

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-124
} Decision No. LIB-II-021

}
} Claim No. LIB-II-125
} Decision No. LIB-II-022

}
} Claim No. LIB-II-126
} Decision No. LIB-II-023

}
} Claim No. LIB-II-127
} Decision No. LIB-II-024

Counsel for Claimant:

Paul M. Tendler, Esq.

ORDER

On March 21, 2013, the above-referenced claimants, 5 U.S.C. §552(b)(6)

(collectively, the "claimants"), filed two letters petitioning to reopen their respective claims against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based upon mental pain and anguish suffered as a result of the death of their brother, 5 U.S.C. §552(b)(6), who was killed on board Pan Am Flight 103 on December 21, 1988. The claimants filed their underlying claims pursuant to Category B of the *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*, and each of the claimants was awarded \$200,000 in decisions that have now become final.

The claimants state in their first letter that they are petitioning to reopen “the issue of their awarded claims” because they “contend that there is a continuing and ongoing investigation regarding the bombing of Pan Am 103.” The letter further states,

Recent news reports indicate high-level meetings between the new Libyan government and investigators from Scotland and the United Kingdom. It appears that new information will be available regarding this matter.

It is [the claimants’] contention that new information has already been obtained by government entities but has not yet been made available to them.

The claimants state in their second letter that they are petitioning to reopen their claims “based on information that there are funds remaining.” They “request that the remaining sum be distributed to [them] in a fair and equitable manner and all the funds collected in the settlement should be distributed to the victims.”

The Commission’s regulations, 45 C.F.R. § 509.5(*l*), govern petitions to reopen before the Commission. Among other requirements, the petition must be based on “newly discovered evidence,” and it must appear “that reconsideration of the matter on the basis of that evidence would produce a different decision.” The first letter does not explain what the asserted new information is or how it might affect these claims. This letter thus fails to establish “that reconsideration of the matter on the basis of the evidence would produce a different decision.”¹

The second letter also fails to satisfy the requirements of the Commission’s petition-to-reopen regulation. To start, it is not clear that the asserted new evidence—that there might be money remaining in the Libya settlement fund—is the type of “newly discovered evidence” that would warrant a petition to reopen. The “evidence” is not directly relevant to

¹ Moreover, section 509.5(*l*) also requires the claimants to demonstrate it was not for “want of due diligence that the evidence did not come sooner” to their knowledge. As to the “new information” alleged in the first letter, the claimants do not specifically address this requirement. Since the claimants have failed to show that the new evidence would produce a different decision, the Commission need not decide the “due diligence” issue.

the injury that claimants suffered. But even accepting it as “newly discovered evidence” for purposes of this petition, the consideration of this evidence would not “produce a different decision.” Whenever the Commission has decided the amount of compensation for claims in the Libya Claims Program, the amount of money in the Libya settlement fund was simply not a factor. Rather, in determining the amount that successful Category B claimants were to recover, the factors the Commission took into account were the State Department’s recommendation, international law principles, and the September 11th Compensation Fund’s awards for similar losses. *See, e.g., Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-II-044, Decision No. LIB-II-001, PD at 9-10 (2009), and *Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-II-125, Decision No. LIB-II-022, FD at 4-5 (2012). Claimants’ decisions are now final, and the Commission sees no reason to change its approach to deciding these claims now. Because the Commission carefully considered all the factors it viewed as relevant in determining claimants’ compensation and because the amount of money in the Libya settlement fund was not one of the relevant factors, “reconsideration of the matter on the basis of” the amount of money in the fund would not “produce a different decision.”

The Commission reiterates its sympathy for the pain and suffering claimants have endured, and does so with full knowledge that no amount of money can truly compensate for the death of a loved one in such horrific circumstances. These Petitions to Reopen must be denied, however, because they fail to satisfy the requirement in the Commission’s regulations that consideration of newly submitted evidence “would produce a different decision.”

Accordingly, it is ORDERED that the Petitions to Reopen these claims for further consideration be and they are hereby denied.

Dated at Washington, DC, April 25, 2013
and entered as the Order of the Commission.



Rafael E. Martinez, Commissioner



Anuj C. Desai, Commissioner

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-124

Decision No. LIB-II-021

Counsel for Claimant:

Paul M. Tandler, Esq.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on mental pain and anguish suffered by ^{5 U.S.C. §552(b)(6)} as a result of the death of her brother, ^{5 U.S.C. §552(b)(6)}, who was killed on board Pan Am Flight 103 on December 21, 1988.

