125

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 296
CHAMBER TWO
AWARD NO. 564-296-2

PARVIZ SADIGH BAVANATI,
Claimant,

and

THE GOVERNMENT OF
THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances:

For the Claimant : Mr. Parviz S. Bavanati,
Claimant.

For the Respondent : Mr. Ali H. Nobari,
Agent of the Islamic Republic of Iran,
Mr. Seifollah Mohammadi,
Legal Adviser to the Agent,
Mr. Jafar Niaki,
Legal Adviser to the Agent.

Also present : Mr. D. Stephen Mathias,
Agent of the United States of America,
Ms. Mary Catherine Malin,
Deputy Agent of the United States of America.

I. THE PROCEEDINGS

1. The Claimant, PARVIZ SADIGH BAVANATI, filed a Statement of Claim on 15 January 1982 against the Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, seeking compensation for the alleged expropriation of a 20,000 square meter parcel of land located in Shiraz, Iran. The Claimant seeks US$1,600,000, which allegedly reflects the fair market value of the property in April 1980, plus interest. The Tribunal notes that at the Hearing the Claimant mentioned a higher figure, namely US$4,200,000, representing an alternative amount for his claim as of 1979, plus interest. However, the Claimant did not formally increase the amount sought.

2. By Order of 3 March 1989, the Tribunal joined "all jurisdictional issues, including the issue of the Claimant's nationality ... to the consideration of the merits of this Case."

3. A Hearing in this Case was held on 28 November 1994.

II. FACTS AND CONTENTIONS

Nationality of the Claimant

4. The Claimant was born in Iran on 15 March 1936. He went to the United States in 1958 to pursue graduate studies. There he received two masters degrees, one in engineering in 1968 and one in mathematics in 1972. He also did course work toward a PhD in mathematics at the University of Toledo. In 1968 the Claimant took advantage of an Iranian statutory provision for peace-time exemption from military service. In 1970 the Claimant registered with the US Selective Service System in Toledo. He was a member of Citizens Helping Eliminate Crime, a community organization in the Toledo metropolitan area. Claimant submitted a copy of his U.S. Social Security enrolment card. The Claimant also states that he was employed in the late 1960s and early 1970s by various

employers in the States of Ohio, North Dakota, and Washington. The Claimant acquired permanent resident status in the United States in 1968, and he became a naturalized United States citizen on 19 February 1974. According to stamps in his passport, the Claimant went to Germany in March 1974. Evidence on record confirms the Claimant's assertion that the purpose of his trip was to study medicine. He contends that he did so because he could not gain admission to an American medical school due to his advanced age. He was granted a German residence permit on 9 May 1974.

5. The Claimant successfully completed his medical studies in Germany in 1983. Subsequently, however, he was apparently unsuccessful in obtaining admission to clinical training programs in the United States. He asserts that, in 1986, he twice took the "Education Commission for Foreign Medical Graduates" examination, the successful completion of which would have permitted him to practice medicine in the United States. Mr. Bavanati reports that he failed the clinical science component of the examination on both occasions.

6. The Claimant alleges that by his letter of 15 September 1974 to the Ministry of Foreign Affairs of Iran he informed the Ministry of his U.S. naturalization and of his decision to give up his Iranian nationality. The Claimant maintains that he therefore is exclusively a United States national. The Claimant furnished a copy of a letter, which he alleges was written upon the advice of officials of the Iranian Consulate in Munich when they allegedly rejected his request for a visa to travel to Iran on his U.S. passport. The letter sought a reply accepting his request, but no reply was ever received. The Respondent denies ever receiving such a letter from the Claimant or of being informed of the Claimant's U.S. naturalization prior to the present proceedings. The Respondent further asserts that the Iranian Consulate did not and could not have given the foregoing advice to the Claimant and that the Claimant never complied with the legal requirements effectively to renounce his Iranian

nationality.[1] The Respondent thus concludes that the Claimant is still an Iranian national and that the Tribunal has no jurisdiction over his claim.

7. During his residence in Germany, the Claimant married a German national and in 1987 a daughter was born to this marriage in Germany. The child was issued a United States passport in 1988. Mr. Bavanati states that he and his family continue to live in Germany, where his wife is employed, out of economic necessity. He maintains, however, that the family would move to the United States if he were to find suitable employment there.

8. The Respondent emphasizes that Mr. Bavanati left the United States just one month after the date of his naturalization and argues that the Tribunal should therefore not consider the Claimant a United States national. In support of this, Iran invokes Section 340 (d) of the U.S. Immigration and Nationality Act, 8 U.S.C. §1451 (d)[2], and also relies on certain

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[1]The Respondent referred (1) to paragraph 9 of the Circular No. 14/48 dated 10/1/1349 (30.3.1970) of the Iranian Ministry of Foreign Affairs which provides that such an applicant shall make his application on stamped papers in Form No. 8 and to be verified by the mission prior to its dispatch to the Ministry for determination and (2) to the Council of Ministers Decree No. 45734 dated 22 Azar 1346 (December 13, 1967) which provides for delegation of permission for renunciation of Iranian nationality after acquisition of foreign nationality to the Ministry of Foreign Affairs and Iran's ambassadors abroad as part of the process of a request for recognition of foreign naturalization.

