

not shown she was a U.S. national at the time of the alleged hostage-taking.¹ On December 9, 2018, Claimant filed a notice of objection. On February 7, 2019, Claimant submitted copies of records from the Department of State that include applications for passports that were issued to her in 1979, 1984, and 1989.

DISCUSSION

This Commission's authority to hear claims is limited to the category of claims referred to it by the United States Department of State.² 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.³ Claimant satisfies the nationality requirement. She has provided records from the U.S. Department of State that show that she was a U.S. national at the time of the alleged hostage-taking. She has also provided a copy of a current U.S. passport, which expires in 2024 and establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

¹ See Claim No. IRQ-II-353, Decision No. IRQ-II-307 (Proposed Decision), at 5-6 (2018).

² See 22 U.S.C. § 1623(a-1)(C) (2012).

³ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

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.⁴ 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*

Claimant also satisfies the final jurisdictional requirement. She states that she has not “received any compensation under the [Claims Settlement Agreement] from the Department of State.” Further, we have no evidence that the State Department has provided her 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 August 2, 1990, until September 14, 1990, a total of 44 days. She alleges that she was 14 years old and living in Kuwait with her family at the time of the invasion. She states that she hid in her residence in constant

⁴ The Agreement entered into force on May 22, 2011. See Claims Settlement Agreement, art. IX.

fear of being detained by Iraqi authorities until September 14, 1990, when she was evacuated from Kuwait on a flight chartered by the U.S. government.

Supporting Evidence

Claimant has supported her claim with a news article that states that she, her mother, and her siblings flew to Charlotte, North Carolina on September 14, 1990, a registration record for a North Carolina school district that shows that Claimant enrolled in a local school on September 18, 1990, and a declaration that provides further information about her alleged detention and ultimate departure from Kuwait. The Commission also takes notice of her mother and siblings' U.S. passports, which contain Iraqi exit stamps dated September 14, 1990.

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.⁵ 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.⁶ 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.⁷

⁵ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16. An estate claimant would of course need to make this showing as to its decedent.

⁶ See *id.* at 17-20.

⁷ See *id.* at 17.

Application of Standard to this Claim

1) **Armed Conflict:** Claimant alleges that Iraq took her hostage in Kuwait on August 2, 1990, and held her hostage for 44 days, until September 14, 1990. In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that during this entire period, Iraq was engaged in an armed conflict with Kuwait.⁸ Thus, Claimant satisfies this element of the standard.

2) **Hostage-taking:** To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant must show that Iraq (a) seized or detained her and (b) threatened her 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 her release. Claimant satisfies this standard for the 44-day period from August 2, 1990, to September 14, 1990.

a) **Detention/deprivation of freedom:** For purposes of analyzing Claimant's allegations of having been detained, her time in Kuwait following the Iraqi invasion can be divided into three periods: i) between the Iraqi invasion on August 2, 1990, and the Iraqi government's formal closing of the borders on August 9, 1990; ii) from that August 9th formal closing of the borders until the August 28, 1990 announcement that women and minors could leave Iraq and Kuwait; and (iii) from that August 28th announcement until her departure on September 14, 1990.⁹

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to her residence in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁰ Although some foreign

⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

⁹ See *id.* at 20-21.

¹⁰ See *id.* at 21.

nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.¹¹ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.¹² Claimant had, as the United Nations Compensation Commission has put it, a “manifestly well-founded fear” of being killed or forcibly detained if she had left her residence.¹³ The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.¹⁴ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until August 28, 1990, the Iraqi government confined Claimant to Kuwait, preventing her from leaving the country by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed Kuwait’s borders, forcibly prohibiting U.S. nationals from leaving.¹⁵ As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving the country, effectively detaining her within the borders of Kuwait and Iraq.¹⁶ For Claimant, this formal policy of prohibiting U.S. nationals from leaving Iraq and Kuwait lasted until August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals could leave.¹⁷

Although Claimant may have been legally permitted to leave Iraq on August 28, 1990, her detention did not end on that date. As the Commission has previously recognized, a claimant’s detention ends only on the date that she is released from the

¹¹ *See id.*

¹² *See id.*

¹³ Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US \$100,000 (Category “C” Claims), UN Doc. S/AC.26/1994/3 (1994), at 93.

¹⁴ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

¹⁵ *See id.* at 21-22.

¹⁶ *See id.* at 22.

