



DEPARTMENT OF THE ARMY
Headquarters, 3rd Brigade Combat Team
3rd Infantry Division
FOB Warhorse, Iraq
APO AE 09397

REPLY TO
ATTENTION OF:

AFZP-VI-JA

26 July 2005

MEMORANDUM OF OPINION

SUBJECT: Claim of [REDACTED] 05-IA5-1140

1. Claimants name and address: [REDACTED], [REDACTED]
2. Incident date and place the incident occurred giving rise to the claim: Incident occurred on 30 April 2005 at Mufrak Circle, Baqubah, Iraq.
3. Amount of claim and filing date: Claimant filed a claim in the amount of \$4,000.00 on 20 July 2005.
4. Chapter the claim was considered under and a brief description of the incident or of the issues raised by the claimant for consideration: Foreign Claims Act and Chapter 10, AR 27-20; claim filed for death of claimant's son.
5. Facts:
 - a. Claimant states that on 30 April 2005, the claimant's son was at home while U.S. and Iraqi Forces conducted a raid. A vehicle drove up and a VBIED detonated near claimant's son, who was mortally wounded.
 - b. The claimant submitted witness statements along with the claim.
6. Opinion:
 - a. In order to form a basis for a claim under the FCA, the incident in question must have arisen outside the United States. In addition, the incident must be caused by either non-combat activity of the United States Armed Forces or by negligent or wrongful acts of military members or civilian employees of the Armed Forces.

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SUBJECT: Claim of Rokaya Awaad Mohaisen, 05-IA5-1140

- b. There is insufficient evidence to suggest that this incident arose out of the negligence and/or wrongful acts of the United States Armed Forces. The evidence shows that the claimant's son was killed by a VBIED, which detonated by him. The incident therefore falls under the combat exclusion.

7. Recommended Action: This claim is not payable under the FCA for the aforementioned reasons. Consequently, this claim for \$4,000.00 is denied.

[REDACTED]
[REDACTED]
CPT, JA
Claims Judge Advocate

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CLAIMS FORM

To: United States Army Foreign Claims Commission.

From: Name: _____

Address: _____

I am

- a. A citizen and national of: _____
- b. A permanent resident of: _____

I hereby make a claim against the United States Government for damages or injuries caused by: (Name, Organization, Military Department, Address, Telephone Number)

The property damaged is owned by: _____

My claim arose at:

(Town)

(City)

(Country)

My claim arose on:

Month

Day

Year

April

30

2005

(1530)

Give a brief statement of the accident or incident on which the claim for damages to property or for personal injury is based. (Use back of this sheet if necessary)

Raid going on with TA \$ 43 - while Raid was going on, a VBIED drove up & detonated on them.

List in detail the amount of property damage and itemized expenses resulting from the property damage or personal injury: (Attach bills and receipts, if applicable.)

Item

Amount

Death of Husband

\$ 4,000

Total: 4000

I claim as damages: (Indicate amount in U.S. dollars and local currency)

\$ 4000

local _____

(Signature of Claimant)

Subscribed before me this 20 day of July, 2005.

(Print Name)

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(Signature)