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دیوان داری دعاری ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

Case No. 10427

Date of filing: 16 March 88

** AWARD - Type of Award Final
- Date of Award _____
13 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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CASE NO. 10427

CHAMBER TWO

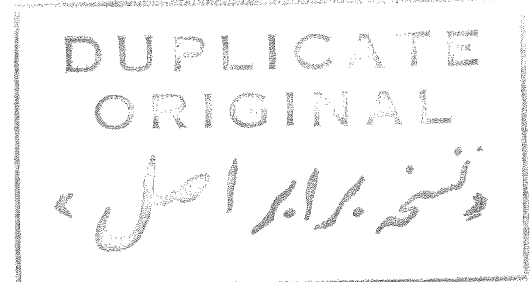
AWARD NO. 354-10427-2

KATHRYN FAYE HILT,
a claim of less than U.S.\$250,000,
presented by the UNITED STATES
OF AMERICA,

Claimant,

and
THE ISLAMIC REPUBLIC OF IRAN,
and SHAHID CHAMRAN UNIVERSITY
(formerly JUNDI SHAPUR UNIVERSITY)
Respondents,

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه داری دعاری ایران - ایالات متحده	
ثبت شد - FILED			
Date	15 MAR 1988	تاریخ	
	۱۳۶۶ / ۱۲ / ۲۶		
No.	10427	شماره	



AWARD

Appearances:

For Claimant:

Mrs. J.F. Barrett,
Attorney-Adviser,
U.S. Department of State
Ms. Mary Beth West,
Attorney-Adviser,
U.S. Department of State
Ms. Kathryn F. Hilt,
Claimant
Mr. Michael Raboin,
Deputy Agent of the
United States of America

For Respondent:

Mr. Mohammad K. Eshragh,
Agent of the Government
of the Islamic Republic
of Iran
Mr. Mostafa Dorchezadeh,
Legal Adviser to
the Agent
Mr. Morteza Rouhipour,
Assistant to the
Legal Adviser

Also present:

Mr. Timothy Ramish,
Agent of the United
States of America

I. INTRODUCTION

1. On 19 January 1982, the UNITED STATES OF AMERICA filed a Statement of Claim which presented a claim of less than U.S.\$250,000, of KATHRYN FAYE HILT ("the Claimant"), against THE ISLAMIC REPUBLIC OF IRAN, and, in particular, Jundi Shapur University, now named SHAHID CHAMRAN UNIVERSITY ("the Respondent" or "the University") in Ahwaz, Iran. The Claimant seeks damages of U.S.\$11,374 (plus interest and costs) arising from the alleged breach by the University of an employment contract with her, and for the loss of personal property which she states occurred because of her wrongful expulsion from Iran. The Respondent denies the existence of any contract with the Claimant or that it is responsible for any loss occasioned by the Claimant's departure from Iran. A Hearing in this Case was held on 19 November 1987.

II. THE FACTS

2. In May 1978, the Claimant, in response to an advertisement in the New York Times, applied for the position of Assistant Professor in the College of Foreign Languages of the University. On 6 June 1978, Ms. Hilt received a telegram from Mr. Janssens, the Dean of the College, offering her a one year teaching position (contingent on the successful completion of her doctorate which was in its final stages), with monthly salary and benefits totalling 136,500 rials. The Claimant's telegram of acceptance was sent later in June 1978. Subsequently, on 19 July 1978, she received a follow-up letter from the Vice-Chancellor of the University, a Mr. Mahdavi, confirming the offer outlined in the Dean's telegram and informing her that the University would make the appropriate arrangements for her travel from the United States to Iran. Ms. Hilt states that, during this time, she turned down an offer of employment at another university.

3. Originally it was arranged that Ms. Hilt would travel to Iran at the end of August 1978 in order to commence her employment on 1 September 1978. As events transpired, Ms. Hilt was required to remain in the United States until 12 September 1978, the date on which she was to present the oral defence of her doctoral dissertation. This did not create problems for the University, as classes did not commence until October. A new date, 13 September 1978, was set for Ms. Hilt's departure and the commencement of her employment.

