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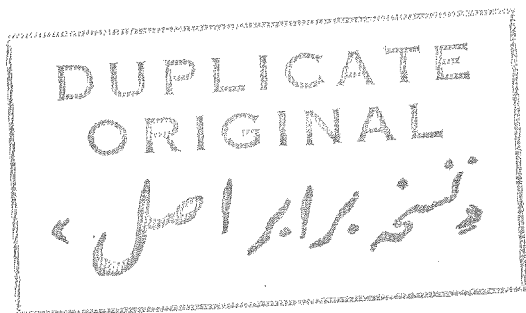
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعای ایران - ایالات متحدہ



CASE NO. 767

CHAMBER THREE

AWARD NO. 562-767-3

MORTEZA KHATAMI,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	ایران داوری دعای ایران - ایالات متحدہ
FILED	ثبت شد
DATE	13 DEC 1994
	تاریخ ۱۳۷۲ / ۹ / ۲۲

AWARD

Appearances:

For the Claimant : Dr. Morteza Khatami,
Claimant;
Mr. Dominic J. Aprile,
Counsel.

For the Respondent : Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran;
Mr. Nozar Dabiran,
Legal Adviser to the Agent;
Mr. Mostafa Nadimi,
Legal Adviser to the Agent;
Mr. Morteza Foroutan,
Representative, National Iranian
Steel Company;
Mr. Kamal Majedi Ardekani,
Expert Witness.

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

I. PROCEDURAL HISTORY

1. On 19 January 1982, the Claimant MORTEZA KHATAMI (the "Claimant") filed a Statement of Claim against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran" or the "Respondent") seeking compensation for various alleged expropriations and breaches of contract in the amount of U.S.\$10,310,000.00, plus interest. Specifically, the Claimant sought compensation for: (1) the balances in several accounts in Iranian banks allegedly belonging to him; (2) the alleged expropriation of certain land in Iran that he claims to have inherited; (3) the alleged expropriation of other land that he purchased in Iran; (4) unpaid salary and other benefits allegedly owed to him as a result of his employment at the University of Isfahan from 1975 to 1976; (5) air tickets and other expenses incurred through trips to Iran "to protect and take over [his] properties"; and (6) what the Claimant refers to as his wife's "Dower and Courtesy [sic] Rights."

2. The Respondent objected to, inter alia, the jurisdiction of the Tribunal on the ground that the Claimant is exclusively a national of Iran and that therefore his claims do not fall within the Tribunal's jurisdiction.

3. In accordance with its practice in similar cases, the Tribunal, quoting the decision of the Full Tribunal in Case No. A18, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, informed the Parties on 28 June 1985 that "it has jurisdiction over claims against Iran by dual Iran-United States nationals when 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." The Tribunal ordered the Claimant to file by 2 September 1985 all evidence he wished the Tribunal to consider in determining his dominant and effective nationality. Similarly, the Tribunal requested by Order of 15 January 1986 that the Respondent file by 28 February 1986 all evidence that

it wished the Tribunal to consider on the issue of the Claimant's nationality.

4. The Claimant filed a reply brief on 31 December 1985 in which he addressed, inter alia, the issue of nationality. After several extensions of time granted by the Tribunal, the Respondent filed a "Brief and Evidence on the Claimant's Nationality Issue" on 29 May 1990, and the Claimant filed supplemental briefs dealing with nationality and other issues on 21 November 1990 and 25 January 1991.

5. By Order of 3 December 1990, the Tribunal joined "all jurisdictional issues, including the issue of the Claimant's nationality during the relevant period between the time the Claim allegedly arose and 19 January 1981, to the consideration of the merits in this Case."

6. In accordance with Tribunal Orders, the Claimant filed his Hearing Memorial on 31 July 1991; the Respondent filed its "Memorial and Evidence on Claimant's Nationality and other Jurisdictional Issues and Merits" on 10 June 1992; the Claimant filed his Memorial and Evidence in Rebuttal on 24 December 1992; and the Respondent filed its Memorial and Evidence in Rebuttal on 22 July 1993.

