

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579**

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-II-056
	}	
	}	Decision No. IRQ-II-338
	}	
Against the Republic of Iraq	}	
	}	

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) for personal injuries allegedly suffered as a result of Iraq’s invasion of Kuwait in August 1990. Under the terms of the State Department letter referring claims against Iraq to this Commission, the Commission does not have authority to entertain personal injury claims unless a claimant had been in pending litigation against Iraq. Because Claimant does not allege that she was a party to such litigation, the claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that, in 1991, she was a three-month old United States citizen living with her family in Johnson City, New York, when she began to suffer emotional injuries arising from “‘in-womb’ stress” experienced during her mother’s pregnancy. Specifically, Claimant states that, while pregnant with her, Claimant’s mother was living in Kuwait when Iraq invaded the country on August 2, 1990, and for six weeks thereafter, was forced to hide in a number of locations in constant fear of being captured by Iraqi authorities. After the Iraqi government authorized female and minor U.S. nationals to

leave, Claimant's mother flew to Baghdad with two of her children on September 12, 1990. They then flew to London that same day, September 12, 1990, and from there to Raleigh, North Carolina, and then finally reached family members in Johnson City, New York. Claimant was subsequently born in Johnson City on December 28, 1990.¹

Claimant relies on her mother's narrative to establish her emotional injuries.² Claimant's mother asserts that, unlike her siblings, Claimant was "nervous" as a baby, "cried often," and "seemed agitated almost constantly." As she grew, Claimant became "very clingy and insecure" and "exhibit[ed] anxiety and stress." Claimant's mother further states that, "[w]hether or not this is related to the 'in-womb' stress, and it hasn't been officially diagnosed as such, she continues to have anxiety attacks on occasion."

Claimant's mother also alleges that Claimant suffered physical injuries on two occasions after Iraq's invasion of Kuwait. Her mother states that Claimant was hospitalized for four days when she was three months old and that her treatment involved being placed "under an oxygen tent." Her mother further claims that she sought medical advice concerning a "'croupy' cough" that Claimant developed after her family returned to Kuwait in July 1991. According to Claimant's mother, doctors indicated that Claimant's cough arose from "sediment in the air" caused by oil fires set by the Iraqi army as they fled Kuwait.

Although Claimant was not among them, many of the individuals in Iraq and Kuwait at the time of the 1990-91 Iraqi occupation of Kuwait sued Iraq (and others) in

¹ Claimant's mother, her two siblings, and one step-sibling, are also claimants in this Iraq claims program. See Claim No. IRQ-II-058, Decision No. IRQ-II-024; Claim No. IRQ-II-057, Decision No. IRQ-II-006; Claim No. IRQ-II-059, Decision No. IRQ-II-069; and Claim No. IRQ-II-135, Decision No. IRQ-II-285.

² The allegations set forth in this section derive principally from an unsworn statement, dated March 30, 2015, that Claimant submitted in support of her claim. According to Claimant, the statement was narrated by her mother because Claimant was "not yet born and [does] not recall the details of the August 2, 1990 [i]nvasion of Kuwait."

federal court for, among other things, hostage-taking.³ Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.⁴ 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.⁵

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.⁶ 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: hostage-taking, death while being held hostage, and personal injury resulting from physical harm.⁷ This was the State Department’s second referral of claims to the Commission under the Claims Settlement Agreement, the first having been by letter dated November 14, 2012 (“2012 Referral” or “November 2012 Referral”).⁸

³ 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).

⁴ 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”).

⁵ See *id.* Art. III(1)(a)(ii).

⁶ See 22 U.S.C. § 1623(a)(1)(C) (2012).

⁷ 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”).

⁸ See *Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission* (“2012 Referral” or “Referral”). 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.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSA and the 2014 Referral.⁹

On May 11, 2015, Commission received from Claimant a completed Statement of Claim seeking compensation under the 2014 Referral, together with exhibits supporting the elements of her claim.

DISCUSSION

This Commission's authority to hear claims is limited to the categories of claims referred to it by the United States Department of State.¹⁰ The Commission's authority to hear personal injury claims is set forth in Category C of the 2014 Referral. Category C authorizes the Commission to adjudicate personal injury claims brought by U.S. nationals "resulting from physical harm ... caused by Iraq" provided that they satisfy three additional requirements.¹¹ Personal injury claimants must 1) have had pending litigation against Iraq arising out of acts other than hostage-taking; 2) not have already received compensation for their injuries under the Claims Settlement Agreement; and 3) not have had a valid claim and received compensation under the 2014 Referral for death while being held hostage.¹²

Claimant has failed to establish that she satisfies the pending litigation requirement. Category C requires that the claimant have had pending litigation against Iraq arising out of acts other than hostage taking. This means that for this Commission to adjudicate the merits of her claim, Claimant must have been a party in a lawsuit against Iraq based on an act other than hostage taking. Claimant does not allege that she was ever a party in a

⁹ *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).

¹⁰ See 22 U.S.C. § 1623(a)(1)(C) (2012).

¹¹ 2014 Referral, at ¶ 5.

¹² See *id.*

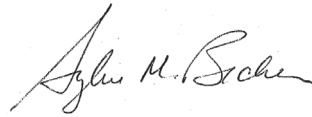
lawsuit against Iraq, and the Commission has no independent evidence of any such litigation. We therefore conclude that she is not eligible for compensation under the 2014 Referral and Claims Settlement Agreement without determining whether she would otherwise qualify under Category C as a “U.S. national[]” who suffered a “personal injury resulting from physical harm . . . caused by Iraq.”¹³

Accordingly, this claim must be and is hereby denied. The Commission makes no determinations about any other aspect of this claim.

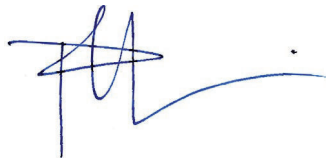
Dated at Washington, DC, October 24, 2019
and entered as the Proposed Decision
of the Commission.

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

December 10, 2019



Sylvia M. Becker, Commissioner



Patrick Hovakimian, 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) (2018).

¹³ 2014 Referral, at ¶ 5.