

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-191

Decision No. LIB-II-147

Counsel for Claimant:

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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*

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

The present claim is made under Categories A, B, 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 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. Finally, 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 September 7, 2010, the Commission received from the claimant a completed Statement of Claim in which she asserts claims under Categories A, B, and E of the January Referral, along with exhibits supporting the elements of her claim. This submission included evidence of claimant’s current U.S. nationality, her presence at the

scene of the terrorist incident, and her alleged physical injuries for which she now claims compensation.

The claimant states that she was on board Pan Am Flight 73 in Karachi, Pakistan on September 5, 1986, when she and other passengers were held hostage by armed hijackers for seventeen hours while the plane sat on the tarmac. In her claim form and attached sworn statement, claimant asserts that, in the chaos following the incident, she and her daughters “were pushed out the exit door onto the tarmac[,]” and were “trampled by many others who were falling one on top of another.” As a result, claimant states that she suffered “cuts, bruises, abrasions to large areas of [her] body; soreness; [and] orthopedic injuries to [her] feet, ankle and legs.” In addition, although claimant states that she and her daughters were taken to a local hospital following the incident, she “refused to wait at the hospital due to the chaos and dysfunction[,]” and instead went to her brother’s home—a short distance from Karachi Airport—where she underwent treatment from a private physician.

According to the claimant, the doctor “did not allow us to leave until 3 weeks later due to the extent of our injuries which included broken bones, fractures and concussions” Claimant asserts that she and her husband wanted “to rid our daughters’ memories of this horrific event, therefore neither me my husband nor I took any pictures of the injuries sustained or saved any related medical records.”

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICOSA, the Commission’s jurisdiction here is limited to the category of claims defined under the January Referral. As noted above, Categories A, B, and E of the January Referral all require that the claimant be a U.S. national.

January Referral, *supra*, ¶ 3-4, 7. Categories A and B further require that the claimant be a named party in a Pending Litigation case against Libya which has been dismissed. *Id.* ¶ 3-4.

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 became a naturalized U.S. citizen in 1989 (approximately three years after the terrorist incident). In support of this assertion, she has submitted a copy of her U.S. Certificate of Naturalization, indicating that she was naturalized on June 22, 1990, and identifying Pakistan as her "Country of former nationality." The Commission notes, however, that because claimant was not naturalized until four years after the incident, she was not a "national of the United States" when her claims arose in 1986; therefore, her claims do not satisfy the requirement of continuous U.S. nationality. For this reason, the Commission concludes that claimant fails to meet the jurisdictional requirements established under the January Referral, and that her claims are not eligible for adjudication on the merits.

Pending Litigation

In addition, as noted above, Categories A and B 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. Claimant has provided no evidence that she was a named party in the Pending Litigation. Accordingly, the Commission concludes that the claimant's claims under Categories A and B 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 claims, and while the Commission sympathizes with the suffering endured by claimant and her family, the Commission determines that the present claims are not within the Commission's jurisdiction and therefore must be, and hereby are, denied.

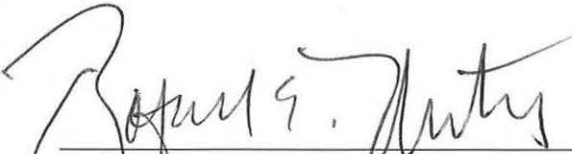
The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

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



Timothy J. Feighery, Chairman

**The decision was entered as the
Commission's Final Decision on
October 26, 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).