7. A Hearing was held in this Case on 30 June 1994.

II. FACTS AND CONTENTIONS

8. The Tribunal shall limit itself to those facts and contentions that are necessary for the disposition of the Case.

9. The Claimant was born in Iran to Iranian parents in either 1919 or 1925,¹ received his primary and secondary schooling in Iran and attended Tehran Medical School from 1939 until 1945. He then performed compulsory military service in the Iranian army from 1945 until 1947, after which he worked in hospitals and clinics belonging to the Anglo-Iranian Oil Company in the south of Iran until 1951. He claims to have "immigrated" to the United States in 1951 and to have been a permanent resident there ever since. According to the Claimant, his only tie to Iran was that of his "properties and . . . wealth", and his dominant and effective nationality at all relevant times was that of the United States.

10. The Claimant asserts that all of his advanced medical training and virtually all of his professional work experience has been at various hospitals in the United States, where he specialized in general surgery and thoracic and cardiovascular surgery. Between 1952 and 1975 he claims to have completed internships, fellowships and surgical residencies at a number of hospitals in the States of Massachusetts, New York, Utah, West Virginia, Illinois and New Jersey. He has submitted certificates or letters confirming his professional involvement with: the New York Polyclinic Medical School and Hospital; the Mount Vernon Hospital in New York; the Brockton Hospital in Massachusetts; the St. Michael's Medical Center in Newark, New Jersey; the St. Elizabeth Hospital in Elizabeth, New Jersey; the Newark Beth Israel Medical Center in New Jersey; and the St. James Hospital in Newark, New Jersey. The Claimant was licensed to practice medicine and surgery in New Jersey in July 1968, was certified by the American Board of Surgery in November 1971, and is also licensed to practice medicine and surgery in New York State.

¹ There is some lack of clarity in this regard. The Claimant's Iranian birth certificate and his American certificate of naturalization place his date of birth at 1919. However, in 1973 he applied successfully to an Iranian court to have his birth certificate "corrected" to read 1925. The corrected date, however, is hard to reconcile with certain other events in the Claimant's life, such as his attending medical school from 1939.

While in the United States, he obtained a certificate of professional proficiency in English from the University of the State of New York in 1961 and also became a Member of the American Medical Association, as evidenced by his submission of a copy of his membership card for 1972. In addition, he obtained a driver's license from the State of New Jersey, a copy of which was submitted into evidence.

11. On 18 April 1962 the Claimant married Alba Eileen Guzzo, an American national by birth, as evidenced by an extract from the office of the Registrar of Vital Statistics of the State of New Jersey. The Claimant was naturalized as an American citizen on 12 October 1971, as evidenced by his Certificate of Naturalization.

12. The Claimant contends that he returned to Iran only three times after his departure in 1951. The first visit was allegedly a three-month holiday in 1969, during which time he stayed primarily with his brother and sister. The second and third visits occurred from March 1975 until approximately June 1976, and approximately August 1976 until 21 April 1977, respectively. During these latter two periods, the Claimant took up a position at the University of Isfahan as an Assistant Professor in general surgery, allegedly at the invitation of officials from the University. The Claimant contends that this post was temporary, and that his permanent residence remained the United States. During both of these latter sojourns in Iran, his wife Alba Khatami remained behind in the United States. Between June and August 1976, the Claimant returned to his residence in New Jersey. In November 1976 the Claimant's employment with the University of Isfahan ended, and after obtaining an exit visa from Iran the Claimant returned to the United States in April 1977.

13. The Claimant has shown that he possessed American passports issued on 20 July 1976, 31 December 1982 and 26 April 1990. However, he also possessed Iranian passports issued on 14 May 1967, 16 May 1974, 22 June 1979 and 6 June 1990. The

Claimant used his Iranian passports for travel to and from Iran, allegedly on the instructions of officials from the Iranian Embassy in the United States. According to the Claimant, these officials advised him that because he had been born in Iran, he was obliged to use an Iranian passport in order to enter Iran.

