

**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. LIB-III-034
	}	
	}	Decision No. LIB-III-005
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Moses Lebovits, Esq. Daniels, Fine, Israel, Schonbuch & Lebovits, LLP
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PROPOSED DECISION

Claimant brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") alleging that she was unlawfully detained or held hostage in violation of international law. Because she has established that she was unlawfully detained during the hijacking of Pan Am Flight 73 in Karachi, Pakistan, on September 5, 1986, she is entitled to an award of \$1 million.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant, who was three months old at the time of the hijacking, alleges that she was a passenger on board Pan Am Flight 73 on September 5, 1986, when four heavily armed gunmen attacked the plane while it was on the tarmac in Karachi, Pakistan. She further alleges that the gunmen, supported by Libya and in violation of international law, unlawfully detained her or held her hostage on the plane, together with her parents and sister. The Commission's records indicate that all of the passengers, including Claimant,

were held for about 16 hours; and that the incident ended when the gunman fired their automatic weapons and detonated explosives inside the plane, killing and injuring many of the passengers and crew. Claimant alleges that “[h]er father . . . was shot in the back and severely injured when he laid on top of his daughters to protect their lives.”

Although Claimant was not among them, a number of the Pan Am Flight 73 victims sued Libya (and others) in federal court in 2006. *See Patel v. Socialist People’s Libyan Arab Jamahiriya*, No. 06-cv-626 (D.D.C.). In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya, including claims of “hostage taking or detention.” *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). Two months later, 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 (“ISCA”), 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, and January 15, 2009, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

In 2010, the Claimant filed a claim under the January 2009 Referral, alleging that she had been held hostage or unlawfully detained and had suffered physical injuries as a

result of the Pan Am Flight 73 hijacking.¹ The Commission denied her claim on the basis that she had not provided any evidence of her continuous U.S. nationality, and alternatively, that she had not set forth a claim in the Pending Litigation (as defined in the 2009 Referral), as required under the categories under which she had filed her claim. *See* Claim No. LIB-II-187, Decision No. LIB-II-146, at 4-6 (2012) (“Proposed Decision”). The Claimant did not object to the Proposed Decision, which became final on April 10, 2012.

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, known as Category C, consists of

claims of U.S. nationals who were held hostage or unlawfully detained in violation of international law during one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), provided that (1) the claimant was not a plaintiff in the Pending Litigation; (2) the claim meets the standard for such claims adopted by the Commission; and (3) 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.

2013 Referral at ¶ 5. Attachment 2 to the 2013 Referral lists the Covered Incidents, and it includes the “September 5, 1986 hijacking of Pam Am flight 73.”

¹ Claimant filed her claim under Category A (claims for hostage-taking or unlawful detention) and Category D (claims for special circumstances in cases of physical injury). *See 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*, ¶¶ 3, 6 (“January 2009 Referral”). Because both categories required that the claimant have set forth a claim in the Pending Litigation (as defined in the 2009 Referral)—and because Claimant had not done so—the Commission also considered the claim under Category E, which consisted of claims for wrongful death or physical injury where the claimant was *not* a plaintiff in the Pending Litigation. *See id.* ¶ 7.

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 the ICSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On June 11, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category C of the 2013 Referral, together with exhibits supporting the elements of her claim. Because of the substantive similarity between the claims, the Commission has incorporated into the record the exhibits that Claimant previously submitted in connection with her claim under the January 2009 Referral.

DISCUSSION

Jurisdiction

As an initial matter, the Commission must consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the "Category C" paragraph of the 2013 Referral is limited to claims of (1) "U.S. nationals"; who (2) have alleged that they were held hostage or unlawfully detained in violation of international law during one of the "Covered Incidents" listed in Attachment 2 to the 2013 Referral; provided that the Claimant (3) was not a plaintiff in any of the lawsuits listed in Attachment 1 to the 2013 Referral (the "Pending Litigation") and (4) 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 the 2013 Referral. 2013 Referral ¶ 5.

Nationality

As noted above, this claims program is limited to “claims of U.S. nationals.” Here, that 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).

Claimant has provided a copy of her U.S. birth certificate, as well as copies of two U.S. passports: one from the time of the hostage-taking incident (valid from July 1986 to February 1987) and her current one (valid from August 2006 to August 2016). Claimant therefore satisfies the nationality requirement.

Covered Incident and No-Pending Litigation

The list of “Covered Incidents” in Attachment 2 to the 2013 Referral includes the “September 5, 1986 hijacking of Pan Am flight 73.” Claimant’s allegations in this claim arise out of that hijacking. Attachment 2 also identifies the Pending Litigation case(s) associated with each Covered Incident, which in this claim, as noted above, is the *Patel* case. Claimant has stated under oath in her Statement of Claim, and the pleadings in the *Patel* case confirm, that she was not a plaintiff in that litigation. Accordingly, Claimant has satisfied the covered-incident and the no-pending-litigation requirements here.

Compensation Under the Claims Settlement Agreement

Claimant did not receive any compensation under any other distribution under the Claims Settlement Agreement and does not qualify for any other category of compensation in the 2013 Referral. While the Claimant did file a claim for physical injury pursuant to the January 2009 Referral, the Commission denied that claim. Proposed Decision, *supra*. Our independent review of Commission records from the two previous Libyan claims programs confirms that she has not received compensation from

the Commission under the Libyan Claims Settlement Agreement, and we have no evidence that the State Department has provided her any compensation under the Claims Settlement Agreement either. Claimant herself confirms this, under penalty of perjury, in her Statement of Claim. Accordingly, Claimant meets this element of her claim.

