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

In the Matter of the Claim of 5 U.S.C. §552(b)(6) Against the Great Socialist People's Libyan Arab Jamahiriya	Claim No. LIB-II-058 Decision No. LIB-II-174

Counsel for Claimant: Zoe Salzman, Esq.
Emery Celli Brinckerhoff & Abady LLP

ORDER

On March 21, 2013, 5 U.S.C. §552(b)(6) filed a Petition to Reopen his claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya"). The underlying claim was made pursuant to Category B of the January Referral Letter[1] and was based on mental pain and anguish that he suffered because of the death of his brother, 5 U.S.C. §552(b)(6) on board Pan Am Flight 103 on December 21, 1988. On February 15, 2013, the Commission issued a Final Decision denying 5 U.S.C. §552(b)(6) claim because he had not met his burden to prove that he was a U.S. national on the date the claim arose, a requirement for the Commission to exercise jurisdiction under the terms of the January Referral Letter. In particular, the Commission noted that (1) the U.S. government does not recognize the claimant to have been a national of the United States on December 21, 1988, the date the claim arose; (2) on December 7, 2012, the United States District Court for the Eastern District of New York issued a decision granting summary judgment to the U.S. Citizenship and Immigration Services and denying Mr. Porter's request to declare him a U.S. citizen at

[1] 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* (hereinafter, "January Referral Letter").

birth, 5 U.S.C. §552(b)(6) 2012 WL 6102875 (E.D.N.Y. December 7, 2012); and (3) Mr. 5 U.S.C. §552(b)(6) had not provided the Commission with any evidence or legal analysis that would indicate that the United States government's determination on this question was incorrect.

Under the Commission's regulations, "a petition to reopen on the ground of newly discovered evidence may be filed" if, among other things, "reconsideration of the matter on the basis of that evidence would produce a different decision." 45 C.F.R. § 509.5(*l*). Mr. 5 U.S.C. §552(b)(6) bases his Petition to Reopen on his argument that he was "likely to prevail" in an appeal of the District Court's judgment that he filed in the United States Court of Appeals for the Second Circuit. Pointing to language in the Final Decision that refers to the Commission's petition-to-reopen procedures, *see* Final Decision at 7 n.6, he argues that a favorable Second Circuit decision would constitute "newly discovered evidence" sufficient to grant his Petition. *See* 45 C.F.R. § 509.5(*l*). After 5 U.S.C. §552(b)(6) filed his Petition to Reopen, however, the Second Circuit issued an order affirming the District Court's judgment. *See* 5 U.S.C. §552(b)(6), No. 13-119-cv (order affirming District Court judgment) (Docket Entry 59) (2d Cir., Apr. 11, 2013). The Second Circuit's Order thus effectively denied Mr. 5 U.S.C. §552(b)(6) attempt to have the U.S. government declare him to have been a citizen at birth. Thus, the Commission need not decide whether a court decision of this sort would constitute "newly discovered evidence" within the meaning of the regulations, since even if it would, "reconsideration of the matter on the basis of" the actual Second Circuit decision in this claim clearly would not "produce a different decision."

The Commission reiterates its sympathy for the pain and suffering 5 U.S.C. §552(b)(6) has endured. His Petition to Reopen must be denied, however, because he has not provided any "newly discovered evidence" that would change the Commission's conclusion that it lacks jurisdiction over his claim.

Accordingly, it is ORDERED that the Petition to Reopen this claim for further consideration be and is hereby denied.

Dated at Washington, DC, May 14th, 2013
and entered as the Order of the Commission.

Rafael E. Martinez, Commissioner

Anuj C. Desai, Commissioner

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In the Matter of the Claim of 5 U.S.C. § 552(b)(6) Against the Great Socialist People's Libyan Arab Jamahiriya	Claim No. LIB-II-058 Decision No. LIB-II-174

Counsel for Claimant: Zoe Salzman, Esq.
Emery Celli Brinckerhoff & Abady LLP

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on mental pain and anguish suffered by 5 U.S.C. § 552(b)(6) as a result of the death of his brother, 5 U.S.C. § 552(b)(6) who was killed on board Pan Am Flight 103 on December 21, 1988. By its Proposed Decision dated June 20, 2012, the Commission concluded that the claimant had not met his burden to prove that he was a U.S. national on the date the claim arose, and on this basis held that the claim is not within the Commission's jurisdiction and not compensable under the January Referral Letter.[1]

On July 25, 2012, the claimant filed a Notice of Objection to the Proposed Decision. In his Notice, the claimant stated (i) that he had filed a federal lawsuit (in the

[1] 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* (hereinafter, "January Referral Letter").

