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-071
	Decision No. IRQ-II-057
Against the Republic of Iraq	

FINAL DECISION

Claimant objects to the Commission's Proposed Decision denying his hostage-taking claim against the Republic of Iraq ("Iraq"). The Proposed Decision denied his claim because he was not a U.S. national at the time of his alleged hostage taking, as required by the September 2010 U.S.-Iraq settlement agreement[1] and by the State Department letter referring claims arising out of that agreement to this Commission.[2] On objection, Claimant requests that the Commission reconsider its decision in light of the hardship he experienced in Kuwait and Iraq. He further states that the Claims Settlement Agreement "contradicts American Law as it ignores the benefits for the Parents of American Minor Citizens who [were] held hostage[] as in [Public] Law 101-513." After carefully considering Claimant's request, along with all of his arguments and evidence, we again deny Claimant's claim for

[1] *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").
[2] *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* ¶ 3 ("2014 Referral" or "October 2014 Referral").

the same reason stated in the Proposed Decision: Claimant was not a U.S. national at the time of the alleged hostage taking. We thus affirm the denial of this claim.

BACKGROUND

Claimant, who was four years old at the time of the incident, brought this claim against Iraq alleging that Iraq held him hostage in Kuwait and Iraq in August and September 1990. He alleged that he and his family (including, among others, his six-year-old U.S. citizen sister) were in Kuwait when Iraq invaded the country on August 2, 1990, although, because of his age at the time, Claimant did not recall the details of his alleged captivity. Claimant sought compensation for his hostage experience under Category A of the State Department's letter to the Commission establishing this program ("2014 Referral"), which consists of "claims by U.S. nationals for hostage-taking[] by Iraq[] in violation of international law prior to October 7, 2004 . . . ."[3]

The Commission denied the claim in a Proposed Decision entered on February 23, 2017 ("Proposed Decision").[4] In so doing, the Commission noted that, under the 2014 Referral, claimants must have been "U.S. nationals" to be eligible for compensation. The Commission further explained that, in order to determine the applicable law, the Commission was required under its authorizing statute to "look first to 'the provisions of the applicable claims agreement.'"[5] Here, this meant that, in order to determine the precise legal meaning of the term "U.S. national," the Commission had to look to the U.S.-Iraq Claims Settlement Agreement,[6] which defines "U.S. nationals" as "'natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry

[3] *Id.*
[4] *See* Claim No. IRQ-II-071, Decision No. IRQ-II-056 (2017) (Proposed Decision).
[5] *Id.* at 4 (citing 22 U.S.C. § 1623(a)(2) (2012)).
[6] *Id.*

into force of this agreement.'"[7] The Proposed Decision held that Claimant did not satisfy that definition because he was not a U.S. national at the time his claim arose, which was in 1990.

On March 14, 2017, Claimant filed a timely notice of objection. He did not, however, request an oral hearing. Claimant subsequently submitted a letter, dated May 11, 2017. That letter stated, among other things, that the Claims Settlement Agreement "contradicts American law" because it "ignores" the benefits available to the parents (who do not have to be U.S. nationals) of U.S. minors who were held hostage in Iraq and Kuwait under Public Law No. 101-513.[8] Claimant also noted that the U.S. State Department "acknowledged that we were hostages by giving us a letter[.]" Finally, Claimant requested that the Commission reconsider its denial of his claim in light of "the hardship [he and his family] went through . . . ."

As we explain below, we conclude that our determination in the Proposed Decision was correct: Claimant was not a U.S. national at the time of his alleged hostage-taking experience, and the Commission therefore lacks jurisdiction to adjudicate the merits of his claim under the 2014 Referral. Because we lack jurisdiction, we likewise have no authority in deciding this claim to consider any hardship Claimant and his family suffered. For this reason, his claim is denied.

[7] *Id.* (quoting Claims Settlement Agreement, *supra*, art. I(2) (emphasis added)).
[8] *See* Foreign Operations, Export Financing, and Related Programs Appropriations Act for 1991, Pub. L. No. 101-513, 104 Stat. 1979, 2064 (1990) (heading to section 599C entitled "Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon"); *see also* 5 U.S.C. § 5561 note (2012) ("Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon").

DISCUSSION

Because Claimant has not requested an oral hearing,[9] his objection relies entirely on his May 11, 2017 letter. In that letter, Claimant asks the Commission to reconsider its Proposed Decision, which was based on the fact that Claimant was not a U.S. national at the time of the alleged hostage taking. Claimant does not dispute, however, that he was not a U.S. national at the time of the alleged hostage taking and has not provided any evidence that he was a U.S. national at the time. In fact, he has not provided any new documentary evidence at all.

