

i.e., Claim No. LIB-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. Stephenson 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. Stephenson would have continued to work for Pan Am.

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.

The Commission denied the claim in a Proposed Decision dated August 16, 2016, concluding that Claimant Estate had failed to satisfy the jurisdictional 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. Stephenson's job loss.

On September 13, 2016, Claimant Estate filed a notice of objection and requested an oral hearing. The notice of objection stated that Claimant Estate had already provided the Commission with documents establishing its standing, and that it intended to submit supplemental documentation to prove that it could "rightfully pursue" the claim. The notice of objection also incorporated by reference the notices of objection filed by the Abbott Group claimants whose claims were addressed on the merits in the Initial and Consolidated Proposed Decisions. On November 23, 2016, Claimant Estate's counsel submitted a memorandum that asserts that, based on the evidence previously submitted, Mr. Stephenson's spouse, Ransi Stephenson, is the legal representative of his estate. Thereafter, on December 12, 2016, Claimant Estate submitted an undated letter from the Clerk of Circuit and County Courts for Broward County, Florida, that states that Ms. Stephenson had deposited a document purporting to be Mr. Stephenson's last will and testament, and a document appended to the letter that is titled "Last Will and Testament of James Earl Stephenson."

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. 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. Stephenson's estate by submitting a document that it asserts is the decedent's last will and testament and that nominates Ms. Stephenson as personal representative of the decedent's estate. There is no evidence, however, to support Claimant Estate's assertion that this document is the legitimate will of the decedent. The letter from the Clerk of Circuit and County Court for Broward County that Claimant has submitted states that the document "[purports] to be" the decedent's last will and testament and notes that it was "not being offered for Probate" at that time and was "merely deposited" with the court. Moreover, even if the will had been admitted to probate, this would not be

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).

enough to establish that Ms. Stephenson has standing to represent Claimant Estate before the Commission. As is set forth in the Proposed Decision, the Commission requires legal proof of the identity of the personal representative (e.g. letters testamentary or letters of administration issued by the appropriate court or judge as proof of the representative's authority to act on behalf of the estate). No such evidence has been provided. 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 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.

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 an additional copy of the decedent's last will and testament, together with a copy of an accompanying letter from the Deputy Clerk of the Circuit and County Court, Broward County, Florida. 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.

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 JAMES STEPHENSON, DECEASED	}	Claim No. LIB-III-082
	}	
	}	Decision No. LIB-III-051
	}	
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 James Stephenson 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. Stephenson 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. Stephenson would not have lost his employment and suffered the losses which the Estate now claims. Because Mr. Stephenson died on November 29, 1999, the claim was initially filed in the name of Mr. Stephenson’s widow, Ransi Stephenson. The Estate, however, 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. Stephenson 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. Stephenson’s] professional career[] . . . result[ing] in the immediate loss of income” as well as “substantially all [of his] pension and medical benefits.”

Mr. Stephenson 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 JAMES STEPHENSON, 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 has failed to establish it has standing. Mr. Stephenson died on November 29, 1999. As evidence of this, Claimant Estate has provided a certified copy of Mr. Stephenson’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

⁷ *Id.* at ¶ 8.

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

appropriate court or judge as proof of the representative's authority to act on behalf of the estate). Thus far, no such evidence has been provided. 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. Stephenson's birth certificate; Mr. Stephenson's death certificate; copies of Mr. Stephenson's expired U.S. passports (valid from May 1985 to May 1995 and May 1996 to May 2006, respectively); a copy of Mr. Stephenson's U.S. Department of Defense identification card, issued in 1967; a copy of Mr. Stephenson's last will and testament, dated March 14, 1996; copies of Ransi Stephenson's U.S. passports (valid from

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).

November 1995 to November 2005 and May 2006 to March 2016, respectively); and Ransi Stephenson's U.S. Certificate of Naturalization, issued on November 15, 1972;

Although Claimant Estate has submitted a copy of Mr. Stephenson's last will and testament, the copy provided does not bear a stamp or seal from the probate court, and Claimant Estate has not submitted any court order indicating that the 1996 will is legally valid. Nor has Claimant provided a court-issued declaration of heirs or any other document establishing the heirs to Mr. Stephenson's estate. Therefore, because Claimant Estate has not established the identity of the legal heirs of Mr. Stephenson, the Commission is 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.

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

¹¹ 45 C.F.R. 509.5(b) (2015).

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.

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. Stephenson's economic harm. Therefore, this claim must be, and hereby is, denied.

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).

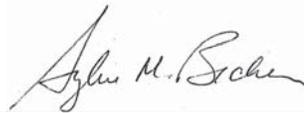
¹³ The 2013 Referral requires Claimant Estate to show, in addition to the standing and continuous nationality requirements discussed above, that this claim is a "commercial claim[]" of a "U.S. national" within the meaning of the 2013 Referral, and that the claim was set forth by a claimant named in the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



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).