

**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. IRQ-I-010
	}	
Against the Republic of Iraq	}	Decision No. IRQ-I-022
	}	

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

FINAL DECISION

Claimant objects to the Commission’s Proposed Decision denying his claim against the Republic of Iraq (“Iraq”). In that decision, the Commission concluded that Claimant had failed to meet his burden to prove that Iraqi officials had coercively interrogated him. He was thus unable to show that Iraq had knowingly inflicted upon him a “serious personal injury,” as required by the State Department’s referral letter legally authorizing the Commission to hear claims in this program. On objection, Claimant has submitted additional evidence and argument in support of his claim. Because we find Claimant’s newly-submitted evidence credible, and because he meets all other requirements of eligibility, we reverse the denial of the claim and conclude that he is entitled to an award of \$500,000.00 in compensation.

BACKGROUND

Claimant brought this claim against Iraq based on injuries he suffered while being held hostage in Kuwait and Iraq between August and December 1990. Claimant sought compensation, in addition to that paid to him by the United States Department of State for his experience as a hostage, based primarily on a claim that Iraqi officials coercively interrogated him during his captivity and that, as a result, he suffered mental and emotional injuries. In a Proposed Decision entered July 24, 2014, the Commission concluded that Claimant had satisfied the requirements for jurisdiction, but denied the claim on the record then before it, finding that Claimant had failed to meet his burden to prove that he was coercively interrogated. *See* Claim No. IRQ-I-010, Decision No. IRQ-I-022 (2014) (Proposed Decision).

On August 7, 2014, Claimant filed a notice of objection and requested an oral hearing. On December 30, 2014, Claimant submitted a brief containing further evidence and argument in support of his objection, including a sworn statement of a disinterested third-party. The Commission held a hearing on the objection on January 13, 2015. At the hearing, Claimant provided sworn testimony, and his attorney also briefly argued. Having found that the Claimant has addressed the evidentiary deficiencies we identified in the Proposed Decision, we reverse the denial of the claim and conclude that Claimant is entitled to \$500,000.00 in additional compensation.

DISCUSSION

The objection in this claim presents two issues for decision. First, the Commission must decide whether Claimant's evidence, which now includes the newly-submitted evidence, satisfies his burden to prove the factual allegations of his claim—

namely, whether Claimant was subjected to the interrogation described. Second, in the event Claimant meets his burden of proof, the Commission must still address whether the interrogation Claimant endured caused a “serious personal injury” of sufficient severity to constitute a “special circumstance warranting additional compensation.” Proposed Decision at 14 n.4. We address both issues below.

I. Evidence

Claimant bears the burden to prove his allegations. *See* 45 C.F.R. § 509.5(b) (2013) (“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.”); *see also* Claim No. LIB-II-150, Decision No. LIB-II-115 (2012) (denying claim because claimant failed to establish either the extent of the injury actually suffered as a result of the attack or that the severity of the injury was more than superficial). The Commission found in the Proposed Decision that the evidence Claimant submitted—three declarations of his own and three newspaper articles—failed to meet that burden. Proposed Decision at 10-11. In particular, the Commission stated,

The fact that Claimant’s allegations about the interrogation are uncorroborated is key here. While Claimant’s declarations provide significant detail about the alleged interrogation, Claimant has not submitted any declarations from anyone else present in Iraq at the time. In circumstances where, as here, a claim relies heavily on written declarations, certain factors must be considered in determining how much weight to place on such statements. These may include, for example, the length of time between the incident and the statement, *see Akayesu*, Case No. ICT-96-4-T, ¶ 137, and whether the declarant is a party interested in the outcome of the proceedings or has a special relationship with the Claimant, *see Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals* (2006), at 312, 317. Here the declarations were made more than 16 years after the events described, and the only declarant is the Claimant, who obviously has an interest in the outcome of the proceedings. Standing alone, therefore, Claimant’s

declarations fail to meet his burden to show that he was subjected to the alleged coercive interrogation.

Id. at 11.

