

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

In the Matter of the Claim of	}	
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	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-III-007
	}	
	}	Decision No. LIB-III-008
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	

Counsel for Claimant:

David J. Strachman, Esq.
McIntyre Tate LLP

PROPOSED DECISION

Claimant brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") for mental pain and anguish suffered as a result of the death of her brother, 5 U.S.C. §552(b)(6) ("decedent"), who was killed on board Pan Am Flight 103 on December 21, 1988. Because she has established that she is a living close relative of the decedent and satisfies all other legal requirements entitling her to an award of compensation from this Commission, she is entitled to an award of \$200,000.00.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that Libyan agents killed her brother on December 21, 1988, while he was on board Pan Am Flight 103, and that Claimant had a close relationship with him and was deeply affected by his death. Along with four other family members, Claimant sued Libya in federal court in 2002 for intentional infliction of emotional distress, loss of consortium and solatium. *See* Complaint, 5 U.S.C. §552(b)(6)

5 U.S.C. §552(b)(6)

. In August

2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya, including claims for mental pain and anguish based on wrongful death. *See 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; *see also* Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). In October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission. *See* International Claims Settlement Act of 1949 (“ICSA”), 22 U.S.C. § 1623(a)(1)(C)(2012). The Secretary has delegated that authority to the State Department’s Legal Adviser, who, by letters dated December 11, 2008, January 15, 2009, and November 27, 2013, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

In 2010, the Claimant filed a claim under Category B of the January 2009 Referral, alleging that her brother’s death caused her mental pain and anguish. However, one of the jurisdictional requirements for claims in that category was that the claim be based on a decedent “whose death formed the basis of a death claim *compensated by the Department of State.*” *See* Claim No. LIB-II-140, Decision No. LIB-II-098 (2011) (emphasis added). Because Claimant’s brother’s death claim was not compensated by the State Department—the evidence indicated that her brother’s wife settled the claim for

wrongful death in a separate, private agreement with the Libyan government, *id.* at 4—the Commission denied her claim.

The Legal Adviser referred an additional set of claims to the Commission on November 27, 2013. *Letter dated November 27, 2013, 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* (“2013 Referral” or “November 2013 Referral”). One category of claims from the 2013 Referral is applicable here. That category, also known as Category B, consists of

claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent provided that (1) the claim was set forth as a claim for emotional distress, solatium, or similar emotional injury by the claimant in the Pending Litigation; (2) the claim meets the standard adopted by the Commission for mental pain and anguish; (3) the claimant is not eligible for compensation as part of the associated wrongful death claim; and (4) the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral.

Id. at ¶ 4. Attachment 1 to the 2013 Referral lists the suits comprising the Pending Litigation.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to Title I of ICSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On April 24, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category B of the 2013 Referral, together with exhibits supporting the elements of her claim, including the evidence she had previously submitted in connection with the claim she made under the January 2009 Referral. These submissions included evidence of Claimant’s U.S. nationality; her close relationship with the decedent, ⁵ U.S.C. §552(b)(6) ; her inclusion as a named party in

one of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral, in which she set forth a claim for intentional infliction of emotional distress and solatium, and the dismissal of the Pending Litigation case against Libya. The Claimant subsequently submitted additional evidence of her U.S. nationality and relationship to the decedent. Claimant has also submitted a memorandum arguing for an upward departure in award. The Claimant states that her brother ^{5 U.S.C. §552(b)(6)} was killed on December 21, 1988, on Pan Am Flight 103, and that she had a close relationship with her brother and was deeply affected by his death.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined in the 2013 Referral; namely, the claims of individuals who (1) are U.S. nationals; (2) made claims for emotional distress, solatium, or similar emotional injury, in one of the designated Pending Litigation cases; and (3) have not received any compensation under any other distribution under the Claims Settlement Agreement, and do not qualify for any other category of compensation pursuant to the 2013 Referral. 2013 Referral, *supra*, ¶ 4.

