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) 5 U.S.C. §552(b)(6) Against the Republic of Iraq	Claim No. IRQ-II-141 Decision No. IRQ-II-312

PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq ("Iraq") alleging that Iraq held the decedent, Roy Cameron Johnson, hostage in violation of international law from August through December 1990. Mr. Johnson died on October 29, 2001, although the claim was initially filed in Mr. Johnson's name by his widow, Karen Jayne Johnson. Neither Claimant Estate nor Ms. Johnson herself, however, has provided evidence of a legal representative to represent Mr. Johnson's estate before the Commission. Moreover, Claimant Estate has not satisfied the requirement of continuous U.S. nationality. For these two separate and distinct reasons, this claim is denied.[1]

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Johnson was living in Kuwait when Iraq invaded the country on August 2, 1990. It asserts that he was working for a marine equipment

[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) (2018). Accordingly, this Proposed Decision is issued in the name of the ESTATE OF ROY CAMERON JOHNSON, DECEASED.

company in Salmya, Kuwait, at the time, and that he was subsequently held hostage until December 3, 1990, when he was released. According to copies of newspaper articles submitted with this claim, Mr. Johnson was confined to his apartment for four months and did not leave until the Iraqi regime sanctioned the release of all remaining foreigners in Kuwait. Mr. Johnson died in October 2001.

Although neither Mr. Johnson nor Claimant Estate was 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.[2] Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.[3] 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.[4] 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.[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

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[2] *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).
[3] *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").
[4] *See id.* Art. III(1)(a)(ii).
[5] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).

this Commission for adjudication and certification.[6] This was the State Department's second referral of claims to the Commission under the Claims Settlement Agreement, the first having been by letter dated November 14, 2012 ("2012 Referral" or "November 2012 Referral").[7]

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[1] by Iraq[2] 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[3] 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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[1] 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.

[2] 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.

[3] 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.

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[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").

[7] 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.

2014 Referral at ¶ 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.[8]

On February 18, 2016, the Commission received from Claimant Estate a completed Statement of Claim seeking compensation under Category A of the 2014 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.[9] 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 on behalf of the decedent's estate.[10]

Claimant Estate has failed to establish it has standing. Mr. Johnson died on October 29, 2001. As evidence of this, Claimant Estate has provided a certified copy of Mr. Johnson's death certificate. The Commission staff mailed two letters to his widow, Ms. Johnson, the purported estate representative, on March 7, 2016, and April 20, 2018, requesting that she provide 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. Thus far, no such evidence has been provided. Although Claimant Estate has provided a copy of Mr.

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[8] *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).
[9] *See Claim of ESTATE OF ELIZABETH L. ROOT, DECEASED*, Claim No. LIB-II-040, Decision No. LIB-II-026 (2011).
[10] *Claim of ESTATE OF LINA ESTHER GONZALEZ-ARIAS*, *DECEASED*, Claim Nos. LIB-II-113 & LIB-II-117, Decision No. LIB-II-177, at 4 (2012) (Proposed Decision).

Johnson's purported last will and testament, the will does not appear to have been probated. Its validity, therefore, has not been established. 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 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.[11] Here, therefore, we must look to the language of the "Category A" 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) was not a plaintiff in pending litigation against Iraq for hostage taking on May 22, 2011; and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral ¶ 3.

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."[12] 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*."[13] As the Commission has recognized in its previous decisions, the U.S. nationality requirement thus means that

[11] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).
[12] *Id.* § 1623(a)(2).
[13] Claims Settlement Agreement, art. I(2) (emphasis added).

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.[14]

In addition, in the case of claims brought by estates on behalf of beneficiaries, both this Commission and its predecessors, the War Claims Commission and the International Claims Commission, have consistently concluded 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.[15]

Claimant Estate has failed to show that the claim was held by a U.S. national continuously through the effective date of the Claims Settlement Agreement. While the Estate has submitted a copy of Mr. Johnson's birth certificate, evidencing his birth in Ohio, there is insufficient evidence to show that the claim was held by a U.S. national after Mr. Johnson's death in 2001. First, Claimant Estate has failed to provide sufficient evidence of the U.S. nationality of the estate beneficiaries. The copy of Mr. Johnson's last will and testament, dated February 10, 1988, submitted by Claimant Estate does not bear a stamp or seal from the probate court, and Claimant Estate has not submitted any court order indicating that the 1988 will is legally valid. Second, even if the validity of the will had been established, it appears from its terms that the claim would have passed to Mr. Johnson's widow, Karen Jayne Johnson, who has submitted no evidence of U.S. nationality

[14] *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001(Proposed Decision), at 5-6 (2014).
[15] *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).

despite multiple requests from the Commission staff. We are thus 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.[16]

The Commission accordingly concludes that 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. Therefore, this claim must be and hereby is denied.

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

Dated at Washington, DC, November 29, 2018
and entered as the Proposed Decision
of the Commission.

Sylvia M. Becker, Commissioner

Patrick Hovakimian, 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) (2018).

[16] 45 C.F.R. 509.5(b) (2018).