On objection, Claimant provides two new pieces of evidence, a sworn statement from a disinterested witness and his own live testimony. The first piece of new evidence is the sworn statement of Mildred Logsdon, a secretary for the U.S. Embassy in Kuwait at the time Claimant was detained there. Logsdon states that the Claimant told her about his interrogation, including that he was threatened with violence and death, and that he did so 10 days after the interrogation, when they were together on the flight from Baghdad the day Iraq released them. Second, Claimant appeared before the Commission and testified in detail about the interrogation under oath. The Commission finds Claimant's sworn testimony highly credible. Therefore, in light of his testimony and the sworn statement of Ms. Logsdon, a disinterested, third-party,¹ the Commission finds that Claimant has proven and substantiated the factual allegations of his claim.

I. Standard for Coercive Allegation

Having found the Claimant's account credible and substantiated by the evidence, the Commission must still determine whether Claimant's interrogation caused him a "serious personal injury" of sufficient severity to constitute a "special circumstance warranting additional compensation." Proposed Decision at 14 n.4. Since the 2012 Referral specifically provides that the phrase "serious personal injury" may include injuries arising from, *inter alia*, "coercive interrogation," the question here is whether Claimant endured a "coercive interrogation." As we explained in the Proposed Decision, "'coercive interrogation' in the context of the 2012 Referral includes, at least,

¹ See *Bin Cheng, supra*, at 317.

circumstances in which the hostage taker credibly threatens the hostage and/or a member of the hostage's family with violence in order to secure information from the hostage.” *Id.* at 10 (citing Claim No. IRQ-I-003, Decision No. IRQ-I-006 (2014) at 6-8 (Proposed Decision)). The Commission further noted that the details of the interrogation “must distinguish between injuries generally associated with having been held hostage and coercive interrogation.” *Id.* at 13, n.3.

Claimant satisfies this standard: together, his sworn testimony and the Logsdon Declaration sufficiently corroborate facts that constitute “coercive interrogation,” as distinct from hostage taking, and therefore establish that he suffered a serious personal injury within the meaning of the 2012 Referral. Claimant provided credible and detailed testimony regarding the harrowing nature of the interrogation when he was threatened with violence and death if he did not answer specific questions regarding the working of the besieged U.S. Embassy in Kuwait. When the questioning began, Claimant, in an act of patriotism and out of concern for those still in the U.S. Embassy, feigned lack of knowledge. As a result, the two Iraqi officials subjected him to a lengthy, grueling and terrifying interrogation: one of the interrogators, who was visibly armed with a pistol, threatened Claimant “with physical harm if [Claimant] did not answer his questions, placed his hand on his weapon and warned [Claimant] that [he] was in danger of not making it as far as the desert – much less to [his] home in the United States”; and both of them also raised their fists at Claimant, threatened that he would be used as a “human shield,” and threatened to torture him and dump his body “in the desert never to be found.” Claimant also testified and stated in his declarations that during the interrogation one of the interrogators lunged at Claimant and squeezed his throat with his hand, while

calling Claimant an “Arab Traitor.” Ms. Logsdon further corroborated the basic outlines of Claimant’s account, including the threats of violence during the interrogation:

In a conversation on the flight [Claimant] told me that when he left the compound he had been subjected to a terrible and frightening interrogation, in which he was asked numerous questions about the situation inside the compound and threatened with violence or death if he did not tell the Iraqis what they wanted to hear.

Logsdon Declaration at 2.

Claimant has therefore demonstrated that he suffered a “serious personal injury” that was “knowingly inflicted” by Iraq. The Commission further finds that given the nature of the specific acts committed by Iraq giving rise to Claimant’s injury, the severity of the serious personal injury suffered constitutes a “special circumstance warranting additional compensation.” *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006 (Proposed Decision), at 11.

II. Compensation

The Proposed Decision noted the similarity of the facts alleged in this claim and in Claim No. IRQ-I-003:

In many ways, this claim—indeed, some of the specifics of the allegations themselves—is similar to that in Claim No. IRQ-I-003, Dec. No. IRQ-I-006. In both cases, U.S. citizens of Arab descent had spent from August to late November 1990 in Kuwait, mostly in the U.S. Embassy. In both cases, the allegations are that, in late November 1990, Iraqi officials induced the hostage out of the U.S. Embassy based on a promise of release. And, in both cases, the allegations are based on what appear to be attempts by Iraqi officials to glean intelligence about the situation inside the diplomatic compound of the U.S. Embassy. Moreover, the allegations in both cases are consistent with each other, albeit based on two different sets of interrogations of two different individuals in two different places.