14. After his return to the United States from Iran in 1977, the Claimant worked at St. Francis Hospital in Pittsburgh, Pennsylvania, from May 1977 until May 1978. In July 1978 he was offered a Commission in the United States Army. He entered the United States Army on 24 July 1978 with the rank of Major, subsequently becoming a Lieutenant Colonel, and served as an Army surgeon until he was honorably discharged on 16 July 1982 as a result of health problems.

15. The Respondent, on the other hand, while conceding that the Claimant acquired American nationality in 1971, argues that he never lost his Iranian nationality, because he failed to renounce it in accordance with the procedures prescribed by Iranian law. The Respondent further contends that the dominant and effective nationality of the Claimant at all relevant times was that of Iran.

16. The Respondent disputes the Claimant's contention that he "immigrated" to the United States in 1951, noting that he has produced no formal documentary proof to that effect. It contends that the Claimant left Iran in 1951 merely to pursue further medical studies and to gain professional experience with the ultimate intention of returning to Iran. The Respondent alleges that the Claimant returned to Iran in approximately 1972 or 1973, intending to settle permanently there. In furtherance of this goal, the Respondent argues, the Claimant bought land in order to build a medical clinic in Isfahan; corrected the date of birth on his birth certificate and identity card in order to obtain a

permanent job at Isfahan University;² and opened bank accounts in Isfahan and Tehran. In support of the contention that the Claimant returned to Iran in about 1972, rather than in 1975 as he contends, the Respondent points to the failure of the Claimant to supply complete copies of his passports for those years, to the Deed for the properties purchased in Isfahan signed by the Claimant and dated 30 September 1972, and to the application form for a job at the University of Isfahan filled in by the Claimant in 1972. The Respondent points further to the extensive correspondence that the Claimant conducted with the Iranian Ministry of Science and Higher Education between 1969 and 1975 regarding the recognition in Iran of his American professional qualifications.

17. The Respondent contends that the ties of the Claimant to American society are weak. In this regard, the Respondent emphasizes the Claimant's own repeated expressions of loyalty to and love for Iran in letters to the then Shah, to officials of the Ministry of Science and Higher Education, and to the former Iranian Ambassador to the United States. Moreover, the Respondent contends that the Claimant's wife, Alba Khatami, acquired an Iranian passport and identity card. This latter allegation is freely admitted by the Claimant, who contends that this condition was "imposed" upon her by the Iranian Embassy. The Respondent further contends that the Claimant, while still married to his American spouse, contracted a second marriage to an Iranian woman on 19 August 1972 in Iran. Finally, the Respondent emphasizes that the Claimant did not obtain American citizenship until twenty years after his arrival in the United States.

18. Regarding the claims for compensation asserted by Dr. Khatami, the Tribunal notes that two of the claims set forth in the Statement of Claim -- that for air travel to Iran and other

² The Respondent contends that permanent academic staff at Isfahan University were obliged to retire at age 65, or in exceptional cases at age 70.

expenses allegedly incurred by the Claimant "to protect . . . [his] properties," and that for "Dower and Courtesy [sic] Rights" on behalf of his wife -- have not been pursued in the Claimant's subsequent pleadings or at the Hearing. Accordingly, the Tribunal regards those claims as having been abandoned.

