

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 BLANCA ROSA GONZALEZ
HERNANDEZ, DECEASED ;
NEREIDA GONZALEZ HERNANDEZ &
JOSE MANUEL GONZALEZ HERNANDEZ,
ADMINISTRATORS

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-090

Decision No. LIB-II-184

Counsel for Claimant:

Joshua M. 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 Blanca Rosa Gonzalez Hernandez ("claimant"), based upon the wrongful death of Ms. Gonzalez as a result of the terrorist incident at Lod Airport in Tel Aviv, 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 United States 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").

The present claim is made under Category E. According to the January Referral, 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 lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral, as well as a December 11, 2008 referral letter ("December Referral") 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. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On May 6, 2010, the Commission received from the claimant a completed Statement of Claim in which the claimant asserts a claim under Category E of the January Referral, along with exhibits supporting the elements of its claim. This submission included evidence of: the U.S. nationality of the claimant's decedent, the late Blanca Rosa Gonzalez Hernandez, and of the beneficiaries of her estate; her presence at the scene of the terrorist incident; and her alleged wrongful death as a result of injuries sustained during the incident.

The claimant states that Blanca Rosa Gonzalez Hernandez was present in the terminal at Lod Airport in Tel Aviv, Israel on May 30, 1972, when three terrorists armed with automatic rifles began shooting and throwing hand grenades at passengers gathered in the baggage claim area. According to the Statement of Claim and accompanying

exhibits, Ms. Gonzalez suffered severe internal injuries during the attack caused by grenade blasts and machine gun fire and died at the scene as a result of these injuries.

DISCUSSION

As a threshold matter, the Commission has reviewed the Resolution issued by the Puerto Rico General Court of Justice, Superior Court, Division of Bayamón, on June 29, 1973, identifying the heirs to Ms. Gonzalez' estate. Specifically, the court identified the following persons as her heirs: "her mother María Antonia Hernández, and her widower Ricardo Pérez, as regards the usufructuary portion of surviving spouse to which he is entitled by law." Since the issuance of this declaration of heirs for Ms. Gonzalez, her mother, María Antonia, has also died. Accordingly, claimant has also submitted a 1977 Resolution identifying the following heirs to María Antonia's estate: "Flor María, Benjamín, Luis Manuel, Jaime, Samuel, Nereida, Gustavo, Noelia and José Manuel, all with surname González Hernández" Claimant also indicates that several of the aforementioned beneficiaries to the estate of María Antonia Hernández had died by the date of the Claims Settlement Agreement. It has therefore provided court-issued declarations of heirs for those estates. Further, claimant has provided a declaration of heirs for one of the grandsons of María Antonia Hernández, a beneficiary of her estate through her son Luis Manuel.

The claimant estate has also provided a copy of a Decision issued on May 17, 2012 by the Puerto Rico General Court of Justice, Bayamón Judicial Center, Superior Division, appointing Nereida González Hernández and José Manuel González Hernández as administrators of the estate. Based on this review, the Commission finds that the ESTATE OF BLANCA ROSA GONZALEZ HERNANDEZ, DECEASED; NEREIDA

GONZALEZ HERNANDEZ & JOSE MANUEL GONZALEZ HERNANDEZ,
ADMINISTRATORS, is the proper claimant in this claim.

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here 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 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 the claim.¹

¹ 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*

To meet the nationality requirement, the claimant has provided the birth certificate of the claimant's decedent, Blanca Rosa Gonzalez Hernandez, identifying her place of birth as Vega Baja, Puerto Rico, a copy of the Report of the Death of an American Citizen issued by the U.S. Department of State for Ms. Gonzalez, and copies of, *inter alia*, birth certificates, U.S. passports, and/or voter registration cards for the beneficiaries of Ms. Gonzalez' estate and the beneficiaries of each estate that holds an interest in the claim, each of whom is identified above.

Based on this 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 Category E of the January Referral, 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 Blanca Rosa Gonzalez Hernandez 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 Letter, *supra*, ¶ 7. Attachment 2 to the

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).

January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident and includes the *Franqui* case, which, as noted above, is the Pending Litigation related to this claim. 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. In addition, claimant, through one of its duly-appointed administrators José Manuel González Hernández, has stated under oath in its Statement of Claim that it was not a plaintiff in the Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has satisfied this element of its claim.

In summary, therefore, 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, to be eligible for compensation, a claimant asserting a claim for wrongful death under Category E must meet the "standard . . . 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

According to the Statement of Claim and accompanying documents, Blanca Rosa Gonzalez Hernandez died on May 30, 1972 while in the baggage claim area at Lod Airport in Tel Aviv, Israel; specifically, the claimant states that "Blanca Rosa was killed by machine gunfire and grenade blasts that lacerated her lungs, liver, and diaphragm." In support of its claim, the claimant has submitted a copy of a Report of the Death of an American Citizen issued by the U.S. Department of State on July 14, 1972, which confirms that Ms. Gonzalez died at Lod Airport on the date of the incident, and states that her remains were repatriated to Puerto Rico on June 4, 1972. The report also cites an Israeli death certificate issued for Ms. Gonzalez on June 2, 1972, which states the cause of death.

Additional documents submitted with this claim further confirm that Ms. Gonzalez died during the Lod Airport attack, including, *inter alia*: a Consular Mortuary Certificate issued by the U.S. Embassy in Tel Aviv on June 2, 1972, noting Ms. Gonzalez' death at Lod Airport on May 30; copies of several newspaper reports from the days following the incident, which specifically mention her as one of the fatalities; a Final Statement of Account issued for Ms. Gonzalez by the American Consul in Tel Aviv on August 28, 1972; a copy of a funeral announcement for her published in a Puerto Rico newspaper on June 1, 1972; photos allegedly depicting her lying in her casket; a copy of

the program from a memorial service dedicated to the victims of the Lod Airport massacre held on June 15, 1972 in Puerto Rico, identifying Ms. Gonzalez as one of those killed in the attack; a copy of a benefits-related letter to the decedent's mother from the Israeli National Insurance Institute, dated December 27, 1972, noting her daughter's death the previous May 30; a copy of a Puerto Rican Senate resolution from June 2009, commemorating the Lod Airport massacre and listing Ms. Gonzalez as one of those who died in the attack; a photograph of a memorial marker in Israel dedicated to the memory of the Lod Airport victims, also listing Ms. Gonzalez as a victim of the attack; and affidavits from the two administrators of the estate (the decedent's siblings) describing their learning of their sister's death in the Lod Airport massacre.

Based on the evidence submitted, the Commission finds that this claim meets the standard for wrongful death. Accordingly, claimant ESTATE OF BLANCA ROSA GONZALEZ HERNANDEZ, DECEASED; NEREIDA GONZALEZ HERNANDEZ & JOSE MANUEL GONZALEZ HERNANDEZ, ADMINISTRATORS, is entitled to compensation as set forth below.

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 BLANCA ROSA GONZALEZ HERNANDEZ, DECEASED; NEREIDA GONZALEZ HERNANDEZ & JOSE MANUEL GONZALEZ HERNANDEZ, ADMINISTRATORS,

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 therefore 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. §§ 1626-1627 (2006).

AWARD

Claimant ESTATE OF BLANCA ROSA GONZALEZ HERNANDEZ, DECEASED; NEREIDA GONZALEZ HERNANDEZ & JOSE MANUEL GONZALEZ HERNANDEZ, ADMINISTRATORS, is entitled to an award in the amount of Ten Million Dollars (\$10,000,000.00).

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

**The decision was entered as the
Commission's Final Decision on
August 28, 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).