Proposed Decision at 13. Additionally, Claimant has described mental injuries resulting from the coercive interrogation that are of a similar nature as those described in Claim No. IRQ-I-003. Specifically, he has stated that for four years after his release from Iraq

he suffered painful memories, anxiety, abnormal startle response, spells of dizziness, insomnia and nightmares. *See* Proposed Decision at 10. He further stated that he continues to suffer from an exaggerated startle response, flashbacks, concentration difficulties, and periodic instances in which he wakes up from his sleep with his body soaking wet. *Id.* Given that the Claimant was subjected to a coercive interrogation similar to that described in Claim No. IRQ-I-003 and suffered similar resulting mental injuries,² and the Commission's preference to avoid making narrow distinctions between similar claims, *see* Claim No. IRQ-I-022, Decision No. IRQ-I-008 at 9-10 (2015), Claimant should be awarded the same amount as the claimant in Claim No. IRQ-I-003. Claimant is thus entitled to an award of \$500,000.00, and this amount (which is in addition to the amount already received from the Department of State) constitutes the entirety of the compensation that the Claimant is entitled to in the present claim.

The Commission 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. §§ 1626-27.

² *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006 (Proposed Decision), at 11-14.

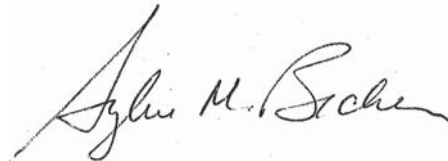
AWARD

Claimant is entitled to an award in the amount of Five Hundred Thousand Dollars (\$500,000.00).

Dated at Washington, DC, February 12, 2015
and entered as the Final Decision
of the Commission.

Handwritten signature of Anuj C. Desai in black ink.

Anuj C. Desai, Commissioner

Handwritten signature of Sylvia M. Becker in black ink.

Sylvia M. Becker, Commissioner

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PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered while being held hostage in Kuwait and Iraq between August and December 1990. The United States Department of State has already provided him compensation for his experience as a hostage. He now seeks additional compensation based primarily on a claim that Iraqi officials coercively interrogated him and that, as a result, he suffered mental and emotional injuries. On the present record, the Claimant has failed to meet his burden to prove that he was in fact coercively interrogated. The claim is therefore denied.

BACKGROUND AND BASIS OF CLAIM

Claimant alleges that, on the morning of August 2, 1990, he arrived in Kuwait with his wife and son to begin work for a new job. Following Iraq’s attack on Kuwait that day, he claims that Iraq effectively held him hostage until December 9th of that year,

first for two weeks in his hotel in Kuwait (with his wife and son), then for more than three months in the U.S. Embassy in Kuwait, and then for approximately two weeks in Iraq, including some time at a chemical plant near Baghdad where he was used as a human shield. Claimant states that Iraq permitted his wife and son to leave Kuwait on September 1, 1990, with a group of women and children whose release was negotiated by Reverend Jesse Jackson. He also states that just before transporting him to Iraq in late November, Iraqi soldiers interrogated him under the threat of violence and death. Claimant's alleged experiences and injuries are detailed further in the Merits section below.

Claimant was part of a suit initiated against Iraq in federal court in 2001 seeking damages for a variety of injuries including hostage-taking and intentional infliction of emotional distress. *See* ⁵ U.S.C. §552(b)(6) That case was pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. *See Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement"). The Agreement, which came into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some, like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation "encompassed physical, mental, and emotional injuries generally associated with" being held hostage or subject to

unlawful detention.¹ Claimant states that the amount of the payment he received was based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention. For Claimant, this was \$800,000 total.