19. The remaining claims are essentially four-fold. First, Dr. Khatami seeks compensation for the balances in several accounts in banks in Isfahan and Tehran, totaling approximately U.S.\$100,000.00. The Respondent denies liability on this claim and argues, inter alia, that the Claimant never made a proper demand for payment of the balances.³ Second, the Claimant seeks compensation, in the amount of U.S.\$6,200,000.00, for the alleged expropriation during the 1960s of land in Iran that he claims to have inherited from his family. The Respondent counters that the Claimant has not proven his ownership of the land and that, in any event, it was not expropriated. Third, Dr. Khatami claims compensation of U.S.\$3,800,000.00 for the alleged expropriation in 1980 or early 1981 of land that he purchased in Isfahan in 1972. The Respondent concedes that the property was taken by the Government of Iran but argues, inter alia, that the expropriation did not occur until 1984, well after the jurisdictional cut-off date under the Claims Settlement Declaration. Moreover, the Respondent maintains that monies were deposited in compensation for the taking and are available to Dr. Khatami. Finally, Dr. Khatami seeks compensation for the non-payment of salary and other benefits allegedly due to him as a result of his employment as an Assistant Professor at the University of Isfahan, in the amount of approximately U.S.\$60,000.00. The Respondent, among other defenses, asserts that the University paid the Claimant all monies that he was due.

³ See Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2, at 7 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 223 (holding that absent a timely demand for the balance in a bank account, there is no "claim" within the meaning of Article II, para. 1 of the Claims Settlement Declaration).

III. REASONS FOR THE AWARD

A. The Claimant's Nationality And The Relevant Period

20. In order to decide whether the Tribunal has jurisdiction over Dr. Khatami's claims, it is first necessary to determine whether Dr. Khatami was a citizen of Iran, a citizen of the United States, or a citizen of both Iran and the United States during the relevant period, i.e., from the time his claims arose until 19 January 1981, the date on which the Claims Settlement Declaration entered into force. According to the A18 decision, if the Claimant was a citizen of both Iran and the United States, the Tribunal must proceed to determine the Claimant's dominant and effective nationality during that period. See Case No. A18, 5 Iran-U.S. C.T.R. at 265.

21. It is undisputed that the Claimant is an Iranian national by birth. In addition, the Tribunal is satisfied that the Claimant was naturalized as a United States citizen on 12 October 1971, as evidenced by a photocopy of his Certificate of Naturalization No. 9354191. The Claimant also has produced a photocopy of the identifying pages of his American passport issued on 20 July 1976. There is no evidence in the record that the Claimant has relinquished or otherwise lost either his Iranian citizenship in accordance with Iranian law or his United States citizenship in accordance with United States law. Consequently, the Tribunal finds that from 12 October 1971 until 19 January 1981, the Claimant was a citizen of both Iran and the United States.

22. Before proceeding to examine the question of the Claimant's dominant and effective nationality, it is necessary to clarify the parameters of the relevant jurisdictional period. That task is complicated by the fact that there is some ambiguity in the pleadings regarding the dates on which several of Dr. Khatami's claims allegedly arose. It is clear, however, that his claim for compensation based upon the alleged expropriation of the property that he inherited from his family falls outside the

jurisdiction of the Tribunal. Dr. Khatami's pleadings indicate that this claim arose in or about 1963, and he confirmed that date during the Hearing. Because Dr. Khatami did not become a United States citizen until 1971, the claim has not been "owned continuously" by a United States national and therefore is not within the Tribunal's jurisdiction.⁴ As a result, that claim can be disregarded for purposes of determining the relevant period.

23. Dr. Khatami's remaining claims appear to have arisen no earlier than 1976. As best the Tribunal can determine, the claim involving the property Dr. Khatami purchased in Isfahan arose no earlier than 1980; his claims involving alleged deposits at various Iranian banks arose between 1977 and 1979; and his claim for salary and other benefits from Isfahan University arose in 1976, the year that his employment at the University ended. Consequently, the Tribunal concludes that the relevant period, for purposes of the inquiry into Dr. Khatami's dominant and effective nationality, is the period between 1976 and 19 January 1981.⁵

B. The Claimant's Dominant and Effective Nationality During the Relevant Period

24. In order to reach a conclusion as to the Claimant's dominant and effective nationality during the relevant period, the Tribunal must determine whether the Claimant had stronger ties with Iran or with the United States during that period. To this end, the Tribunal must consider all relevant factors, such as the Claimant's habitual residence, center of interests, family ties, participation in public life and other evidence of

⁴ See Claims Settlement Declaration, Art. VII, para. 2; Burton Marks et al. and The Islamic Republic of Iran, Interlocutory Award No. ITL 53-458-3, at 7-8 (26 June 1985), reprinted in 8 Iran-U.S. C.T.R. 290, 294.