Claimant argues that the Commission failed to consider the benefits he claims were available to "Parents of American Minor Citizens" under Public Law No. 101-513, a 1990 statute that provided certain benefits to, among others, "United States nationals, or family members of United States nationals, who are in a hostage status in Iraq or Kuwait during the period beginning on August 2, 1990, and terminating on the date on which United States economic sanctions against Iraq are lifted . . . ."[10] Claimant further suggests that the Commission should not have relied on the Claims Settlement Agreement because it "contradicts" U.S. law by not taking into account the benefits available to him under Public Law No. 101-513. Claimant also points to a letter from the U.S. Department of State in which the Department allegedly "acknowledged" that the members of Claimant's family were hostages. The letter, dated April 7, 1993, states that Claimant and other members of his family "were in hostage status beginning August 2, 1990," and, further, that Claimant's

[9] Under the Commission's regulations, "[i]f an objection [to a Proposed Decision] has . . . been filed, but no hearing requested, the Commission may, after due consideration thereof: (1) Issue a Final Decision affirming or modifying its Proposed Decision, (2) Issue an Amended Proposed Decision, or (3) On its own motion order hearing thereon, indicating whether for the taking of evidence on specified questions or for the hearing of oral arguments." 45 C.F.R. § 509.5(h) (2017).
[10] § 599C(d)(4)(A), 104 Stat. at 2065.

parents received hostage benefits under Public Law No. 101-513. Claimant's name does not specifically appear in the letter, however.

The argument Claimant appears to be making about Public Law No. 101-513 is incorrect. Public Law No. 101-513 does not affect this Commission's jurisdiction in any way. Rather, as we explained in the Proposed Decision, the Commission's jurisdiction in this program comes from the Secretary of State, who has statutory authority under the International Claims Settlement Act of 1949 ("ICSA") to refer "a category of claims against a foreign government" to this Commission.[11] The Secretary delegated that authority to the State Department's Legal Adviser, who then referred the category of claims at issue here to the Commission via the 2014 Referral. One of the threshold requirements for hostage-taking claims in this program is that the claim be brought by a "U.S. national." As we noted in the Proposed Decision, the term "U.S. national" has a specific legal meaning that the Commission is bound to apply in deciding claims under the 2014 Referral. The ICSA requires the Commission first to "apply the … provisions of the applicable claims agreement . . . ."[12] Here, the "applicable claims agreement" is the U.S.-Iraq Claims Settlement Agreement. That agreement states that "[r]eference to 'U.S. nationals' shall mean natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement."[13] Thus, applying the applicable provisions of the ICSA, the Commission's authorizing statute, the Commission must interpret the term "U.S. national" to mean a person who was a U.S. national at the time the claim arose. In this case, the claim arose in August 1990. It is undisputed that Claimant was not a U.S. national at that time. He therefore does not meet the jurisdictional

[11] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).
[12] *Id.* § 1623(a)(2).
[13] Claims Settlement Agreement, art. I(2) (emphasis added).

requirement under Category A of the 2014 Referral that the claim be brought by a U.S. national.

Public Law No. 101-513 is not relevant to the Commission's jurisdiction or the requirement that a claimant have been a U.S. national at the time the claim arose. The beneficiaries of Public Law No. 101-513 included "family members of United States nationals" who were not themselves "United States nationals." Therefore, even though a "family member[] of [a] United States national[]" may have been eligible for benefits under Public Law No. 101-513, such a family member would not be eligible for compensation in the Commission's Iraq Claims Program unless he or she were also a "United States national" within the meaning of the Claims Settlement Agreement. In short, the relevant U.S. law is the Commission's own authorizing statute, the ICSA, which requires that a claimant in this program be a "United States national." Nothing in the Claims Settlement Agreement "contradict[s]" Public Law No. 101-513. The Claims Settlement Agreement defines "U.S. nationals," while Public Law No. 101-513, in contrast, provides benefits for a different group of individuals, including "family members of United States nationals." The fact that Public Law No. 101-513 granted benefits to family members of U.S. nationals has no bearing on *this* claims program, which is based on the 2014 Referral, which is in turn based on the Claims Settlement Agreement.

Finally, Claimant also appears to assert that the Commission should reconsider its decision because he experienced hardship during his ordeal in Kuwait and Iraq in 1990. Whatever hardship Claimant and his family faced during the Iraqi invasion and occupation of Kuwait, this does not give the Commission legal authority to decide the claim. Because the relevant law requires that Claimant have been a U.S. national at the time of the alleged hostage-taking, the degree of hardship Claimant suffered plays no role in the Commission's

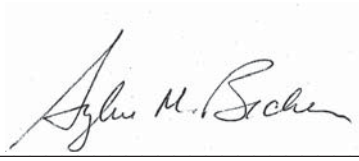
decision: The decision is based solely on the fact that Claimant was not a U.S. national at the time of the alleged hostage taking.

