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Case No. 211

Date of Filing 29 March 1983

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DECISION. Date of Decision

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CONCURRING OPINION of _____

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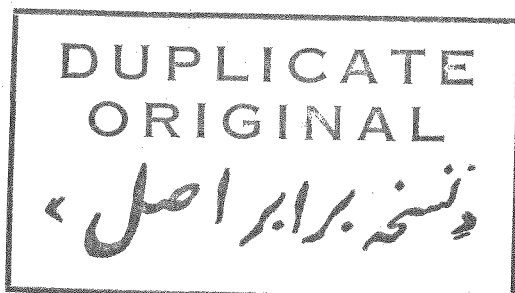
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IRAN - UNITED STATES CLAIMS TRIBUNAL



ATAOLLAH GOLPIRA,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondent.

AWARD

Appearances:

For the Claimant:

Mr. Guy M. Albertini,
Mr. Patrick A. O'Doherty, Baltimore, Md.
Attorney
Mr. Ataollah Golpira, Claimant

For the Respondent:

Mr. Mohammed K. Eshragh, Deputy
Agent of the Islamic Republic of Iran
Professor J. Niaki,
Mr. M. Khavar, Legal Advisers to the
Agent of the Islamic Republic of Iran
Miss F. Riahi, Secretary to the Agent
of the Islamic Republic of Iran

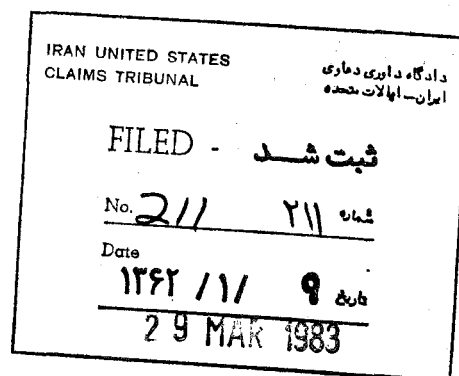
Also Present:

Ms. Jamison M. Selby, Deputy Agent of
the United States of America

CASE NO. 211

CHAMBER TWO

AWARD NO. 32-211-2



I. The Proceedings

The Claimant, Mr. Ataollah Golpira, stating that he is a U.S. citizen, filed a Statement of Claim on 11 January 1982 against the Government of the Islamic Republic of Iran. The relief sought by the Claimant is the payment of U.S. \$450,000, representing the asserted value of 20 shares of stock in the Borzooyeh Medical Group which were owned by the Claimant. He alleged that the property of the Medical Group was nationalized by the Respondent. Copies of the stock certificates were filed on 21 April 1982.

The Respondent, the Government of the Islamic Republic of Iran, filed its Statement of Defence on 31 May 1982 denying nationalization of the Medical Group and contending that the Tribunal has no jurisdiction over this claim, owing to the Iranian nationality of the Claimant, which was never renounced in accordance with Iranian municipal law. The Claimant filed a Reply on 7 September 1982.

The Respondent then elaborated its contentions in a Rejoinder filed on 11 October 1982, with a supporting legal brief filed on 1 November 1982.

The Claimant submitted a summary of evidence and an affidavit of Richard T. Moxley concerning the value of the stock, both filed on 29 October 1982. The Hearing was held on 5 November 1982. On 13 December 1982 the Claimant filed a post-Hearing memorial and additional evidence concerning the assets of the Medical Group. On 10 January 1983 the Claimant submitted a brief, second post-Hearing memorial, and the Respondent submitted further documentation in response to an Order of the Chamber. The Respondent's post-Hearing memorial, along with documents concerning the financial condition of the Medical Group, was filed on 12 January 1983. A further post-Hearing memorial was filed by the Claimant on 14 February 1983.

II. The Facts

Ataollah Golpira is a national of Iran and the United States, under the respective domestic laws of each country. He is a national of Iran under Iranian law because he was born in Iran of an Iranian father. He was issued, accordingly, an Iranian identity card, number 35, in District 2, Tehran. He was, moreover, raised in Iran, and received his early education there. His father was an army officer who retired in 1959 with the rank of Major General.

He completed high school, college and medical school in Iran and received his medical degree there. He left Iran at the age of twenty-six to intern in Jacksonville, Florida, the United States of America, arriving in 1953. From 1954 to 1958 he completed his medical training at hospitals in Baltimore, Maryland. He began the practice of medicine in Baltimore in December, 1958 and has practiced there ever since. In 1958 he returned to Iran for three months, was married, and returned with his bride to the United States. They have two children, both born in the United States.

In October, 1957 he secured permanent resident status in the United States. On February 14, 1964, he became an American citizen, receiving Naturalization Certificate, No. 8527559.

Golpira's two children have been educated exclusively in United States schools. Golpira has participated regularly in cultural, civic, and business activities in the United States. He is a registered voter in Maryland, and owns both residential and commercial real estate in the United States.

Golpira's parents moved to the United States in 1977 and became permanent residents in 1978. An uncle has lived in the United States since 1950.