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 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”).

Category B of the claims referred 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. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation.

The January Referral Letter, as well as the December 11, 2008 referral letter from the State Department’s Legal Adviser to the Commission (“December Referral Letter”), 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 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. On October 31, 2008, the Secretary of State certified, pursuant to the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008), that the United States Government “has received funds pursuant to the claims agreement that are sufficient to ensure . . . payment of the settlements referred to in section 654(b) of division J of the Consolidated Appropriations Act, 2008 (Public Law 110-161; 121 Stat. 2342); and . . . fair compensation of claims of nationals of the United States for wrongful death or physical injury in cases pending on the date of enactment of this Act against Libya” January Referral Letter, *supra*, ¶ 1.

On the same day, the President issued Executive Order No. 13477, 73 Fed. Reg. 65,965 (Oct. 31, 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 directing 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).

I. BASIS OF THE PRESENT CLAIM

On July 1, 2010, the Commission received from claimant's counsel a completed Statement of Claim and accompanying exhibits in support of the claim, including her birth certificate and the birth certificate of Charles T. Fisher, IV. On October 27, 2010, the Commission received from claimant's counsel supplemental material, including a copy of claimant's U.S. passport. Claimant has also provided evidence of her inclusion as a named party in the Pending Litigation referred to in Attachment 1 of the January Referral Letter, in which she set forth a claim for emotional distress, solatium, or similar injury; and the dismissal of the Pending Litigation against Libya.

The claimant states that she is the sister of ^{f5 U.S.C. §552(b)(6)}, who was killed on December 21, 1988 on Pan Am Flight 103, and that she had a very close relationship with her brother and was deeply hurt by his death. Claimant's claim includes a declaration by her attorney, made under penalty of perjury, which states that:

[Claimant] sought to participate in the settlement. That request was denied by the estate representative as was the request for a share of any portion of the settlement funds. Accordingly, [claimant] has not received any money from the \$10 million settlement between Charles T. Fisher IV's estate and Libya, nor has she received compensation from any other source as a result of her brother's death nor has she received compensation from any other for her emotional trauma and the loss of her brother's support and companionship.

II. DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA the Commission's jurisdiction here is limited to the category of claims defined in the January Referral Letter; namely the claims of individuals who: (1) are U.S. nationals; (2) are living; (3) are close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State; (4) as named parties, made claims for emotional distress, solatium, or similar emotional injury in a Pending Litigation case which has been dismissed; and (5) are not eligible for compensation from the wrongful death claim, have not received any compensation from the wrongful death claim, have not received any compensation under any other part of the Claims Settlement Agreement, and do not qualify for any other category of compensation pursuant to the January referral. January Referral Letter, *supra*, ¶ 4.

A. Nationality

As noted above, the January Referral Letter tasked the Commission with adjudicating and certifying six categories of claims of United States nationals. In *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 for the nationality requirement to have been met, 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. To meet this requirement the claimant has

provided copies of her birth certificate and U.S. passport. Based on this evidence, the Commission finds that the claimant was a U.S. national at the time ^{5 U.S.C. §552(b)(6)} was killed on December 21, 1988, and that she has been a U.S. national continuously thereafter including on the effective date of the Claims Settlement Agreement.

B. Claimant Must Have Been Living at the Time of the January Referral Letter

The January Referral Letter states that Category B shall consist 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. The Commission notes that the January Referral Letter plainly refers to claimants “who are living” and not “who are, or were, living.” In light of this fact, the Commission held in *Claim of* ^{5 U.S.C. §552(b)(6)} Claim No. LIB-II-044, Decision No. LIB-II-001 (2010), that in order to qualify for compensation under Category B, a claimant must have been living as of the date of the January Referral Letter as well as at the time of the incident which served as the basis of the Pending Litigation and caused the mental pain and anguish. The Commission finds that claimant has satisfied this requirement, as evidenced by her birth certificate and her notarized declaration in support of her Statement of Claim dated June 23, 2010.

C. Claimant Must Be a Close Relative of the Decedent

The January Referral Letter also states that Category B shall consist 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.¹ The Commission held in *Claim of* ^{5 U.S.C. §552(b)(6)} *supra*, that, for the limited purpose of Category B of this claims program, the term “close relatives”

¹ The Commission takes notice that the death of ^{5 U.S.C. §552(b)(6)} formed the basis of a death claim compensated by the Department of State.

comprises the relatives of a decedent who are within one step of immediacy to the decedent, namely spouses, children, parents and siblings. The Commission finds that the claimant has established that she is a close relative of the decedent, as evidenced by claimant's birth certificate which, in conjunction with the decedent's birth certificate, demonstrates that the claimant and the decedent had the same parents and that they were sister and brother.