4. Ms. Hilt made preparations for departure on this date including vacating her apartment. However, her air tickets did not arrive and, apparently in response to an inquiry she made, the Dean of the College on 8 September 1978, telegraphed a reassuring reply:

Job guaranteed tickets delayed but will arrive
soon Janssens

It appears that the delay in forwarding the promised tickets occurred because of the disruption to normal business, trading and governmental activity being encountered in Iran by the authorities at that time. The air tickets finally did arrive on 16 October 1978, and the Claimant arrived in Iran on 19 October 1978. Ms. Hilt states that during the period 13 September to 18 October 1978 she was fully able and willing to take up the position and would have done so but for the University's delay in sending her the tickets.

5. Some four weeks after her arrival at the University, the Claimant was issued an identification card, bearing a date of issue of 20 November 1978, which identified her as an employed faculty member of the College of Foreign Languages.

6. The Claimant's arrival in Ahwaz coincided with a period of student strikes and increasing disruption of the University's teaching schedule. The University authorities,

apparently trying to maintain some semblance of normality, instructed the staff to continue conducting classes for those students who wished to come to them and to attend meetings of the faculty. Ms. Hilt asserts that she held classes for students who attended, familiarized herself with the college's curriculum and kept office hours. She also attended faculty meetings and states that at one of these meetings the Dean informed the staff that the Ministry of Education had granted a 25% salary increase to university teachers.

7. Ms. Hilt's arrival in Iran and her activities at the University took place in the absence of the execution of a formal contract. That state of affairs was touched upon in the Hiring Brochure which the University sent to Ms. Hilt during the summer of 1978 before her departure from the United States. It stated in part:

The contract is for twelve months, renewable by mutual consent. Because contracts come to us from the Ministry of Education in Tehran, they often do not arrive for signing until well after the school year has begun. However, clear temporary agreements are always made, so that the guaranteed salary is paid from the outset Salaries are paid in twelve equal monthly installments Economy-class air tickets to Iran are provided free for newly arriving teachers and their families After a minimum of two years' service, similar travel expenses are covered for teachers re-locating home.

8. In addition, Ms. Hilt had received advice from the Dean concerning the necessity of obtaining a work visa. The Dean's letter of 30 July 1978 advised Ms. Hilt:

For the visa: just get them to issue you a visitor's visa (3 months): you can have this renewed overhere for another 3 months, giving our services the time to clear you for your employment with us and for your residence papers.... Actually we never require people to have work visas....

It appears that applications for work permits were processed by the University on behalf of incoming staff but not until such time as after the formal contract was ratified, usually some considerable time after the commencement of teaching duties.

9. At the beginning of December 1978, the Claimant went on vacation to Cyprus for ten days. After her return, conditions at the University deteriorated as did conditions in Ahwaz, as the mood of revolution spread over the country. Ms. Hilt, fearful for her safety, moved in with friends but maintained contact with her colleagues. At the end of December, the Claimant states that the Chairman of the English Department, Mr. Sypher, informed her that the University was closed indefinitely and advised her to leave the country.

10. The Claimant departed from Iran on 5 January 1979 aboard an evacuation flight organized by a private U.S. company. It appears that passengers were only permitted to carry two pieces of luggage on the flight, and consequently Ms. Hilt left most of her personal belongings behind, for which she seeks U.S.\$2,000 in compensation. Her initial destination was Bahrain from where she flew at her own expense to Paris. From France Ms. Hilt was recruited by a Saudi Arabian university where she commenced teaching on 7 February 1979.

