

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, DC 20579

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Great Socialist People's  
Libyan Arab Jamahiriya

Claim No. LIB-II-179

Decision No. LIB-II-078

Counsel for Claimant:

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on mental pain and anguish suffered by<sup>5 U.S.C. §552(b)(6)</sup> as a result of the death of her parents,<sup>5 U.S.C. §552(b)(6)</sup> who were killed in a terrorist bombing in Enniskillen, Northern Ireland, on November 8, 1987.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

On January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication six categories of claims of U.S. nationals against Libya. *Letter from the Honorable John*

*B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* (“January Referral Letter”).

The present claim is made under Category B. According to the January Referral Letter, Category B consists of

claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State provided that (1) the claim was set forth as a claim for emotional distress, solatium, or similar emotional injury by the claimant named in the Pending Litigation; (2) the claimant is not eligible for compensation from the associated wrongful death claim, and the claimant did not receive any compensation from the wrongful death claim; (3) the claimant has not received any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral; and (4) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

*Id.* at ¶ 4. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December Referral Letter”) from the State Department, followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and on August 14, 2008, the United States and Libya concluded the *Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008. On October 31, 2008, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965, which, *inter alia*, espoused the claims of U.S. nationals coming within the terms of the Claims Settlement Agreement, barred U.S. nationals from asserting or maintaining such claims, terminated any pending suit within the terms of the

Claims Settlement Agreement, and directed the Secretary of State to establish procedures governing claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

#### BASIS OF THE PRESENT CLAIM

On July 7, 2010, the Commission received from the claimant a completed Statement of Claim, in which the claimant asserts a claim under Category B of the January Referral Letter, along with exhibits in support of the claim. The claimant states that she is the daughter of <sup>5</sup> U.S.C. §552(b)(6) who were killed in a terrorist bombing in Enniskillen, Northern Ireland, on November 8, 1987, and that she was one of the plaintiffs in *McDonald v. Socialist People's Arab Jamahiriya* (D.D.C.) 06-cv-729.

#### DISCUSSION

##### Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined in the January Referral Letter (in this case, as noted above, Category B); namely the claims of individuals who: (1) are U.S. nationals; (2) are living; (3) are close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State; (4) as named parties, made claims for emotional distress, loss of solatium, or similar emotional injury in a Pending Litigation case which has been dismissed; and (5) are not eligible for compensation from the associated wrongful death claim, have not received any compensation from the wrongful

death claim, have not received any compensation under any other part of the Claims Settlement Agreement, and do not qualify for any other category of compensation pursuant to the January referral. January Referral Letter, *supra*, ¶ 4.

### *Nationality*

In *Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held that to meet the nationality requirement the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. The Commission's decision in *Claim of* 5 U.S.C. §552(b)(6) is consistent with its past jurisprudence and generally accepted principles of international law.<sup>1</sup>

The claimant states that she did not become a U.S. citizen until April 27, 2006, nearly 20 years after the death of her parents. While the Commission is sensitive to the claimant's loss, it notes that claimant was not a national of the United States when this claim arose in 1987.<sup>2</sup> Therefore, under U.S. practice and the applicable principles of international law, including its own jurisprudence, the Commission is constrained to conclude that this claim fails to satisfy the nationality requirement. Consequently, while

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<sup>1</sup> See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of ILONA CZIKE against Hungary*, Claim No. HUNG-2-0784, Decision No. HUNG-2-191 (1976); and *Claim of JOSEPH REISS against the German Democratic Republic*, Claim No. G-2853, Decision No. G-2499 (1981). See also, Richard B. Lillich & Gordon A. Christenson, *International Claims: Their Preparation and Presentation* 8-9 (1962) ("The most important condition precedent to securing government espousal of an individual's grievance is the requirement that it have been owned by a United States national at the time of loss or injury. The Foreign Claims Settlement Commission, like the Department of State, has consistently held this position."); and *Chytil v. Powell*, 15 Fed. Appx. 515, 516 (9th Cir. 2001) (unpublished) ("Because in espousing a claim a sovereign takes the claim on as its own, a sovereign cannot espouse claims for people who were not citizens of that sovereign at the time the injury was inflicted.").

<sup>2</sup> See, e.g., *Mary Barchard Williams v. Germany*, Docket No. 594, Mixed Claims Commission (United States and Germany) (1925) (stating that "the right to recover damages" resulting from a decedent's death accrues at the time of the death, and the claimant has to be a U.S. national at the time of the decedent's death and thereafter).

the Commission is sympathetic to the tragic loss suffered as a result of the death of claimant's parents, it must conclude that this claim is not compensable under the January Referral Letter and the Claims Settlement Agreement.<sup>3</sup> Accordingly, this claim must be denied and it is hereby denied.

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<sup>3</sup> The Commission further notes that the January Referral Letter also states that Category B shall consist of claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent "whose death formed the basis of a death claim compensated by the Department of State." January Referral Letter, *supra*, ¶ 4. By letter dated July 11, 2011, claimant has informed the Commission that her claim for the wrongful death of her parents was denied by the State Department because she was not a U.S. national on the date her parents died. Accordingly, the claim also fails to satisfy this requirement of Category B of the January Referral Letter.

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

Dated at Washington, DC, September 7, 2011  
and entered as the Proposed Decision  
of the Commission.

  
Timothy J. Feighery, Chairman

  
Rafael E. Martinez, Commissioner

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

OCT 12 2011

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice 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 such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2010).