¹⁷ *See id.*

control of the person or entity that detained her.¹⁸ Any attempt “[by the perpetrator] to restrict [the] movements” of a claimant establishes control,¹⁹ whereas a claimant who has a reasonable opportunity to leave the site of his or her captivity is deemed no longer to be under the perpetrator’s control.²⁰

Under this standard, Claimant remained under Iraq’s control until September 14, 1990. The Commission has recognized that Iraq imposed conditions on air travel that limited the ability of foreign nationals, including U.S. nationals, to leave Iraq and/or Kuwait immediately after the August 28, 1990 release announcement.²¹ Indeed, the available evidence indicates that Claimant left Kuwait at the first reasonable opportunity, on the September 14, 1990 evacuation flight. Because there is no evidence that Claimant remained voluntarily in Iraq at any time during this period, we conclude that she was under Iraq’s control and thus detained from August 28, 1990, to September 14, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990, until September 14, 1990.

b) Threat: In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission determined that the Iraqi government threatened U.S. nationals in Kuwait and Iraq numerous times with continued detention.²² This included Claimant. Both Iraqi President Saddam Hussein and the Speaker of Iraq’s National Assembly Saadi Mahdi made clear that American nationals (as well as those from numerous other countries) would not be permitted to leave.²³

¹⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22; see also Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

¹⁹ Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22 citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 12 (2012)).

²⁰ See *id.*

²¹ See *id.*

²² See *id.* at 23.

²³ See *id.*

In short, the Iraqi government made unequivocal threats to continue to detain U.S. nationals in Kuwait and Iraq. Claimant was a U.S. national in Iraq at the time. She has thus established that Iraq threatened to continue to detain her.

c) Third party coercion: The Commission has previously held that Iraq detained all U.S. nationals in Kuwait or Iraq at the time and threatened them with continued detention in order to compel the United States government to act in certain ways as an explicit and/or implicit condition for their release.²⁴ Iraq itself stated that it sought three things from the United States government before it would release the detained U.S. nationals; it wanted the United States (i) not to attack Iraq, (ii) to withdraw its troops from Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.²⁵ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.²⁶

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held Claimant hostage in violation of international law for a period of 44 days, and Claimant is thus entitled to compensation.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation.

In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that successful claimants should be awarded compensation in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in

²⁴ *See id.*

²⁵ *See id.* at 23-24.

²⁶ *See* George H. W. Bush, "These Innocent People . . . Are, In Fact, Hostages" in U.S. Dep't of State, *American Foreign Policy Current Documents 1990* 484 (Sherrill Brown Wells ed. 1991); *see also* 2014 Referral at ¶ 3; *cf.* United Nations S.C. Res. 674 (Oct. 29, 1990) (noting "actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanding that Iraq "cease and desist" this practice).

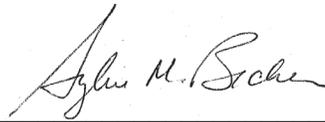
captivity.²⁷ Therefore, for the 44 days Iraq held Claimant hostage, she is entitled to an award of \$370,000, which is \$150,000 plus 44 x \$5,000). This amount constitutes the entirety of the compensation to which she is entitled under the Claims Settlement Agreement.

The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA.²⁸

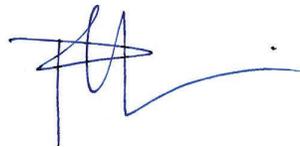
AWARD

Claimant is entitled to an award in the amount of \$370,000.

Dated at Washington, DC, February 28, 2019
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).

²⁷ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

²⁸ 22 U.S.C. §§ 1626-1627 (2012).

**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)

Against the Republic of Iraq

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Claim No. IRQ-II-353

Decision No. IRQ-II-307

Counsel for Claimant:

William R. Stein, Esq.
Hughes Hubbard & Reed 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 August and September 1990. Because Claimant has not established that she was a U.S. national at the time her claim arose, the claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was a 14-year-old United States citizen living in Kuwait with her family when Iraq invaded the country on August 2, 1990. She asserts that, beginning with the invasion and for approximately six weeks thereafter, she and her family hid in their residence constant fear of being captured by Iraqi authorities. Claimant asserts that she flew out of Iraq on September 14, 1990, after the Iraqi government authorized female and minor foreign nationals to leave.

Although Claimant was not among them, many of the individuals 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.¹ Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.² 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.³ The Agreement defined “U.S. nationals” as “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.”⁴

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 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

¹ 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).

² 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”).

³ See *id.* Art. III(1)(a)(ii).

⁴ See *id.* Art. I(2).

