

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 CARMELO CALDERON-MOLINA,
DECEASED; LUZ CALDERON-CARDONA,
ADMINISTRATOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-094

Decision No. LIB-II-060

Counsel for Claimant:

Naomi Weinberg, Esq.
Osen LLC

Oral hearing held on January 25, 2012.

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon the wrongful death of Carmelo Calderon-Molina as a result of the terrorist attack at Lod Airport in Israel on May 30, 1972. This claim was submitted 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 July 12, 2011 the Commission denied this claim—submitted by Luz Calderon-Cardona—on the ground that Ms. Calderon-Cardona was not the legal representative of the Estate of Carmelo Calderon-Molina (the "claimant") and, therefore, lacked standing to pursue this claim. The Commission further noted in its decision that Ms. Calderon-Cardona had failed to submit evidence establishing the nationality, at the pertinent times, of several of the heirs of Mr. Calderon-Molina's estate.

On July 22, 2011, the claimant filed a "Notice of Objection" and request for oral hearing. On December 30, 2011, the claimant submitted an objection brief containing further evidence and argument in support of its objection. The brief was accompanied by, *inter alia*, a Resolution of the Commonwealth of Puerto Rico, Court of First Instance, Superior Court of San Juan dated November 2, 2011 regarding the Judicial Administration of the Estate of Carmelo Calderon-Molina; 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 January 25, 2012.

DISCUSSION

Standing

As noted above, the claimant has submitted, in support of the objection, a Resolution issued by the Commonwealth of Puerto Rico, Court of First Instance, Superior Court of San Juan dated November 2, 2011. By this Resolution, Luz Calderon-Cardona was appointed as the Judicial Administrator of Mr. Calderon-Molina's estate. The Commission determines that this new evidence satisfactorily establishes that Ms. Calderon-Cardona has standing to pursue the present claim on behalf of the Estate of Carmelo Calderon-Molina, and that the proper claimant is the ESTATE OF CARMELO CALDERON-MOLINA, DECEASED; LUZ CALDERON-CARDONA, 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

The Commission, in its Proposed Decision, determined that the claimant had failed to establish the continuous U.S. nationality of Salvador Calderon Martinez, Irma Calderon Fonseca, Josue Calderon Martinez, Miguel Angel Calderon Cardona, Esther Calderon-Martinez, Carlos Manuel Calderon Febres, Miguel Angel Calderon Guzman, Angel Miguel Calderon Guzman, and Angel Manuel Calderon Zayas. The claimant has now supplemented the record to include evidence of the continuous U.S. nationality, including copies of birth and death certificates, current passports, and current voter registration cards, for each of the aforementioned individuals, with the exception of Esther Calderon-Martinez. With regard to the U.S. nationality of Esther Calderon-Martinez, claimant has submitted the Sworn Declaration of Lucy Calderon-Cardona, the step-sister of Esther Calderon-Martinez^{*}, wherein Ms. Calderon-Cardona asserts that Esther Calderon-Martinez pre-deceased Carmelo Calderon-Molina. Based on this and other evidence in the file, the Commission determines that Esther Calderon-Martinez pre-deceased her father, Carmelo Calderon-Molina, and, therefore, never held an ownership interest in this claim. Considering this new evidence, the Commission 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.

* The Commission also notes that the decision of the Superior Court of Puerto Rico, San Juan Division Decision dated May 13, 1974 in the matter of *COMMONWEALTH OF PUERTO RICO v. CARMEN MARTINEZ CAMACHO ET AL*, Civil No. 73-3218, which it independently discovered—distributing ex-gratia funds received by Puerto Rico from Japan for the benefit of Puerto Ricans involved in the Lod Airport attack—does not identify Esther Calderon-Martinez as an heir to Mr. Calderon-Molina's estate.

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 Mr. Calderon-Molina 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, which in this claim, as noted above, is the *Franqui* case. In this regard, the Commission takes notice of the First Amended Complaint in *Franqui*, which demonstrates that neither the claimant estate, nor any of 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, on the basis of the foregoing, 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, Carmelo Calderon-Molina, died as a result of the injuries he sustained on May 30, 1972 at Lod Airport in Israel. In support of its claim, the claimant has provided copies of an Israeli Death Certificate, a U.S. Embassy Consular Mortuary Certificate, and a U.S. Embassy Certificate which confirm that Mr. Calderon-Molina's death resulted from injuries he sustained during the Lod Airport attack. In addition to the aforementioned official reports, claimant has also submitted a newspaper report dated June 1, 1972 which specifically identifies Mr. Calderon-Molina as one of the fatalities in the attack.

Based on this evidence, the Commission finds that Mr. Calderon-Molina's death meets the standard for wrongful death set forth above. Accordingly, claimant ESTATE OF CARMELO CALDERON-MOLINA, DECEASED; LUZ CALDERON-CARDONA, 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 CARMELO CALDERON-MOLINA, DECEASED; LUZ CALDERON-CARDONA, 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.

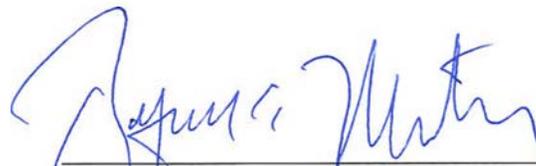
AWARD

Claimant, ESTATE OF CARMELO CALDERON-MOLINA, DECEASED; LUZ CALDERON-CARDONA, ADMINISTRATOR, is entitled to an award in the amount of Ten Million Dollars (\$10,000,000.00).