Nationality

This claims program is limited to “claims of U.S. nationals.” In the context of a different category of claims in this same 2013 Referral, we held that “claims of U.S. nationals” means that a claimant must have been a national of the United States continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-001, Decision No. LIB-III-001, at 5-6 (2014) (Proposed Decision). Given that this Category B claim contains the same language and is made under the same 2013 Referral and given that all claims under both the 2008 and the

2009 Referrals, including those for emotional injury, also incorporated the same continuous-nationality requirement, that requirement should apply equally here.

Claimant satisfies this requirement. She has provided, among other documents, copies of her California birth certificate and her current U.S. passport. This evidence establishes that this claim was held by a U.S. national at the time the decedent was killed on December 21, 1988, and was so held continuously until the effective date of the Claims Settlement Agreement.

Pending Litigation and its Dismissal

To be eligible for compensation under Category B of the 2013 Referral, Claimant's claim must have been "set forth as a claim for emotional distress, solatium, or similar emotional injury" in one of the Pending Litigation cases listed in Attachment 1 to the 2013 Referral. 2013 Referral, *supra*, ¶ 4. 5 U.S.C. §552(b)(6)

, filed in the U.S. District Court for the District of Columbia, is one of those cases, and the Complaint in that case names Claimant as one of the plaintiffs and states a claim for both solatium and intentional infliction of emotional distress. Claimant's claim thus satisfies this requirement.

Other Compensation

To fall within Category B of the 2013 Referral, Claimant must also be ineligible for compensation from the associated wrongful-death claim, must not have received any compensation under any other distribution under the Claims Settlement Agreement, and must not qualify for any other category of compensation pursuant to the 2013 Referral. 2013 Referral, *supra*, ¶ 4. Claimant has represented to the Commission under penalty of perjury, and has provided additional substantiating evidence, that she "ha[s] not received any money from the settlement between . . . 5 U.S.C. §552(b)(6) estate and Libya [or] any money from any other source as a result of his death." She has also represented to

the Commission under penalty of perjury that she has not received compensation under any other part of the Claims Settlement Agreement, and that she does not qualify for any other category of claims under the 2013 Referral. On this basis, the Commission finds that Claimant is not eligible for compensation from the associated 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 2013 Referral.

In summary, therefore, the Commission concludes that this claim is within the Commission's jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

Merits

Claimant Must Have Been Living at the Time of the 2013 Referral

To be eligible for compensation under Category B, the 2013 Referral states that a claimant must be a "living" close relative of a decedent. The Commission has previously held that in order to qualify for compensation under the similar Category B of the 2009 Referral, a claimant must have been living as of the date of the relevant referral from the State Department 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. *See, e.g.*, Claim No. LIB-II-044, Decision No. LIB-II-001 (2010). Because the 2013 Referral in this context uses language identical to that used in the 2009 Referral, this same standard should apply to Category B of the 2013 Referral. Claimant has satisfied this requirement, as evidenced by her birth certificate, and her signed and dated claim form.

Claimant Must Be a Close Relative of the Decedent

The 2013 Referral Letter also requires a Category B Claimant to be a "close relative" of a decedent. The Commission has previously held that for the limited

purpose of the similar Category B of the 2009 Referral, the term “close relatives” comprises those relatives who are immediate family to the decedent: spouses, children, parents, and siblings. *See, e.g.*, Claim No. LIB-II-044, Decision No. LIB-II-001, *supra* at 6. Because the 2013 Referral also uses the term “close relatives,” which is identical to that used in the 2009 Referral, the same standard should apply to Category B of the 2013 Referral.

Claimant has established that she was ^{5 U.S.C. §552(b)(6)} sister, as evidenced by the Claimant’s birth certificate and the decedent’s death certificate, which list the same mother and father. She was thus a “close relative” of the decedent.

