

**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. LIB-III-085
	}	
	}	Decision No. LIB-III-053
	}	
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 brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based on economic losses he asserts were sustained as a result of the bombing of Pan Am Flight 103 over Lockerbie, Scotland, on December 21, 1988. He alleges that the bombing ultimately forced Pan American World Airways ("Pan Am") to cease operations nearly three years later, resulting in his 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 asserts that, but for the terrorist bombing, Pan Am would have continued operations, and he would not have lost his employment and suffered the losses which he now claims. Because this Commission's jurisdiction in this claims program is based on a specific legal document, a referral from the United States Department of State, and because that referral does not authorize us to adjudicate Claimant's claim, this claim is denied.

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 states that, at the time of the bombing, he was a pilot for Pan American World Airways, Inc. (“Pan Am”). He 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, he claims, “the bombing ended [his] professional career[.] . . . result[ing] in the immediate loss of income” as well as “substantially all [of his] pension and medical benefits.”

A number of 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.¹ However, Claimant was not named as a plaintiff in that lawsuit. 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 Claimant here—that 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 . . .

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

aircraft sabotage . . . or the provision of material support or resources for such an act”² 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.³

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission.⁴ 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.⁵ 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 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.”⁶

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.⁷

² *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).

³ *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

⁴ *See* International Claims Settlement Act of 1949 (“ICSA”), 22 U.S.C. § 1623(a)(1)(C) (2012).

⁵ *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”).

⁶ *Id.* at ¶ 8.

⁷ *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On June 13, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category F of the 2013 Referral, together with exhibits supporting the elements of his claim.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICOSA,⁸ the Commission's jurisdiction here is limited to the category of claims defined by the November 2013 Referral. Therefore, in order to come within the Commission's jurisdiction, claimants filing under Category F of the 2013 Referral must establish that their claim (1) is a commercial claim, (2) is held by a U.S. national, and (3) was set forth by a claimant named in the *Abbott* case.⁹

Commercial Claim

Category F is limited to commercial claims. Commerce is generally viewed as the exchange of goods and services.¹⁰ Claimant alleges that he provided the service of his labor to Pan Am and that Libya's actions unlawfully precluded him from continuing to do so. Moreover, the remedy he seeks is money damages to compensate for what he otherwise would have earned but for Libya's actions. Accordingly, this claim is a "commercial claim[]" within the meaning of the 2013 Referral.

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. *See* Claim No. LIB-

⁸ 22 U.S.C. § 1623(a).

⁹ 2013 Referral, *supra* note 5, ¶ 8.

¹⁰ *Claim of SUBROGATED INTERESTS TO PAN AMERICAN WORLD AIRWAYS, INC.*, Claim No. LIB-II-171, Decision No. LIB-II-161 (2012) (Proposed Decision); *see also Black's Law Dictionary* 304 (9th ed. 2009) (Commerce is the "exchange of goods and services, esp. on a large scale involving transportation between cities, states, and nations.").

III-001, Decision No. LIB-III-001, at 5-6 (2014). Claimant has provided a copy of his current U.S. passport, which evidences his birth in the United States and his U.S. nationality at the time of the Claims Settlement Agreement. He therefore satisfies the nationality requirement.

Claimant Named in Abbott

To fall within Category F of the 2013 Referral, the claim must have been set forth by a claimant “named in” the *Abbott* case. According to a certified copy of the complaint in that litigation, Claimant is not a named party. Moreover, he has not provided any other court filings indicating that he sought to amend the complaint to include him. Indeed, Claimant has not provided any evidence that his name was ever mentioned in any of these filings. Therefore, Claimant fails to satisfy this jurisdictional requirement.

The thrust of Claimant’s argument that we nonetheless have jurisdiction is that his not being named in the *Abbott* case was due to an inadvertent omission on the part of the plaintiffs’ lawyers in that case and that we should consider his claim on the merits based on equitable principles. In an affidavit dated June 13, 2014, Claimant states that he “fully participated” in the lawsuit brought by the “Abbott Group,” and indeed provided payment to the fund created by the group in support of the litigation. As evidence of this, he has provided photocopies of three checks he wrote to the fund in 1994.

The terms of the referral are clear and unambiguous as to who may file a claim under Category F: the claim must be “set forth by a claimant named in [the *Abbott* case].”¹¹ Here, the Claimant here was not “named in” the *Abbott* case; he therefore does not satisfy this element of his claim. Moreover, the Commission has no discretion to

¹¹ 2013 Referral, *supra* note 5, ¶ 8.

expand its own jurisdiction.¹² The Commission is accordingly constrained to conclude that it does not have jurisdiction to adjudicate the merits of this claim under Category F.

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 would have failed in his burden of proving that the alleged harm is compensable under the applicable legal principles, as required under Category F of the 2013 Referral.¹³ 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 here. Accordingly, even assuming Claimant were to have established the other jurisdictional elements of his claim under the 2013 Referral, we would deny Claimant's claim for the reasons explained more fully in the above-referenced claims, which we incorporate by reference: First, Claimant has failed to establish that his claim was not extinguished by the 2005 settlement of the lawsuit Pan Am brought against Libya in Scotland, and, second, he has failed to prove that the bombing of Pan Am Flight 103 was the proximate cause of his economic harm. Therefore, this claim must be, and hereby is, denied.

¹² See Claim No. LIB-II-165, Decision No. LIB-II-186, at 4-5 (Final Decision) (2013) ("The State Department has the authority to issue technical corrections to address any 'anomalies' that may arise through the referral process, but it is not within the Commission's competence to do so.").

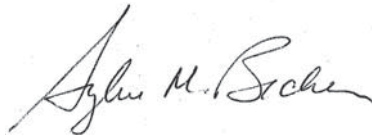
¹³ The Commission has previously addressed the merits of a claim, notwithstanding the claimant's failure to establish the jurisdictional bases for its claim, in the interests of adjudicative efficiency and economy. See, e.g., *Claim of SUBROGATED INTERESTS TO PAN AMERICAN WORLD AIRWAYS, INC.*, *supra* note 10, 20 note 17; *Claim of JERKO BOGOVICH*, Claim No. Y-1757, Decision No. Y-857 (1954).

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).