

Although Claimant was not among them, many of the U.S. nationals in Iraq and Kuwait at the time of the 1990-91 Iraqi occupation of Kuwait sued Iraq (and others) in federal court for, among other things, hostage-taking.¹ Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.² The Agreement, which entered into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004, including claims of personal injury caused by hostage-taking.³ Exercising its authority to distribute money from the settlement funds, the U.S. Department of State provided compensation to numerous individuals whose claims were covered by the Agreement, including some whom Iraq had allegedly taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait.

Under the International Claims Settlement Act of 1949 ("ICSA"), the Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission.⁴ The Secretary has delegated that authority to the State Department's Legal Adviser, who, by letter dated October 7, 2014, referred three categories of claims to this Commission for adjudication and certification.⁵ This was the State Department's second referral of claims to the Commission under the Claims Settlement Agreement, the

¹ See, e.g., *Hill v. Republic of Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001); *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006).

² See *Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement").

³ See *id.* Art. III(1)(a)(ii).

⁴ See 22 U.S.C. § 1623(a)(1)(C) (2012).

⁵ 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* ("2014 Referral" or "October 2014 Referral").

first having been by letter dated November 14, 2012 (“2012 Referral” or “November 2012 Referral”).⁶

One category of claims from the 2014 Referral is applicable here. That category, known as Category A, consists of

claims by U.S. nationals for hostage-taking¹ by Iraq² in violation of international law prior to October 7, 2004, provided that the claimant was not a plaintiff in pending litigation against Iraq for hostage taking³ at the time of the entry into force of the Claims Settlement Agreement and has not received compensation under the Claims Settlement Agreement from the U.S. Department of State. . . .

¹ For purposes of this referral, hostage-taking would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

² For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

³ For purposes of this category, pending litigation against Iraq for hostage taking refers to the following matters: *Acree v. Iraq*, D.D.C. 02-cv-00632 and 06-cv-00723, *Hill v. Iraq*, D.D.C. 99-cv-03346, *Vine v. Iraq*, D.D.C. 01-cv-02674; *Seyam (Islamic Society of Wichita) v. Iraq*, D.D.C. 03-cv-00888; *Simon v. Iraq*, D.D.C. 03-cv-00691.

2014 Referral at ¶ 3.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICOSA and the 2014 Referral.⁷

⁶ Although the November 2012 Referral involved claims of U.S. nationals who were held hostage or unlawfully detained by Iraq, it did not involve hostage-taking claims *per se*. Rather, it consisted of certain claimants who had *already received* compensation under the Claims Settlement Agreement from the State Department for their hostage-taking claims, and it authorized the Commission to award additional compensation to those claimants, provided they could show, among other things, that they suffered a “serious personal injury” during their detention. The 2012 Referral expressly noted that the “payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.” 2012 Referral, *supra*, n.3.

⁷ *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).

On October 27, 2015, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of her claim.

DISCUSSION

Jurisdiction

This Commission's authority to hear claims is limited to the category of claims referred to it by the United States Department of State.⁸ The Commission's jurisdiction under the "Category A" paragraph of the 2014 Referral is limited to claims for hostage-taking of (1) "U.S. nationals," provided that the claimant (2) was not a plaintiff in any litigation against Iraq for hostage taking pending on May 22, 2011 (the "Pending Litigation"), and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral ¶ 3.

Nationality

This claims program is limited to claims of "U.S. nationals." Here, that means a claimant must have been a national of the United States when the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force.⁹ Claimant satisfies the nationality requirement. She has provided a copy of her U.S. birth certificate, which shows that she was a U.S. national at the time of the alleged hostage-taking (August 1990 through February 1991). She has also provided a copy of her current U.S. passport, which establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

⁸ See 22 U.S.C. § 1623(a)(1)(C).

⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

No Pending Litigation

Additionally, Category A states that the claimant must not have been a plaintiff in any of the so-called Pending Litigation cases at the time of the entry into force of the Claims Settlement Agreement.¹⁰ Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant has averred under oath in an October 2015 declaration submitted with her claim, and the pleadings in the cases cited in footnote 3 confirm, that she was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of her claim.

*No Compensation under the Claims Settlement Agreement
from the Department of State*

The Claimant also satisfies the final jurisdictional requirement. Claimant has stated that she has “not previously received compensation from the U.S. Department of State under the United States-Iraq Settlement Agreement dated September 2, 2010.” Further, we have no evidence that the State Department has provided her any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of her claim.

In summary, this claim is within the Commission’s jurisdiction pursuant to the 2014 Referral and is entitled to adjudication on the merits.