United States District Court for the Eastern District of New York) against the U.S. Citizenship and Immigration Services ("U.S. CIS") seeking a declaratory judgment that he had acquired U.S. citizenship at birth, and (ii) this suit was pending. *See* 5 U.S.C. § 552(b)(6)

By letter dated August 1, 2012, the Commission scheduled an oral hearing on the objection for October 2012. The claimant requested a delay sufficient to permit the federal district court to render a decision prior to the Commission's oral hearing. The Commission granted claimant's request, and rescheduled the hearing for December 12, 2012. On December 7, 2012, the district court issued a decision granting summary judgment to the U.S. CIS and thereby denying claimant's request to declare him a U.S. citizen at birth. Claimant provided the Commission a copy of the court's decision three days later, on December 10, 2012. On December 12, 2012, the claimant requested that the Commission postpone the objection hearing scheduled for that same day. By letter dated December 13, 2012, the Commission granted his request and rescheduled the hearing for January 25, 2013. By letter dated January 4, 2013, claimant's counsel requested a further postponement of the hearing, noting that he had appealed the district court's decision to the federal appellate court (the U.S. Court of Appeals for the Second Circuit). On January 8, 2013, the Commission denied this request on the grounds that claimant failed to demonstrate that he had a sufficient likelihood of success on appeal to warrant further delay of the Commission's proceedings in the claim.[2] By letter dated January 14, 2013, and by counsel's telephone call on January 22, 2013, the claimant requested that the Commission reconsider its decision to deny the additional delay of the

[2] The Commission also noted that, pursuant to 45 C.F.R. § 509.5(*l*), the Commission may consider a petition to reopen in certain circumstances.

hearing. The Commission rejected the requests for further delay. The oral hearing was held, as scheduled, on January 25, 2013.

DISCUSSION

Claimant's Objection

In his July 25, 2012 Notice of Objection the claimant objected to the Commission's Proposed Decision on the grounds that the Commission had heightened the burden of proof it placed on the claimant, and that he had presented sufficient evidence that he obtained U.S. citizenship at the time of his birth.

Analysis

Pursuant to both statute and regulation, claimants before the Commission bear the burden of proving the validity of their claims. *See* 22 U.S.C. § 1623(b) ("All decisions shall be upon such evidence and written legal contentions as may be presented . . . ."); 45 C.F.R. § 509.5(b) (noting that "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"). The Proposed Decision noted that the claimant represented to the Commission that he had acquired U.S. citizenship both (1) by naturalization in the United States on June 14, 1995, in Brooklyn, New York; and (2) by birth abroad to a United States citizen parent.

In support of his contention that he acquired U.S. citizenship by naturalization, the claimant appended to his claim form a U.S. certificate of naturalization, which states he was "admitted as a citizen of the United States of America" and took an oath of allegiance on June 14, 1995. If claimant *became* a citizen in 1995, however, this would mean that he was not a citizen prior to that point. Importantly, it would mean that he was

not a citizen in December 1988 when this claim arose and that the Commission would thus not have jurisdiction over his claim.

Therefore, claimant argues that, notwithstanding his naturalization in 1995, he has also been a citizen since birth.[3] Since he was born outside of the United States (in St. Vincent and the Grenadines), his claim of citizenship at birth is premised on his having satisfied the statutory requirements for those born abroad to a U.S. citizen parent. The relevant law for determining whether a child born abroad to a U.S. citizen parent is entitled to U.S. citizenship is the law that was in effect at the time of the child's birth.[4] Claimant was born in 1955, and so the relevant law is the Immigration and Nationality Act of 1952. Since claimant was born out of wedlock to a U.S. citizen mother, the relevant provision of that Act is Section 309(c), which reads as follows:

> a person born ... outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.[5]

Claimant must thus show that (1) his mother had U.S. nationality when claimant was born, and (2) his mother had been physically present in the U.S. (or one of its outlying possessions) for a continuous period of one year prior to claimant's birth.

To demonstrate that he satisfied these two requirements, the claimant provided the U.S. birth certificate of his mother, 5 U.S.C. § 552(b)(6), and a declaration from 5 U.S.C. § 552(b)(6)

[3] At the oral hearing, counsel explained that claimant naturalized in 1995 because he did not realize then that he was already a citizen. Counsel stated that it was only after researching the relevant law for the purpose of bringing this claim that she learned—and then explained to claimant—that she believed him to be a citizen from the time of his birth.

[4] *See, e.g., Drozd v. INS,* 155 F.3d 81, 86 (2d Cir. 1998); and *Runnett v. Shultz,* 901 F2d 782, 783 (9th Cir. 1990).

