

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

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In the Matter of the Claim of

ESTATE OF LINA ESTHER GONZALEZ-ARIAS,  
DECEASED; BETSY LILIANA DELGADO TUFÍÑO,  
JUDICIAL ADMINISTRATOR

Against the Great Socialist People's  
Libyan Arab Jamahiriya  
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} Claim No. LIB-II-113

} Claim No. LIB-II-117

} Decision No. LIB-II-177  
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}

Counsel for Claimant:

Joshua M. Ambush, Esq.  
Joshua M. Ambush, LLC

Augusto Cesar Sanchez, Esq.  
Bufete Augusto Sanchez

Oral hearing held on December 12, 2012.

FINAL DECISION

These claims against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") are based upon the wrongful death of Lina Esther Gonzalez-Arias as a result of the terrorist attack at Lod Airport in Israel on May 30, 1972. On behalf of the estate of Ms. Gonzalez-Arias, Sylma E. Rivera and Juan Francisco Figueroa-Rodriguez submitted two separate claims under Category E of the January 15, 2009 *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"). By Proposed Decision entered June 20, 2012 the Commission consolidated the two claims

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and denied them on the grounds that neither Ms. Rivera nor Mr. Figueroa-Rodriguez was the legal representative of the estate of Ms. Gonzalez-Arias and, therefore, they both lacked standing to pursue their claims. The Commission further noted in its decision that Ms. Rivera and Mr. Figueroa-Rodriguez had failed to submit evidence establishing the continuous U.S. national character of the estate's claim.

On July 24, 2012, the attorney representing Ms. Rivera and the attorney representing Mr. Figueroa-Rodriguez filed a joint "Notice of Objection and Request for Oral Hearing" on their clients' behalf. The filing included as an attachment a new Statement of Claim submitted on behalf of the estate of Ms. Gonzalez-Arias as claimant, signed by Betsy Liliana Delgado Tufiño in her capacity as the estate's Judicial Administrator. In further support of the objection, the claimant also submitted a Declaratory Judgment dated December 6, 2012, issued by the Commonwealth of Puerto Rico, General Court of Justice, Court of First Instance, Fajardo Judicial Center, Superior Division, identifying all of the heirs to the Estate of Lina Esther Gonzalez-Arias; a Declaratory Judgment "Nunc Pro Tunc" of that same court dated December 11, 2012; the claimant's decedent's family tree; evidence of the place and manner of claimant's decedent's death; and evidence establishing the nationality of all of the heirs to claimant's decedent's estate. The hearing on the objection was held on December 12, 2012.

## DISCUSSION

### Standing

As noted above, the claimant estate has submitted, in support of the objection, a new Statement of Claim signed by Betsy Liliana Delgado Tufiño in her capacity as the

Judicial Administrator of the estate. The Commission determines that this new evidence satisfactorily establishes that the claimant before the Commission has standing to pursue the present consolidated claim on behalf of the Estate of Lina Esther Gonzalez-Arias, and that the proper claimant is the ESTATE OF LINA ESTHER GONZALEZ-ARIAS, DECEASED; BETSY LILIANA DELGADO TUFÍÑO, ADMINISTRATOR.

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited, under Category E of the January Referral, to 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, *supra* ¶ 7.

*Nationality*

In its Proposed Decision, the Commission determined that Ms. Rivera and Mr. Figueroa-Rodriguez had failed to establish the identity of the legal heirs of Ms. Gonzalez-Arias; the Commission thus denied both of the claims brought on the estate's behalf because it was unable to determine that the two claims had been held continuously by U.S. nationals. To address this deficiency, the claimant supplemented the record to include the Declaratory Judgment "Nunc Pro Tunc," dated December 11, 2012, identifying all of the heirs to the Estate of Lina Esther Gonzalez-Arias. Furthermore, claimant has submitted various combinations of documentary evidence of the continuous U.S. nationality of the legal heirs, including copies of birth and death certificates, current passports, current voter registration cards, current voter information records, and statements from the Social Security Administration for each of the individuals identified

in the Declaratory Judgment. Considering this new evidence, the Commission now determines that this claim was owned by U.S. nationals on the date of the incident and continuously through the effective date of the Claims Settlement Agreement.

