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IN SAFE

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**** DECISION** - Date of Decision _____

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**** CONCURRING OPINION** of _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	12 JAN 1987 تاریخ ۱۳۶۵ / ۱۰ / ۲۲
No.	298 شماره

CASE NO. 298

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CHAMBER TWO

AWARD NO. ITL 66-298-2

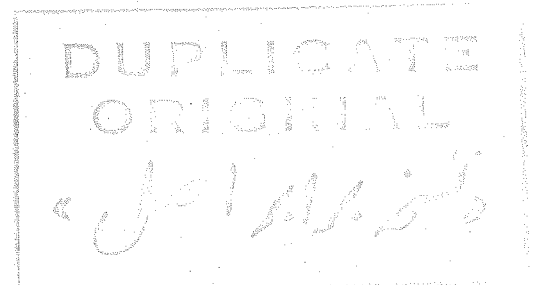
JAMES M. SAGHI, MICHAEL R. SAGHI,
and ALLAN J. SAGHI,

Claimants,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondent.



INTERLOCUTORY AWARD

I. THE PROCEEDINGS

1. The Claimants, JAMES M. SAGHI, MICHAEL R. SAGHI, and ALLAN J. SAGHI, filed a Statement of Claim on 15 January 1982 against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent"), claiming a total of \$17,391,000, plus interest and costs, for the alleged expropriation in August 1980 of Novzohour Paper Industries and Novin Trading & Distributing Paper Products, two Iranian corporations in which the Claimants allege they hold beneficial ownership of the controlling interests.

2. The Claimants (a father and two sons) contend that they are all United States nationals and only United States nationals. The Respondent asserts in its Statement of Defense filed on 18 October 1982 that the Claimants are all nationals of Iran under Iranian law and therefore may not assert claims against Iran before this Tribunal.

3. In accordance with its practice in similar cases, the Tribunal, on 15 June 1984, ordered the Parties to submit all documentary evidence they wished the Tribunal to consider in connection with the nationality issue in accordance with a schedule set forth in that Order. The Claimants submitted their evidence on 14 September 1984. The Respondent was granted three extensions up to 30 November 1985 until the Tribunal in its Order of 5 December 1985 finally gave the Respondent until 31 January 1986 to submit its evidence, after which date it stated that it would take a decision on jurisdiction on the basis of the briefs and evidence before it. A request for a further extension was denied by the Tribunal in its Order of 13 February 1986, but the Tribunal indicated that it would consider any documents filed by the Respondent prior to deliberation of the jurisdictional issue. No further evidence on the question was submitted by the Respondent. The Tribunal therefore proceeds to a decision in this matter.

II. THE FACTS

A. James M. Saghi

4. Mr. James M. Saghi was born in Tabriz, Iran on 1 January 1921 of an Iraqi father and states that consequently he was a national of Iraq from birth. He moved to the United States on 13 June 1945 for the purposes of completing his university education and working as a trainee with several American companies represented by his father's company in Iran and Iraq. After entering the United States (on an immigrant visa), he was drafted into service in the United States armed forces. Upon release from the armed forces, he was naturalized as a United States citizen in 1947. In 1950, he married Antoinette Landi, an American-born U.S. citizen, in Tehran, Iran. He owned real estate in the United States and his family resided there in the 1960s and early 1970s. He lived and worked in Iran during the 1950s and much of the 1960s and 1970s and was issued numerous residence and work permits by the Government of Iran. These permits explicitly referred to his United States nationality. He states that since 1947 he travelled exclusively on a United States passport, and the Government of Iran issued visas to him. His United States passport from the period 1976 to 1981, for example, contains a four-year multiple entry visa issued in 1977 by the Consulate General of Iran in San Francisco. He states that he ended his most recent period of residence in Iran in 1977 and resumed residence in the United States.