The State Department's Legal Adviser subsequently requested that the Commission commence a claims program for some of the hostages that it had already compensated. More specifically, the State Department authorized the Commission to award additional compensation to hostages who suffered a "serious personal injury," when that injury was "knowingly inflicted ... by Iraq" and the severity of that injury is a "special circumstance warranting additional compensation." The State Department made its request in a letter dated November 14, 2012 which the Commission received pursuant to its discretionary statutory authority. *See* 22 U.S.C. § 1623(a)(1)(C) (2012) (granting the Commission jurisdiction to "receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or 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"). The letter sets forth the category of claims as follows:

claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq¹ in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking² provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State³ for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, "serious personal injury" may include instances of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.

¹ A group of hostages, not including Claimant, received compensation for economic loss. The hostages that received compensation for economic loss are not before the Commission in this program.

¹ For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

² Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

³ The payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.

See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission (“2012 Referral” or “Referral”) at ¶ 3 & nn.1-3 (footnotes in original). The Commission then commenced the Iraq Claims Program to decide claims under the 2012 Referral. Commencement of Iraq Claims Adjudication Program, 78 Fed. Reg. 18,365 (Mar. 26, 2013).

Claimant submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of his claim, including evidence of his U.S. nationality, his receipt of compensation from the Department of State for his claim of hostage-taking, and his alleged personal injuries.

DISCUSSION

Having reviewed all the documents Claimant has submitted, we conclude that (1) the Commission has jurisdiction over the claim but (2) Claimant has failed to carry his burden to prove that he suffered a “serious personal injury” within the meaning of the 2012 Referral and thus has not shown that he is entitled to additional compensation.

Jurisdiction

The 2012 Referral’s statement of the category of claims defines the Commission’s jurisdiction. *See* 22 U.S.C. § 1623(a)(1)(C). Thus, the Commission has jurisdiction to entertain only claims of individuals who (1) are U.S. nationals and (2) “already received compensation under the Claims Settlement Agreement from the Department of State¹ for [their] claim of hostage-taking,” where “such compensation did not include economic loss based on a judgment against Iraq[.]” 2012 Referral, *supra*, ¶ 3. Claimant satisfies both requirements, and the Commission thus has jurisdiction over this claim.

Nationality

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 at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 5-6 (2014) (Proposed Decision). Claimant satisfies the nationality requirement. He has provided a copy of two U.S. passports—one from the time of the hostage-taking (valid from March 1990 to March 2000) and one covering the date the Agreement entered into force (valid from April 2004 to April 2014).

Compensation from the Department of State

The Claimant also satisfies the second jurisdictional requirement. He has submitted a copy of a Release he signed on August 15, 2011, indicating his agreement to accept a given amount from the Department of State in settlement of his claim against Iraq. He has also submitted a copy of an electronic notification from the Department of State that he was paid this sum on October 14, 2011. Claimant further stated under oath

in his Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq.

In summary therefore, the Commission has jurisdiction over this claim under the 2012 Referral.

Merits

The 2012 Referral requires a claimant to satisfy three conditions to succeed on the merits of a claim. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 7-8 (2014) (Proposed Decision). First, the claimant must have suffered a “serious personal injury,” which may be “physical, mental, or emotional.” In order to satisfy this standard, the injury must have arisen from one of the four acts specifically mentioned in the Referral—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault—or from some other discrete act, separate from the hostage experience itself, that is comparable in seriousness to one of those four acts—that is, an act of a similar type or that rises to a similar level of brutality or cruelty as the four enumerated acts. *Id.* at 7.

The second requirement is that Iraq must have “knowingly inflicted” the injury. Thus, even where a claimant suffered a serious personal injury that satisfies the other requirements in the 2012 Referral, it must be proven that Iraq knowingly inflicted the injury.²

The third requirement is that the Commission determine that the severity of the serious personal injury suffered constitutes a “special circumstance warranting additional compensation.” In determining whether the severity of the injury is such a “special circumstance,” the Commission will consider the nature and extent of the injury itself (including the specific acts committed by Iraq giving rise to such injury), the extent to

² “Iraq” is defined in footnote 1 of the Referral.

which the injury substantially limits one or more of the claimant's major life activities (both in the immediate aftermath of the injury and on a long-term basis), and/or the extent to which there is permanent scarring or disfigurement that resulted from the injury. *See id.* at 8.