11. During the time she was in Iran, the Claimant did not receive any regular payments from the University. It has not been contested that this was because the formalities relating to the contract had not been finalized and also because of the general disruption to commerce. She did, however, receive two "advances" in November and December 1978 of 25,000 rials and 100,000 rials, respectively. The Claimant asserts that her employment contract was breached and seeks compensation in the amount of U.S.\$9,374 for her salary and entitlements from 13 September 1978 to 7 February 1979, including a sum of U.S.\$800 for air fare for her return from Iran to the United States. In the alternative, the Claimant bases her claim on quantum meruit and seeks compensation for services provided from 19 October 1978 to the end of December 1978.

III. JURISDICTION

12. The Claimant asserts that she is a United States national by birth, and has submitted copies of the relevant portions of her passport. The Tribunal is satisfied that the Claimant is and has at all times been a national of the United States. The claims have been owned continuously by the Claimant for the requisite period and were outstanding at the date of the Claims Settlement Declaration.

13. The Claimant has stated that the University was a controlled entity of the Government of Iran and produced evidence of Government control of its finances and Government representation on its Board of Trustees. This evidence has not been challenged by the Respondent. The Tribunal is satisfied that the University was on 19 January 1981 an entity controlled by the Government of Iran, and therefore falls within the definition of "Iran" contained in Article VII, paragraph 3, of the Claims Settlement Declaration.

14. The claims are based on an alleged breach of contract and the expropriation of the Claimant's property as a result of her alleged wrongful expulsion from Iran, both within the Tribunal's jurisdiction under Article II, paragraph 1, of the Claims Settlement Declaration.

15. The Tribunal is satisfied that it has jurisdiction over the claims.

IV. REASONS FOR THE AWARD

1. The Contract Claim

16. As a preliminary matter, the Tribunal is satisfied that the evidence submitted by the Claimant establishes that the Dean, Mr. Janssens, was authorized to enter into employment

contracts. The Tribunal is further satisfied that the telegram of Mr. Janssens, of 6 June 1978, was an offer of employment from the University which was accepted by Ms. Hilt by her telegram later in June 1978. The resulting contract was contingent only upon Ms. Hilt successfully completing the requirements for her doctorate, which she did. The initial commencement date of the contract was 1 September 1978. As confirmed in the correspondence between the Parties, this was subsequently amended by mutual agreement to 13 September 1978. The other terms of the contract agreed upon were that Ms. Hilt's salary and other entitlements would be 136,500 rials per month and that the University would arrange and pay for her air travel to Iran. The Tribunal notes that, as part of the record in this Case, there is a copy of a standard form contract, apparently utilized by the University for hiring its academic staff. However, as it is not clear at what stage Ms. Hilt was made aware of its more detailed terms and as Ms. Hilt does not rely on its provisions, the Tribunal prefers to define the terms of the contract on the basis of the various direct communications between the Parties.

17. The Respondent relies on Iranian law to support its argument that a contract did not come into existence. The Tribunal finds, however, that the Respondent has failed to support these contentions. In particular, the Respondent has failed to substantiate its argument that, under Iranian law, employment contracts must be in writing to be valid. Even if this were the case, it has not been demonstrated to the Tribunal that the written exchanges between the Parties would not satisfy such a requirement.

18. Having determined that the Parties entered into a valid and enforceable contract, the Tribunal must determine its commencement and termination date. As stated above, the Parties agreed to a commencement date of 13 September 1978 being the proposed date of Ms. Hilt's departure from the United States. The Tribunal is satisfied that, but for the

University not sending Ms. Hilt her air ticket to Iran, she would have taken up her position at the University at that time. There is no suggestion from the Respondent, nor any evidence to support such a contention, that the Claimant was in any way responsible for the delay in her arrival in Iran to commence her teaching duties. The Tribunal finds, consequently, that 13 September 1978 was the commencement date of the contract.