⁵ Because of the particular circumstances upon which the Tribunal bases its conclusions on the issue of the Claimant's dominant and effective nationality, it is not necessary for the Tribunal to determine with precision the dates upon which these various claims arose.

attachment. See Case No. A18, 5 Iran-U.S. C.T.R. at 265. While the Tribunal's jurisdiction is dependent on the Claimant's dominant and effective nationality during the period between 1976 and 19 January 1981, the events and facts preceding that period remain relevant to the determination of the Claimant's dominant and effective nationality during that period. 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, 51-52. The ultimate aim of the inquiry in dual national cases is to determine whether, under the totality of the circumstances, the claimant had stronger allegiance and attachment during the relevant period to the United States or to Iran.

25. As noted above, the Claimant moved to the United States in 1951. His very long residence in the United States as an adult is a factor that suggests that by October 1971, when he acquired United States nationality, his life had become centered in the United States. Furthermore, after his initial medical training in Iran, virtually all of the Claimant's advanced professional qualifications and experience were acquired in various American hospitals. These factors suggest that, from 1951 until the early 1970s, the center of the Claimant's professional and personal life was the United States.

26. While the circumstances noted above are relevant to the determination of the Claimant's dominant and effective nationality, the Tribunal is primarily concerned with his national allegiance and attachment during the period from 1976 until 19 January 1981. With respect to that period, the Tribunal must take into consideration the Claimant's own utterances contained in letters written to the Shah of Iran and other Iranian officials. These statements, which appear in contemporaneous documents that the Claimant admits to having written, provide

particularly important evidence of the Claimant's national allegiance and attachment during the relevant period.⁶

27. The first contemporaneous document is a June 1978 letter that the Claimant wrote to Mr. Ardeshir Zahedi, the Iranian Ambassador to the United States at that time, complaining about the termination of his employment at the University of Isfahan. In this letter the Claimant, writing about Iran, asserts that his "loyalty to [his] country and [his] love for [his] fellow countrymen should be taken for granted."

28. In a similar letter dated June 1978 and addressed to the Shah of Iran, the Claimant states that he had returned to Iran to work at Isfahan University in the mid-1970s "out of the deep and burning love [he] felt for [his] dear country." He writes that the behavior of the University officials in terminating his employment was such that he "had no alternative other than [to] leav[e] [his] homeland and return[] to the United States out of despair and disappointment, instead of serving [his] country which [he] love[s] so much, and which [he] wanted so much to serve." In the same letter, the Claimant even more explicitly writes:

The purpose of submitting the present letter is to inform Your Majesty that this is how competent Iranians are prevented from returning to their beloved homeland and how those who at the expense of the dear nation of Iran educate abroad for years and gain knowledge and experience, are forced to permanently reside abroad.

In any event, if your devoted servant had the chance to be alive, I will reluctantly remain abroad only as long as it is necessary to recover emotionally, physically and financially, and then will return again after some time to my dear country, will kiss the soil of Iran, and

⁶ See Rana Nikpour and The Islamic Republic of Iran et al., Interlocutory Award No. ITL 81-336-1, para. 23 (18 Feb. 1993), reprinted in ___ Iran-U.S. C.T.R. ___, ___ (finding the Claimant to be a dominant and effective United States national based upon, inter alia, a "contemporaneous evidentiary document" in which she declared her intention to remain a resident of the United States).

pray for Your Majesty and the young Crown Prince as long as I live. (emphasis added).