Here, Claimant's primary allegations of "serious personal injury" stem from an incident when Iraqi forces allegedly interrogated him. To prove these allegations, Claimant has submitted three declarations, dated June 30, 2007, June 17, 2013, and October 29, 2013, in which he describes his hostage experience, including the alleged coercive interrogation, and three newspaper articles. For the reasons discussed below, the Commission concludes that Claimant has failed to carry his burden to prove that he was in fact coercively interrogated and thus that he suffered a "serious personal injury" within the meaning of the 2012 Referral.

Detention in Kuwait: Claimant alleges that he arrived in Kuwait on the morning of August 2, 1990, to begin a new job, and, as he and his wife and son were being driven to their hotel from the airport, Iraq invaded Kuwait. They stayed in their hotel in Kuwait City for the next two weeks. Iraqi troops roamed around the hotel and, during this period, Claimant states that he suffered from intense stress, sleeplessness, and fatigue as he worried about the welfare of his family and himself. On August 18, 1990, Claimant and his family made their way to the U.S. Embassy in Kuwait. According to Claimant, the Embassy was overcrowded, and they had to sleep on the floor of an office trailer. Iraq permitted Claimant's wife and son to leave Kuwait on September 1, 1990, with a group of women and children whose release was negotiated by Reverend Jesse Jackson, but Claimant had to remain at the Embassy for the next three months. Claimant was

concerned the Embassy would be stormed by Iraqi soldiers and he would be killed, tortured or deployed as a human shield.

Interrogation: Claimant states that he left the Embassy on November 29, 1990, based on Iraq's representation that American civilians of Arab descent (like the Claimant) would be permitted to leave Kuwait. According to Claimant, however, Iraq instead took him to the Iraqi headquarters in a hotel in Kuwait where they questioned him for a number of hours about the situation in the U.S. Embassy. The June 30, 2007 declaration that Claimant submitted in his federal court litigation describes the situation in general terms: he states that he was questioned for a number of hours on November 29, 1990, and that, as the interrogation dragged on, his interrogators grew agitated as they were unable to get any valuable information. Claimant states his interrogators "threatened him with physical harm, but fortunately they were only bluffing and eventually they gave up on me."

The two declarations that Claimant prepared specially for this proceeding provide somewhat more detail about the alleged interrogation. In the first one, dated June 17, 2013, Claimant states that he was subjected to a lengthy, grueling and terrifying interrogation. An interrogator, who was visibly armed with a pistol, threatened Claimant "with physical harm if [Claimant] did not answer his questions, placed his hand on his weapon and warned [Claimant] that [he] was in danger of not making it as far as the desert – much less to [his] home in the United States." The interrogators also raised their fists at Claimant, threatened that he would be used as a "human shield," and threatened that he would be "tortured and [his] body dumped in the desert never to be found." During the interrogation, Claimant asserts, one of the interrogators lunged at Claimant and squeezed his throat with his hand and called Claimant an "Arab Traitor." Similarly,

in his October 29, 2013 declaration, Claimant again states that, during interrogations, Iraqi security officials threatened him with physical harm, and told him that if he did not answer their questions, they would “severely beat [him] and/or take [him] to the desert where no one would find [him].”

Detention in Baghdad: After the interrogation, Iraqi officials took Claimant to Baghdad where he spent several days confined to a hotel. According to Claimant, he was provided only with water and unappetizing food, and felt angry, distressed and helpless. On December 2, 1990, Claimant was blindfolded and put in the back of a truck. He states that Iraqi officials took him to a chemical plant near Baghdad to serve as a “human shield.” Claimant spent the next five days confined with four other hostages to a tiny room that was dilapidated and insect-infested, and he was allowed outside only once a day. The hostages’ communications were limited, and the food they were served was “barely edible.” Claimant states that the Iraqi guards at the chemical plant were menacing, and he felt his life was in constant jeopardy.