19. As to the termination of the contract, the Tribunal notes that the University was in breach of contract by its failure to make Ms. Hilt's monthly salary payments. Although such a continuing breach might have been sufficient for Ms. Hilt to elect to terminate the contract and depart from Iran, she did not do so at the time. Nor does the Tribunal find that the advice Ms. Hilt received to leave Iran constituted a termination of the contract by the University (see paragraph 23 infra). The evidence shows that from the end of 1978, the University closed down with no imminent prospect of re-opening and that nearly all of Ms. Hilt's colleagues were leaving Iran. In view of all the circumstances, the fact that Ms. Hilt left Iran on 5 January 1979, cannot be considered as a breach on her part such as to terminate the contract. The Tribunal notes that the Respondent did not invoke force majeure as a possible excuse for non-payment of Ms. Hilt's salary nor advance the argument that the contract had been frustrated. Therefore, the Tribunal does not have to examine these possible arguments.

20. Consequently, the Tribunal determines that the contract continued in existence after Ms. Hilt's departure. The University was clearly in breach of its obligation to pay salary to the Claimant and, as there was no reasonable prospect for her to resume her employment or receive her salary and entitlements, she acted properly in obtaining alternative employment, thereby mitigating the damages and terminating the contract. The Tribunal finds that Ms. Hilt

is entitled to her salary and entitlements to 7 February 1979, the date on which she commenced her new employment and awards the Claimant six hundred and forty eight thousand three hundred and seventy five rials (648,375 rials) less the one hundred and twenty five thousand rials (125,000 rials) advanced to her, making a total of five hundred and twenty three thousand three hundred and seventy five rials (523,375 rials).

21. Ms. Hilt also claims for a 25% salary increase from December 1978. In support of this part of her claim, Ms. Hilt, apart from her own evidence, relies on a Time magazine article of November 1978 which refers generally to salary increases being granted to governmental employees in Iran. The Tribunal notes that the University has access to information within its records which would settle this issue and which it has failed to produce. Nevertheless, the Tribunal notes that the Chairman of the English Department of the College, who presented two affidavits in support of Ms. Hilt's claim, nowhere mentions or refers to this salary increase. Neither was any evidence presented by Mr. Janssens, the Dean of the College who, Ms. Hilt states, informed the staff meeting of the increase. In these circumstances, where it appears that the Claimant would have had access to corroborating evidence but failed to present it or offer any explanation as to its absence, the Tribunal determines that Ms. Hilt has not met the burden of proof required to establish the existence of, and her entitlement to, a 25% increase. That part of her claim is denied accordingly.

22. Ms. Hilt also claims U.S.\$800 as compensation for her travel expenses from Iran and relies on a verbal assurance she states she received from the Dean, Mr. Janssens, that her return air fare from Iran to the United States would be paid. At the Hearing, Ms. Hilt confirmed that this sum was an estimate of the costs of a single air fare from Iran to the United States, and that the actual extra costs incurred

by her in her travel from Bahrain to Paris, where she took up her new employment, amounted to U.S.\$500. The Tribunal notes that the Hiring Brochure, which Ms. Hilt was sent before her departure from the United States, states that travel expenses of departing employees would be paid by the University after two years service (this entitlement was also reflected in the standard form contract). In the other written exchanges between the Parties presented in evidence, the Tribunal can find no evidence to support this part of Ms. Hilt's claim. Ms. Hilt was unable to provide the Tribunal at the Hearing with any specific evidence as to the nature of Mr. Janssens's assurance that under the circumstances which existed, the University would pay her return air fare. This, coupled with the information contained in the Hiring Brochure, leads the Tribunal to find that Ms. Hilt has failed to satisfy the burden of proving this part of her claim, which is dismissed accordingly.