[5] 8 U.S.C. § 1409 (1952 ed.).

stating that she was told by her parents that she lived in the United States for the first year of her life. The claimant sought to further substantiate his assertion that he acquired U.S. citizenship by birth abroad to a U.S. citizen parent by reference to his sister, who he states acquired derivative U.S. citizenship at the time of her birth in 1948. The claimant also provided evidence that the U.S. Department of State issued a passport to him on December 17, 2010, which he asserts was based only on submissions to the State Department in which he did not reference his 1995 certificate of naturalization.

To further corroborate his claim that he has been a U.S. citizen since birth, claimant sought a Certificate of Citizenship from the U.S. CIS. To get such a Certificate, the claimant filed a form N-600, Application for Certification of Citizenship, based on having a U.S. citizen parent. The U.S. CIS denied claimant's application on the grounds that claimant's mother's declaration was insufficient to establish that she had been "physically present in the United States ... for a continuous period of one year." In rejecting the application, the U.S. CIS described her "unsupported declaration" as "unreliable" because of her age at the time of her alleged departure from the United States—between one and two years old—and noted further that her claim was unsupported by "any other evidence, such as copies of passport pages showing entry or exit stamps or other travel documents." The U.S. CIS decision also noted that the claimant's sister's affidavit stating that she became a U.S. citizen at birth through her mother failed to show the claimant's nationality at birth: claimant's sister was born in 1948 (prior to the Immigration and Nationality Act of 1952), when the immigration law did not require the mother to have any specific duration of continuous residence in the U.S. On November 22, 2011, the U.S. CIS dismissed the claimant's Motion to Reopen

U.S. CIS's decision on the N-600. The U.S. CIS stated that "[b]ased on the evidence in the record, 5 U.S.C. § 552(b)(6) has not met his burden to establish that his mother was present for one continuous year before his birth."

On the basis of the above facts, the Proposed Decision concluded that (1) the U.S. government does not recognize the claimant to have been a national of the United States on December 21, 1988, the date the claim arose; and (2) the claimant had not provided the Commission with any evidence or legal analysis that would indicate that the United States government's determination on this question was incorrect. The Commission thus concluded that the claimant had not met his burden to prove that he was a U.S. national on the date the claim arose and therefore held that the claim is not within the Commission's jurisdiction and not compensable under the January Referral Letter.

After the Commission's Proposed Decision, the United States District Court for the Eastern District of New York ruled on claimant's challenge to the U.S. CIS's decision. The district court found that "[b]ecause [claimant] has failed, after sufficient time for discovery, to submit admissible and probative evidence of an essential element of his case that he bears the burden of proving – the one-year physical presence requirement – a grant of summary judgment in favor of [U.S. CIS] is warranted." 5 U.S.C. § 552(b)(6) at *10. The court therefore dismissed the suit. *Id.*

It therefore remains the case that the U.S. government does not recognize the claimant to have been a national of the United States on December 21, 1988, the date the claim arose, and the claimant has not provided the Commission with any evidence or legal analysis that would indicate that the United States government's determination on this question is incorrect. [6]

[6] At the Objection Hearing the claimant argued that the Commission should delay issuing a Final Decision in this claim pending a determination in his appeal to the Second Circuit. However, (1) the Commission has asked the claimant to perfect his claim in regard to the question of nationality for more than two years; (2) the U.S. CIS and a federal district court have found that the claimant was not a U.S. citizen on December 21, 1988; and (3) the Commission does not know when the Second Circuit will rule on the claimant's appeal, or whether the Second Circuit's decision will end the litigation, or result in a remand to the district court for further proceedings. For these reasons, the Commission denies this request, but again notes that pursuant to 45 C.F.R. § 509.5(*l*), the Commission may consider a timely filed petition to reopen in certain circumstances.

CONCLUSION

In summary, the Commission affirms its determination that the present claim is not within its jurisdiction under the January Referral Letter, because claimant has failed to show that he was a U.S. national at the time the claim arose. This constitutes the Commission's final determination in this claim.

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

Timothy J. Feighery, Chairman

Rafael E. Martinez, Commissioner

Anuj Desai, Commissioner

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In the Matter of the Claim of 5 U.S.C. §552(b)(6) Against the Great Socialist People's Libyan Arab Jamahiriya	Claim No. LIB-II-058 Decision No. LIB-II-174

Counsel for Claimant: Zoe Salzman, Esq.
Emery Celli Brinckerhoff & Abady LLP

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on mental pain and anguish suffered by 5 U.S.C. §552(b)(6) as a result of the death of his brother 5 U.S.C. §552(b)(6) who was killed on board Pan Am Flight 103 on December 21, 1988.