Claimant states that on December 7, 1990, he was told he would be able to leave Iraq. On December 8, 1990, Iraqi officials transferred him back to the hotel in Baghdad, which was now overcrowded because of the many hostages being relocated there, and the environment was tense. On December 9, 1990, Claimant left Baghdad on a flight to Germany. The conditions at the airport in Baghdad were crowded and unsanitary, and Claimant was extremely worried that the hostages were not really going to be released. Claimant finally returned to the United States on December 10, 1990.

Injuries Alleged: Claimant maintains that, for four years after his release from Iraq, he suffered painful memories, anxiety, abnormal startle response, spells of dizziness, insomnia and nightmares. He states that, while he subsequently returned to

Kuwait for work and his symptoms gradually dissipated to some degree, he continues to suffer from an exaggerated startle response, flashbacks, concentration difficulties, and periodic instances in which he wakes up from his sleep with his body soaking wet.

Analysis: Claimant asserts he suffered a “serious personal injury” stemming from the coercive interrogation he endured on November 29, 1990. The 2012 Referral specifically provides that the phrase “serious personal injury” may include injuries arising from, *inter alia*, “coercive interrogation.” The Commission has previously determined that “coercive interrogation” in the context of the 2012 Referral includes, at least, circumstances in which the hostage taker credibly threatens the hostage and/or a member of the hostage’s family with violence in order to secure information from the hostage. *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006 (2014) at 6-8 (Proposed Decision).

Claimant bears the burden to prove his allegations. *See* 45 C.F.R. § 509.5(b) (2013) (“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.”); *see also* Claim No. LIB-II-150, Decision No. LIB-II-115 (2012) (denying claim because claimant failed to establish either the extent of the injury actually suffered as a result of the attack or that the severity of the injury was more than superficial). The evidence Claimant submitted—three declarations of his own and three newspaper articles—fails to meet that burden.

The fact that Claimant’s allegations about the interrogation are uncorroborated is key here. While Claimant’s declarations provide significant detail about the alleged interrogation, Claimant has not submitted any declarations from anyone else present in Iraq at the time. In circumstances where, as here, a claim relies heavily on written

declarations, certain factors must be considered in determining how much weight to place on such statements. These may include, for example, the length of time between the incident and the statement, *see Akayesu*, Case No. ICT-96-4-T, ¶ 137, and whether the declarant is a party interested in the outcome of the proceedings or has a special relationship with the Claimant, *see Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals* (2006), at 312, 317. Here the declarations were made more than 16 years after the events described, and the only declarant is the Claimant, who obviously has an interest in the outcome of the proceedings. Standing alone, therefore, Claimant's declarations fail to meet his burden to show that he was subjected to the alleged coercive interrogation.

The only other evidence Claimant has submitted to prove his allegations, the newspaper articles, provides no support for his allegations about the interrogation. Claimant has submitted three newspaper articles: one from ^{5 U.S.C. §552(b)(6)}, dated December 16, 1990, one from ^{5 U.S.C. §552(b)(6)}, dated January 3, 1991, and a copy of a December 12, 1990 article from ^{5 U.S.C. §552(b)(6)} (Enterprise, Alabama). None of them makes any mention of Claimant being interrogated. Furthermore, two of the articles contain statements that might be seen as suggesting that Claimant was not harmed at all during his time as a hostage. *The* ^{5 U.S.C. §552(b)(6)} article states, “[Claimant] said he and his family weren't hurt during the ordeal, and said they hadn't witnessed any of the reported atrocities by Iraqi soldiers.” It further quotes Claimant as saying that “[t]hey didn't threaten me personally. . . .” Likewise, the ^{5 U.S.C. §552(b)(6)} article states that the Claimant and his family “did not see many of the Iraqi atrocities that have been reported in the news media. They did see Kuwaitis being hit with rifle butts.”

