

**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

}
}
}
}
}
}
}
}
}

Claim No. IRQ-II-374

Decision No. IRQ-II-329

Counsel for Claimant:

S. Ricardo Narvaiz, Esq.

FINAL DECISION

Claimant objects to the Commission’s Proposed Decision concluding that Iraq held him hostage in Kuwait from August 2, 1990, to August 28, 1990, and awarding him \$285,000 for the 27 days that he was detained. On objection, Claimant contends that Iraq also held him hostage in Kuwait from August 29, 1990, to October 10, 1990. After considering Claimant’s arguments, we again conclude that he has failed to establish that Iraq detained him, and thus held him hostage, after August 28, 1990. We therefore affirm the conclusion in the Proposed Decision that Claimant is entitled to an award of \$285,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant brought this claim against Iraq alleging that Iraq held him hostage in Kuwait from August 2, 1990, to October 10, 1990. Claimant sought compensation for his hostage experience under Category A of the State Department’s letter to the Commission establishing this program, which consists of “claims by U.S. nationals for hostage-taking[]

by Iraq[] in violation of international law prior to October 7, 2004”¹ On February 28, 2019, the Commission issued a proposed decision (“Proposed Decision”) concluding that Iraq held Claimant hostage from August 2, 1990, to August, 28, 1990, the date that Iraq authorized women and children to leave Iraq and/or Kuwait.² The Commission further concluded that his claim did not satisfy the standard for hostage-taking between August 29, 1990, and October 10, 1990, because he failed to establish that Iraqi authorities detained him during this period.³ Thus, the Commission awarded Claimant \$285,000 for the 27 days that he was held in Kuwait by Iraq.⁴

On March 29, 2019, Claimant filed a notice of objection arguing that the Commission erred in concluding that Iraq did not detain him between August 29, 1990, and October 10, 1990. Because he did not request an oral hearing, the Commission advised him by letter dated April 15, 2019, that his claim would be decided on the written record and requested that he submit any additional evidence in support of his objection no later than May 9, 2019. Claimant did not submit evidence or take other action to supplement the record pursuant to the Commission’s letter.

DISCUSSION

To establish a hostage-taking claim under Category A of the 2014 Referral, 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

¹ 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 ¶ 3 (“2014 Referral” or “October 2014 Referral”).

² See Proposed Decision, *supra*, at 12-13.

³ See *id.* at 13.

⁴ See *id.* at 14-15.

implicit condition for the claimant's release.⁵ Thus, to prevail on objection, Claimant must show that he was seized or detained by Iraq from August 29, 1990, to October 10, 1990. Because Claimant was a minor covered by Iraq's August 28, 1990 announcement that authorized women and children of U.S. nationality to depart, he must show that he remained under Iraq's control to establish that he was detained by Iraq after that announcement.⁶ In this regard, any attempt by Iraq "to restrict [the] movements" of a claimant establishes control,⁷ whereas a claimant who has a reasonable opportunity to leave the site of his or her captivity is deemed no longer to be under [Iraq's] control.⁸

Claimant has not shown that he remained in Kuwait due to actions taken by Iraqi authorities to restrict his movements or to otherwise prevent him from leaving Kuwait.⁹ On objection, he "requests that the Commission award him compensation through October 10, 1990, on the basis that [his] parents . . . subjectively believed . . . they could not leave Kuwait or even come out of hiding" and "did not 'choose' to stay" until October 10, 1990.¹⁰ Claimant contends that they either "were simply ill-informed and did not know about the U.S. sponsored evacuation flights out of Kuwait [in] September or they were so extremely skeptical that they believed that they could not go to the U.S. Embassy without risking arrest or harm to their family, until just before October 10, 1990."¹¹ Claimant points to his

⁵ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 17-20. The Commission has previously determined that 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. *See id.* at 17.

⁶ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22.

⁷ *Id.* (citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 12 (2012)).

⁸ *See id.*

⁹ In the Proposed Decision, the Commission determined that except for his contention that he feared being seized or detained due to "an environment of extreme military hostility . . . created by the government and army of Iraq in Kuwait," Claimant did not advance any reasons for his detention that "concerned acts . . . committed by the Iraqi government." Proposed Decision, at 13.