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 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 B. According to the January Referral Letter, Category B consists of

> claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State provided that (1) the claim was set forth as a claim for emotional distress, solatium, or similar emotional injury by the claimant named in the Pending Litigation; (2) the claimant is not eligible for compensation from the associated wrongful death claim, and the claimant did not receive any compensation from the wrongful death claim; (3) the claimant has not received any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral; and (4) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 4. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation.

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, 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 January 11, 2010, the Commission received from claimant a Statement of Claim and accompanying exhibits in support of the claim. Included in claimant's submission is evidence of his inclusion as a named party in the Pending Litigation referred to in Attachment 1 of the January Referral Letter, in which he set forth a claim for emotional distress, solatium, or similar injury, and the dismissal of the Pending Litigation against Libya. The claimant also provided his birth certificate and 5 U.S.C. §552(b)(6) birth certificate, both of which identify 5 U.S.C. §552(b)(6) as the mother. By letter dated February 11, 2010, the claimant provided a declaration by 5 U.S.C. §552(b)(6) (who is also known as 5 U.S.C. §552(b)(6) [1]) stating that the claimant and 5 U.S.C. §552(b)(6) shared the same biological mother and father.

[1] Claimant's counsel has stated in a declaration dated January 8, 2010, that 5 U.S.C. §552(b)(6) legal name is 5 U.S.C. §552(b)(6) and has submitted a declaration 5 U.S.C. §552(b)(6) to the same effect. 5 U.S.C. §552(b)(6) explains that because her mother and father were not married when she was born, her surname on her birth certificate is her mother's surname 5 U.S.C. §552(b)(6) while she was known throughout her life by the surname of her father 5 U.S.C. §552(b)(6)

The claimant has represented to the Commission that he acquired United States citizenship by both of the following means: (1) by naturalization in the United States on June 14, 1995, in Brooklyn, New York; and (2) by birth abroad to a United States citizen parent. The claimant has appended as Exhibit B to his claim form a U.S. certificate of naturalization which states he was "admitted as a citizen of the United States of America" and took an oath of allegiance on June 14, 1995.

By letter dated June 30, 2010, the claimant, who was born in St. Vincent and the Grenadines in 1955, further stated that he acquired U.S. citizenship by birth abroad to a U.S. citizen parent. His claim of citizenship at birth is premised on his argument that he meets the requirements of Section 309(c) of the Immigration and Nationality Act of 1952, the section applicable in 1955 for persons who, like claimant, were born outside the U.S. and out of wedlock. Under that provision, "a person born ... outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year."[2] To demonstrate that he satisfied the twin requirements of the law, the claimant provided the U.S. birth certificate of his mother 5 U.S.C. §552(b)(6) and a declaration from 5 U.S.C. §552(b)(6) stating that she was told by her parents that she lived in the United States for the first year of her life. By letter dated July 27, 2010, the claimant sought to further substantiate his assertion that he acquired U.S. citizenship by birth abroad to a U.S. citizen parent by reference to his sister, who he states acquired derivative U.S. citizenship at the time of her birth in 1948.

[2] 8 U.S.C. § 1409 (1952 ed.).

By letter dated December 21, 2010, the claimant provided evidence that the U.S. Department of State issued a passport to him on December 17, 2010, which he asserts was based only on submissions to the State Department in which he did not reference his 1995 certificate of naturalization.

To further corroborate his claim that he has been a United States citizen since birth, claimant sought a Certificate of Citizenship from the U.S. Department of Homeland Security's U.S. Citizenship and Immigration Services ("U.S. CIS"). To accomplish this, the claimant filed a form N-600, Application for Certification of Citizenship, based on having a U.S. citizen parent. The U.S. CIS, however, denied claimant's application. In its decision, the U.S. CIS noted first that federal regulations place the burden of proof to establish citizenship on the claimant.[3] The decision further stated that the U.S. CIS had requested information and evidence regarding how long the claimant's mother had resided in the United States after her birth and that the evidence the claimant had submitted was insufficient. In particular, the U.S. CIS specifically rejected claimant's mother's declaration as insufficient to establish that she had been "physically present in the United States ... for a continuous period of one year," describing her "unsupported declaration" as "unreliable" because of her age at the time of her alleged departure from the United States—between one and two years old—and noting further that her claim was unsupported by "any other evidence, such as copies of passport pages showing entry or exit stamps or other travel documents." The U.S. CIS decision also noted that claimant's sister's affidavit stating that she became a U.S. citizen at birth through her mother was not persuasive evidence to show the claimant's nationality at birth, because she was born

[3] *See* 8 C.F.R. § 341.2(c).

in 1948, and, in contrast to the Nationality Act of 1952, the immigration law in 1948 did not require the mother to have any specific duration of continuous residence in the U.S. On November 22, 2011, U.S. CIS dismissed the claimant's Motion to Reopen U.S. CIS's decision on the N-600. U.S. CIS stated that "[b]ased on the evidence in the record, Mr. 5 U.S.C. §552(b)(6) has not met his burden to establish that his mother was present for one continuous year before his birth."