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

Merits

To make out a substantive claim under Category C, a claimant must establish that she meets the standard adopted by the Commission for claims of those "who were held hostage or unlawfully detained in violation of international law." 2013 Referral ¶ 5. The Commission has held that in order for claims of those held hostage or unlawfully detained pursuant to Category C to be considered compensable, a claimant must have been

- (a) held illegally against his or her will;
- (b) in a particular area; and
- (c) for an extended period of time, or for shorter periods of time in circumstances in which he or she reasonably felt an imminent threat to his or her life.²

See Claim No. LIB-III-001, Decision No. LIB-III-001, at 8.

² This standard is effectively one for an unlawful-detention claim, not a hostage-taking claim. As the Commission has previously noted, an unlawful-detention claim in international law is not the same as a hostage-taking claim, but is instead a lesser-included offense, one that excludes the element of third-party coercion. See Claim No. LIB-II-011, Decision No. LIB-II-105, at 9. Since Category C of the 2013 Referral (like Category A of the 2009 Referral) is for claims of those who were *either* unlawfully detained *or* taken hostage, claimants only need to prove the former in order to be entitled to compensation here. It thus makes no difference to the determination of the merits of this claim whether Claimant was taken hostage, as long as she can show that she was unlawfully detained.

Application of Standard to this Claim

Claimant satisfies this standard. She alleges that, along with her parents and her sister, she was on board Pan Am Flight 73 on September 5, 1986, when “the plane was hijacked by a terrorist group.” Claimant’s evidence in support of her claim consists of, *inter alia*, the visa pages of her U.S. passport from the time of the incident showing her departure from India on September 5, 1986. In connection with claims arising out of Pan Am Flight 73 in the two earlier Libya claims programs, the Commission also has a copy of the Pan Am 73 flight manifest (list of passengers), which includes Claimant’s name. Other documents in the Commission’s records indicate that all of the Pan Am Flight 73 passengers were held for approximately 16 hours, and that, late in the day, the lights on the plane went out, at which point the hijackers attacked the passengers with machine guns and hand grenades as the passengers attempted to escape from the airplane.

The evidence establishes that Claimant was on board Pan Am Flight 73 during the terrorist attack and that the gunmen on that flight (a) held her illegally against her will (b) on the airplane and (c) for 16 hours in circumstances in which she reasonably felt an imminent threat to her life. The evidence conclusively shows that Claimant was on Pan Am Flight 73 during the hijacking, which is enough to show that she was “(a) held illegally against . . . her will” and “(b) in a particular area.” In addition, the Commission’s records regarding the Pan Am Flight 73 hijacking provide extensive detail concerning the harrowing ordeal experienced by the passengers, both during their captivity and in the moments prior to their escape, when the gunmen began firing automatic weapons and detonating explosives. The Commission has evidence that the gunmen killed at least 20 people during the attack. *See* Claim No. LIB-III-004, Decision No. LIB-III-003, at 7 (Proposed Decision). In such circumstances, we find that Claimant

satisfies the standard for the third element, that she “(c) . . . reasonably felt an imminent threat to . . . her life” even though she was only three months old at the time of the terrorist attack. We can presume that she either would have felt an imminent threat to her life but for her young age, or did in fact experience such feelings but is unable to remember the incident for the same reason. That is enough to satisfy the standard. *See* Claim No. LIB-II-013, Decision No. LIB-II-003, at 9-10 (2009) (Proposed Decision³) (concluding that a claimant who was two years old at the time of the Pan Am Flight 73 hijacking “reasonably felt an imminent threat” to his life, even though he had no recollection of the event: he “either would have felt an imminent threat to his life but for his young age, or did in fact experience such feelings but [was] unable to remember the incident for the same reason.”).⁴

In sum, this claim meets the standard for unlawful detention, and Claimant is thus entitled to compensation.

COMPENSATION

The Commission has held that \$1 million is an appropriate amount of compensation for Pan Am Flight 73 hostage-taking victims whose claims meet the Commission’s standard under Category C, and that such claims are not entitled to interest as part of the awards granted therein. *See* Claim No. LIB-III-001, Decision No. LIB-III-001, at 10-11. Accordingly, Claimant is entitled to an award of \$1,000,000.00, and this amount constitutes the entirety of the compensation that the Claimant is entitled to in the present claim.

³ The relevant portions of this Proposed Decision were effectively incorporated into the Final Decision, since the Final Decision modified the Proposed Decision only as to the amount of compensation. *See* Claim No. LIB-II-013, Decision No. LIB-II-003 (2011) (Final Decision).

⁴ Because we conclude that the Claimant “reasonably felt an imminent threat to her life,” we need not determine whether 16 hours is long enough to constitute “an extended period.”

The Commission therefore enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-1627 (2012).

AWARD

Claimant is entitled to an award in the amount of One Million Dollars (\$1,000,000.00).

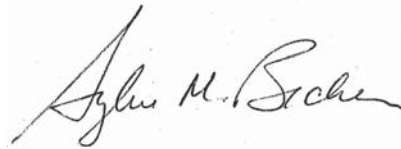
Dated at Washington, DC, November 6, 2014
and entered as the Proposed Decision
of the Commission.

**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).