

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

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In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Republic of Iraq  
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Claim No. IRQ-II-304

Decision No. IRQ-II-220

Counsel for Claimant:

Anthony Onorato, Esq.  
FisherBroyles, LLP

PROPOSED DECISION

Claimant\* brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held her hostage in violation of international law in Kuwait between October 1990 and February 1991. Because she has failed to provide sufficient evidence to establish that Iraq held her hostage during this period, her claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was born a U.S. citizen in Kuwait on October 16, 1990, approximately 10 weeks after Iraq invaded the country on August 2, 1990. She asserts that, after she was born, she and her family were forced to hide in a relative’s residence. Claimant contends that she was released on February 25, 1991, after Kuwait was liberated by a U.S.-led coalition force.

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\* Claimant uses two different transliterations of her last name in this claim. *See infra* note 14.

Although Claimant was not among them, many of the U.S. nationals in Iraq and Kuwait at the time of the 1990-91 Iraqi occupation of Kuwait sued Iraq (and others) in federal court for, among other things, hostage-taking.<sup>1</sup> Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.<sup>2</sup> 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 claims of personal injury caused by hostage-taking.<sup>3</sup> Exercising its authority to distribute money from the settlement funds, the U.S. Department of State provided compensation to numerous individuals whose claims were covered by the Agreement, including some whom Iraq had allegedly taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait.

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.<sup>4</sup> 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.<sup>5</sup> This was the State Department's second referral of claims to the Commission under the Claims Settlement Agreement, the

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<sup>1</sup> See, e.g., *Hill v. Republic of Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001); *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006).

<sup>2</sup> 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").

<sup>3</sup> See *id.* Art. III(1)(a)(ii).

<sup>4</sup> See 22 U.S.C. § 1623(a)(1)(C) (2012).

<sup>5</sup> 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").

first having been by letter dated November 14, 2012 (“2012 Referral” or “November 2012 Referral”).<sup>6</sup>

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

claims by U.S. nationals for hostage-taking<sup>1</sup> by Iraq<sup>2</sup> in violation of international law prior to October 7, 2004, provided that the claimant was not a plaintiff in pending litigation against Iraq for hostage taking<sup>3</sup> at the time of the entry into force of the Claims Settlement Agreement and has not received compensation under the Claims Settlement Agreement from the U.S. Department of State. . . .

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<sup>1</sup> For purposes of this referral, hostage-taking would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

<sup>2</sup> For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

<sup>3</sup> For purposes of this category, pending litigation against Iraq for hostage taking refers to the following matters: *Acree v. Iraq*, D.D.C. 02-cv-00632 and 06-cv-00723, *Hill v. Iraq*, D.D.C. 99-cv-03346, *Vine v. Iraq*, D.D.C. 01-cv-02674; *Seyam (Islamic Society of Wichita) v. Iraq*, D.D.C. 03-cv-00888; *Simon v. Iraq*, D.D.C. 03-cv-00691.

2014 Referral at ¶ 3.

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<sup>6</sup> Although the November 2012 Referral involved claims of U.S. nationals who were held hostage or unlawfully detained by Iraq, it did not involve hostage-taking claims *per se*. Rather, it consisted of certain claimants who had *already received* compensation under the Claims Settlement Agreement from the State Department for their hostage-taking claims, and it authorized the Commission to award additional compensation to those claimants, provided they could show, among other things, that they suffered a “serious personal injury” during their detention. The 2012 Referral expressly noted that the “payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.” *Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission*, at ¶3 n.3.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSA and the 2014 Referral.<sup>7</sup>

On November 2, 2015, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of her claim.

## DISCUSSION

### Jurisdiction

This Commission's authority to hear claims is limited to the category of claims referred to it by the United States Department of State.<sup>8</sup> The Commission's jurisdiction under the "Category A" paragraph of the 2014 Referral is limited to claims for hostage-taking of (1) "U.S. nationals," provided that the claimant (2) was not a plaintiff in any litigation against Iraq for hostage taking pending on May 22, 2011 (the "Pending Litigation"), and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral at ¶ 3.

### *Nationality*

This claims program is limited to claims of "U.S. nationals." Here, that means 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.<sup>9</sup> Claimant satisfies the nationality requirement. Claimant has provided a copy of her Consular Report of Birth Abroad, which shows that she was a U.S. national at the time of the alleged hostage-taking (October 1990 – February 1991). She has also provided a copy

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<sup>7</sup> *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).

<sup>8</sup> See 22 U.S.C. § 1623(a)(1)(C) (2012).

<sup>9</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

of her current U.S. passport, which expires in January 2021 and establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

*No Pending Litigation*

Additionally, Category A states that the claimant may not have been a plaintiff in any of the so-called Pending Litigation cases at the time of the entry into force of the Claims Settlement Agreement.<sup>10</sup> Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant has averred, and the pleadings in the cases cited in footnote 3 confirm, that she was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of her claim.