*Claim for Death or Injury Resulting From a Covered Incident*

To fall within Category E, the claimant must assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral. January Referral, *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 Ms. Gonzalez-Arias during this terrorist attack. Accordingly, the Commission finds that the claimant has satisfied this element of its claim.

*Pending Litigation*

Finally, the January Referral states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral, *supra*, ¶ 7. Attachment 2 to the January Referral identifies the Pending Litigation cases associated with each Covered Incident. The only Pending Litigation associated with the Lod Airport attack is the *Franqui* case. The First Amended Complaint in *Franqui* does not include the claimant estate or any of its beneficiaries as plaintiffs. Thus, neither claimant nor its beneficiaries were plaintiffs in the Pending Litigation. On this basis, the Commission finds that the claimant has also satisfied this element of its claim.

In summary the Commission concludes that this claim is within the Commission’s jurisdiction pursuant to the January Referral and is entitled to adjudication on the merits.

Merits

*Standard for Wrongful Death*

As stated in the January Referral, 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, *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*

According to the Statement of Claim, the claimant’s decedent, Lina Esther Gonzalez-Arias, died as a result of the injuries she sustained on May 30, 1972 at Lod Airport in Israel. In support of its claim, the claimant has provided a copy of the Report of the Death of an American Citizen, issued by the Department of State, which confirms that Ms. Gonzalez-Arias’s death resulted from injuries she sustained during the Lod Airport attack. In addition to this report, claimant has submitted a newspaper report

dated June 2, 1972 which specifically identifies Ms. Gonzalez-Arias as one of the fatalities in the attack.

Based on this evidence, the Commission finds that Ms. Gonzalez-Arias's death meets the standard for wrongful death set forth above. Accordingly, claimant ESTATE OF LINA ESTHER GONZALEZ-ARIAS, DECEASED; BETSY LILIANA DELGADO TUFÍÑO, ADMINISTRATOR is entitled to compensation in this claim.

#### COMPENSATION


In the *FLORES* claim, 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 LINA ESTHER GONZALEZ-ARIAS, DECEASED; BETSY LILIANA DELGADO TUFÍÑO, 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.

Therefore, the Commission revises its former action in this claim and issues an award as set forth below, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-1627. This constitutes the Commission's final determination in this claim.

AWARD

Claimant, ESTATE OF LINA ESTHER GONZALEZ-ARIAS, DECEASED;  
BETSY LILIANA DELGADO TUFÍÑO, ADMINISTRATOR, is entitled to an award in  
the amount of Ten Million Dollars (\$10,000,000.00).

Dated at Washington, DC, February 15, 2013  
and entered as the Final Decision  
of the Commission.

  
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Timothy J. Feighery, Chairman

  
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Rafael E. Martinez, Commissioner

  
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Anuj C. Desai, Commissioner

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

In the Matter of the Claim of	}	
	}	
	}	
SYLMA E. RIVERA	}	Claim No. LIB-II-113
	}	
JUAN FRANCISCO FIGUEROA-RODRIGUEZ	}	Claim No. LIB-II-117
	}	
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	Decision No. LIB-II-177

Counsel for Claimant:

Joshua Ambush, Esq.  
Joshua M. Ambush, LLC

Augusto Cesar Sanchez, Esq.  
Bufete Augusto Sanchez

PROPOSED DECISION

These claims against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") are brought by SYLMA E. RIVERA and JUAN FRANCISCO FIGUEROA-RODRIGUEZ on behalf of the Estate of Lina Esther Gonzalez-Arias, based upon the wrongful death of Lina Esther Gonzalez-Arias 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).

