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)	}	Claim No. IRQ-II-322
	}	
	}	Decision No. IRQ-II-001
	}	
Against the Republic of Iraq	}	
	}	

PROPOSED DECISION

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

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was living in Kuwait with her family when Iraq invaded the country on August 2, 1990. She claims that she and her family attempted to escape from Kuwait but were unable to leave because of the risk of "being captured and possibly being used as human shields." On September 9, 1990, Claimant and her family were evacuated from Kuwait on a flight chartered by the United States

government. Claimant alleges that she suffered a nervous breakdown as a result of her detention and that she continues to suffer from severe anxiety and panic attacks today.

Although Claimant was not among them, a number of plaintiffs sued Iraq (and others) in federal court for, among other things, hostage-taking alleged to have occurred in the aftermath of the Iraqi invasion of Kuwait, the same period that Claimant alleges to have been taken hostage.[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 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 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 Iraq Claims Settlement Agreement.

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[1] *See, e.g., Hill v. Republic of Iraq, No. 1:99-cv-03346 (D.D.C.).*
[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] *Id.* art. I(2).
[4] *Id.*
[5] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).
[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").

One category of claims from the 2014 Referral is relevant 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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> **********
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> _____
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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.
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> [2] For purposes of this referral, "Iraq" shall mean the Republic of lraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of lraq, and any official, employee or agent of the Republic of lraq acting within the scope of his or her office, employment or agency.
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> [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*, D.D.C. 99-cv-03346, *Vine v. Iraq,* D.D.C. 0 l-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. *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (2014).

On January 5, 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 her 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.[7] 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 (the "Pending Litigation") 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 look first to "the provisions of the applicable claims agreement."[8] 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."[9] 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.[10]

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[7] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).
[8] 22 U.S.C. § 1623(a)(2) (2012).
[9] Claims Settlement Agreement, art. I(2).
[10] *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001(Proposed Decision), at 5-6 (2014).

According to the documents that Claimant has submitted in this claim, she was not a U.S. national in 1990, when her claim arose. Despite stating that she was a U.S. citizen at the time of the invasion in her Statement of Claim, Claimant has submitted a naturalization certificate indicating that she did not become a U.S. citizen until November 19, 1997—over seven years after she 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.

Although Claimant has submitted evidence that she was the beneficiary of a petition for a relative immigrant visa approved on January 24, 1987, this evidence does not establish that she was a U.S. national. Indeed, even if this evidence established that she had been a lawful permanent resident, that would still not have made her a U.S. national at that time. As the Commission has previously recognized, U.S. nationality could be acquired "only by birth or by naturalization under the process set by Congress."[11] Even if, by 1990, she had taken concrete steps towards becoming a U.S. citizen (such as applying for a visa that may lead to lawful permanent residency) or had lived in the U.S. for a long time, this would still not have made her a U.S. national at the time.[12]

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

[11] 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)).
[12] *See* Claim No. LIB-I-044, Decision No. LIB-I-017 (Final Decision), at 7-8 (2011).

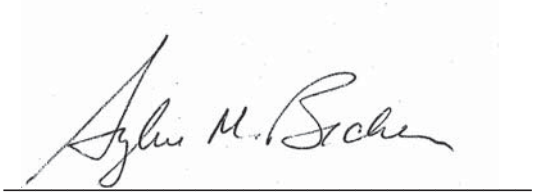
must be and is hereby denied for lack of jurisdiction. The Commission makes no determinations about any other aspect of this claim.

Dated at Washington, DC, April 14, 2016
and entered as the Proposed Decision
of the Commission.

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

May 16, 2016

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).