DEPARTMENT OF THE ARMY
Headquarters, 1st Brigade Combat Team
10th Mountain Division (Light Infantry)
Forward Operating Base Warrior, Iraq
APO AE 09338

AFZS-LI-JA

3 February 2008

MEMORANDUM OF OPINION

SUBJECT: Claim of (b)(6) 08-IH4-T077

1. Claimants name and address: (b)(6) Kirkuk, Iraq.

2. Incident date and place the incident occurred giving rise to the claim: Incident occurred on 11 November 2007 in Kirkuk, Iraq.

3. Amount of claim and filing date: Claimant filed a claim in the amount of $2,500.00 on 11 November 2007.

4. Chapter the claim was considered under and a brief description of the incident or of the issues raised by the claimant on reconsideration: Foreign Claims Act and Chapter 10, AR 27-20; claim filed for the death of her husband.

5. Facts:

a. (b)(6) claims that on 11 November 2007, Coalition Forces shot her husband using proper escalation of force procedures after he turned down an access road to Patrol Base Millet, resulting in his death.

b. There was a death certificate included in the submitted claim.

c. The incident was able to be verified by the responsible unit.

6. Opinion:

a. In order to form a basis for a claim under the FCA, the incident has to occur outside of the United States and be from either non-combat activities of the U.S. Armed Forces or by the negligent or wrongful acts of military members or civilian employees of the Armed Forces.

b. There is insufficient evidence to suggest that this incident resulted from non-combat activity or arose out of the negligence and/or wrongful acts of the United States Armed Forces. Any appeal must be submitted within 30 days.

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7. Action: This claim is not payable under the FCA for the above mentioned reasons. Consequently this claim for $2,500.00 is denied.

(b)(3), (b)(6)

CPT, JA
Foreign Claims Commissioner