These press reports appear inconsistent with Claimant's allegations of a coercive interrogation. However, Claimant offers a reasonable explanation of why these reports do not undermine his claim. For one, he states that he did not discuss the interrogation with the reporters in order to avoid upsetting family members. He also contends that these statements were only about the first few weeks of his time in Kuwait when he was with his family, not what he experienced after they left. Looking at these articles in their entirety, this makes sense. The ^{5 U.S.C. §552(b)(6)} article is entitled "Hostage family did a lot of praying" and has a subtitle of ^{5 U.S.C. §552(b)(6)} "couple tell of ordeal in hiding, give thanks," clearly implying that the article is about the family, not Claimant alone. Although there is a brief mention of Claimant's time as a human shield in the last few sentences of the article, the remainder of the (25-paragraph) article is about the family, not just Claimant. Moreover, the statement that the Iraqis "didn't threaten me personally" comes immediately after a sentence specifically referring to the first few weeks of his time in Kuwait when he, his wife and son were in the hotel; it thus clearly seems to be referencing that same period. The ^{5 U.S.C. §552(b)(6)} article is also about the family, not Claimant himself. There is only the most casual mention of the more than three additional months Claimant spent in Kuwait and Iraq in the opening lines of the article, after which the entire (44-paragraph) article discusses only those first weeks until Claimant's wife and son were released.

While these explanations are plausible and we do not view the articles as necessarily contradicting Claimant's allegations of coercive interrogation, the fact remains that the articles fail to corroborate Claimant's account of interrogation. In short, while these articles do not necessarily undermine Claimant's account, they are the only

contemporaneous evidence we have, and there is nothing in them to support his allegations of coercive interrogation.³

In many ways, this claim—indeed, some of the specifics of the allegations themselves—is similar to that in Claim No. IRQ-I-003, Dec. No. IRQ-I-006. In both cases, U.S. citizens of Arab descent had spent from August to late November 1990 in Kuwait, mostly in the U.S. Embassy. In both cases, the allegations are that, in late November 1990, Iraqi officials induced the hostage out of the U.S. Embassy based on a promise of release. And, in both cases, the allegations are based on what appear to be attempts by Iraqi officials to glean intelligence about the situation inside the diplomatic compound of the U.S. Embassy. Moreover, the allegations in both cases are consistent with each other, albeit based on two different sets of interrogations of two different individuals in two different places.

The dispositive difference between the two cases is solely a question of evidence. In IRQ-I-003, the claimant's account was corroborated by a third-party declaration from someone whom the Claimant had told about the coercive interrogation shortly after it took place. There was thus evidence in addition to the claimant's own statements. Here, in contrast, there is no evidence other than Claimant's own declarations to support his account. It is for this reason that we conclude that Claimant has failed to meet his burden of proof. Uncorroborated declarations, not subject to cross-examination, do not, by themselves, provide sufficient evidence to support a claim for compensation.

³ In this claim, corroboration of the details of the interrogation is very important, as the Commission must distinguish between injuries generally associated with having been held hostage and coercive interrogation. *See* Claim No. IRQ-I-024, Decision No. IRQ-I-012 at 15 (2014) (denying claim where claimant's account suggested Iraqi guards implicitly threatened to harm, or perhaps kill, her if she attempted to escape, finding this scenario very much like a typical hostage-taking scenario, and noting that claimants in this program have already received compensation from the State Department for injuries associated with having been held hostage).

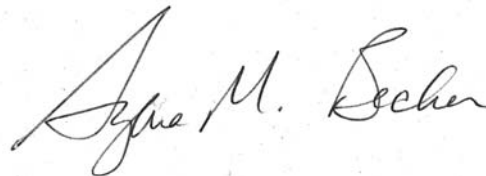
Given that Claimant has not provided any third-party, objective corroboration for his account of interrogation, we find that Claimant has not satisfied his burden to prove his claim of coercive interrogation. Claimant has therefore failed to prove that he suffered a “serious personal injury,” as required by the 2012 Referral.⁴

Accordingly, while the Commission sympathizes with Claimant for the hardship that he undoubtedly endured during his detention in Kuwait and Iraq, in the absence of further evidence substantiating his claim, the claim must be and is hereby denied.

Dated at Washington, DC, July 24, 2014
and entered as the Proposed Decision
of the Commission.



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).

⁴ Because Claimant has not met his burden of proof, we need not address the question whether the interrogation Claimant described, if proved, would have caused a “serious personal injury” of sufficient severity to constitute a “special circumstance warranting additional compensation.”