[2]It provides:

> If a person who shall have been naturalized shall, within five years [amended November 1986 to one year] after such naturalization, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such person to reside permanently in the United States at the time of filing his petition for naturalization and in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of

international jurisprudence.

9. The Respondent also argues that, were the Tribunal to decide that the Claimant is a dual Iran-United States national, his United States nationality was not his dominant and effective nationality during the relevant period. Not only did the Claimant live in the United States for 16 years exclusively as an Iranian national, but he also left the United States one month after acquiring his United States nationality (see, supra, para. 4). Moreover, the Respondent states that while in Germany the Claimant acted as an Iranian national by accepting certain benefits that were available only to Iranian students abroad. The benefits included the duty-free importation of a motor vehicle into Iran, certain foreign exchange benefits and a scholarship from the Welfare Fund for Iranian students abroad.

The Claim

10. In 1969 the Claimant purchased a 20,000 square meter parcel of land in Shiraz, Iran. The Claimant states that he bought the land with the intention of building a hospital in honour of his late brother, who had been a surgeon. Mr. Bavanati changed his

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naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively. The diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with statements of the names of those persons within their respective jurisdictions who have been so naturalized and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to revoke and set aside the order admitting to citizenship and to cancel the certificate of naturalization.

mind about the hospital in 1974 and, he says, began to attempt to sell the land. Mr. Bavanati says that in 1975 he informed the Respondent's "officials at the Bureau of Urban Planning and Development" in Shiraz that he was a U.S. citizen and that he wished to sell the property in Shiraz. They purportedly told him that they would "have to wait for an instruction from Tehran regarding [his] status" and that he "could not involve himself in any transaction." The Claimant states that he then went to Tehran to "explain his situation to the Minister of Foreign Affairs" but was not successful. Mr. Bavanati does not allege that he had a willing buyer for the land at any time, but he asserts that the uncooperative attitude of the Iranian authorities made a sale impossible and thus constituted a taking of the land. Mr. Bavanati admitted at the Hearing, however, that his sister had in 1978 transferred for him his share in certain other immovable properties that he had inherited from his father. Mr. Bavanati's sister did so using a power of attorney he had given her.

11. The Respondent denies that it prevented the Claimant from selling the land. It points out that the Ministry of Foreign Affairs had nothing to do with the sale or registration of the sale of land and that in any event at no time prior to 1979 was there a government agency called "Bureau of Urban Planning and Development" in Iran. The Respondent denies having in any manner expropriated the land in question during the relevant period in this Case.

III. REASONS FOR THE AWARD

JURISDICTION

Nationality of the Claimant

12. In accordance with the various criteria set forth by the Full Tribunal in its 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 must first determine on the basis of the evidence whether the Claimant was, during the relevant period from the time his 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, his dominant and effective nationality during that period. The Claimant contends that his claim arose sometime between early 1975 and early 1980 as a result of the Respondent's actions.

13. The Tribunal notes that there is no dispute that, under Iranian law, Mr. Bavanati acquired Iranian nationality by virtue of his birth to Iranian parents in Iran. Although the Claimant asserts that he renounced his Iranian nationality in September 1974, he has failed to show that he has fulfilled Iranian legal requirements for renunciation of his Iranian nationality. At the same time, the Claimant has shown to the Tribunal's satisfaction that he has been a United States national since 1974. The Tribunal is not convinced by Respondent's argument that the Claimant lost his United States nationality by leaving the United States one month (see supra, para. 4) after his naturalization. The provision of the U.S. Immigration and Nationality Act that is invoked by the Respondent provides that the U.S. Government shall - upon affidavit showing good cause therefor - initiate a procedure in order to revoke the acquired United States nationality of one who takes up permanent residence outside the United States within five years of his or her naturalization as a U.S. citizen.[3] There is no evidence before the Tribunal that the United States Government ever initiated such a procedure against Mr. Bavanati. Moreover, there is ample evidence in the file that the United States Government, through its Consulate in Munich, Germany, has consistently treated Mr. Bavanati as one of its nationals. The U.S. Consulate has, for example, continued to renew his U.S. passport, while also issuing one to his German-

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[3]Section 340 (a) of the U.S. Immigration and Nationality Act, 8 U.S.C. §1451 (a).

born daughter. The Tribunal thus concludes that the Claimant was a national of both Iran and the United States during the relevant period.