Since 1964, Golpira has returned to Iran three times, in 1970, 1975, and 1978. Each visit was for approximately two weeks. On those occasions, whenever he entered and exited Iran, he did so with an Iranian passport.

Golpira registered both of his children with the consular section of the Iranian embassy in Washington soon after they were born. In the case of the second child that registration occurred in January 1966, two years after Golpira acquired his U.S. citizenship.

In 1970, Golpira purchased stock in the Borzooyeh Medical Group. The purchase was made with the assistance of his father. The stock certificates include a reference to Golpira's Iranian ID card number, although this was not necessary as the Respondent acknowledged at the Hearing that ownership of the stock was open to foreign nationals. Dividends on the stock were paid to Golpira's father in Iran. No dividends have been received for any years since 1977. Golpira's stock amounts to 20 shares out of a total of 2500.

Golpira's allegations that the Medical Group was expropriated rest largely on the assertion that the shares held by the principal stockholder, Dr. Bahadori and his family, which were expropriated, amounted to a 50 percent ownership. The Respondent, however, submitted evidence showing that those shares amounted only to some 21 percent of the total and that Golpira retained ownership of his shares. Financial statements were also submitted showing that no dividends have been paid to anyone for years subsequent to 1977.

III. The Jurisdictional Issue

A. The Applicable Law

In its Award No. 31-157-2 in the claim of Nasser Esphahanian, signed today (copy annexed), the Tribunal decided that it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the Claimant is that of the United States. The Tribunal applies that rule in the present case.

B. Application of the Law to the Facts in this Case

We may now frame the jurisdictional issue before us: Were Golpira's factual connections with the United States "in the period preceding, contemporaneous with and following" his naturalization as a United States citizen more effective than his factual connections with Iran during the same period? See Nottebohm Case, [1955] I.C.J. Rpts. 4, 24.

Golpira's contacts with the United States were long and consistent. He has resided in the United States since 1953 and has practiced medicine in Baltimore, Maryland since 1958. He became an American citizen in 1964. Although married to an Iranian, they have two children who were born in the United States and have lived and been educated solely in the United States. His entire professional life and virtually all his investments have been centered in the United States. He owns both residential and commercial property in the United States. Since becoming a citizen of the United States, Golpira has paid U.S. taxes and has voted in U.S. elections.

Golpira's contacts with Iran since he went to the United States to complete his medical studies have been much more limited. He has made only three brief visits to Iran to see relatives still living there. He has retained his Iranian passport, which he used for his visits to Iran and has registered his children with Iranian consular authorities.

It should be noted that Iranian law permits renunciation of Iranian nationality only with the approval of the Council of Ministers. Any person who receives such approval is thereafter allowed to travel to Iran only once, in order to sell or transfer his properties. With respect to Golpira's use of an Iranian passport to enter and leave Iran, the Tribunal notes that the laws of Iran in effect forced such use. Once he had emigrated to the United States and had become an American citizen, the only way he could return lawfully to Iran was as an Iranian national, using an Iranian passport. If he insisted on using his U.S. passport to enter Iran, he would be turned away or, at least, his U.S. passport would be confiscated and he would be admitted only as an Iranian. In effect, Iran told its citizens that, if they took foreign nationality, they must also retain their Iranian nationality -- which in Iran would be considered their sole nationality -- or they would be forever barred from returning to Iran.

Since shares of stock in the Borzooyeh Medical Group were available for purchase by non-Iranians, the mere fact that Golpira's Iranian ID card number appears on his share certificates does not mean that he concealed his American nationality in order to obtain benefits available only to Iranians.

On the basis of these facts, the Tribunal concludes that Golpira's dominant and effective nationality at all relevant times has been that of the United States, and the damages sought in the present claim are related primarily to his American nationality, not his Iranian nationality. All of his actions relevant to this claim could have been done by a non-Iranian. The Tribunal holds that the Claimant, Ataollah Golpira, is a national of the United States within the meaning of the Claims Settlement Declaration and that the Tribunal has jurisdiction to decide his claim against the Government of the Islamic Republic of Iran.

IV. Reasons for the Award

The Claimant's case on the merits is based on the alleged expropriation of the Borzooyeh Medical Group by the Respondent. The Claimant does not allege that the Government of the Islamic Republic of Iran has appointed managers or directors of the company or that his shares, per se, were expropriated, but rather that expropriation of the shares of the family of the principal founder, Dr. Akbar Bahadori resulted in expropriation of the majority of shares in the Medical Group, which, coupled with his receipt of no dividends, annual reports or correspondence from the Medical Group since it was taken over by the Respondent, constitutes a de facto expropriation of his interest, as well as those of the other shareholders.

