

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

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-141
Decision No. LIB-II-099

Counsel for Claimant:

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PROPOSED DECISION

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

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

On January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication six categories of claims of United States nationals against Libya. *Letter from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable*

Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission ("January Referral Letter").

The present claim is made under Category B. According to the January Referral Letter, Category B consists of:

claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State provided that (1) the claim was set forth as a claim for emotional distress, solatium, or similar emotional injury by the claimant named in the Pending Litigation; (2) the claimant is not eligible for compensation from the associated wrongful death claim, and the claimant did not receive any compensation from the wrongful death claim; (3) the claimant has not received any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral; and (4) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

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

The January Referral Letter, as well as a December 11, 2008 referral letter from the State Department's Legal Adviser to the Commission ("December Referral Letter"), followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 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 Letter. *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 from the claimant a Statement of Claim, in which she asserts a claim under Category B of the January Referral Letter, along with exhibits in support of her claim. The claimant states that she is the mother of 5 U.S.C. §552(b)(6), who was killed on board Pan Am Flight 103 on December 21, 1988, that she is a U.S. national, and that she was one of the plaintiffs in *Cummock v. Socialist People's Arab Jamahiriya* (D.D.C.) 02-cv-2134.

DISCUSSION

Jurisdiction

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

Agreement, and do not qualify for any other category of compensation pursuant to the January referral. January Referral Letter, *supra*, ¶ 4. Claims that do not meet these criteria fall outside the Commission's jurisdiction, and are not eligible for adjudication on the merits.

The present claim fails to meet one of the established criteria: namely that the claim be of a living close relative of a decedent "*whose death formed the basis of a death claim compensated by the Department of State.*" (Emphasis added). Beginning with a letter dated September 13, 2010, the Commission staff has sent repeated requests to the claimant to explain and support her assertion that her claim qualifies for compensation under Category B of the January Referral Letter, despite its apparent lack of a connection to a wrongful-death claim compensated by the Department of State. By letter dated April 5, 2011, the claimant informed the Commission that she had submitted a request to the Department of State for an amendment to the January Referral Letter which would have the effect of qualifying her claim for favorable consideration by the Commission, but she has not provided any further information regarding that request. Nor has the claimant responded to subsequent requests by the Commission's staff to submit any and all additional evidence or information she wished the Commission to consider in regard to her claim.

Given the passage of time and the claimant's failure to respond to the Commission's requests by the specified deadlines, the Commission must adjudicate the claim as submitted. The evidence indicates that the wrongful death of 5 U.S.C. §552(b)(6)

did not form the basis of a death claim compensated by the Department of State. Rather, the claimant indicates that the decedent's wife settled the claim for Mr. 5 U.S.C. §552(b)(6) wrongful death in a separate, private agreement with the Libyan government "for an undisclosed sum." On this basis, the Commission concludes that the claimant has

not met her burden of proving that she meets the criteria established by the State Department for Category B of the January Referral Letter.

Consequently, while the Commission is sympathetic to the tragic loss suffered as a result of the death of claimant's son, it is constrained to conclude that this claim is not eligible for compensable under the January Referral Letter. Accordingly, this claim must be and it is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, DC, October 17, 2011
and entered as the Proposed Decision
of the Commission.

**This decision was entered as the
Commission's Final Decision on**
NOV 30 2011


Timothy J. Feighery, Chairman


Rafael E. Martinez, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2010).