

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

In the Matter of the Claim of	}	
	}	
	}	
ESTATE OF JOSE MANUEL OTERO ADORNO;	}	Claim No. LIB-II-085
FRANCISCO RAFAEL OTERO ADORNO,	}	
ADMINISTRATOR	}	Decision No. LIB-II-151
	}	
	}	
	}	
Against the Great Socialist People's	}	
Libyan Arab Jamahiriya	}	

Counsel for Claimant: Joshua Ambush, Esq.
Joshua M. Ambush, LLC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the ESTATE OF JOSE MANUEL OTERO ADORNO ("claimant"), based upon the wrongful death of Mr. Jose Manuel Otero Adorno, as a result of the terrorist attack at Lod Airport in Israel on May 30, 1972.

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 U.S. nationals against Libya. *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 (“January Referral Letter”).

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

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

Id. at ¶ 7. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December Referral Letter”) from the State Department, 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 ICOSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On April 26, 2010, the Commission received a Statement of Claim in which the claimant asserted a wrongful death claim under Category E of the January Referral Letter. The submission also included exhibits supporting the elements of its claim, including: evidence of the U.S. nationality of the late Jose Manuel Otero Adorno; copies of a State of Israel - Ministry of Health death certificate, a U.S. Embassy Consular Mortuary certificate, and a U.S. Embassy Embalming certificate reflecting the date, place, and cause of Mr. Jose Manuel Otero Adorno's death; and contemporaneous newspaper articles identifying Mr. Jose Manuel Otero Adorno's as one of the killed during the attack. Counsel for claimant subsequently submitted additional evidence to support the claim.

DISCUSSION

As an initial matter, the Commission notes that the claimant estate submitted a decision issued by the Court of First Instance of Puerto Rico, Superior Division of Bayamon, dated March 6, 2012, in which the court approved the petition to appoint Francisco Rafael Otero Adorno as the Estate Administrator for the Estate of Jose Manuel Otero Adorno.¹ Accordingly, the Commission finds that the ESTATE OF JOSE

¹ The March 6, 2012 Decision notes that Jose Manuel Otero Adorno is also known as Jose Otero Adorno and Manuel Otero Adorno.

MANUEL OTERO ADORNO; FRANCISCO RAFAEL OTERO ADORNO, ADMINISTRATOR, is the proper claimant in this claim.

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction under Category E is limited to the category of claims defined under the January Referral Letter; namely, claims of individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral Letter, *supra* ¶ 7.

Nationality

In the *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that to meet the nationality requirement the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. In the case of claims brought by estates on behalf of beneficiaries, it is a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors (the War Claims Commission and the International Claims Commission) that the nationality of the injured party as well as the beneficiaries of his or her estate must be evaluated for purposes of determining the nationality of a claim.²

² See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); and *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

The claimant has submitted to the Commission a copy of the Resolution issued on August 11, 1972 by the Superior Court of Puerto Rico, Bayamon Ward where the Superior Court found that Manuel Otero Feliciano, the father of Jose Manuel Otero Adorno, was the deceased's sole heir. Evidence in the record establishes that Manuel Otero Feliciano died on March 1, 1998. On October 8, 2009, the Court of First Instance of Puerto Rico, Vega Baja Ward, issued a Resolution approving a Declaration of Heirs that named the following heirs to the Estate of Manuel Otero Feliciano: his children, Francisco Rafael Otero Adorno; Juan Ramon Otero Adorno; Blanca Iris Otero Adorno; Alicia Otero Diaz; and Mr. Otero Feliciano's grandchildren, Luis Otero Goyco³ and Lisette Otero Goyco, representing their predeceased father Luis Antonio Otero Diaz who was also a son of Mr. Otero Feliciano.

Based on its precedent and its review of the court-issued Declaration of Heirs, the Commission determines that, during the pertinent period, an interest in this claim has been held by the following: Jose Manuel Otero Adorno; Manuel Otero Feliciano; Francisco Rafael Otero Adorno; Juan Ramon Otero Adorno; Blanca Iris Otero Adorno; Alicia Otero Diaz; Luis Antonio Otero Diaz; Jon A. Otero; and Lisette Otero Goyco.

To meet the nationality requirement, the claimant has provided the following with respect to these individuals: birth certificate, Consular Mortuary certificate, and

³ The Declaration of Heirs lists Mr. Otero Feliciano's grandson as Luis Otero Goyco, but his name on his birth certificate is Jon A. Otero and on his current U.S. passport is Jon Antonio Otero. Jon Otero is serving in the U.S. Army and is currently stationed in a remote area of Afghanistan; consequently, counsel for claimant submitted a declaration from Lisette Otero Goyco, Jon Otero's sister, in which she states the following:

When Jon was a child and used to visit our family in Puerto Rico, they used to call him Luis or Luisito, because he looked so much like our dad, the late Luis A. Otero. For this reason, he is listed as "Luis Otero Goyco" on some documents. Additionally, following the Latin custom using one's mother's last name as a second surname, some court documents from Puerto Rico list Jon's last name as "Otero Goyco."