Dated at Washington, DC, March 15, 2012
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
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LUZ CALDERON-CARDONA	}	Claim No. LIB-II-094
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	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	
Counsel for Claimant:	}	Naomi Weinberg, Esq. Osen LLC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by LUZ CALDERON-CARDONA on behalf of the Estate of Carmelo Calderon Molina, based upon the wrongful death of Carmelo Calderon Molina as a result of the terrorist incident 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 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 May 13, 2010 the Commission received from claimant a Statement of Claim asserting a claim under Category E of the January Referral Letter, along with exhibits supporting the claim. This submission included: evidence of the U.S nationality of Carmelo Calderon Molina and some of the beneficiaries of his estate; a copy of a Death Certificate reflecting the date and place of Mr. Molina's death; and evidence relating to his presence at the terrorist incident at Lod Airport in Israel on May 30, 1972. The claimant states that Carmelo Calderon Molina was killed during the Lod Airport attack.

DISCUSSION

Standing

As a threshold matter, claimant must establish that she is the proper claimant in this claim. 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. *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 present claim the claimant has sought to establish her standing as representative of the Estate of Carmelo Calderon Molina through the submission of Powers of Attorney from all but one of Mr. Molina's heirs, each designating her as the "Agent" of the estate. The Commission staff noted in its several letters to claimant that the Commission does not generally accept Powers of Attorney to establish the identity of an

estate representative and recommended that official court documents designating an estate representative be submitted. In response, by letter dated November 4, 2010, claimant asserted, without support, that “the judicial administration process was not necessary.” The Commission disagrees and, therefore, declines to accept Luz Calderon Cardona as the estate representative in this claim. Accordingly, the Commission determines that the claimant has failed to establish that she is the proper claimant.¹ On this basis alone, the claim must fail.

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, 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.²

¹ 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) (2010).

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); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

Based on this precedent and its review of the Declaration of Heirs issued by the Commonwealth of Puerto Rico, Court of First Instance, Court of San Juan on February 26, 2010 submitted by claimant, the Commission determines that during the pertinent time period an interest in this claim has been held by the following: Carmelo Calderon Molina, Salvador Calderon Martinez, Esther Calderon Martinez, Ruth Calderon Cardona, Luz Francisca Calderon Cardona, Luis Carmelo Calderon Cardona, Gloria Maria Calderon Cardona, Ana Delia Calderon Cardona, Hilda Eladia Calderon Cardona, Jose Raul Calderon Cardona, Irma Calderon Fonseca, Sara Elba Calderon Fonseca, Josue Calderon Martinez, Carlos Manuel Calderon Febres, Miguel Angel Calderon Guzman, Angel Miguel Calderon Guzman, Angel Manuel Calderon Zayas, and Miguel Angel Calderon Cardona.

To meet the nationality requirement, the claimant has provided the following: "Consular Mortuary Certificate" for the claimant's decedent, Carmelo Calderon Molina; the birth certificates and copies of current passports of Ruth Calderon Cardona, Luis Carmelo Calderon Cardona, and Gloria Maria Calderon Cardona; the birth certificates and copies of current voter registration cards of Luz Francisca Calderon Cardona, Ana Delia Calderon Cardona, Hilda Eladia Calderon Cardona, Jose Raul Calderon Cardona; a copy of the current passport of Sara Elba Calderon Fonseca; and the birth certificates of Salvador Calderon Martinez, Irma Calderon Fonseca, Josue Calderon Martinez, and Miguel Angel Calderon Cardona.

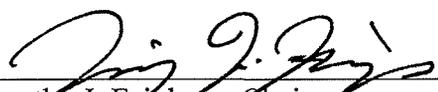
Based on the evidence submitted in this claim the Commission finds that the claimant has failed to establish the continuous U.S. nationality of Salvador Calderon Martinez, Irma Calderon Fonseca, Josue Calderon Martinez, Miguel Angel Calderon Cardona, Esther Calderon Martinez, Carlos Manuel Calderon Febres, Miguel Angel

Calderon Guzman, Angel Miguel Calderon Guzman, and Angel Manuel Calderon Zayas.³

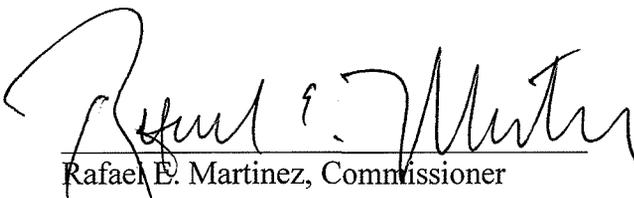
Therefore, the Commission also finds that this claim fails to satisfy the nationality requirement.

In summary, the Commission finds that the claimant has failed to meet her burden to establish that she is the proper claimant in this claim, or that the claim was held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement. In light of the foregoing, the Commission concludes that the claim of LUZ CALDERON-CARDONA does not qualify for compensation under Category E of the January Referral Letter. Accordingly, this claim based upon the wrongful death of Carmelo Calderon Molina as a result of the Lod airport incident must be and is hereby denied.

Dated at Washington, DC, July 12, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, 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) (2010).

³ 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) (2010).