The Respondent, in its post-hearing submissions, has submitted evidence indicating that, the Bahadori family's shares amounted only to 21 percent of the total shares and that, following their expropriation, the total holdings of the Oppressed People's Foundation (Bonyade Mostaz'afan) were 679 shares, or 27.16 percent of the 2500 shares outstanding. The evidence also indicates that the remaining shares continue to be privately owned. Lists of shareholders both before and after the Revolution are among the documents submitted by the Respondent. The new managing director, Dr. Ali Khansi, who is also the representative of the Foundation, certifies that, since 1977, the Medical Group has not made any profit and has not paid any dividends to any shareholder. Copies of balance sheets for the years ending in March 1980 and March 1981 were also submitted,

confirming his statements. The Respondent does not, however, deny Golpira's assertion that the Medical Group has sent him no communications concerning his stock, meetings of the stockholders, or other information related to his investment.

After reviewing this evidence the Tribunal concludes that the Claimant has failed to prove the expropriation of his property, that is, of his ownership interest in the Medical Group. The evidence is persuasive that the management of the Medical Group, previously in the hands of Dr. Bahadori, is now in the hands of the Oppressed People's Foundation^{*} by virtue of the expropriation by the Respondent of the shares of the Bahadori family. The evidence is equally persuasive, however, that Golpira is still listed as a stockholder by the company and that he has not been paid dividends since 1977 only because no dividends have been paid to anyone. On the record before us, it is not established that the control exercised by the Foundation over the activities of the Medical Group is any different from the control previously exercised by Dr. Bahadori as the largest shareholder. The corporation continues to be managed by the largest single shareholder, but the identity of that shareholder has changed. At the General Meeting of 14 September 1979 the shareholders amended certain clauses of the Articles of Association. In particular, Clause 11 was amended to allow transfer, by decision of the Board of Directors, of shares 1 through 1100 to "nonmedical persons", while allowing priority to "doctors, dentists, pharmacists and laboratory specialists" for the purchase of such shares. Dr. Golpira holds shares 1486 through 1506, and those shares

^{*}The Claimant alleged that the Foundation is an instrumentality of the Government of the Islamic Republic of Iran, but the Tribunal does not need to decide that question in the present case because of our conclusion that expropriation has not been proved.

were never made subject to the control of the Board. It is clear that a profitable investment has become, at least temporarily, unprofitable, but it has not been demonstrated that the Claimant's investment has been taken by the Respondent.

The fact that Golpira received no notices of meetings or other communications with respect to his property interest in the Medical Group is disturbing, but the Tribunal is not prepared to conclude from that fact alone that his property interest has been taken by the Government. While the Articles of Association of the Medical Group do not provide any specific method of giving notice of ordinary or extraordinary General Meetings, the typical requirement for the giving of such notice is publication in certain local newspapers chosen annually by the Ministry of Justice. Compare Commercial Code of Iran, Article 45 (M. Sabi trans. 1976) with id. at Article 74. Thus, the 14 September 1979 General Meeting was convened pursuant to notice published in Ettel'at, a daily newspaper, on 30 August 1979. That meeting was attended by holders of 1519 of the 2500 outstanding shares. The signatures of persons holding as little as 1 share, and attending the meeting, were submitted. There is, moreover, no evidence that Golpira made any effort to communicate with the company subsequent to the Revolution and the accompanying change in the company's management. Even before the revolution, the evidence indicates that communications to Golpira took the form of personal letters from Dr. Bahadori, rather than any official notices or corporate reports and that dividends were paid to Golpira's father in Iran rather than to Golpira in the United States. Golpira, as a small expatriate shareholder, never had any role in the management or direction of the company, nor did he have any rights to such participation beyond his .8% voting power.

The Tribunal has previously stated that a taking of property may occur by virtue of unreasonable interference in the use of that property,* but the Claimant in the present case has failed to prove interference in the use or enjoyment of his property sufficient to constitute any such taking.

V. Costs

Each Party shall be left to bear its own costs of arbitration.

* Harza Engineering Co. and the Islamic Republic of Iran,
Award No. 19-98-2 (30 December 1982).

AWARD

The Tribunal Awards As Follows:

The claim of Ataollah Golpira relating to the Government of the Islamic Republic of Iran is hereby dismissed.

Each of the parties shall bear its own costs of arbitrating this claim.

Bellet

Dated: The Hague

29 March 1983

Pierre Bellet

Chairman

Chamber Two

George H. Aldrich

George H. Aldrich

Shafie Shafeiei

I REFUSE TO TAKE PART IN THE
MAKING OF A DECISION WHICH, IN
THE PART DEALING WITH JURISDICTION,
CANNOT BE LEGALLY JUSTIFIED, BUT
TAINTED WITH IMPROPER MOTIVES. THESE
MOTIVES SHALL BE DISCLOSED IN MY
SEPARATE OPINION

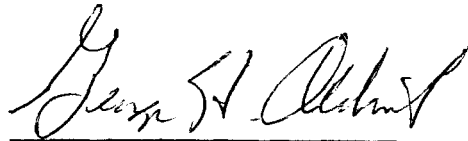
SHAFIE SHAFEIEI



Mr. Shafeiei took part in the hearing and deliberation of this case. He signed the English text of the Award. Having been invited by letter dated 25 March 1983 to sign the Farsi text on 28 March 1983, he attended the meeting, but refused to sign.



Pierre Bellet
Chairman
Chamber Two



George Aldrich

29 March 1983