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined in Category B of the January Referral Letter; namely the claims of individuals who: (1) are U.S. nationals; (2) are living; (3) are close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State; (4) as named parties, made claims for emotional distress, loss of solatium, or similar emotional injury in a Pending Litigation case which has been dismissed; and (5) are not eligible for compensation from the associated wrongful death claim, have not received any compensation from the wrongful death claim, have not received any compensation under any other part of the Claims Settlement Agreement, and do not qualify for any other category of compensation pursuant to the January referral. January Referral Letter, *supra*, ¶ 4.

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 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.[4] The Commission has further noted in the Libya Claims Program that the continuous nationality requirement is a "long-standing principle of international law consistently applied and advocated by the United States to the present day. Consequently, any departure from these principles would have been clearly articulated [in the Libya Claims Program authorizing documents] and not merely implied." *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-049, Decision No. LIB-I-019 (2011), FD at 6.[5] In 5 U.S.C. §552(b)(6) the Commission discussed in detail the basis of its determination that the continuous nationality requirement applies to the Libya Claims Program and its conclusions apply equally here:

> As a general matter, the United States continues to recognize the continuous nationality rule as customary international law. For example, the United States' 2006 comments on the International Law Commission's Draft Articles on Diplomatic Protection clearly convey the United States' position that the continuous nationality requirement – that nationality "be maintained continuously from the date of injury through the date of resolution" – reflects customary international law.[6]
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> * * * *
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> Given the fact that the continuous nationality rule is recognized by the United States as customary international law, and that this rule has been applied by both this Commission and its predecessors, a derogation from

[4] *See also, Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of ILONA CZIKE against Hungary*, Claim No. HUNG-2-0784, Decision No. HUNG-2-191 (1976); *Claim of JOSEPH REISS against the German Democratic Republic*, Claim No. G-2853, Decision No. G-2499 (1981).

[5] *See also Richard B. Lillich & Gordon A. Christenson, International Claims: Their Preparation and Presentation* 8-9 (1962) ("The most important condition precedent to securing government espousal of an individual's grievance is the requirement that it have been owned by a United States national at the time of loss or injury. The Foreign Claims Settlement Commission, like the Department of State, has consistently held this position."); *Chytil v. Powell,* 15 Fed. Appx. 515, 516 (9th Cir. 2001) (unpublished) ("Because in espousing a claim a sovereign takes the claim on as its own, a sovereign cannot espouse claims for people who were not citizens of that sovereign at the time the injury was inflicted.").

[6] *See International Law Commission, Comments and observations received from Governments, Diplomatic protection,* at page 19, U.N. Doc. A/CN.4/561 (2006).

> this rule will not be assumed by the Commission from the absence of language in any of the operative documents that inform and define this program. Any derogation must be clearly expressed, and there has been no such express derogation in this program. Consequently, the Commission adheres to its earlier finding that in order for a claim to be compensable in this program, it must have been owned by a U.S. national continuously from the date of injury to the date of the Claims Settlement Agreement.

5 U.S.C. §552(b)(6) FD at 6-8.

While the Commission sympathizes with the facts asserted by the claimant, it notes that the U.S. government does not recognize the claimant to have been a national of the United States on December 21, 1988, the date the claim arose, and further notes that the claimant has not provided the Commission with any evidence or legal analysis that would indicate that the United States government's determination on this question is incorrect. The Commission thus finds that the claimant has not met his burden to prove that he was a U.S. national on the date the claim arose.[7] On this basis, the Commission is constrained to conclude that his claim is not within the Commission's jurisdiction and not compensable under the January Referral Letter.

[7] Pursuant to both statute and regulation, claimants before the Commission bear the burden of proving the validity of their claims. *See* 22 U.S.C. § 1623(b) ("All decisions shall be upon such evidence and written legal contentions as may be presented . . . ."); 45 C.F.R. § 509.5(b) (noting that "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").

Accordingly, the Commission determines that, consistent with the ICSA and the January Referral Letter, the present claim is not within its jurisdiction and, therefore, this claim must be and is hereby denied. The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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 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).