*No Compensation under the Claims Settlement Agreement  
from the Department of State*

The Claimant also satisfies the final jurisdictional requirement. Claimant has stated that she has not “received compensation from the U.S. Department of State under the United States-Iraq Settlement Agreement dated September 2, 2010.” Further, we have no evidence that the State Department has provided her any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of her claim.

In summary, this claim is within the Commission’s jurisdiction pursuant to the 2014 Referral and is entitled to adjudication on the merits.

Merits

*Factual Allegations*

Claimant states that Iraq held her hostage from October 16, 1990, until February 25, 1991, a total of 132 days. Claimant alleges that she was born in Kuwait on October 16,

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<sup>10</sup> The Agreement entered into force on May 22, 2011. *See* Claims Settlement Agreement, art. IX.

1990, approximately 10 weeks after Iraq invaded Kuwait. She claims that, after her birth, she and her family hid in a relative's residence until February 25, 1991, which is the date that she asserts that a U.S.-led coalition force liberated Kuwait.

*Supporting Evidence*

Claimant has supported her claim with her sworn Statement of Claim, a copy of her Consular Report of Birth Abroad issued on July 2, 1997 (which indicates that she was born in Kuwait on October 16, 1990), a copy of the front pages of her current U.S. passport (which indicates that she was born in Jordan on October 16, 1990), and a declaration in which she states that she was held hostage in Kuwait from October 16, 1990, to February 25, 1991.

*Legal Standard*

To make out a substantive claim under Category A of the 2014 Referral, a claimant must show that (1) Iraq was engaged in an armed conflict and (2) during that conflict, Iraq took the claimant hostage.<sup>11</sup> The Commission has previously held that, to establish a hostage-taking claim, a claimant must show that Iraq (a) seized or detained the claimant and (b) threatened the claimant with death, injury, or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for the claimant's release.<sup>12</sup> A claimant can establish the first element of this standard by showing that the Iraqi government confined the claimant to a particular location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.<sup>13</sup>

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<sup>11</sup> See *id.* at 16. An estate claimant would of course need to make this showing as to its decedent.

<sup>12</sup> See *id.* at 17-20.

<sup>13</sup> See *id.* at 17.

*Application of Standard to this Claim*

Claimant has failed to satisfy the standard for hostage-taking in this program because she has not met her burden to prove the first element of this standard—that Iraq seized or detained her in Kuwait. The evidence Claimant has submitted fails to establish that she was present in Kuwait from October 16, 1990, to February 25, 1991. Claimant relies on a copy of her Consular Report of Birth Abroad, which states that she was born in Kuwait on October 16, 1990. This document, however, was not issued at the time of her birth; rather, it was issued in July 1997, more than six years after she was born. More importantly, the document’s reference to Claimant being born in Kuwait is flatly contradicted by her current U.S. passport, which states that Jordan was her place of birth. The Consular Report of Birth Abroad is thus insufficient to establish that Claimant was in Kuwait on October 16, 1990, for our purposes here.<sup>14</sup> Claimant’s declaration, which is the only other evidence that she has submitted to support her claim, is similarly unavailing.<sup>15</sup> As “[a] single statement from an interested party,” a declaration, particularly by someone who was too young at the time to have any independent recollection of the events described in the declaration, is simply not sufficient to meet Claimant’s burden to prove that she was in Kuwait during the relevant period.<sup>16</sup> She has therefore failed to establish that Iraq detained her in Kuwait at any point during this period, and her claim thus does not satisfy

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<sup>14</sup> Both documents spell Claimant’s last name “Al-Duaij,” and when Claimant signs and states her name, she uses that spelling. In contrast, in her Statement of Claim and the text of her Declaration, the name is spelled differently, “Aldaeaj.” These two spellings may well be two different transliterations of the same name, but Claimant has not provided any evidence that this is the case.

<sup>15</sup> The Commission Staff contacted Claimant’s counsel multiple times in 2016 and 2017 to request additional documents to support Claimant’s assertion that she was held hostage in Kuwait between October 1990 and February 1991. On September 14, 2016, and November 19, 2016, Claimant’s counsel indicated that Claimant was working to obtain documents in support of her claim but ultimately did not submit any additional evidence on her behalf. Almost a year later, on October 20, 2017, Claimant’s counsel stated that he had made several attempts to contact Claimant to request further information over that past year but had not received “a substantive reply.”

<sup>16</sup> Claim No. LIB-III-014, Decision No. LIB-III-031 (2016) (Final Decision), at 8.

the standard for hostage-taking in this program. Accordingly, this claim must be and is hereby denied.

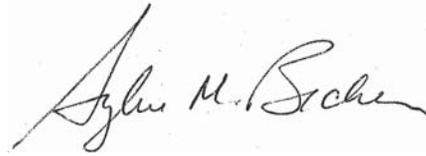
Dated at Washington, DC, January 25, 2018  
and entered as the Proposed Decision  
of the Commission

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

**March 5, 2018**



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) (2017).