

heirs. The hearing on the objection was held on October 25, 2012. Subsequent to the hearing, on December 5, 2012, claimant submitted additional evidence, as requested by the Commission, in further support of the nationality of the remaining heirs.

DISCUSSION

Category E of the January Referral 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.

January Referral, ¶ 7.

In the Proposed Decision, the Commission held that claimant had not satisfied the jurisdictional requirements for a Category E claim.¹ The Commission stated that for a Category E claim brought by an estate, “it is a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors . . . that the injured party as well as the beneficiaries of his or her estate must be U.S. nationals to establish that a U.S. national has continuously held the claim from the date of the injury through the date of the settlement agreement.” In the Proposed Decision, the Commission found that the following individuals had an interest in the claim: Antonio Pacheco, Sr.; Rita Margarita Maldonado Molina;² Antonio Pacheco Wiener; Marisa Luisa Maldonado Molina; Norma Pacheco Reyes;³ Wanda Pacheco Reyes;⁴ Lina Pacheco

¹ As claimant failed to satisfy the jurisdictional requirements of a Category E claim, the Commission did not address the merits of the claim in the Proposed Decision.

² Documentation in the record also refers to a “Rita Margarita Morales Colon,” and “Rita M. Morales Colon.” After reviewing the evidence in the record, the Commission is satisfied that Rita Margarita Morales Colon, Rita M. Morales Colon, and Rita Margarita Maldonado Molina are one and the same person.

³ Documentation in the record also refers to a “Norma Iris Pacheco,” “Norma I. Neadle,” “Norma Iris Neadle,” and “Norma Iris Wong.” After reviewing the evidence in the record, the Commission is satisfied that Norma Pacheco Reyes, Norma Iris Pacheco, Norma I. Neadle, Norma Iris Neadle, and Norma Iris Wong are one and the same person.

Reyes;⁵ Brenda Pacheco; and Antonio Pacheco Maldonado. The Commission also determined that claimant had provided evidence to demonstrate continuous U.S. nationality for only four of these individuals: Antonio Pacheco, Sr.; Marisa Luisa Maldonado; Antonio Pacheco Wiener; and Brenda Pacheco. As noted above, subsequent to the issuance of the Proposed Decision and then after the oral hearing, claimant's counsel submitted additional documents to demonstrate continuous U.S. nationality for the remaining individuals.

Analysis

Jurisdiction

Under subsection 4(a) of the ICOSA, the Commission's jurisdiction under Category E is limited to the category of claims defined under the January Referral; namely, claims of individuals who: (1) are U.S. nationals; (2) have set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral, ¶ 7.

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. As discussed above, for claims brought by an estate,

⁴ Documentation in the record also refers to a "Wanda Pacheco." After reviewing the evidence in the record, the Commission is satisfied that Wanda Pacheco Reyes and Wanda Pacheco are one and the same person.

⁵ Documentation in the record also refers to a "Lina Antonia Pacheco." After reviewing evidence in the record, the Commission is satisfied that Lina Pacheco Reyes and Lina Antonia Pacheco are one and the same person.

the claimant is required to demonstrate continuous U.S. nationality for the injured party and all heirs to his or her estate.

In the Proposed Decision, the Commission held that claimant had not demonstrated continuous U.S. nationality for the following individuals who, during the relevant period, had an interest in the claim: Rita Margarita Maldonado Molina, Norma Pacheco Reyes, Wanda Pacheco Reyes, Lina Pacheco Reyes, and Antonio Pacheco Maldonado. Since the issuance of the Proposed Decision, claimant submitted additional evidence to demonstrate the U.S. nationality of these five individuals. Including the material submitted prior to the Proposed Decision, claimant has submitted the following information to meet the nationality requirement for these individuals: a birth certificate, marriage certificate, and death certificate for Rita Margarita Maldonado Molina; a birth certificate, divorce judgment, a marriage certificate, and a current U.S. passport for Norma Pacheco Reyes; birth certificate and a copy of a voter polling information for Wanda Pacheco; a birth certificate, current California Identification Card, and current U.S. passport for Lina Pacheco Reyes; and a birth certificate and voter registration card for Antonio Pacheco Maldonado. Based on the record as supplemented for these five individuals and together with the holding by the Commission in the Proposed Decision, the Commission now holds that the claim was owned by a U.S. national continuously from the time of the incident through the effective date of the Claims Settlement Agreement.

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must also assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral. January Referral, ¶ 7. This list includes the “May 30 1972, attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian*

Arab Republic, et al. (D.D.C.) 06-cv-734.” *Id.*, Attachment 2, ¶ 1. In its Statement of Claim, claimant sets forth a claim for wrongful death based on the death of Mr. Antonio Pacheco, Sr. during this terrorist attack. Accordingly, the Commission finds that claimant has satisfied this element of its claim.

