

IRAN

INTERNATIONAL CLAIMS TRIBUNAL

دیوان دادگستری دعاوی ایران - ایالات متحده

66

ORIGINAL DOCUMENTS IN SAFE

Case No. 256

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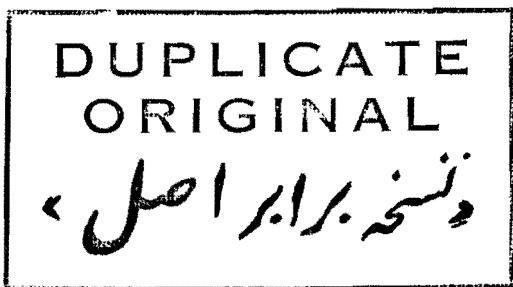
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CASE NO. 256
CHAMBER TWO
AWARD NO. 412-256-2

AUGUST FREDERICK BENEDIX, JR.,
HOMA DIBA BENEDIX,

Claimants,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondent.

PARTIAL AWARD

I. THE PROCEEDINGS

1. The Claimants AUGUST FREDERICK BENEDIX, JR. ("Mr. Benedix") and HOMA DIBA BENEDIX ("Mrs. Benedix") filed a Statement of Claim on 14 January 1982 against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent"), claiming individually the sums of U.S.\$87,660 and U.S.\$821,000, respectively, plus interest thereon, as compensation for the alleged expropriation of property interests as well as shareholding rights in various Iranian business enterprises located in Iran. According to the Claimants their Claims arose during 1979.

2. The Respondent in its Statement of Defence, objected, inter alia, to the Claims on jurisdictional grounds arguing that Mr. Benedix had failed to prove his alleged American nationality and that Mrs. Benedix was exclusively an Iranian national.

3. After the Full Tribunal's decision in The Islamic Republic of Iran and The United States of America, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, the Tribunal requested the Claimants to file any further documentary evidence they wished the Tribunal to consider in determining whether they were nationals of the United States of America or the Islamic Republic of Iran, or both, and in case the Claimants were nationals of both countries, evidence relating to the Claimants' dominant and effective nationality. Likewise, the Tribunal ordered the Respondent to file all documentary evidence it wished the Tribunal to consider with regard to the issue of the Claimants' nationality.

4. The Claimants submitted their evidence on 6 November 1985. The Respondent, on 9 May 1988, filed with the Tribunal its evidence and brief regarding the issue of the Claimants' nationality.

II. FACTS RELATING TO THE NATIONALITY OF THE CLAIMANTS

5. The First Claimant, August Frederick Benedix, Jr. was born in Ipswich, Massachusetts, United States of America on 29 January 1921. There is unrebutted evidence that Mr. Benedix travelled to Iran in the early 1950s, married Mrs. Benedix in 1954 and immediately after their marriage returned to Ipswich, Massachusetts. In mid-1957, allegedly as an agent to a number of U.S. companies which had contracts with Middle Eastern countries to sell American spare parts, Mr. Benedix and his wife moved to Beirut, Lebanon. As a result of the political crisis in Lebanon during this time they moved to Tehran, Iran, on 8 November 1958. There is no dispute that he settled there until December 1978. Mr. and Mrs. Benedix left Iran in December 1978 and moved to London, England, where, according to the evidence submitted, they continue to live. Mr. Benedix held and continues to hold a United States passport. There is no evidence that the Claimant acquired the nationality of any of the aforesaid countries where he resided, or of the United Kingdom where he now resides.

6. Mrs. Homa Diba Benedix was born in Tehran, Iran on 19 October 1917 to Iranian parents. She was issued an Iranian Identity Card No. 2060 in Tehran in 1918 as evidence of her birth. She married an Iranian national by the name of Ataollah Ettehadieh and had two children from that marriage. In December 1953 she was divorced from her husband and in May of the following year married Mr. Benedix in Tehran.

7. It is not disputed that Mrs. Benedix accompanied her husband to Massachusetts in 1954, where she commenced the process of obtaining her U.S. nationality. Mrs. Benedix alleges she was naturalized as a United States citizen on 20 May 1957. Soon thereafter she and Mr. Benedix moved to Lebanon and then in 1958 to Tehran, Iran, where they resided until 1978. Since then Mrs. Benedix has resided in London, England, with her husband. There is no indication that Mrs.

Benedix dispensed with or took the legal steps to have either her Iranian or United States nationality revoked, nor is there evidence that she acquired any other citizenship. Mrs. Benedix has submitted evidence that she held a United States passport for a number of years.

III. REASONS FOR THE AWARD

8. By virtue of his birth in the United States as evidenced by an official certificate of birth, Mr. Benedix is clearly a national of the United States. There is no evidence that he ever acquired any nationality other than his U.S. nationality. Nor is there evidence that he ever lost or abandoned his U.S. nationality in favor of another nationality. The fact that he has lived abroad for many years is not evidence of loss or change of nationality. The Tribunal is satisfied that he was, and remains, exclusively a national of the United States. Hence, the Tribunal concludes that the Claims asserted by Mr. Benedix are Claims of a national of the United States as defined by Article VII, paragraph 1, of the Claims Settlement Declaration.