Mental Pain and Anguish Standard

The 2013 Referral Letter also requires that a claim meet “the standard adopted by the Commission for mental pain and anguish.” 2013 Referral ¶ 4. In adjudicating claims under the similar Category B of the 2009 Referral, the Commission presumed that all “close relatives” of a decedent (i.e., spouse, children, parents, and siblings) suffered mental pain and anguish. In the absence of specific evidence to the contrary, we will do the same here.

As noted above, Claimant is a “close relative” of the decedent and is thus entitled to this presumption. *See supra* at 7. Moreover, she has provided a heart-wrenching affidavit describing her relationship with her brother and the Commission has not been presented with any evidence to the contrary. Claimant has thus satisfied the standard adopted by the Commission for mental pain and anguish.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation. The 2013 Referral recommends a fixed amount of \$200,000 for claims that meet the applicable standard under

Category B. 2013 Referral, *supra* ¶ 4. This is the same fixed amount that was recommended for compensable claims in Category B of the 2009 Referral. In its first decision addressing compensation for mental pain and anguish under the 2009 Referral, the Commission carefully reviewed its prior claims programs, as well as those of other tribunals and commissions that had adjudicated wrongful-death claims, including the September 11th Compensation Fund of 2001. The Commission then noted the nature and tragedy of the events associated with the Pending Litigation cases, and determined that \$200,000 was an appropriate amount of compensation for mental pain and anguish claims. *See* Claim No. LIB-II-044, Decision No. LIB-II-001, *supra* at 9-10. This fixed sum was therefore awarded to all claimants under the 2009 Referral with compensable mental pain and anguish claims.

The same \$200,000 fixed amount should apply to mental pain and anguish claims in the 2013 Referral. This claim—indeed the entire 2013 Referral—arises from the same U.S.-Libya Claims Settlement Agreement that resulted in both the 2008 and 2009 Referrals. Moreover, Category B of the 2013 Referral is substantively the same as Category B of the 2009 Referral: both involve claims of U.S. nationals for emotional injury—mental pain and anguish—associated with a death claim of a decedent in one of the Pending Litigation cases. Given these similarities, the Commission sees no reason to depart from the \$200,000 figure for mental pain and anguish claims under Category B of the 2013 Referral.

Moreover, the Commission will not award interest in this claim. For mental pain and anguish awards under Category B of the 2009 Referral, the Commission held that claimants were not entitled to interest as part of their awards. *See* Claim No. LIB-II-044, Decision No. LIB-II-001, at 10. It did so after consideration of the applicable principles

of international law and its own precedent, and those reasons apply equally to mental pain and anguish claims under the 2013 Referral.

Finally, the Commission has reviewed the Claimant's memorandum in support of an upward departure which requests that the Commission award sums "similar to those in civil terrorism cases" in U.S. courts. The Commission previously addressed and rejected similar arguments made in regard to Category B of the 2009 Referral. *See, e.g.*, Claim No. LIB-II-125, Decision No. LIB-II-022 at 4-5 (2012); *Cf.*, Claim No. LIB-II-042, Decision No. LIB-II-018, Order dated April 15, 2013. Its analysis applies with equal force here. In rejecting this argument again, we do so with full knowledge that no amount of money can truly compensate for the death of a loved one in such horrific circumstances. Accordingly, Claimant is entitled to an award of \$200,000.00, and this amount constitutes the entirety of the compensation that the Claimant is entitled to in the present claim.

The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICOSA. 22 U.S.C. §§ 1626-27 (2012).

AWARD

Claimant is entitled to an award in the amount of Two Hundred Thousand Dollars (\$200,000.00).

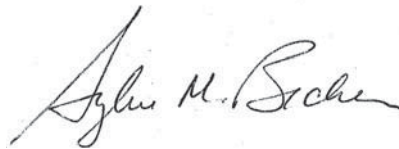
Dated at Washington, DC, November 6, 2014
and entered as the Proposed Decision
of the Commission.

**The decision was entered as the
Commission's Final Decision on**

December 15, 2014



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) (2013).