Pending Litigation

Finally, Category E of the January Referral states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral, ¶ 7. Attachment 2 to the January Referral identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, is the *Franqui* case. The Commission has independently reviewed the First Amended Complaint in *Franqui*, which demonstrates that neither the claimant estate, nor any of its beneficiaries, were plaintiffs in the Pending Litigation. Based on this evidence, the Commission finds that claimant has also satisfied this element of its claim.

In summary the Commission concludes, on the basis of the foregoing, that this claim is within the Commission’s jurisdiction pursuant to the January Referral and is entitled to adjudication on the merits.

Merits

Standard for Wrongful Death

As stated in the January Referral, to be eligible for compensation, a claimant asserting a claim under Category E must meet “the standard for physical injury or wrongful death, as appropriate, adopted by the Commission” for purposes of this referral. January Referral, ¶ 7. The Commission held in *Claim of ESTATE OF VIRGEN MILAGROS FLORES, DECEASED; CRUCITA FLORES SUÁREZ, PERSONAL REPRESENTATIVE*, Claim No. LIB-II-065, Decision No. LIB-II-043 (2011), that in order

for a claim for wrongful death pursuant to Category E to be considered compensable, a claimant must:

- 1) provide evidence sufficient to establish the fact of death in the form of a death certificate or other similar document; and
- 2) provide evidence sufficient to establish that the decedent died as the proximate result of a Covered Incident.

Id. at 12. The present Category E claim must likewise meet this standard to be compensable.

Wrongful Death

In the Statement of Claim, claimant states that Mr. Antonio Pacheco, Sr. was killed on May 30, 1972 in the attack at Lod Airport in Tel Aviv, Israel, and has submitted the following evidence to establish Mr. Pacheco, Sr.'s death: a U.S. Consular Mortuary Certificate and embalming certificate from the U.S. Embassy in Israel both dated June 2, 1972; a death certificate issued by the Israeli Ministry of Health that identifies Mr. Pacheco, Sr. as deceased and states the cause of death; and a contemporaneous newspaper article that discusses the terrorist attack at Lod Airport and lists Mr. Antonio Pacheco, Sr. as among those killed.

Based on the evidence submitted, the Commission finds that Mr. Pacheco, Sr.'s death meets the standard for wrongful death set forth above. Accordingly, claimant ESTATE OF ANTONIO PACHECO, SR.; BRENDA PACHECO, ADMINISTRATOR is entitled to compensation in this claim.

COMPENSATION

In *Claim of MILAGROS FLORES*, the Commission held that, in this program, \$10 million is an appropriate amount of compensation for claims of wrongful death that meet

the Commission's standard under Category E, and that interest is not to be applied. Accordingly, the Commission determines that the claimant, ESTATE OF ANTONIO PACHECO, SR.; BRENDA PACHECO, ADMINISTRATOR, is entitled herein to an award of \$10,000,000.00 and that this amount constitutes the entirety of the compensation that claimant is entitled to in the present claim.

Therefore, the Commission withdraws its denial of claimant's claim as set forth in the Proposed Decision, and issues an award as set forth below, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSEA. 22 U.S.C. §§ 1626-1627 (2006). This constitutes the Commission's final determination in this claim.

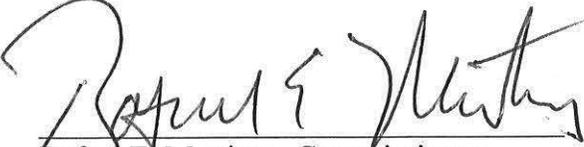
AWARD

Claimant ESTATE OF ANTONIO PACHECO, SR.; BRENDA PACHECO, ADMINISTRATOR, is entitled to an award in the amount of Ten Million Dollars (\$10,000,000.00).

Dated at Washington, DC, January 9, 2013
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



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

ESTATE OF ANTONIO PACHECO, SR.; BRENDA
PACHECO, ADMINISTRATOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

}
}
}
} Claim No. LIB-II-133

}
} Decision No. LIB-II-179

Counsel for Claimant:

Neal M. Sher, Esq.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the ESTATE OF ANTONIO PACHECO, SR.; BRENDA PACHECO, ADMINISTRATOR ("claimant"), based upon the wrongful death of Mr. Antonio Pacheco, Sr.¹, as a result of the terrorist attack 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).

¹ The Statement of Claim identifies the decedent as "Antonio Pacheco, Sr." Documentation submitted by claimant regarding the decedent refers to him as Antonio Pacheco Ruiz. After reviewing his birth certificate along with additional evidence in the record, the Commission is satisfied that Antonio Pacheco, Sr. and Antonio Pacheco Ruiz are one and the same person.

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").

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

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

BASIS OF THE PRESENT CLAIM

On July 1, 2010, the Commission received a Statement of Claim in which claimant asserted a wrongful death claim under Category E of the January Referral. Evidence supporting the claim was submitted with the initial filing as well as with subsequent filings.

