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) Against the Republic of Iraq	Claim No. IRQ-II-318 Decision No. IRQ-II-027

FINAL DECISION

Claimant objects to the Commission's Proposed Decision denying his claim for hostage-taking against the Republic of Iraq ("Iraq"). In the Proposed Decision, the Commission determined that it did not have jurisdiction over Claimant's claim because he failed to establish that he was a U.S. national at the time of the alleged hostage-taking. On objection, Claimant argues that the Commission should treat him as a U.S. national and exercise jurisdiction over his claim. After carefully considering all of Claimant's arguments and evidence, we again conclude that his claim fails to satisfy the requirements for jurisdiction under the 2014 Referral from the Department of State because Claimant was not a U.S. national at the time of the alleged hostage-taking. We thus affirm the denial of this claim.

BACKGROUND

Claimant brought this claim under Category A of the 2014 Referral alleging that Iraq held him hostage in Kuwait and Iraq from August 2, 1990 to August 18, 1990. In a Proposed Decision dated September 27, 2016, the Commission denied the claim: the

Proposed Decision concluded that the Commission did not have jurisdiction over the claim because Claimant was not a U.S. national at the time of the alleged hostage-taking.[1] On October 24, 2016, Claimant filed a notice of objection and requested an oral hearing. On November 16, 2016, the Commission held an oral hearing that consisted of testimony and argument presented by Claimant. Claimant provided further details about his family's harrowing escape from Kuwait and Iraq in August 1990 and testified that the hostage-taking led to the demise of his family life and business in Kuwait.

DISCUSSION

To be eligible for compensation in this program, Claimant must establish that he is a "U.S. national."[2] As the Commission has previously recognized, the term "U.S." national" in this context "means that a claimant must have been a national of the United States when the claim arose and continuously thereafter until May 22, 2011."[3] Claimant concedes that he was not a U.S. national at the time of the alleged hostage-taking (August 1990) but nevertheless contends that the Commission should treat him as a "U.S. national" for the following reasons: 1) he was eligible to become a U.S. national at that time; 2) he put his life at risk to rescue his wife and his children who were U.S. nationals at the time; 3) such treatment would be consistent with the alleged practice of the U.S. government in offering U.S. citizenship to certain Iraqi nationals and the Commission's precedent in claims brought by spouses of non-U.S. nationals; and 4) he would otherwise be deprived of his right to bring a claim against Iraq.[4] None of these arguments, however, undermines the Commission's determination in the Proposed Decision that it does not have jurisdiction

[1] *See* Claim No. IRQ-II-318, Decision No. IRQ-II-027.
[2] Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.
[3] *Id.* at 5.
[4] *See* Claimant's Notice of Objection, at 1-2.

over this claim because Claimant was not a U.S. national at the time of the alleged hostage-taking.

Even assuming that Claimant was eligible to become a U.S. citizen at the time of the alleged hostage-taking (August 1990), this would not be sufficient to establish U.S. nationality for our purposes here. It is a well-settled principle in the Commission's jurisprudence that U.S. nationality can be acquired "only by birth or by naturalization under the process set by Congress."[5] We have previously recognized that this principle precludes a claimant from qualifying as a U.S. national merely because he has taken steps towards becoming a U.S. citizen or is otherwise eligible for U.S citizenship.[6] Thus, even assuming Claimant was eligible to become a U.S. citizen at the time of the alleged hostage-taking (August 1990), he would not qualify as a U.S. national for the purposes of the 2014 Referral.

Claimant's claim that he saved the lives of U.S. national family members who were escaping from Kuwait and Iraq is also insufficient to make him a U.S. national. To support this argument, Claimant cites the U.S. government practice of offering U.S. citizenship "to Iraqi citizens who . . . saved American lives during the Iraqi war."[7] Yet, while there is evidence that shows the U.S. government offered Iraqi nationals who assisted the U.S. during the Second Gulf War special immigrant status that permitted them to apply for permanent residence, there is no evidence that these individuals were directly offered U.S. nationality for their efforts.[8] More importantly, even if Congress had enacted a law offering U.S. nationality in that context, this would not be sufficient to establish that

[5] Claim No. LIB-I-044, Decision No. LIB-I-017 (Final Decision), at 7 (2011) (citing *Abou-Haidar v. Gonzalez*, 437 F.3d 206, 207 (1st Cir. 2006)).)
[6] *See* Claim No. IRQ-II-322, Decision No. IRQ-II-001, at 5.
[7] Claimant's Notice of Objection, at 2.
[8] *See* National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1244, 122 Stat. 396, 397-98 (2008).

Claimant was a U.S. national for our purposes here. As we noted above, the only factor relevant in determining whether a claimant who was not a U.S. national at birth has acquired such nationality for the purpose of the 2014 Referral is the date of his "naturalization under the process set by Congress."[9] Thus, because Claimant was not naturalized as a U.S. citizen in August 1990, he does not qualify as a U.S. national for our purposes here regardless of any assistance that he offered his U.S. citizen family members at that time.