9. In accordance with the various criteria set forth by the Full Tribunal in the A18 Decision (paragraph 3, supra), the Tribunal must, in relation to Mrs. Benedix, first determine on the basis of the evidence whether she was, during the relevant period from the time her Claim arose until the date of the Claims Settlement Declaration, 19 January 1981, a national of the United States or of Iran, or of both countries, and, if a national of both countries, her dominant and effective nationality during that period.

10. The Tribunal notes that there is no dispute that Mrs. Benedix acquired Iranian nationality under Iranian law by virtue of her birth to Iranian parents. Moreover, the Identification Card (No. 2060) issued to her confirms her Iranian nationality. There is no evidence before the

Tribunal that she ever took legal steps to have her Iranian nationality revoked at any time, in accordance with the nationality laws prevailing in Iran. For the foregoing reasons, the Tribunal determines that Mrs. Benedix was, during the relevant period under consideration, an Iranian national.

11. The Tribunal has not examined Mrs. Benedix's U.S. naturalization certificate which was allegedly issued to her in 1957.¹ The Tribunal, however, has noted the copies of pages from several U.S. passports she has submitted and is prepared to assume, for the purposes of this Award, that she obtained U.S. nationality as she alleges and that she has retained that nationality.

12. In view of the above considerations, the Tribunal proceeds to determine the dominant and effective nationality of Mrs. Benedix. In order to examine whether the Claims presented by Mrs. Benedix are claims of a U.S. national as defined by Article VII, paragraph 1, of the Claims Settlement Declaration, the Tribunal must, pursuant to the Full Tribunal's decision in Case No. A18 (para 3, supra), determine whether the dominant and effective nationality of Mrs. Benedix was that of the United States during the relevant period between the time that she alleges her Claim arose and 19 January 1981, which is the date of the Claims Settlement Declaration. In order to make such a determination, the Tribunal must consider all relevant factors, including Mrs. Benedix's habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment.

¹Mrs. Benedix offered to submit the original certificate (No. 7934059) through the Agent of the United States for examination by the Tribunal, noting that U.S. law forbids the copying of such certificates. In the circumstances of this Case and given its conclusions, infra, the Tribunal finds this unnecessary.

13. Mrs. Benedix asserts, in support of her claim of dominant and effective U.S. nationality, that she possessed and continues to possess a U.S. passport since acquiring U.S. nationality in 1957. She also states that on the basis of her U.S. nationality she had successfully acquired for her two children from the previous marriage permanent residency status in the United States and that she had jointly filed U.S. tax returns together with Mr. Benedix, during the relevant period. Mrs. Benedix alleges that her prolonged periods of residence outside the United States were necessitated by her husband's business activities, and asserts further that despite these long periods of residence outside the United States, she has made periodic visits to the United States where her two children now reside.

14. The Tribunal notes that Mrs. Benedix resided in the United States only for a relatively brief period between 1954 and 1957. Following her naturalization as a U.S. citizen she was present in the United States only for sporadic visits. At present she apparently lives in London, England, where she and her husband chose to reside upon leaving Iran in 1978. Evidence provided by the Claimant relating to factors such as her habitual residence, center of interests, family ties, participation in public life and other attachments are insufficient to support a finding that Mrs. Benedix's links to the United States were dominant during the relevant period between the time when her Claims allegedly arose in 1979 and 19 January 1981. The Tribunal, therefore concludes, that her Claims are not Claims of a national of the United States as defined in Article VII, paragraph 1, of the Claims Settlement Declaration and consequently, that it does not have jurisdiction over such claims under Article II, paragraph 1, of that Declaration.

IV. PARTIAL AWARD

15. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

- (a) The Claimant, AUGUST FREDERICK BENEDIX, JR., was during the relevant period a national of the United States of America, as defined in Article VII, paragraph 1, of the Claims Settlement Declaration.
- (b) All other jurisdictional issues associated with the Claims of AUGUST FREDERICK BENEDIX, JR., are hereby joined to the merits.
- (c) The Claims asserted by the Claimant, HOMA DIBA BENEDIX, are hereby dismissed for lack of jurisdiction.

Dated, The Hague

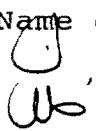
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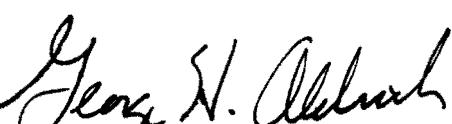
Robert Briner

Chairman

In the Name of God



Seyed K. Khalilian



George H. Aldrich

Seyed K. Khalilian