⁵ See 22 U.S.C. § 1623(a)(1)(C) (2016).

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”).

first having been by letter dated November 14, 2012 (“2012 Referral” or “November 2012 Referral”).⁷

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 April 3, 2017, 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

This Commission’s authority to hear claims is limited to the category of claims referred to it by the United States Department of State.⁹ 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 “U.S. nationals.” 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.”¹⁰ Here, that command means we must

⁷ See 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 (“2012 Referral” or “Referral”). 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.” *Id.*

⁸ *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).

⁹ See 22 U.S.C. § 1623(a)(1)(C) (2012).

¹⁰ 22 U.S.C. § 1623(a)(2) (2012).

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.”¹¹ As the Commission has recognized in its previous decisions, the U.S. nationality requirement thus means that 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.¹²

Claimant has failed to show that she was a U.S. national at the time of the alleged hostage-taking (August 1990). Claimant argues that under former section 321(a) of the Immigration and Naturalization Act of 1952, she became a U.S. national on October 22, 1979, the date that her parents were naturalized as U.S. citizens.¹³ Section 321(a) provided for the automatic conferment of U.S. citizenship “on a child born outside of the United States of alien parents” who subsequently acquired U.S. citizenship before the child turned 18 if the “child [was] residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized . . . or thereafter [began] to reside permanently in the United States while under the age of eighteen years.”

Despite her reliance on section 321(a), Claimant does not seek to establish that she became a U.S. national by directly showing that she was a legal permanent resident of the

¹¹ Claims Settlement Agreement, art. I(2) (emphasis added).

¹² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

¹³ The relevant law for determining whether a child born abroad to a U.S. citizen parent is entitled to U.S. citizenship is the law that was in effect at the time of the child's birth. Claim No. LIB-II-058, Decision No. LIB-II-174 (Final Decision), at 4 (2013).

United States at the time of her parents naturalizations on October 22, 1979, or that she “thereafter began to reside permanently in the United States while under the age of 18.” Rather, citing her mother’s declaration, which states that Claimant was issued a U.S. passport immediately after her parents were naturalized, Claimant argues that the U.S. government recognized her as a U.S. national at that time, and that the “only logical inference” of this recognition is that she became a U.S. national “by operation of law” due to her parents’ naturalizations in October 1979. Yet, as a “single statement from an interested party,” this declaration is not sufficient to establish that Claimant was issued a U.S. passport at that time and was thus recognized by the U.S. government as having fulfilled the requirements of section 321(a).¹⁴ Claimant has not provided a copy or any other record of the passport allegedly issued on October 22, 1979, to corroborate her mother’s statement.¹⁵

We therefore conclude that she has failed to carry her burden to prove that she was a U.S. national when her claim arose and thus is not eligible for compensation under the Claims Settlement Agreement and 2014 Referral.¹⁶

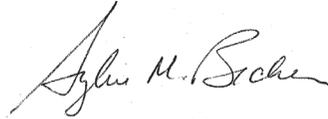
¹⁴ Claim No. IRQ-II-108, Decision No. IRQ-II-259, at 10.

¹⁵ Claimant also asserts that she is no longer in possession of the U.S. passport that she held at the time of the invasion but does not explain why she was unable to obtain passport records from the Department of State for the passports that were allegedly issued to her prior to the invasion in 1990. U.S. Dep’t of State, Get Copies of Passport Records, <https://travel.state.gov/content/travel/en/passports/after/passport-records.html> (last visited Sept. 11, 2018).

¹⁶ See 45 C.F.R. § 509.5(b) (“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.”). By letters dated July 27 2017, September 5, 2017, and May 3, 2018, the Commission staff requested Claimant’s counsel to submit evidence of Claimant’s U.S. nationality at the time of her claim arose. In response to Claimant’s counsel’s statement in a letter dated August 31, 2017, that Claimant had been “unable to locate direct documentation of either her naturalization or permanent residency status,” the September 5, 2017 letter recommended that Claimant submit a Certificate of Citizenship from U.S. Citizenship and Immigration Services. Although Claimant’s counsel stated in a letter dated May 18, 2018, that Claimant has submitted an application for the Certificate, to date, the Commission has not received the Certificate, or any documentary evidence, sufficient to establish that she was a U.S. national in August 1990.

Accordingly, this claim must be and is hereby denied. The Commission makes no determinations about any other aspect of this claim.

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



Sylvia M. Becker, Commissioner



Patrick Hovakimian, Commissioner

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