

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of

CARLOS MANUEL CALDERON
ANGEL MANUEL CALDERON

Against the Great Socialist People's
Libyan Arab Jamahiriya

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} Claim No. LIB-II-083

} Decision No. LIB-II-068
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Counsel for Claimant:

Reggie Diaz, Esq.
Pavia Bermudez & Diaz LLP

Hearing on the record held on June 5, 2012

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon the wrongful death of Carmelo Calderon-Molina as a result of the terrorist incident at Lod Airport in Israel on May 30, 1972. This claim was submitted under Category E of the January 15, 2009 *Letter 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"). By Proposed Decision entered July 12, 2011 the Commission denied this claim on the ground that claimants lacked standing to pursue it.

On August 2, 2011, the claimants filed an objection wherein they "informed" the Commission that they "incorporate and adopt by reference, as fully set forth

herein; the facts and legal arguments raised by the [Estate of Carmelo Calderón-Molina] in its Notice of Objection filed on July 22, 2011.”¹ Subsequently, by letter dated February 7, 2012 the claimants requested “the consolidation of our...Claim...with Claim No. LIB-II-094 filed by...the Estate of Carmelo Calderón-Molina.”

Since the claimants did not request an oral hearing on their objection, pursuant to 45 CFR § 509.5(h)(1), the Commission has considered claimants’ objection along with the materials referenced by claimants in support of their objection, and, after a hearing on the record, issues this Final Decision.

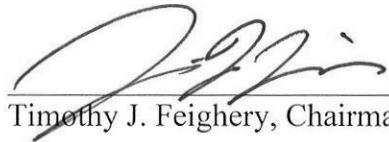
As noted above, in support of this objection the claimants have referenced evidence submitted in support of the objection in Claim No. LIB-II-094. This evidence includes the Resolution of the Commonwealth of Puerto Rico, Court of First Instance, Superior Court of San Juan dated November 2, 2011, appointing Luz Calderón-Cardona as the Judicial Administrator of the Estate of Carmelo Calderon-Molina. Based on that Resolution the Commission determined—in the Final Decision issued in Claim No. LIB-II-094—that Ms. Calderón-Cardona was the legal representative of the Estate and, therefore, had standing to pursue the claim of the Estate.

In light of the fact that the evidence presented in Claim No. LIB-II-094 clearly establishes that the legal representative of the Estate of Carmelo Calderón-Molina is Ms. Calderón-Cardona, the Commission finds that the claimants herein do not have

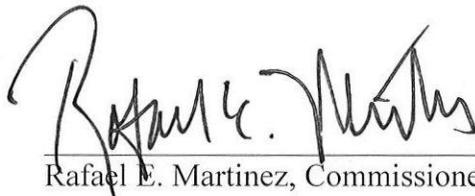
¹ The Commission notes that a separate claim arising out of the same facts and circumstances as the present claim has been submitted by a Luz Calderon-Cardona on behalf of the Estate of Carmello Calderon-Molina. See Claim No. LIB-II-094, Decision No. LIB-II-060.

standing to pursue this claim. Accordingly, the denial set forth in the Proposed Decision in this claim must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, June 5, 2012
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

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Libyan Arab Jamahiriya	}	
	}	
Counsel for Claimant:	}	Reggie Diaz, Esq. Pavia Bermudez & Diaz LLP

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by CARLOS MANUEL CALDERON and ANGEL MANUEL CALDERON, on behalf of the Estate of Carmelo Calderon Molina, based upon the wrongful death of Carmelo Calderon Molina as a result of the terrorist incident at Lod Airport in Israel on May 30, 1972.

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 Letter”).

The present claim is made under Category E. According to the January Referral Letter, 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 Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December 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 (Nov. 5, 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 Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On April 22, 2010 the Commission received from claimants a Statement of Claim asserting a claim under Category E of the January Referral Letter, along with exhibits supporting the claim. This submission included: evidence of the U.S. nationality of Carmelo Calderon Molina and that of some of the beneficiaries of his estate; a document reflecting the date and place of Mr. Molina's death; and evidence relating to his presence at the terrorist incident at Lod Airport in Israel on May 30, 1972. The claimant states that Carmelo Calderon Molina was killed during the Lod Airport attack.

DISCUSSION

Standing

As a threshold matter, claimants must establish that they are the proper claimants in this claim. In the case of claims brought on behalf of deceased victims, a claimant must provide the Commission with evidence that he or she is legally entitled to bring the claim. *Claim of ESTATE OF ELIZABETH L. ROOT, DECEASED; JAMES G.*

ROOT & DAVID H. ROOT, PERSONAL REPRESENTATIVES, Claim No. LIB-II-040, Decision No. LIB-II-026 (2011). To this end, the Commission staff requested, by its letter dated May 24, 2010, that the claimants provide the Commission with evidence establishing the identity of the legal representative of the estate. Claimants have failed to respond to this request.¹ On this basis alone, the claim must fail.

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 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. In the case of claims brought by estates on behalf of beneficiaries, it is a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors (the War Claims Commission and the International Claims Commission) that, for purposes of determining the nationality of a claim, the nationality of the injured party as well as the beneficiaries of his or her estate must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.² The Commission notes that the Commonwealth of Puerto

¹ 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).

² See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

Rico, Court of First Instance, Court of San Juan issued a Declaration of Heirs in the Estate of Carmelo Calderon Molina on February 26, 2010.³ Based on its review of the Declaration of Heirs and the aforementioned Commission precedent, the Commission determines that during the pertinent time period an interest in this claim has been held by the following: Carmelo Calderon Molina, Salvador Calderon Martinez, Esther Calderon Martinez, Ruth Calderon Cardona, Luz Francisca Calderon Cardona, Luis Carmelo Calderon Cardona, Gloria Maria Calderon Cardona, Ana Delia Calderon Cardona, Hilda Eladia Calderon Cardona, Jose Raul Calderon Cardona, Irma Calderon Fonseca, Sara Elba Calderon Fonseca, Josue Calderon Martinez, Carlos Manuel Calderon Febres, Miguel Angel Calderon Guzman, Angel Miguel Calderon Guzman, Angel Manuel Calderon Zayas, and Miguel Angel Calderon Cardona.

To meet the nationality requirement, the claimants have provided a copy of the "Consular Mortuary Certificate" for the claimants' decedent, Carmelo Calderon Molina. The claimants, however, have not submitted evidence of the continuous U.S. nationality of any of Mr. Molina's heirs, including the claimant's herein.⁴ Therefore, the Commission also finds that this claim fails to satisfy the nationality requirement.

In summary, the Commission finds that the claimants have failed to meet their burden to establish that they are the proper claimant in this claim, or that the claim was held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement. In light of the foregoing, the Commission concludes that the

³ The referenced Declaration of Heirs was submitted to the Commission in support of Claim No. LIB-II-094 which has also been submitted on behalf of the Estate of Carmelo Calderon Molina.

⁴ 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).

claim of CARLOS MANUEL CALDERON and ANGEL MANUEL CALDERON, does not qualify for compensation under Category E of the January Referral Letter. Accordingly, this claim based upon the wrongful death of Carmelo Calderon Molina as a result of the Lod airport incident must be and is hereby denied.

Dated at Washington, DC, July 12, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



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) (2010).