

**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-026
	}	
	}	Decision No. LIB-III-013
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joshua M. Ambush, Esq. Joshua M. Ambush, LLC
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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 in the terrorist attack at Lod Airport in Israel on May 30, 1972. 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 brings this claim against Libya for mental pain and anguish based on the killing of her brother in the terrorist attack at Lod Airport in Israel on May 30, 1972. She alleges that she had a close relationship with her brother, was deeply affected by his death, and is thus entitled to compensation from Libya. Although she did not bring a

lawsuit against Libya, the United States and Libya concluded an agreement in August 2008 that settled numerous claims of U.S. nationals against Libya, including claims (such as Claimant's) for mental pain and anguish based on wrongful death arising out of various terrorist attacks, including the one at Lod Airport. *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.

The third of these referral letters is at issue here. *See 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, known as Category E, states as follows:

This category shall consist 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 under the Claims Settlement Agreement, provided that (1) the claimant was not a plaintiff 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 claim meets the standard adopted by the Commission for mental pain and anguish; 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 ¶ 7. 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 June 2, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category E of the 2013 Referral, and on December 18, 2014, Claimant submitted additional evidence supporting her claim. These submissions included evidence of Claimant's U.S. nationality and her close relationship with the decedent. It also included evidence that Claimant was not a named party in one of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral; that she is not eligible for compensation from the associated wrongful death claim; that she did not receive any compensation from the wrongful death claim; that she has not received any compensation under any other distribution under the Claims Settlement Agreement; and that she does not qualify for any other category of compensation under the 2013 Referral.

## 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

(1) who are U.S. nationals; (2) who were not a named party in one of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral; (3) whose close relative's death formed the basis of a death claim compensated under the Claims Settlement Agreement; (4) who are not eligible for compensation from the associated wrongful-death claim, and did not receive any compensation from the wrongful-death claim; and (5) have not received any compensation under any other distribution under the Claims Settlement Agreement and do not qualify for any other category of compensation under the 2013 Referral. 2013 Referral, *supra*, ¶ 7.

*Nationality*

This claims program is limited to “claims of U.S. nationals.” In the context of a similar 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-007, Decision No. LIB-III-008, at 4 (2014). Given that this Category E 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 Puerto Rico birth certificate and a U.S. passport which expired in September 2014. This evidence thus establishes that this claim was held by a U.S. national at the time the decedent was killed on May 30, 1972, and was so held continuously until the effective date of the Claims Settlement Agreement, August 14, 2008.

*Pending Litigation*

To be eligible for compensation under Category E of the 2013 Referral, the claimant must not have been a named party in one of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral. 2013 Referral, *supra*, ¶ 7. Claimant has represented to the Commission under penalty of 18 U.S.C. § 1001, a statute akin to perjury, and the Commission has verified, that the Claimant was not a named party in one of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral. Claimant's claim thus satisfies this requirement.

*Death Claim Compensated Under the Claims Settlement Agreement*

Category E of the 2013 Referral also requires that Claimant's relative's death have been the basis of a death claim compensated under the Claims Settlement Agreement. Here, this element of jurisdiction has been satisfied: the Commission awarded compensation for the wrongful-death claim of Claimant's brother pursuant to an earlier referral letter under the same Claims Settlement Agreement. *See* Claim No. LIB-II-080, Decision No. LIB-II-150 (2012).

*Other Compensation*

Category E of the 2013 Referral is limited to claims where the claimant is not eligible for compensation from the associated wrongful-death claim; the claimant did not receive any compensation from the wrongful-death claim; the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement; and the claimant does not qualify for any other category of compensation under the 2013 Referral. 2013 Referral, *supra*, ¶ 7. Claimant here was not a beneficiary of the award made by the Commission in the wrongful-death claim arising out of her brother's death. *See* Claim No. LIB-II-080, Decision No. LIB-II-150, *supra*, at 6. Claimant has further

represented under penalty of 18 U.S.C. § 1001, a statute akin to perjury, that Claimant is not eligible for compensation from the associated wrongful-death claim; that Claimant did not receive any compensation from the wrongful-death claim; that Claimant has not received any compensation under any other distribution under the Claims Settlement Agreement; and that Claimant does not qualify for any other category of compensation under the 2013 Referral. The Commission has no reason to doubt these representations. Claimant thus satisfies these final jurisdictional requirements.

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 E, 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 2013 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* Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 6. 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 E Claimant to be a "close relative" of a decedent. The Commission has previously held that, for the similar Category B of the 2013 Referral, and 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-III-007, Decision No. LIB-III-008, *supra*, at 6-7; Claim No. LIB-II-044, Decision No. LIB-II-001 at 6 (2010). Because Category E of the 2013 Referral also uses the identical term “close relatives,” we apply the same standard to Category E of the 2013 Referral.

Claimant has established that she was the decedent’s sister, as evidenced by the Claimant’s birth certificate and the decedent’s birth certificate, which list the same mother and father. She was thus a “close relative” of decedent.

#### *Mental Pain and Anguish Standard*

The 2013 Referral requires that a claim meet “the standard adopted by the Commission for mental pain and anguish.” 2013 Referral ¶ 7. In adjudicating claims under the similar Category B of the 2013 Referral and 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. *See* Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 7. 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* 2013 Referral ¶ 7. Moreover, she has provided a heart-wrenching affidavit describing her relationship with her brother, and the Commission has no 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 E. 2013 Referral, *supra* ¶ 7. This is the same fixed amount that was recommended for compensable claims in the similar Category B of the 2013 Referral and the similar 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 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 has been awarded to mental-pain-and-anguish claims under Category B of the 2013 Referral. *See* Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 7-9. The Commission has also previously determined, based on consideration of the applicable principles of international law and its own precedent, that it will not award interest in this category of claims. *Id.* We make this award 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).

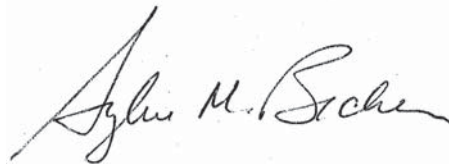
Dated at Washington, DC, February 12, 2015  
and entered as the Proposed Decision  
of the Commission.

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

**April 7, 2015**



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Anuj C. Desai, Commissioner



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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) (2014).