The Claimant ends the letter "[w]ith sincerest prayers from your devoted servant."

29. At the Hearing, the Claimant attempted to explain these statements as being motivated by the customary deference afforded to a ruling monarch whom he regarded himself as morally obliged to respect. As discussed more fully below, the Tribunal finds that although the Claimant's explanation is facially credible, it is ultimately unpersuasive. Instead, the Tribunal regards these utterances by the Claimant as providing highly significant and contemporaneous insight into his subjective motivations and intentions. The sentiments expressed by the Claimant suggest that even after acquiring United States nationality and taking an oath of allegiance to the United States, he continued to have primary emotional ties to Iran; and, perhaps more importantly, his statements tend to prove that given the opportunity he would have returned to Iran and lived there permanently.

30. The Claimant's contemporaneous declarations of his subjective feelings about Iran are not in themselves dispositive on the issue of dominant and effective nationality during the relevant period. This is especially true in light of the facially credible explanation from the Claimant accounting for these statements. In such a situation, the Tribunal must examine both the contemporaneous written statements and the Claimant's subsequent explanation in light of his objective behavior during the relevant time frame in order to determine which set of statements more accurately reflects the Claimant's national allegiance and attachment.

31. In making this determination, the Tribunal finds three aspects of the Claimant's objective behavior during and immediately prior to the relevant period to be particularly revealing. The first is the Claimant's acceptance of a job as an Assistant Professor at the University of Isfahan from March 1975 until

November 1976. Although the Claimant alleges that this position was strictly temporary, the record suggests that the appointment of the Claimant occurred under a standard university employment contract, pursuant to which an employee would serve a two-year probationary period before becoming a permanent employee. The record indicates that the Claimant's employment was cut short by the University authorities against the wishes of the Claimant, as evidenced by his institution of complaint procedures before a board charged with hearing the employment-related complaints of government employees,⁷ as well as by letters of complaint written by the Claimant. Based upon these circumstances, it appears likely that the Claimant would have continued his employment at the University of Isfahan indefinitely beyond November 1976 had the University authorities not terminated his employment against his wishes.

32. Second, in 1972 (after he had acquired United States citizenship) the Claimant purchased two plots of land in Isfahan, Iran, as evidenced by the deed of transfer and tax clearance certificates for the properties in question and title deeds showing registration in the Claimant's name. The Claimant himself asserted in his written pleadings that he had planned "to invest 12 million dollars" to build a medical clinic on this land, and that the initial bank loan to finance the project had been approved. At the Hearing, the Claimant confirmed that he had in fact travelled to Iran in the early 1970s, that his intention in buying the aforementioned land had been to build a clinic, and that he had intended that it should be a home as well as a clinic. He claimed, however, that he had not intended to reside permanently in Iran, but rather to maintain a permanent residence in the United States and to "come and go" from the project in Iran. The Tribunal is not convinced by this explanation. The building of a medical clinic would have been a major project requiring financial and time commitments of Dr. Khatami that probably would have resulted in his spending

⁷ This was the Employment Complaints Examination Board of the State Administration and Employment Affairs Organization.

significant lengths of time in Iran, such that the permanence of his residence in the United States could be questioned. Furthermore, his purchase of land and securing of the initial financing on a U.S.\$12 million medical clinic, combined with his assumption of a faculty position at the University of Isfahan, strongly suggests that by 1976 the center of the Claimant's professional and economic interests had shifted back to Iran.

33. Finally, the Respondent has submitted documentation from the Ministry of Science and Higher Education in Iran consisting of correspondence conducted between the Ministry and the Claimant between 14 April 1969 and 12 July 1975 regarding his attempt to gain official recognition in Iran of the professional qualifications he had obtained in the United States. An Evaluation Certificate of Foreign Education was issued on 5 May 1969 recognizing the Claimant as a specialist in general surgery in Iran. However, the Claimant's attempt, and ultimate failure, to gain accreditation as a specialist in cardiovascular surgery continued until 1975, giving rise to an extended exchange of letters. It appears that these actions were directed toward gaining the necessary certificates to practice that specialty in Iran.

