

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-187

Decision No. LIB-II-146

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PROPOSED DECISION

This multi-part claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by 5 U.S.C. §552(b)(6) in connection with the September 5, 1986 hijacking of Pan Am flight 73 in Karachi, Pakistan.

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 dated January 15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the*

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Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission
(“January Referral”).

The present claim is made under Categories A, D, and E. According to the January Referral, Category A consists of:

claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, provided that (1) the claimant meets the standard for such claims adopted by the Commission; (2) the claim was set forth as a claim for injury other than emotional distress alone by the claimant named in the Pending Litigation; (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission; and (4) the claimant did not receive an award pursuant to [the Secretary of State’s] referral of December 11, 2008.

Id. at ¶ 3. Category D consists of

claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by [the Department of State’s] December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to [the Department of State’s] December 11, 2008 referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim’s death; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 6. Category E consists of

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

Id. at ¶ 7. Attachment 1 to the January Referral lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral, as well as a December 11, 2008 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. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On July 16, 2010, the Commission received from the claimant a completed Statement of Claim, in which she asserts claims under Categories A, D, and E of the January Referral. The submission included evidence of claimant's U.S. nationality and her presence at the scene of the terrorist incident.

The claimant states that she, along with her parents and sister, was on board Pan Am Flight 73 in Karachi, Pakistan on September 5, 1986, when the plane was hijacked by "a Libyan terrorist group." She was approximately three months old at the time. In her claim form, she asserts that, during the ordeal, her father "was shot in the back and

severely injured when he laid on top of his daughters to protect their lives.” Given the claim categories under which the claimant seeks compensation, it is notable that the claimant fails to allege or substantiate the substantive elements of a claim under any of those categories.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission’s jurisdiction here is limited to the categories of claims defined under the January Referral. As noted above, Categories A, D, and E of the January Referral all require that the claimant be a U.S. national. January Referral, *supra*, ¶¶ 3, 6-7. In addition, Category A requires that the claimant not have received an award under the December Referral, that the claimant be a named party in the Pending Litigation listed in Attachment 1 to the January Referral, and that the claimant prove that the Pending Litigation against Libya has been dismissed. Category D, because it requires that the claimant have received an award under the December Referral, also incorporates the requirements that the claimant be a named party in the Pending Litigation, and evidence that this litigation was dismissed. *Id.* ¶¶ 3, 6. Category E, on the other hand, requires that the claimant *not* have been a plaintiff in the Pending Litigation. It does require, however, that a claimant assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral. *Id.* ¶ 7.

Nationality

In the *Claim of* ^{5 U.S.C. §552(b)(6)} Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that in order 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. *See also Claim of* ^{5 U.S.C. §552(b)(6)} *Claim* No. LIB-I-049, Decision No. LIB-I-019 (2011) (Final Decision).

The claimant asserts in her Statement of Claim that she was born in the United States in May 1986 (approximately four months before the terrorist incident). In support of this assertion, she has provided a copy of her 1986 birth certificate, evidencing her birth in Bellflower, California; however, she has not provided any evidence of her continuous U.S. nationality. By letter dated August 17, 2010, the Commission requested that claimant provide such information, for instance, by submitting a copy of a current U.S. passport, voter registration card, or other similar document. No response was received. The Commission, by letter dated December 21, 2011, repeated its request that claimant provide the necessary documentation. As of the date of this decision, however, there has been no response to the Commission's request. In the absence of the evidence requested, the Commission is constrained to conclude that the claimant does not satisfy the requirement of continuous U.S. nationality, and therefore fails to meet the jurisdictional requirements established under the January Referral. For this reason, her claim is not eligible for adjudication on the merits.

Pending Litigation

In addition, as noted above, Categories A and D of the January Referral require that the claimant be a named party in one of the Pending Litigations listed in Attachment 1 to the January Referral, and must provide evidence that the Pending Litigation against Libya has been dismissed. January Referral, *supra*, ¶ 3-4. Although claimant indicates that she was a plaintiff in a lawsuit related to the 1986 hijacking, filed against Pan Am World


Airways in November 1986 in the Superior Court of California, she has provided no evidence that she was a named party in any of the Pending Litigation cases identified in Attachment 1 to the January Referral. Accordingly, the Commission concludes that the claimant's claims under Categories A and D are not eligible for adjudication on the merits for the separate and distinct reason that claimant has failed to establish that she was a named party in a Pending Litigation case against Libya.

CONCLUSION

Given that the claimant has failed to meet the jurisdictional requirements for her claim, and while the Commission sympathizes with the suffering she describes, the Commission determines that the present claim is not within its jurisdiction and therefore must be, and hereby is, denied.

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim, including claimant's failure to plead and prove the substantive elements of her claims under Categories A, D and E.

Dated at Washington, DC, February 23, 2012
and entered as the Proposed Decision
of the Commission.


Timothy J. Feighery, Chairman

The decision was entered as the
Commission's Final Decision on

April 10, 2012


Rafael E. Martinez, Commissioner

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) (2011).