CONCLUSION

In sum, while we recognize the considerable suffering and hardship endured by Claimant during the Iraqi invasion and occupation of Kuwait, for the reasons discussed above and in the Proposed Decision, and based on the evidence and information submitted in this claim, the Commission concludes that the denial of this claim set forth in the Proposed Decision must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, May 15, 2018
and entered as the Final Decision
of the Commission.

Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
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In the Matter of the Claim of	}	
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5 U.S.C. §552(b)(6)	}	Claim No. IRQ-II-071
	}	
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	}	
Against the Republic of Iraq	}	
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PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq ("Iraq") alleging that Iraq held him hostage in violation of international law in August and September 1990. Because Claimant was not a U.S. national at the time, however, this Commission lacks jurisdiction over his claim. In other words, the Commission does not have the authority to consider the merits of his claim—that is, to decide whether Iraq held him hostage. For this reason, his claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was living with his family in Kuwait when Iraq invaded the country on August 2, 1990. Because Claimant was four years old at the time, he does not recall the details of his alleged captivity; however, he states that he was held hostage in Kuwait and Iraq along with other members of his family until they ultimately crossed the border from Iraq into Jordan on September 13, 1990. He does not explain the circumstances of his departure.

Although Claimant was not involved in the suit, many U.S. nationals who were 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] The Agreement defined "U.S. nationals" as "natural and juridical persons who were U.S. nationals at the time their claim arose and through the date of entry into force of this Agreement."[4]

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.[5] 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.[6] 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").[7]

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[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 id.* Art. I(2).

[5] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).

[6] *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").

[7] *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

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-taking[1] by Iraq[2] 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 taking[3] 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. . . .
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> [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.
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> [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 ICSA and the 2014 Referral.[8]

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 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." *Id.*

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

On June 19, 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 his claim.

DISCUSSION

This Commission's authority to hear claims—known in the legal vernacular as its "jurisdiction"—is limited to the category of claims referred to it by the United States Department of State.[9] Here, therefore, we must look to the language of the "Category A" paragraph of the 2014 Referral to determine our jurisdiction. That language limits our jurisdiction to claims of (1) "U.S. nationals," provided that the claimant (2) was not a plaintiff in pending litigation against Iraq for hostage taking on May 22, 2011; and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral ¶ 3.

This claim fails to satisfy the first requirement—that it be brought by a "U.S. national." The term "U.S. national" has a specific legal meaning in this context. When the Commission interprets terms such as "U.S. national," Congress has directed us to look first to "the provisions of the applicable claims agreement."[10] Here, that means we must turn first to the Claims Settlement Agreement. That Agreement expressly provides a definition of "U.S. nationals." Article I of the Agreement states that "[r]eference to 'U.S. nationals' shall mean natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement."[11] As the Commission has recognized in its previous decisions, the U.S. nationality requirement thus means that

[9] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).
[10] 22 U.S.C. § 1623(a)(2) (2012).
[11] Claims Settlement Agreement, art. I(2) (emphasis added).

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.[12]

Claimant has failed to show that he was a U.S. national in 1990, when his claim arose. Indeed, the documents Claimant has submitted seem to establish conclusively that he was *not* a U.S. national when his claim arose. Claimant has submitted a copy of his Immigration and Naturalization Service (INS) Form I-94, which contains a parole stamp from October 1, 1990, indicating that his country of citizenship was "Lebanon (Palestine)." (He has also submitted a copy of his U.S. social security card.) Similarly, in his sworn statement, Claimant states that, at the time of the invasion of Kuwait, he was a "stateless Palestinian." Thus, the evidence establishes that Claimant was not a U.S. citizen when the claim arose and is thus not a "U.S. national" within the meaning of the Claims Settlement Agreement and 2014 Referral.

In support of his claim to U.S. nationality, Claimant argues that he was "treated as [an] American National[]" by the U.S. Department of State on two occasions: first, when the State Department submitted a claim on his behalf against Iraq before the United Nations Compensation Commission (UNCC);[13] and, second, when his family received a "Hostage Relief Payment" pursuant to Public Law 101-513.[14]

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[12] *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001(Proposed Decision), at 5-6 (2014).

[13] The UNCC was created in 1991 as a subsidiary organ of the United Nations Security Council to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's 1990–1991 invasion and occupation of Kuwait.