34. In particular, one letter from the Claimant to the Director General of the Secretariat of the Council for Evaluation of Foreign Academic Certificates seems to shed light on the possible aim of the Claimant in obtaining certification of his American qualifications and to reveal to some extent his general attitude toward his life in the United States. In this letter, dated July 1974, the Claimant complains about the decision of the Council not to recognize certain aspects of his American training toward the granting of a specialization in thoracic surgery. The letter states that this decision had prompted him to do an internship at Manitoba University in Canada, which was an "approved" place for such study, and laments that the Council's decision has "caused four years loss of my time." The Claimant then asks rhetorically: "Is this fair for the country [Iran] and young people?"; he goes on to request that the Council "write

[him] clearly about the exact problem to prevent the students studying abroad from wasting their time in slavery." These statements suggest that the Claimant was not professionally committed to practicing medicine in the United States, but rather, as the Respondent contends, that he viewed his professional activities in the United States as merely preparatory for practicing medicine in Iran. The statements are also consistent with the other evidence noted above regarding the Claimant's employment at the University of Isfahan and his plans to build a clinic in that city. Furthermore, the Tribunal is simply not convinced that the timing of the certification process (which extended from 1969 to 1975) or the lengths to which the Claimant went in attempting to obtain certification in thoracic and cardiovascular surgery -- including moving to Manitoba, Canada, for a one-year special internship -- are consistent with a decision merely to teach on a temporary basis at the University of Isfahan, as the Claimant contends.

35. The Tribunal must, of course, also weigh the Claimant's connections to the United States during the relevant period. In this regard, the Tribunal finds that the Claimant's proof of his ties to American society is less than convincing. The Tribunal considers it to be significant that although the Claimant submitted copious documentation detailing the professional and academic qualifications that he acquired in the United States, he submitted no noteworthy evidence showing his social integration into American society except for his marriage to an American-born woman in 1962.⁸ No additional details or evidence

⁸ Although this is usually a significant fact, the probative value of this marriage is somewhat lessened by the Claimant's marriage to an Iranian woman in 1972 -- during the course of his first marriage -- as evidenced by the Claimant's Iranian identity card issued on 15 April 1975, which contains the details of this second marriage. At the Hearing, the Claimant admitted to having entered into a second marriage with an Iranian woman but contended that the marriage ceremony had taken place at the instigation of his family and that the marriage was dissolved shortly after the ceremony.

For the same reason, the Tribunal attaches less significance than might otherwise be appropriate to the fact that the Claimant's first wife did not accompany him to Iran when he

of the Claimant's attachment to United States society have been provided, such as membership in clubs, societies, religious, civic or other institutions, or participation in public life. Furthermore, the quality of the English spoken and written by the Claimant is poor, as evidenced by written pleadings prepared by the Claimant without the assistance of a lawyer and as confirmed at the Hearing. The Tribunal concludes that the absence of evidence detailing the Claimant's social, civic or religious attachments to the United States constitutes a failure of proof that the Claimant immersed himself in American culture or integrated into American society to any significant extent.⁹

36. To be sure, the Claimant's service in the United States Army, which occurred during the last three years of the relevant jurisdictional period, is a highly significant fact pointing in favor of the Claimant's asserted status as a dominant and

accepted the position at the University of Isfahan. The significance of his first wife's failure to accompany him to Iran is further diminished by the explanation offered by the Claimant at the Hearing that she had decided not to accompany him because of her fear of travelling to Iran on an Iranian passport.