D. Pending Litigation and its Dismissal

To be eligible for compensation under Category B of the claims referred to the Commission, the claimant must also be a named party who made a claim for emotional distress, solatium, or similar emotional injury in a Pending Litigation case listed in Attachment 1 to the January Referral Letter and must provide evidence that the Pending Litigation against Libya has been dismissed. January Referral Letter, *supra*, ¶ 4. The claimant has provided a copy of the First Amended Complaint in *Fisher v. Great Socialist People's Libyan Arab Jamahiriya*, 04-cv-2055, filed in the United States District Court for the District of Columbia, which names her as a party and states a claim for intentional infliction of emotional distress. Additionally, the claimant has provided the District Court's May 7, 2009 Order dismissing with prejudice the litigation, which included claimant's claim, as evidence of the dismissal of this Pending Litigation. Based on this evidence, the Commission finds that the claimant was a named party who made a claim for emotional distress, solatium, or similar emotional injury in the Pending Litigation and that the Pending Litigation has been properly dismissed.

E. Claimant Must Not be Otherwise Eligible For, and Must Not Have Received, Compensation

To fall within Category B of the claims referred to the Commission, the claimant must also be ineligible for compensation from the wrongful death claim, must not have received any compensation from the wrongful death claim, must not have received any compensation under any other part of the Claims Settlement Agreement, and must not qualify for any other category of compensation pursuant to the January Referral Letter. January Referral Letter, *supra*, ¶ 4. Claimant has represented to the Commission, under penalty of perjury, that she has not received, and that she is not eligible to receive, aside from under Category B, compensation from the Department of State or from the Commission, pursuant to either the December Referral Letter or the January Referral Letter. Claimant has also submitted in support of her sworn claim a declaration by her attorney, also made under penalty of perjury, which states that claimant “has not received any money from the \$10 million settlement between ^{5 U.S.C. §552(b)(6)} estate and Libya, nor has she received compensation from any other source as a result of her brother’s death nor has she received compensation from any other source for her emotional trauma and the loss of her brother’s support and companionship.” On this basis, the Commission finds that the claimant was not eligible for compensation from the wrongful death claim, did not receive any compensation from the wrongful death claim, did not receive any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation under the January Referral Letter.

Accordingly, the Commission finds that this claim is within the Commission’s jurisdiction and that the claimant has satisfied the elements required for compensation pursuant to Category B of the January Referral Letter.

III. COMPENSATION

Having concluded that the present claim is within the Commission's jurisdiction and is compensable, the Commission must next determine the appropriate amount of compensation.

A. Amount

In *Claim of* ^{5 U.S.C. §552(b)(6)} *supra*, the Commission, without setting precedent for other categories or other claims programs, held that the recommended fixed award of \$200,000 is the appropriate amount of compensation for eligible claimants under Category B of the January Referral Letter. Accordingly, the Commission determines that the claimant, ^{5 U.S.C. §552(b)(6)} is entitled herein to an award of \$200,000.

B. Interest

As regards interest, in *Claim of* ^{5 U.S.C. §552(b)(6)} *supra*, after consideration of principles of international law and precedent decisions, the Commission held that compensable tort claims in this claims program are not entitled to interest as part of the awards made therein. *Id.* Therefore, the award of \$200,000 made herein constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

IV. CONCLUSION

Accordingly, the Commission enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27.

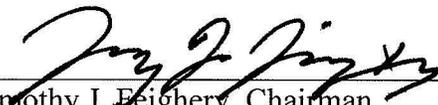
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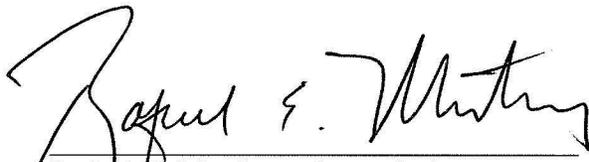
Claimant^{5 U.S.C. §552(b)(6)} is entitled to an award in the amount of Two Hundred Thousand Dollars (\$200,000.00).

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

APR 07 2011

**This decision was entered as the
Commission's Final Decision on
JUL 14 2011**


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).