear a stamp or seal from the probate court. Because the will provided was executed nearly seventeen years before Mr. Wentz's death, it might well have been revoked or amended in the meantime. There is thus no way to be sure that the copy of the will submitted is in fact the will referenced in the 2002 Certificate. Claimant has thus failed to establish the identity of Mr. Wentz's legal heirs. Without knowing who Mr. Wentz's legal heirs are,, the Commission is therefore unable to determine if this claim has been held continuously by U.S. nationals.

Section 509.5(b) of the Commission's regulations provides:

The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.¹¹

The Commission is accordingly constrained to conclude that the Claimant Estate has failed to meet its burdens to establish that the claim is being brought by a legally authorized estate representative and that the claim has been continuously owned by U.S. nationals.

¹¹ 45 C.F.R. 509.5(b) (2015).

Finally, in the interests of adjudicative efficiency and economy, the Commission also notes that, even if it had jurisdiction and were to assess the claim, Claimant Estate would have failed in its burden of proving that the alleged harm is compensable under the applicable legal principles, as required under Category F of the 2013 Referral.¹² The Commission has previously decided the claims of other members of the *Abbott* litigation group in Claim No. LIB-III-044, Decision No. LIB-III-044 (2016) (Proposed Decision), and Claim Nos. LIB-III-036, *et al.*, Decision No. LIB-III-045 (2016) (Proposed Decision). The relevant facts, evidence, and legal arguments submitted in those claims are identical to the record relied on by Claimant Estate here. Accordingly, even assuming Claimant Estate were to have established the other jurisdictional elements of its claim under the 2013 Referral,¹³ we would deny Claimant Estate's claim for the reasons explained more fully in the above-referenced claims, which we incorporate by reference: First, Claimant Estate has failed to establish that its claim was not extinguished by the 2005 settlement of the lawsuit Pan Am brought against Libya in Scotland, and, second, it has failed to prove that the bombing of Pan Am Flight 103 was the proximate cause of Mr. Wentz's economic harm. Therefore, this claim must be, and hereby is, denied.

¹² The Commission has previously addressed the merits of a claim, notwithstanding the claimant's failure to establish the jurisdictional bases for its claim, in the interests of adjudicative efficiency and economy. *See, e.g., Claim of SUBROGATED INTERESTS TO PAN AMERICAN WORLD AIRWAYS, INC.*, Claim No. LIB-II-171, Decision No. LIB-II-161 (2012), 20 note 17 (Proposed Decision); *Claim of JERKO BOGOVICH*, Claim No. Y-1757, Decision No. Y-857 (1954).

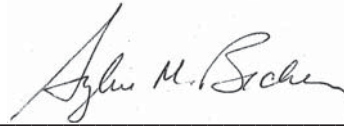
¹³ The 2013 Referral requires Claimant Estate to show, in addition to the standing and continuous nationality requirements discussed above, that this claim is a "commercial claim[]" of a "U.S. national" within the meaning of the 2013 Referral, and that the claim was set forth by a claimant named in the *Abbott* case.

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

Dated at Washington, DC, August 16, 2016
and entered as the Proposed Decision
of the Commission.

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—
Anuj C. Desai, Commissioner

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—
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).