⁹ Cf. Zaman Azar Nourafchan and The Islamic Republic of Iran, Interlocutory Award No. ITL 75-412/415-3, para. 31 (15 Dec. 1989), reprinted in 23 Iran-U.S. C.T.R. 307, 314 (finding claimant to be a dominant and effective United States national where he was "fully integrated into American society" and "his residence, education, professional and business life as well as family and social life were concentrated in the United States"); Katrin Zohrabegian Abrahamian and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 74-377-3, para. 10 (1 Dec. 1989), reprinted in 23 Iran-U.S. C.T.R. 285, 287 (finding dominant and effective American nationality where claimant's "employment, financial obligations and family life [had become] centered in the United States"); Nahid (Danielpour) Hemmat and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 70-170-3, para. 19 (16 June 1989), reprinted in 22 Iran-U.S. C.T.R. 129, 134 (finding claimant's United States nationality to be dominant where she "was fully integrated into American society"); Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 25 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 55 ("Although the Claimant never wholly severed his cultural and sentimental ties with the country of his birth, as evidenced by his marriage and his visits to Iran, his conduct since the time he settled in the United States, in 1966, demonstrates that he fully and deliberately integrated into United States society.").

effective United States national. Under the particular circumstances of the present Case, however, the Tribunal concludes that Dr. Khatami's military service does not tip the balance on the nationality issue. As noted earlier, Dr. Khatami accepted a Commission as an Army surgeon shortly after his return to the United States following separation from his employment at the University of Isfahan. The Respondent suggests, and in light of the other circumstances noted above the Tribunal is inclined to agree, that Dr. Khatami's decision to become an Army surgeon seems to have been motivated less by feelings of allegiance to the United States than by necessity, *i.e.*, the need for suitable employment. Indeed, in view of the statements contained in the Claimant's June 1978 letter to the Shah, it may well be that his decision to work as an Army surgeon was part of a plan "to recover . . . financially, and then . . . return again after some time to my dear country" to carry out his private clinic project.

37. For the reasons discussed above, the Tribunal concludes that during the relevant period the Claimant's economic and social interests were centered in Iran and that, in all likelihood, he actively contemplated a permanent return to the country of his birth during that period. In this regard, the Tribunal attaches particular significance to the contemporaneous indications of the Claimant's subjective intentions contained in the letters he wrote to the Shah of Iran and other officials. The Tribunal finds that the Claimant's objective behavior prior to and during the relevant period -- in particular, his acceptance of a position at the University of Isfahan, his plans to build a multi-million dollar medical clinic on land that he purchased in Isfahan, and his persistent efforts to obtain recognition of his American professional qualifications in Iran -- suggests that the sentiments of allegiance and devotion expressed in his letters were heartfelt. Considered in tandem with the Claimant's failure to prove that he substantially integrated himself into American culture, this leads the Tribunal to conclude that the Claimant's service in the United States Army and his lengthy residence in the United States are outweighed as

indicia of dominant and effective nationality in the particular circumstances of this Case.

38. Accordingly, the Tribunal finds, based on all of the evidence before it, that the Claimant has not proven that his attachment to the United States during the period in question was dominant over his attachment to Iran. The Tribunal therefore concludes that during the relevant period the Claimant's dominant and effective nationality was not that of the United States, and that as a result the Claim of MORTEZA KHATAMI does not fall within the Tribunal's jurisdiction.

IV. AWARD

39. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

a) The Claim of the Claimant MORTEZA KHATAMI is dismissed for lack of jurisdiction under Article II, paragraph 1, and Article VII, paragraph 1, of the Claims Settlement Declaration.

b) Each Party shall bear its own costs of arbitration.

Dated, The Hague

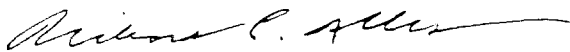
13 December 1994



Gaetano Arangio-Ruiz

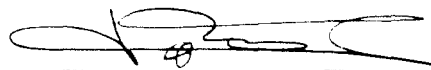
Chairman

Chamber Three



Richard C. Allison

In the Name of God



Mohsen Aghahosseini

Concurring only