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. IRQ-II-353
	Decision No. IRQ-II-307
Against the Republic of Iraq	

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]

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[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

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).