Merits

Factual Allegations

Claimant states that Iraq held her hostage from August 2, 1990, until February 25, 1991, a total of 208 days. She alleges that she was living with her husband and three children in Khalidy, Kuwait, when Iraq invaded the country on August 2, 1990. She states that they “initially stayed inside[,]” as “there was no way for [them] to leave Kuwait.” She

¹⁰ The Agreement entered into force on May 22, 2011. See Claims Settlement Agreement, art. IX.

also asserts that the “borders were inaccessible and [she] was too far-along in [her] pregnancy to attempt to flee through the desert” Eventually, she heard Iraqi personnel were searching for Americans door-to-door, so she and her family eventually moved to her brother-in-law’s house in Sabah Asalam, Kuwait, at the end of August. After giving birth in a local hospital, Claimant and her family returned to their apartment in Khalidy, where they remained until sometime in November, when they moved to Claimant’s sister-in-law’s house and hid in the basement “until the end of the war in February 1991.” Claimant asserts that she was “unable to leave [Kuwait] because [she] was not free to as a result of the Iraqi military presence from August 2, 1990, through at least the liberation of Kuwait on February 25, 1991.”

Supporting Evidence

Claimant has supported her claim with a sworn declaration, dated October 23, 2015, in which she describes her ordeal in Kuwait. Apart from this statement, the Commission also takes notice of additional documents, submitted by other claimants in this Iraq Claims Program, that provide background about the broader geopolitical situation during the First Gulf War in 1990-91, including some that relate specifically to the circumstances faced by U.S. nationals in Iraq and Kuwait at the time. These documents include statements from U.S. and Iraqi officials, resolutions of the United Nations Security Council, newspaper articles, a report from Amnesty International on human rights violations committed by Iraq in 1990, unclassified cables and a memorandum from the U.S. Department of State, and

affidavits submitted in a lawsuit brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War.

Legal Standard

To make out a substantive claim under Category A of the 2014 Referral, a claimant must show that (1) Iraq was engaged in an armed conflict and (2) during that conflict, Iraq took the claimant hostage.¹¹ The Commission has previously held that, to establish a hostage-taking claim, 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 implicit condition for the claimant's release.¹² 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.¹³

Application of Standard to this Claim

Claimant has failed to satisfy the standard for hostage-taking in this program because she has not met her burden to prove the first element of this standard—that Iraq seized or detained her in Kuwait. The evidence in the record is not sufficient to establish that Claimant was present in Kuwait between August 2, 1990, and February 25, 1991.¹⁴

¹¹ *See id.* at 16. An estate claimant would of course need to make this showing as to its decedent.

¹² *See id.* at 17-20.

¹³ *See id.* at 17.

¹⁴ Claimant's children, who are represented by the same counsel, also brought claims in this program, and their claims were denied for this same reason. *See* Claim No. IRQ-II-304, Decision No. IRQ-II-220 (2018); Claim No. IRQ-II-305, Decision No. IRQ-II-221 (2018); Claim No. IRQ-II-306, Decision No. IRQ-II-222 (2018); Claim No. IRQ-II-307, Decision No. IRQ-II-223 (2018). On numerous occasions, the Commission staff wrote letters to counsel requesting additional evidence in support of Claimant and her children's assertions that they were held hostage in Kuwait between August 1990 and February 1991, including, most recently, one pertaining specifically to Claimant that was sent in October 2017. Counsel responded a few days later to this letter, indicating that he would provide supplemental information as soon as possible. However, to date, no additional evidence has been received either for this claim or for any of the four claims of Claimant's children that have already been decided.

The only evidence that Claimant has submitted to support her allegation that she was in Kuwait during this time is her own declaration. Yet, as a “[a] single statement from an interested party,” this declaration is simply not sufficient to meet Claimant’s burden to prove that she was in Kuwait during the relevant period.¹⁵ She has therefore failed to establish that Iraq detained her in Kuwait at any point in this period, and her claim thus does not satisfy the standard for hostage-taking in this program. Accordingly, this claim must be and is hereby denied.

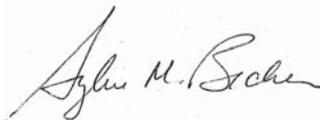
Dated at Washington, DC, February 23, 2018
and entered as the Proposed Decision
of the Commission.

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

April 11, 2018



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery 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 delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2017).

¹⁵ Claim No. LIB-III-014, Decision No. LIB-III-031 (2016) (Final Decision), at 8.