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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 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 June 25, 2010, the Commission received a Statement of Claim, which it docketed as Claim No. LIB-II-113, filed by SYLMA E. RIVERA asserting a claim under Category E of the January Referral Letter for the wrongful death of Ms. Gonzalez-Arias. On the same date, the Commission received a Statement of Claim, which it docketed as Claim No. LIB-II-117, filed by JUAN FRANCISCO FIGUEROA-RODRIGUEZ, also asserting a claim under Category E of the January Referral Letter for the wrongful death of Ms. Gonzalez-Arias. Both claimants assert that they represent other beneficiaries of the Estate of Ms. Gonzalez-Arias.

Both Statements of Claim assert that Ms. Gonzalez-Arias was killed as a result of the Lod Airport attack, and both submissions included exhibits supporting elements of the claim. These submissions included: evidence of the U.S nationality of Lina Esther Gonzalez-Arias and that of some of the purported beneficiaries of her estate; a copy of a Death Certificate reflecting the date and place of Ms. Gonzalez-Arias's death; and

evidence relating to her presence at the terrorist incident at Lod Airport in Israel on May 30, 1972.

#### DISCUSSION

As a threshold matter, by letter dated April 25, 2012, the two claimants requested that their claims be consolidated. The Commission hereby grants this request and consolidates Claim Nos. LIB-II-113 and LIB-II-117 by issuing this consolidated Proposed Decision.

#### *Standing*

As the Commission's jurisprudence makes clear, claimants before the Commission must establish their standing as the proper claimant in this claim. *Claim of ESTATE OF ELIZABETH L. ROOT, DECEASED; JAMES G. ROOT & DAVID H. ROOT, PERSONAL REPRESENTATIVES*, Claim No. LIB-II-040, Decision No. LIB-II-026 (2011). In the case of claims brought on behalf of deceased victims, a claimant must provide the Commission with evidence that he or she is legally entitled to bring the claim. In the present claim, the claimants have submitted the Determination issued by the Commonwealth of Puerto Rico, General Court of Justice, Superior Court of Fajardo, dated June 14, 2012, which appointed Betsy Liliana Delgado Tufiño as the Judicial Administrator of the estate of Ms. González-Arias. However, Ms. Delgado Tufiño is not a signatory to either of the two Statements of Claim nor is she even identified as a claimant in either claim. Accordingly, the Commission determines that the claimants have failed to establish that they represent the estate and are, therefore, the proper claimant before the Commission. On this basis alone, the claim must fail.

*Nationality*

In *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, for purposes of determining the nationality of a claim, the nationality of the injured party as well as the beneficiaries of his or her estate must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.<sup>1</sup> The claimants have not, however, established by court documents—e.g. a declaration of heirs—the identity of the legal heirs of Ms. Gonzalez-Arias, and the Commission is therefore unable to determine if this claim has been held continuously by U.S. nationals.

Section 509.5(b) of the Commission's regulations provides:

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.

45 C.F.R. 509.5(b) (2011).

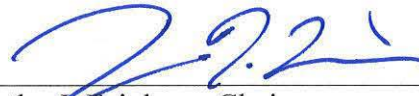
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<sup>1</sup> See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

Based on the evidence and information submitted in support of these claims, and for the reasons set forth above, the Commission finds that the claimants have failed to meet their burden to establish that they are the proper claimants in this claim, or that the claim has been continuously owned by U.S. nationals. In light of the foregoing, the Commission concludes that these claims do not qualify for compensation under Category E of the January Referral Letter.

Accordingly, these claims must be and are hereby denied.

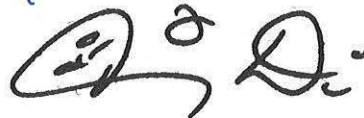
Dated at Washington, DC, June 20, 2012  
and entered as the Proposed Decision  
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C Desai, 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) (2011).