B. Michael R. Saghi

5. Mr. Michael R. Saghi, son of James M. Saghi, was born in 1955 in Tehran, Iran. As a child of two United States nationals, his eligibility to be a national of the United States was established at birth. United States Code, Title 8, Section 1401 (1976). He has lived with his family both

in the United States and in Iran. On 22 May 1971, he obtained an Iranian residence permit which attests to his U.S. nationality and refers to his U.S. passport. The residence permit was renewed several times until it expired on 24 November 1973. On 20 May 1974, the Ministry of Foreign Affairs of Iran issued a certificate granting permission for Michael Saghi to retain the United States nationality of his father.

C. Allan J. Saghi

6. Mr. Allan J. Saghi, son of James M. Saghi, was born on 17 April 1957 in Tehran, Iran. As a child of two United States nationals, his eligibility to be a national of the United States was established at birth. Id. He has lived with his family both in the United States and in Iran. On 7 June 1975, the Government of Iran recognized his withdrawal of any claim to Iranian nationality he may have had by virtue of his birth in Iran. However, on 6 January 1977, he applied to the Iranian Consulate General's Office in New York for a reversion to Iranian nationality. That application was granted and an Iranian identity card was given to him apparently while he was in Iran in the summer of 1977. However, that visit, like all his visits to Iran, was made on his U.S. passport, which contains, among others, a four-year multiple entry visa issued by the Consulate General of Iran in San Francisco on 31 May 1977.

III. REASONS FOR THE AWARD

7. The Tribunal must determine with respect to each Claimant, for the purpose of establishing whether the jurisdictional requirement of the Claims Settlement Declaration as to the nationality of the Claimants has been satisfied, whether, during the relevant period from August 1980 when the Claim arose to 19 January 1981, the date of the Claims Settlement Declaration, the Claimants

were nationals of the United States, of Iran, or of both countries, and if of both, the dominant and effective nationality.

8. The Tribunal is satisfied on the basis of the evidence submitted that James M. Saghi, Michael R. Saghi, and Allan J. Saghi were nationals of the United States during the relevant period. The question remains, however, whether any or all of the Claimants were also nationals of Iran during that period.

9. The Respondent, in its Statement of Defence filed on 18 October 1982, refers to the fact that James Saghi was born in Iran and alleges that he affirmed his Iranian nationality in an affidavit signed in 1945. The Tribunal notes that this affidavit refers to him as having been born in Iran but identifies him as a citizen of Iraq. The Respondent also contends that Michael Saghi is an Iranian national, having been born in Iran of an Iranian father, or in the alternative, having been born in Iran of a foreign father but having lived in Iran for more than one year after the age of eighteen years. The Respondent also contends that Allan Saghi is an Iranian national due to the actions he took to apply for Iranian nationality in 1977.

10. The Tribunal does not consider it necessary to consider the application of Iranian nationality laws when considering the case of James Saghi. There is no evidence before the Tribunal that James Saghi ever claimed Iranian nationality by birthright or at any time asserted Iranian nationality. The evidence submitted by the Claimants shows that the Government of Iran consistently and repeatedly treated James Saghi as a national of the United States in a variety of official acts connected with the regulation of aliens within the territory of Iran, including the issuance of entry, residence, and work permits. Furthermore, the Government of Iran has not produced any evidence in rebuttal. In

addition, in accepting and granting Michael and Allan Saghi's applications for permission to retain the United States nationality of their father (see paragraphs 11 and 13 infra) the Government of Iran also necessarily recognized the United States nationality of James Saghi. The mere potential qualification for nationality, when coupled with official acts of the State concerned which deny that same status, compel the conclusion that neither the State nor the individual concerned consider the potential nationality to have any effect.

11. As to Michael Saghi, the Tribunal notes that the Government of Iran granted permission for him to retain his father's United States nationality as is evidenced by a certificate issued by the Ministry of Foreign Affairs dated 20 May 1974. There is no evidence or argument before the Tribunal that subsequent to the issuance of this certificate he attempted to acquire Iranian nationality.