DISCUSSION

Standing

As an initial matter, the Commission notes that claimant submitted a Resolution issued by the Court of First Instance of Puerto Rico, Arecibo Ward, dated May 2, 2012, in which the court approved the petition to appoint Brenda Pacheco² as the Administrator of the Estate of Antonio Pacheco, Sr. Accordingly, the Commission finds that ESTATE OF ANTONIO PACHECO, SR.; BRENDA PACHECO, ADMINISTRATOR is the proper claimant in this claim.

² The decision refers to a "Brenda Pacheco Maldonado" and names her as Administrator. Claimant signed the Statement of Claim "Brenda Pacheco". After reviewing her birth certificate, current U.S. passport, and other evidence in the record, the Commission is satisfied that Brenda Pacheco and Brenda Pacheco Maldonado are one and the same person.

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction under Category E is limited to the category of claims defined under the January Referral; namely, claims of individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral, *supra* ¶ 7.

Nationality

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 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 the injured party as well as the beneficiaries of his or her estate must be U.S. nationals to establish that a U.S. national has continuously held the claim from the date of the injury through the date of the settlement agreement.³

Claimant submitted to the Commission a copy of a Resolution issued on September 28, 2011 by the Court of First Instance of Puerto Rico, Arecibo Ward, in which the court

³ 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); and *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

approved a Declaration of Heirs naming Antonio Pacheco Wiener⁴ as the sole and universal heir of Antonio Pacheco, Sr. Evidence in the record establishes that Antonio Pacheco Wiener died on April 22, 1983. On November 28, 2011, the Court of First Instance of Puerto Rico, Arecibo Ward, issued a Resolution approving a Declaration of Heirs that named the following heirs of Antonio Pacheco Wiener: his widow, Maria Luisa Maldonado Molina; and his children, Norma Pacheco Reyes; Wanda Pacheco Reyes; Lina Pacheco Reyes; Brenda Pacheco; and Antonio Pacheco Maldonado.

Based on its precedent and its review of the court-issued Declarations of Heirs, the Commission determines that, during the relevant period, an interest in this claim has been held by the following: Antonio Pacheco, Sr.; Rita Margarita Maldonado Molina⁵; Antonio Pacheco Wiener; Marisa Luisa Maldonado Molina; Norma Pacheco Reyes; Wanda Pacheco Reyes; Lina Pacheco Reyes; Brenda Pacheco; and Antonio Pacheco Maldonado. To meet the nationality requirement, claimant has provided the following evidence: a birth certificate, marriage certificate, consular mortuary certificate, and death certificate for Antonio Pacheco, Sr.; a birth certificate for Rita Margarita Morales Colon; a birth certificate for "Male Pacheco," and a marriage certificate and death certificate for Antonio Pacheco Wiener; a birth certificate, marriage certificate, and current U.S. passport for Marisa Luisa Maldonado; a birth certificate for Antonio Pacheco Maldonado; and a birth

⁴ Documentation in the record also refers to an "Anthony Pacheco Weiner", an "Antonio Pacheco, Jr.", an "Antonio Pacheco Winner", and a "Male Pacheco". After reviewing the record, the Commission is satisfied that Anthony Pacheco Wiener, Anthony Pacheco Weiner, Antonio Pacheco, Jr., and Male Pacheco are one and the same person.

⁵ Documentation in the record also refers to a "Rita Margarita Morales Colon". Claimant failed to provide evidence that Rita Margarita Morales Colon and Rita Margarita Maldonado Molina are one and the same person.

certificate and current U.S. passport for Brenda Pacheco.⁶ However, other than with respect to four of the relevant individuals, Marisa Luisa Maldonado, Antonio Pacheco Wiener, the claimant's decedent Antonio Pacheco Sr., and Brenda Pacheco, claimant has failed to provide sufficient evidence of continuous nationality of any of the other individuals with an interest in this claim. Therefore, the Commission is unable to determine if U.S. nationals have continuously held this claim.

In summary, the Commission finds that claimant has failed to meet its burden to establish that the claim was held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.⁷ In light of the foregoing, the Commission concludes that this claim does not qualify for compensation under Category E of the January Referral.

⁶ Claimant has not provided any documents for Norma Pacheco Reyes, Wanda Pacheco Reyes, and Linda Pacheco Reyes.

⁷ It is the claimant's burden to provide evidence to establish the validity of its claim. *See* 45 C.F.R. 509.5(b) (2011) ("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.").

Accordingly, this claim based upon the wrongful death of Antonio Pacheco, Sr., as a result of the Lod airport incident must be and is hereby denied.

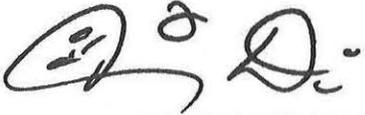
Dated at Washington, DC, June 20, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, 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) (2011).