2. The Personal Property Claim

23. This part of Ms. Hilt's claim is based on the argument that she was wrongfully expelled from Iran. She seeks the replacement cost of various household items left behind with an estimated value of U.S.\$2000. Although in the pleadings Ms. Hilt relied on two "wrongful actions" of the Government of Iran, namely, the failure to protect her from anti-American harassment and the failure to pay her salary, at the Hearing the Claimant argued she had been subject to a de jure expulsion by virtue of the advice she received from Mr. Sypher, the Chairman of the English Department, advising her to leave. She alleges this "instruction" to leave was wrongful in that she was not given time to wind up her affairs and it was therefore in breach of the procedural and substantive standards established by customary international law and the Treaty of Amity. The Tribunal need not discuss whether an official of an institution which is a controlled entity for the purposes of the Claims Settlement

Declaration, can be regarded as a representative of a government for the purposes of issuing a de jure expulsion order, as the evidence presented in this Case does not demonstrate that Mr. Sypher or indeed anyone "instructed" her to leave Iran. At best, the evidence shows that Ms. Hilt was advised to leave Iran by the Dean and Mr. Sypher. She was surely influenced in the main by the departure of most of her colleagues at that time. There is no suggestion that Mr. Sypher issued a deadline for her departure or imposed any conditions. The Tribunal notes that even if the Claimant had continued to rely on an alleged de facto expulsion from Iran, she would have had to establish that her departure from Iran was caused by wrongful actions attributable to the Government of Iran. See Alfred L.W. Short and The Islamic Republic of Iran, Award No. 312-11135-3 (14 July 1987) and Jack Rankin and The Islamic Republic of Iran, Award No. 326-10913-2 (3 November 1987). This the Claimant failed to do. Rather, the Tribunal finds in this Case that Ms. Hilt's decision to leave Iran was caused by the general revolutionary turmoil existing in Iran at that time. This part of Ms. Hilt's claim is dismissed accordingly.

3. Exchange Rate

24. Although the contract, as evidenced by the letters exchanged between the Parties, stipulated that Ms. Hilt was to be paid in rials, the Claimant has converted the rial amount claimed to U.S. dollars at the rate of 70 rials to the dollar. In the absence of any objection to this rate (See Housing and Urban Services International, Inc. and The Government of the Islamic Republic of Iran et al., Award 201-174-1, at p. 33 (22 November 1985); and Richard D. Harza, et al. and The Islamic Republic of Iran, et al., Award No. 232-97-2, at p. 26 (2 May 1986)), and taking cognisance of the fact that this rate is consistent with the exchange rate prevailing at that time (See Theodore Lauth

and The Islamic Republic of Iran, Award No. 233-10335-3, at p. 19 (8 May 1986); and AHFI Planning Associates, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 234-179-2, at p. 14 (8 May 1986)), the Tribunal determines that the conversion rate applied by the Claimant is an appropriate one. The amount of 523,375 rials awarded converts to U.S.\$7,476.79, which the Tribunal awards accordingly.

V. COSTS

25. Each Party shall bear its own costs of arbitration.

VI. INTEREST

26. In order to fully compensate the Claimant for the amount found owing, the Tribunal awards simple interest at the rate of 10.5 percent from 7 February 1979, the date the Tribunal finds the contract was terminated.

VII. AWARD

27. For the foregoing reasons,


THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The Respondent, SHAHID CHAMRAN UNIVERSITY is obligated to pay the Claimant, KATHRYN FAYE HILT, the sum of seven thousand four hundred and seventy six United States dollars and seventy nine cents (U.S.\$7,476.79) plus simple interest at the annual rate of 10.5 percent (365-day basis) from 7 February 1979, up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account. This obligation shall be satisfied

by payment out of the Security Account established by paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

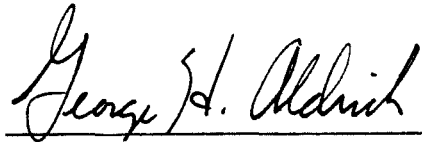
- (b) The remainder of the claims are dismissed on the merits.
- (c) Each Party shall bear its own costs of arbitration.
- (d) This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
16 March 1988



Robert Briner
Chairman

In the name of God,



George H. Aldrich



Hamid Bahrami-Ahmadi

*Concurring in part
Dissenting in part*