14. Based on this conclusion, the Tribunal must proceed to determine Mr. Bavanati's dominant and effective nationality for the purpose of its jurisdiction over his Claim. In the A18 Decision (supra, para. 12), the Tribunal held that it has "jurisdiction over claims against Iran by dual Iran-United States nationals where the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." Id., 5 Iran-U.S. C.T.R. at 265. In order to make such a determination, the Tribunal must consider all relevant factors, including Mr. Bavanati's habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. See Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

15. Mr. Bavanati asserts, in support of his claim of dominant and effective U.S. nationality, that he was always registered as a United States national both with the Friedrich-Alexander University in Erlangen, Germany, where he pursued his studies, as well as with the German authorities. The Claimant alleges that his prolonged period of residence outside the United States was necessitated by reasons beyond his control, and asserts that it has always been his intention to return to the United States to practice medicine. Except for some brief trips to the United States, the only evidence of Claimant's ongoing attachment with the United States while he was living in Germany was that he voted in the U.S. elections in 1984. Incidentally, it should be noted that there is no evidence that the Claimant voted in any U.S. federal or state elections prior to that date, including the relevant period. The Claimant neither owned significant property in the United States nor kept a place of residence there.

16. On the other hand, the record shows that while studying in Germany the Claimant used his Iranian nationality on several occasions. At the Hearing the Claimant admitted that he had received four installments of a study grant from the Iranian authorities and that from 1978 to 1981 he had received the benefit of favorable student foreign exchange authorization and rates under Iranian law. In addition, the Claimant stated that in 1978 he had taken advantage of an Iranian regulation which provides that certain categories of Iranian students abroad can import duty-free one motor-vehicle into Iran. The Claimant explained that these actions represented an effort "to get some money out of Iran", as he had come to realize that he would not be able to recover the investment he had made in 1969. Be that as it may, in accepting the scholarship the Claimant undertook to return to Iran after completing his studies. He assumed the obligation either to serve in Iran for a period of the same length as the time during which he had received the scholarship or, alternatively, to reimburse that scholarship. Thus, while living in Germany on a residence permit in his United States passport, Mr. Bavanati nevertheless conducted himself, at least in some respects, as an Iranian student. This follows both from written evidence and from what he said during the Hearing. There is little doubt that when he was a student in Germany, he submitted, in that capacity, to the personal jurisdiction (personal authority) of Iran. Like any other State, Iran may exercise this jurisdiction, within the bounds of international law, with regard to its citizens abroad.

17. The Tribunal notes that although Mr. Bavanati lived in the United States some 16 years, he lived there only one month (see supra, para. 4) after becoming a United States national. From early 1974 to the date of the Claims Settlement Declaration the Claimant resided continuously in Germany and has been residing there ever since. He has evidently not resided in Iran since 1958, but visited Iran on some occasions. The evidence shows that he developed and strengthened various ties with Germany including, ultimately, marriage to a German national. Prolonged

residence outside the United States, while certainly not dispositive, is a relevant factor in weighing the alleged dominance of the United States nationality of a dual national, even when that residence is not in the other country of which the person in question is a national. See Benedix and The Islamic Republic of Iran, Award No. 412-256-2 (22 Feb. 1989), reprinted in 21 Iran-U.S. C.T.R. 20.

18. Significantly, in the present case, the Claimant made use of his Iranian nationality during the relevant period to obtain benefits limited, by Iranian law, to certain Iranian students. While Mr. Bavanati did so, as he explained, for financial reasons, seeking and accepting such benefits from 1978 to 1981 was scarcely compatible with the alleged dominance of his United States nationality over his Iranian nationality during those same years. Whatever Claimant's motives for continued use of his Iranian nationality might have been, and whatever circumstances might have prevented him to have closer ties with the United States, the evidence shows that since 1974, when the Claimant moved to Germany, his habitual residence, center of interests, family ties, participation in public life and other attachments have been insufficient to support a finding that Mr. Bavanati's links to the United States were dominant over his links to Iran during the relevant period, between the time when his Claim allegedly arose and 19 January 1981. The Tribunal therefore is of the opinion that Mr. Bavanati has not proved that his dominant and effective nationality during the relevant period was that of the United States. Accordingly, the Tribunal concludes that his Claim is not a Claim of a national of the United States as defined in Article VII, paragraph 1, of the Claims Settlement Declaration. Consequently, the Tribunal does not have jurisdiction over such claim under Article II, paragraph 1, of that Declaration.

IV. COSTS

19. Each Party shall bear its own costs.

V. AWARD

20. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(i) The Claim asserted by Mr. Bavanati is dismissed for lack of jurisdiction.

(ii) Each Party shall bear its own costs of arbitration.

Dated, The Hague
17 May 1995

Krzysztof Skubiszewski
Chairman
Chamber Two

In the Name of God

George H. Aldrich

Koorosh H. Ameli
Concurring Opinion