

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)

Claim No. LIB-II-188

Decision No. LIB-II-050

Against the Great Socialist People's
Libyan Arab Jamahiriya

Counsel for Claimant:

Michael G. Dave, Esquire
Marcus, Watanabe & Dave, LLP

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon the hostage-taking or unlawful detention of, and physical injuries said to have been sustained by, 5 U.S.C. §552(b)(6) during the hijacking of Pan Am Flight 73 in Karachi, Pakistan, on September 5, 1986.

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 Honorable*

Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission ("January Referral").

The present claim is made under Categories A 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 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 ("December Referral") 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 (Oct. 31,

2008), 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 claimant a Statement of Claim postmarked July 7, 2010, in which claimant alleged that he was held hostage or unlawfully detained on board Pan Am Flight 73 at Karachi International Airport in Karachi, Pakistan, on September 5, 1986. However, by letter dated May 20, 2011 the claimant amended his claim, reclassifying it from Category A to Category E of the January Referral. In support of his physical injury claim, claimant alleges that he suffered “minor physical injuries...consisting of lacerations, abrasions and contusions.” He has not provided any documentary support for his allegations.

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 and E of the January Referral each require that the claimant be a U.S. national. January Referral, *supra*, ¶¶ 3, 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 provide evidence that the Pending Litigation against Libya has been dismissed. *Id.* ¶ 3. 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 *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. The claimant has provided a copy of his birth certificate establishing his birth in the United States, but he has not submitted evidence of his continuous U.S. nationality. By letters dated May 26, 2011 and July 14, 2011, the Commission staff requested that claimant provide evidence of his continuous nationality, but he has failed to respond to these requests. Consequently, the claimant has failed to satisfy this element of his claims under both Categories A and E.

Pending Litigation

As stated above, Category A requires that the claimant have been a plaintiff in a Pending Litigation listed in Attachment 1 to the January Referral. January Referral, *supra*, ¶ 3. Claimant states in his Statement of Claim, and the relevant pleadings confirm, that he was not a party to a Pending Litigation. Because claimant also does not satisfy this

jurisdictional element for compensation under Category A, the Commission is constrained to conclude that his claim under this category is ineligible for adjudication on the merits.

On the other hand, Category E requires that the claimant *not* have been a plaintiff in the Pending Litigation. As noted above, claimant has stated in his claim form, and the Commission's records confirm, that he was not a party to the Pending Litigation. Based on this evidence, the Commission finds that the claimant has satisfied this element of his claim under Category E.

Claim for Death or Injury Resulting From a Covered Incident

To fall within Category E of the January Referral, the claimant must also assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral. January Referral, *supra*, ¶ 7. This list includes the “September 5, 1986 hijacking of Pan Am flight 73, as alleged in *Patel v. Socialist People’s Libyan Arab Jamahiriya* (D.D.C.) 06-cv-626.” *Id.*, Attachment 2, ¶ 9. In his Statement of Claim, the claimant sets forth a claim for physical injury suffered as a result of the September 5, 1986 Pan Am flight 73 hijacking. The Commission therefore finds that the claimant has satisfied this element of his claim under Category E.

In summary, therefore, the Commission concludes, on the basis of the foregoing, that the claim fails under both Categories A and E because claimant has failed to establish that the claim has been held continuously by a U.S. national. Further, because the claimant was not a Pending Litigant, this claim is also ineligible for adjudication on the merits under Category A. In addition, under Category E, even if claimant were to establish continuous U.S. nationality this claim would nonetheless have to be rejected for the claimant’s failure to establish the substantive elements of his claim, as discussed below.

Merits

The Commission held in *Claim of*

5 U.S.C. §552(b)(6)

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039, Dec. No. LIB-II-015 (2010), that in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant: (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; and (2) must have received medical treatment for the physical injury within a reasonable time; and (3) must verify the injury by medical records. *Id., supra*, at 6-7.

Claimant only asserts that he suffered “minor physical injuries...consisting of lacerations, abrasions and contusions,” as a result of this incident. He has submitted no documentary support for his assertion.*

Based on the lack of evidence submitted in support of claimant’s asserted injuries and the claimant’s own characterization of the injuries as minor, the Commission concludes that claimant has failed to establish that the severity of the injury was more than superficial, as that term is used in the Commission’s physical injury standard. Consequently, the Commission concludes that the claimant, 5 U.S.C. §552(b)(6) does not qualify for compensation under Category E of the January Referral. Accordingly, his claim must be and is hereby denied.

In reaching this conclusion, the Commission notes that, in this program, a number of victims of the hijacking of Pan Am Flight 73 have made claims under the December Referral that were unsuccessful, but because they were Pending Litigants, were able to qualify for compensation under Category A of the January Referral, as hostages. Because claimant was not a Pending Litigant, however, he is jurisdictionally ineligible, under the

* Section 509.5(b) of the Commission’s regulations provides:

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.
45 C.F.R. 509.5(b) (2010).

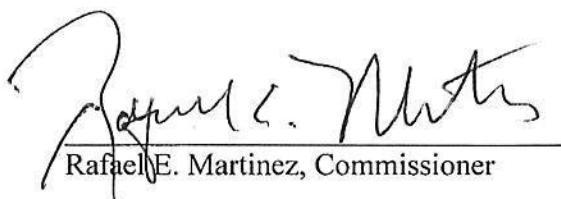
terms of this Referral, for compensation under Category A. The Commission emphasizes this point so as to make clear that in reaching these conclusions, it does not wish to minimize the terror claimant must have experienced aboard Pan Am 73 or otherwise appear to judge negatively on the merits of his assertion that he was held hostage. Indeed, it would appear that claimant was held by the hijackers under precisely the same circumstances as those who later became parties to the Pending Litigation. With the exception of evidence of claimant's continuous U.S. nationality, all other requirements for hostage claims appear to have been met in this particular claim. However, the Commission is constrained by the jurisdictional language of the January Referral, and, is therefore unable to adjudicate claimant's hostage claim on the merits.

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

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



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

The decision was entered as the
Commission's Final Decision on
April 10, 2012

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).