Claimant also appears to argue that, as the spouse of a U.S. national who suffered in captivity in Iraq, he is eligible for compensation in this program even though he was not a national of the United States at the time of the alleged hostage-taking.[10] To support this argument, Claimant looks to the Commission's decisions in claims brought by the spouses of non-U.S. nationals.[11] This jurisprudence, however, is unavailing. Claimant has not identified any claim in which the Commission has exercised jurisdiction over a non-U.S. national in a program such as this one that is governed by an international agreement or statute that requires the application of the continuous nationality principle. In such circumstances, the Commission has consistently maintained that it does not have the authority to make awards to those who fail to satisfy the continuous-nationality requirement.[12]

Claimant contends that the Commission should nevertheless make an exception to the continuous nationality rule and treat him as a U.S. national because the Claims

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[9] *See supra* at 3.
[10] *See* Claimant's Notice of Objection, at 2.
[11] *See id.*
[12] *See* Claim No. Y2-0523, Decision No. Y2-276 (Final Decision), at 2 (1968); Claim of *NEW YORK MARINE AND GENERAL INSURANCE COMPANY*, Claim No. LIB-II-170, Decision No. LIB-II-165 (Final Decision), at 8.

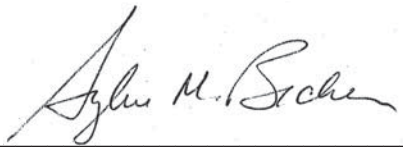
Settlement Agreement deprives him of his right to bring suit against Iraq.[13] While Article V of the Agreement did require the U.S. government to "secure . . . the termination of any claim, suit or action, regardless of claimants' nationality, in U.S. federal or state court . . . and preclude any new claim, suit or action in any U.S. federal or state court," that provision applies only to courts in the United States; nothing in the agreement indicates that the U.S. government settled, espoused, or otherwise extinguished Claimant's claim.[14] Moreover, any difficulty Claimant might face in obtaining compensation from Iraq because of his inability to bring suit in U.S. courts has no bearing on our determination of whether Claimant is a U.S. national within the meaning of the 2014 Referral and the Claims Settlement Agreement. As we have previously recognized in a claim brought by a non-U.S. national who similarly invoked the lack of a "future forum to press its claim," "the relevant . . . law is clear, and the Commission has no authority to change the law for policy reasons."[15]

[13] *See* Oral Hr'g, at 23:01-23:17; Claimant's Notice of Objection, at 1.
[14] 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, Art. V.
[15] Claim of *NEW YORK MARINE AND GENERAL INSURANCE COMPANY*, Claim No. LIB-II-170, Decision No. LIB-II-165 (Final Decision), at 7-8.

Therefore, while we sympathize with Claimant for what he endured, the Commission is constrained to conclude that it has no jurisdiction to decide the present claim under the 2014 Referral. Accordingly, the denial of this claim set forth in the Proposed Decision is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, April 11, 2018
and entered as the Final Decision
of the Commission.

Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
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In the Matter of the Claim of	}	
	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-II-318
	}	
	}	Decision No. IRQ-II-027
	}	
Against the Republic of Iraq	}	
	}	

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq ("Iraq") alleging that Iraq held him hostage in violation of international law in August 1990. Because Claimant was not a U.S. national at the time, however, this Commission lacks jurisdiction over his claim. In other words, the Commission does not have the authority to consider the merits of his claim—that is, to decide whether Iraq held him hostage. For this reason, his claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was living in Kuwait with his American wife and children when Iraq invaded the country on August 2, 1990. He claims that on August 3, 1990, Iraqi security forces detained him at a police station for over ten hours, asked him, among other things, whether he was married to an American, and threatened him with lethal force before releasing him. Claimant asserts that from that period onward, he stayed in his apartment because he feared that he would be captured again by Iraqi forces.

Claimant states that, on August 14, 1990, Iraqi soldiers arrived at his apartment complex to search for American and European citizens. Claimant states that at the moment the soldiers entered the front door of his apartment, he and his family escaped out the back door and traveled by car through Kuwait and Iraq until they reached the Iraqi-Jordanian border. Claimant and his family entered Jordan on August 18, 1990—four days after they departed from Kuwait.

Although Claimant was not among them, many of the U.S. nationals in Iraq and Kuwait at the time of the 1990-91 Iraqi occupation of Kuwait sued Iraq (and others) in federal court for, among other things, hostage-taking.[1] Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.[2] The Agreement, which entered 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, including claims of personal injury caused by hostage-taking.[3] The Agreement defined "U.S. nationals" as "natural and juridical persons who were U.S. nationals at the time their claim arose and through the date of entry into force of this Agreement."[4]

Under the International Claims Settlement Act of 1949 ("ICSA"), the Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission.[5] The Secretary has delegated that authority to the State

[1] *See, e.g., Hill v. Republic of Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001); *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006).
[2] *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").
[3] *See id.* Art. III(1)(a)(ii).
[4] *See id.* Art. I(2).
[5] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).