¹⁰ Claimant's Notice of Objection to Proposed Decision, at 5 ¶ 13.

¹¹ Claimant's Notice of Objection to Proposed Decision, at 4 ¶ 10. While the Commission did not make any specific finding about Claimants' parents professed lack of knowledge of the September 1990 evacuation flights, it noted that their unawareness did "not address an attempt by Iraq to restrict [his] movements after

parents' testimony regarding their state of mind and their subjective belief that they did not have "a true opportunity to evacuate" until October 10, 1990¹², but has not provided any objective evidence of any action on Iraq's part to prevent his departure after August 28. Moreover, his claim is not consistent with statements made by senior State Department officials in September 1990 that establish that, as a result of the August 28, 1990 announcement, the vast majority of women and children of U.S. nationality in Kuwait—including several hundred women and children and their non-U.S. national family members—left on evacuation flights between September 1, 1990, and September 22, 1990.¹³ Claimant has thus failed to establish that Iraq restricted his movements, and thus detained him, after August 28, 1990.

Claimant argues that he is at least entitled to compensation for hostage-taking from August 29, 1990, to September 22, 1990, because he would have been eligible for compensation if he had left Kuwait during this period.¹⁴ To support this claim, Claimant points to the Commission's practice in other claims in this program and its finding in the Proposed Decision that State Department officials indicated that women and children who remained in Kuwait after September 22, 1990, had chosen to stay. Claimant's reliance on the Commission's previous decisions for this argument is unavailing. The decisions merely show that the Commission determined that minor claimants who attempted to leave immediately after the August 28, 1990 announcement were subject to limits on air travel

August 28, 1990." Proposed Decision, at 13 n.47. Claimant similarly fails to explain why his parents' inability to go to the U.S. Embassy in Kuwait would have prevented him (or them) from leaving the country. Because the U.S. Embassy in Kuwait was under siege, the State Department urged U.S. nationals not to go to the Embassy compound. Employees from the U.S. Embassy in Baghdad traveled to Kuwait to assist individuals seeking to depart. *See CB Message from U.S. State Department to American Citizens in Kuwait as Broadcast Via Voice of America*, FEDERAL NEWS SERVICE, Sep. 6, 1990, Lexis; *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Sep. 11, 1990, at Lexis.

¹² Claimant's Notice of Objection to Proposed Decision, at 4-5 ¶ 10.

¹³ *See* Claim No. IRQ-II-143, Decision No. IRQ-II-314, at 6-7.

¹⁴ *See* Claimant's Notice of Objection to Proposed Decision, at 1-3, ¶¶ 4-7.

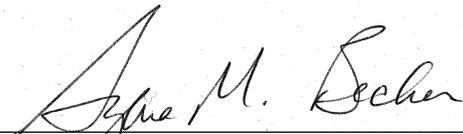
imposed by the Iraqi government that constituted restrictions on their movements sufficient to establish detention.¹⁵ Claimant has not alleged that he attempted to leave Kuwait at that time and thus has not established that Iraq detained him as a result of the limits it imposed on air travel in August and September 1990. He therefore has failed to show that Iraq held him hostage after August 28, 1990, and that he is entitled to additional compensation beyond the \$285,000 he was awarded in the Proposed Decision.

The award entered in the Proposed Decision is hereby affirmed and will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICOSA.¹⁶ This constitutes the Commission's final determination in this claim.

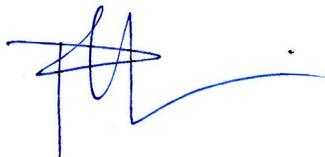
AWARD

Claimant is entitled to an award in the amount of \$285,000.

Dated at Washington, DC, March 30, 2020
and entered as the Final Decision
of the Commission.



Sylvia M. Becker, Commissioner



Patrick Hovakimian, Commissioner

¹⁵ See, e.g., Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22; Claim No. IRQ-II-162, Decision No. IRQ-II-005, at 10.

¹⁶ 22 U.S.C. §§ 1626-1627 (2012).