12. The Tribunal is satisfied that neither James Saghi nor his son Michael Saghi were nationals of Iran as defined in Article VII, paragraph 1, of the Claims Settlement Declaration during the relevant period.

13. As to Allan Saghi, however, who also applied to the Iranian authorities to recognize the United States nationality of his father, the record shows that subsequently on 6 January 1977 he applied for a grant of Iranian nationality under Article 990 of the Iranian Civil Code, which states that: "Iranian subjects who may have personally, or whose fathers may have, renounced Iranian nationality in accordance with the provisions of law and who may wish to reacquire their original nationality can be reinstated in their original nationality by mere application" This application was apparently granted as was evidenced by letters from the Iranian Ministry of Foreign Affairs. The Tribunal therefore determines that Allan J.

Saghi was also a national of Iran as defined in Article VII, paragraph 1, of the Claims Settlement Declaration during the relevant period.

14. In accordance with the findings that Allan J. Saghi is a national both of the United States and of Iran, and in accordance with the Decision in Case No. A18, Decision No. 32-A18-FT (6 April 1984), the Tribunal proceeds to a determination of the dominant and effective nationality of Allan Saghi during the relevant period. In determining his dominant and effective nationality, the Tribunal considers all relevant factors, including habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment.

15. As background to its considerations, the Tribunal notes that Allan Saghi lived in Iran during the first few years of his life and again during the early 1970s, but that he ended his most recent period of residence in Iran in May 1975 when he resumed residence in the United States while he attended Boston University and later the Menlo School of Business. In June 1975, a few months after his 18th birthday, Iran recognized his withdrawal of any claim to Iranian nationality he may have had by virtue of his birth in Iran. However, a couple of years later, in 1977, he applied for and received Iranian nationality. While he was issued an Iranian identity card in 1977, he never requested nor obtained an Iranian passport. Since birth, all of his travels were made on his American passport. In weighing the significance of this application for Iranian nationality, the Tribunal notes that it was made prior to completion of his education, prior to the Revolution, and prior to the alleged taking of his property in Iran.

16. During the period from August 1980 to 19 January 1981, Allan Saghi resided in Foster City, California. He attended Menlo School of Business in Menlo Park, California. His

parents, his brother, and his sisters all were living in the United States as United States nationals. He did not visit Iran. He alleges that during this time his property interests in Iran were expropriated, thereby extinguishing his only remaining link with Iran.

17. In these circumstances, the Tribunal determines that during the relevant period the dominant and effective nationality of Allan J. Saghi was that of the United States.

IV. INTERLOCUTORY AWARD

18. For the foregoing reasons,


THE TRIBUNAL DETERMINES AS FOLLOWS:

(a) The Claimants, JAMES M. SAGHI, MICHAEL R. SAGHI, and ALLAN J. SAGHI are nationals of the United States of America within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration.

(b) All other jurisdictional issues will be decided with the merits in a subsequent award.

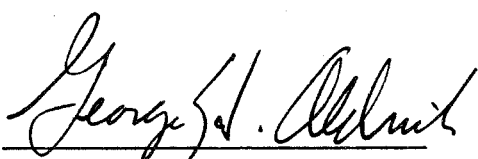
Dated, The Hague

12 January 1987



Robert R. Briner
Chairman

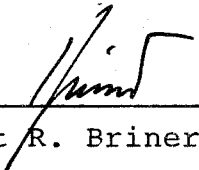
In the Name of God,



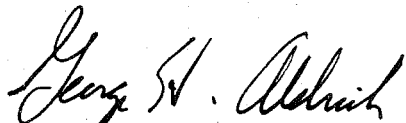
George H. Aldrich

Hamid Bahrami-Ahmadi

Mr. Bahrami-Ahmadi did not participate in the deliberation of this Case, stating that in his view such cases are not admissable, and he refused to sign the present Award.



Robert R. Briner
Chairman



George H. Aldrich