The Commission is satisfied with this explanation and other evidence in the record that Luis Otero Goyco and Jon Antonio Otero are one and the same person.

Embalming certificate by the U.S. Embassy of Jose Manuel Otero Adorno; the death certificate for Manuel Otero Feliciano; the birth and death certificates for Luis Antonio Otero Diaz; and the birth certificates and current U.S. passports of Francisco Rafael Otero Adorno, Juan Ramon Otero Adorno, Blanca Iris Otero Adorno, Alicia Otero Diaz, Lisette Otero Goyco, and Jon A. Otero. Based on this evidence and other evidence in the record, the Commission determines that the claim was owned by a U.S. national at the time of the incident, continuously through the effective date of the Claims Settlement Agreement.

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must also assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral Letter. January Referral Letter, *supra*, ¶ 7. This list includes the “May 30, 1972 attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734.” *Id.*, Attachment 2, ¶ 1. In its Statement of Claim, the claimant sets forth a claim for wrongful death based on the death of Mr. Jose Manuel Otero Adorno during this terrorist attack. Accordingly, the Commission finds that the claimant has satisfied this element of its claim.

Pending Litigation

Finally, Category E of the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, is the *Franqui* case. Claimant has provided a copy of the First Amended Complaint in *Franqui*, which demonstrates that neither the claimant estate, nor any of the beneficiaries, were plaintiffs in

the Pending Litigation. Based on this evidence, the Commission finds that the claimant has also satisfied this element of its claim.

In summary the Commission concludes, on the basis of the foregoing, that this claim is within the Commission's jurisdiction pursuant to the January Referral Letter and is entitled to adjudication on the merits.

Merits

Standard for Wrongful Death

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category E must meet "the standard for physical injury or wrongful death, as appropriate, adopted by the Commission" for purposes of this referral. January Referral Letter, *supra*, ¶ 7. The Commission held in *Claim of ESTATE OF VIRGEN MILAGROS FLORES, DECEASED; CRUCITA FLORES SUÁREZ, PERSONAL REPRESENTATIVE*, Claim No. LIB-II-065, Dec. No. LIB-II-043 (2011) that in order for a claim for wrongful death pursuant to Category E to be considered compensable, a claimant must:

- 1) provide evidence sufficient to establish the fact of death in the form of a death certificate or other similar document; and
- 2) provide evidence sufficient to establish that the decedent died as the proximate result of a Covered Incident.

Id. at 12. The present Category E claim must likewise meet this standard to be compensable.

Wrongful Death

In the Statement of Claim, the claimant states that Mr. Jose Manuel Otero Adorno was with a group of Puerto Rican religious pilgrims travelling to Lod Airport in Tel Aviv,

Israel. The claimant further states that Mr. Jose Manuel Otero Adorno was killed by machine gunfire and grenade blasts that fractured his skull and lacerated his brain. The claimant has submitted a Consular Mortuary Certificate, dated June 2, 1972, from the U.S. Embassy that confirms that Mr. Jose Manuel Otero Adorno died at Lod Airport on May 30, 1972. Claimant has also submitted a death certificate from the Israeli Ministry of Health that identifies Mr. Jose Manuel Otero Adorno as deceased and states the cause of death. In addition, the claimant has submitted contemporaneous news articles that describe the terrorist attack at Lod Airport and that list Mr. Jose Manuel Otero Adorno as among those killed in the attack.

Based on the evidence submitted, the Commission finds that the claimant's decedent's death meets the standard for wrongful death set forth above. Accordingly, claimant ESTATE OF JOSE MANUEL OTERO ADORNO; FRANCISCO RAFAEL OTERO ADORNO, ADMINISTRATOR is entitled to compensation in this claim.

COMPENSATION

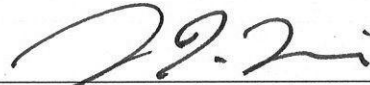
In *MILAGROS FLORES, supra*, the Commission held that, in this program, \$10 million is an appropriate amount of compensation for claims of wrongful death that meet the Commission's standard under Category E, and that interest is not to be applied. Accordingly, the Commission determines that the claimant, ESTATE OF JOSE MANUEL OTERO ADORNO; FRANCISCO RAFAEL OTERO ADORNO, ADMINISTRATOR, is entitled herein to an award of \$10,000,000.00 and that this amount 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 Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27 (2006).

AWARD

Claimant ESTATE OF JOSE MANUEL OTERO ADORNO; FRANCISCO
RAFAEL OTERO ADORNO, ADMINISTRATOR is entitled to an award in the amount of Ten Million Dollars (\$10,000,000.00).

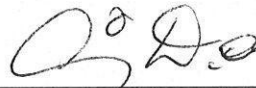
Dated at Washington, DC, May 16, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, Commissioner

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

July 12, 2012

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) (2011).