[14] Public Law 101-513 established a program of benefits for U.S. hostages in Iraq and Kuwait. *See* Foreign Operations, Export Financing, and Related Programs Appropriations Act for 1991, Pub. L. No. 101-513, 104 Stat. 1979, 2064 (1990) (heading to section 599C entitled "Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon"); *see also* 5 U.S.C. § 5561 note (2012) ("Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon"). Under this law, U.S. nationals and their family members who were held hostage in Iraq and Kuwait after August 2, 1990, were entitled to certain payments from the U.S. Government on account of their hostage status.

Even assuming both facts are true, neither establishes that Claimant was a U.S. national. First, the claims the State Department submitted to the UNCC were not just on behalf of United States nationals. The State Department also submitted claims on behalf of non-nationals, including those who were merely "residents of the United States."[15] Thus, just because the State Department submitted a claim to the UNCC on Claimant's behalf does not mean that he was a United States national. Second, the hostage benefits afforded by Public Law No. 101-513 were also not limited to those who were U.S. nationals. The law provided benefits not only to U.S. nationals but also to "family members" of U.S. nationals, including "any individuals who are members of the households of United States hostages."[16] Thus, nothing the State Department has done establishes that Claimant was a U.S. national.

Just as importantly, it would not have mattered even if, as Claimant puts it, he was "treated as [an] American National[]" by the State Department. As the Commission has previously recognized, U.S. nationality can be acquired "only by birth or by naturalization under the process set by Congress."[17] Claimant was not a U.S. national at birth, and there is no evidence that he ever acquired U.S. nationality under the naturalization process established by Congress. Indeed, he states that he became a Canadian citizen in 2000. Thus, even if, by 1990, Claimant had received certain assistance from the State Department (such as the receipt of statutory benefits under Public Law 101-513 or the submission of his claim before the UNCC), this would still not have made him a U.S. national at the time.[18]

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[15] 57 Fed. Reg. 421 (Jan. 6, 1992) (noting State Department to submit UNCC claims on behalf of "residents of the United States" in addition to "United States citizens").
[16] Foreign Operations, Export Financing, and Related Programs Appropriations Act for 1991, §§ 599C(d)(2), (4)(A), (5), Pub. L. No. 101-513, 104 Stat. 1979, 2064-65 (1990).
[17] Claim No. LIB-I-044, Decision No. LIB-I-017 (Final Decision), at 7 (2011) (*citing Abou-Haidar v. Gonzalez*, 437 F.3d 206, 207 (1st Cir. 2006)).
[18] *See id.* at 7-8. Moreover, Claimant does not allege (and the record does not support) that he or anyone in his family received the alleged assistance by the time his claim accrued on August 2, 1990.

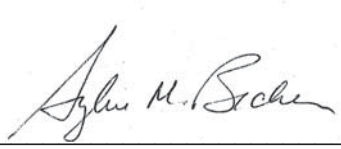
Finally, we find no merit in Claimant's suggestion that he obtained U.S. nationality by demonstrating "permanent allegiance" to the United States. Although he does not say so explicitly, Claimant appears to base this argument on the Commission's authorizing statute, which defines the term "nationals of the United States" as "(1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens."[19] However, as the Commission has previously held, the phrase "persons who, though not citizens of the United States, owe permanent allegiance to the United States" applies only to an extremely small class of individuals who were born in certain outlying possessions of the United States—at this point, only American Samoa and Swains Island[20]—or born of such parentage.[21] Claimant has not demonstrated, or even alleged, that he falls within that classification.

[19] 22 U.S.C. § 1621(c) (2012). This provision mirrors a definition of the same term contained in the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(22) (2012).
[20] 8 U.S.C. § 1101(a)(29) (2012).
[21] *See* Claim No. IRQ-II-069, Decision No. IRQ-II-045 (2017) (Proposed Decision) (citing Claim No. LIB-I-044, Decision No. LIB-I-017 (Final Decision), at 6 (2011) (citations omitted)). The Commission has previously reasoned that persons from certain outlying U.S. possessions were neither U.S. citizens nor aliens who could acquire U.S. citizenship by operation of the naturalization laws; because such persons were incapable of obtaining citizenship, the concept of "permanent allegiance" was developed to meet this situation. *See, e.g., Claim of EDWARD KRUKOWSKI,* Claim No. PO-9532, Decision No. P0-927 (Final Decision), at 2-9 (1964).

Therefore, the Commission is constrained to conclude that it has no jurisdiction to decide the present claim under the 2014 Referral. In other words, the Commission has no authority or power to decide the merits of this claim. Accordingly, this claim must be and is hereby denied for lack of jurisdiction. The Commission makes no determinations about any other aspect of this claim.

Dated at Washington, DC, February 23, 2017
and entered as the Proposed Decision
of the Commission.

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) (2016).