Department's Legal Adviser, who, by letter dated October 7, 2014, referred three categories of claims to this Commission for adjudication and certification.[6] This was the State Department's second referral of claims to the Commission under the Claims Settlement Agreement, the first having been by letter dated November 14, 2012 ("2012 Referral" or "November 2012 Referral").[7]

One category of claims from the 2014 Referral is applicable here. That category, known as Category A, consists of

> claims by U.S. nationals for hostage-taking[1] by Iraq[2] in violation of international law prior to October 7, 2004, provided that the claimant was not a plaintiff in pending litigation against Iraq for hostage taking[3] at the time of the entry into force of the Claims Settlement Agreement and has not received compensation under the Claims Settlement Agreement from the U.S. Department of State. . . .
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> [1] For purposes of this referral, hostage-taking would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.
>
> [2] 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.
>
> [3] For purposes of this category, pending litigation against Iraq for hostage taking refers to the following matters: *Acree v. Iraq*, D.D.C. 02-cv-00632 and 06-cv-00723, *Hill v. Iraq*,

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[6] *See Letter dated October 7, 2014, 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* ("2014 Referral" or "October 2014 Referral").

[7] Although the November 2012 Referral involved claims of U.S. nationals who were held hostage or unlawfully detained by Iraq, it did not involve hostage-taking claims *per se*. Rather, it consisted of certain claimants who had *already received* compensation under the Claims Settlement Agreement from the State Department for their hostage-taking claims, and authorized the Commission to award additional compensation to those claimants, provided they could show, among other things, that they suffered a "serious personal injury" during their detention. The 2012 Referral expressly noted that 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." 2012 Referral, *supra*, n.3.

D.D.C. 99-cv-03346, *Vine v. Iraq*, D.D.C. 01-cv-02674; *Seyam (Islamic Society of Wichita) v. Iraq*, D.D.C. 03-cv-00888; *Simon v. Iraq*, D.D.C. 03-cv-00691.

2014 Referral at ¶ 3.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSA and the 2014 Referral.[8]

On August 18, 2016, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of his claim.

DISCUSSION

This Commission's authority to hear claims—known in the legal vernacular as its "jurisdiction"—is limited to the category of claims referred to it by the United States Department of State.[9] Here, therefore, we must look to the language of the "Category A" paragraph of the 2014 Referral to determine our jurisdiction. That language limits our jurisdiction to claims of (1) "U.S. nationals," provided that the claimant (2) was not a plaintiff in pending litigation against Iraq for hostage taking on May 22, 2011; and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral ¶ 3.

This claim fails to satisfy the first requirement—that it be brought by a "U.S. national." The term "U.S. national" has a specific legal meaning in this context. When the Commission interprets terms such as "U.S. national," Congress has directed us to

[8] *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).
[9] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).

look first to "the provisions of the applicable claims agreement."[10] Here, that means we must turn first to the Claims Settlement Agreement. That Agreement expressly provides a definition of "U.S. nationals." Article I of the Agreement states that "[r]eference to 'U.S. nationals' shall mean natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement."[11] As the Commission has recognized in its previous decisions, the U.S. nationality requirement thus means that a claimant must have been a national of the United States when the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force.[12]

According to the documents that Claimant has submitted in this claim, he was not a U.S. national in 1990, when his claim arose. As the Commission has previously recognized, U.S. nationality can be acquired "only by birth or by naturalization under the process set by Congress."[13] Claimant has submitted a naturalization certificate indicating that he did not become a U.S. citizen until September 22, 1995—over five years after he was allegedly detained in Kuwait. Thus, the evidence establishes that Claimant was not a U.S. citizen when the claim arose and is thus not a "U.S. national" within the meaning of the Claims Settlement Agreement and 2014 Referral.

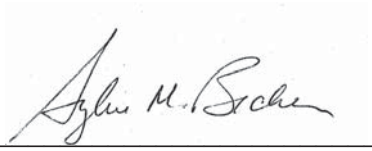
Therefore, the Commission is constrained to conclude that it has no jurisdiction to decide the present claim under the 2014 Referral. In other words, the Commission has no authority or power to decide the merits of this claim. Accordingly, this claim must be

[10] 22 U.S.C. § 1623(a)(2) (2012).
[11] Claims Settlement Agreement, art. I(2) (emphasis added).
[12] *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001(Proposed Decision), at 5-6 (2014).
[13] Claim No. LIB-I-044, Decision No. LIB-I-017 (Final Decision), at 7 (2011) (*citing Abou-Haidar v. Gonzalez*, 437 F.3d 206, 207 (1st Cir. 2006)).

and is hereby denied for lack of jurisdiction. The Commission makes no determinations about any other aspect of this claim.

Dated at Washington, DC, September 27, 2016
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) (2015).