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Case No. 182

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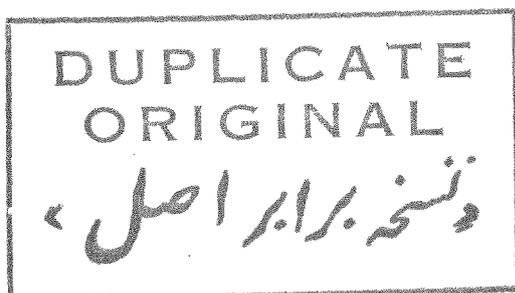
** CONCURRING OPINION of _____
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CASE NO. 182
CHAMBER TWO
AWARD NO. 532-182-2

PARVIZ KARIM-PANAHI,
Claimant,

and

THE GOVERNMENT OF THE
UNITED STATES OF AMERICA,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	26 JUN 1992
	تاریخ ۱۳۷۱ / ۴ / ۵

AWARD

Appearances:

For the Claimant:	Mr. Parviz Karim-Panahi, Claimant
For the Respondent:	Ms. Lucy F. Reed, Agent of the Government of the United States of America Mr. D. Stephen Mathias, Deputy Agent of the Government of the United States of America Mr. David L. Goldwyn, Attorney-Advisor, United States Department of State
Also present:	Mr. Ali H. Nobari, Agent of the Government of the Islamic Republic of Iran Mr. Bijan Izadi, Deputy Agent of the Government of the Islamic Republic of Iran Mr. J. Niaki, Adviser to the Agent of the Islamic Republic of Iran

I. INTRODUCTION

1. On 18 December 1981, the Claimant PARVIZ KARIM-PANAHI ("the Claimant") filed a Statement of Claim against THE GOVERNMENT OF THE UNITED STATES OF AMERICA ("the Respondent"), seeking the amount of U.S. \$500 million as compensation for "29 years of the crimes, illegal and covert operations and damages of the United States government against Claimant, his life and family life and innocent Iranian people." The Claimant subsequently stated that he was also claiming as a result of the United States' and its instrumentalities' "illegal, criminal and unlawful actions, contracts, transactions, expropriations and other measures which have affected [the Claimant's] and his family's property rights".

2. The Respondent filed its Statement of Defense on 3 May 1982. The Respondent argues, inter alia, that many of the Claimant's allegations are based on actions of the former Government of Iran allegedly taken against the Claimant and not on actions of the Respondent, and that none are based on the debts, contracts, expropriations or other measures affecting property rights which, under Article II, paragraph 1 of the Claims Settlement Declaration, are the prerequisite for the Tribunal's jurisdiction over the claim of a national of one state against the government of the other. Accordingly, the Respondent requests that the Tribunal dismiss the Claim for failure to state a claim coming within the Tribunal's jurisdiction. The Respondent also argues that the Claimant lacks standing to the extent he seeks to bring a claim on behalf of the Iranian people as a whole.

3. A Hearing in this Case was held on 3 February 1992. At the Hearing, the Claimant restated his claim and submitted additional documents. The Respondent raised no objection to the submission of these documents, but repeated its objection to the Tribunal's jurisdiction over the claim. The Respondent also argued, subsidiarily, that in case the Tribunal finds jurisdiction, the Claim should be dismissed for lack of proof.

4. On 21 February 1992, the Tribunal received a letter from the Claimant in which he requested that the Tribunal file the documents enclosed therewith, and take various other measures indicated in the letter. The Respondent commented on the Claimant's request in its response submitted on 24 March 1992. On 23 March 1992, the Claimant submitted a fax in which he requested the Tribunal to issue an Award, or at least an interim Award. By its Order of 7 April 1992, the Tribunal accepted for filing the Claimant's Bill of Costs, enclosed with his letter of 21 February 1992, and rejected the document entitled "Claimant's Brief, Part Two", also enclosed therewith, as an unauthorized post-Hearing submission. The Tribunal also assured the Claimant that it would issue an Award expeditiously and in due course.

II. REASONS FOR THE AWARD

5. As a preliminary matter, the Tribunal notes that the Respondent had no objection to the documents submitted by the Claimant at the Hearing. Consequently, the Tribunal finds those documents admissible.

6. As to the substance of the Claim, the Tribunal notes that this Case involves, in fact, a number of claims. For the sake of clarity, the Tribunal will group them into the following four categories:

- (a) Claim arising out of actions taken during and after the 1953 coup in Iran;
- (b) Claims arising out of actions and events subsequent to 19 January 1981;
- (c) Claim arising out of the alleged ransacking of the Claimant's New York City apartment by the police in 1971;
- (d) Claim arising out of the Claimant's detention at John F. Kennedy airport in New York City on 20 May 1980, retention of his passport and Alien Registration Card and out of his subsequent placement in federal custody and becoming subject to deportation orders.

A. Claim Arising out of Actions Taken During and After the 1953 Coup

7. In addition to his Claim on behalf of the Iranian people, the Claimant states in his Statement of Claim that he was arrested, imprisoned and beaten following the August of 1953 coup in Iran. According to the Claimant, the Government of the United States, in particular through the CIA, was directly involved in the implementation of the coup, and therefore also responsible for the injuries the Claimant allegedly sustained. The Claimant also asserts that he was further discriminated, harassed, imprisoned and beaten in various occasions after the 1953 coup, and that although those incidents took place in Iran, the Government of the United States was directly involved and therefore is responsible for those actions.

8. The Tribunal first notes that to the extent this part of the Claimant's Case implicates the former Iranian Government, the Claimant has submitted no Claim against Iran. Insofar as this part of the Claim is directed against the United States Government, the Tribunal finds it also inadmissible. Apart from generalized allegations of the United States involvement, the Claimant's statements remain so vague and devoid of any supporting evidence as to fail to state a cognizable claim or cause of action. Because the Claimant has not appropriately stated or adequately identified this Claim, the Tribunal need not reach the questions of the Claimant's standing to claim on behalf of the Iranian people, or whether or not it might have jurisdiction over this part of the Claim.

B. Claims Arising out of Actions and Events Subsequent to 19 January 1981

9. The Claimant brings a number of claims arising out of actions and events subsequent to 19 January 1981. These actions and events include the United States Government's alleged

eviction from his residence; deportation threats; allegations of harassment and discrimination; mistreatment by the Los Angeles Police; and a dispute over unpaid taxes with the Internal Revenue Service of the United States.

10. Under Article II, paragraph 1 of the Claims Settlement Declaration, the Tribunal has jurisdiction over claims which are "outstanding on the date of this Agreement," that is, 19 January 1981. As the Claimant does not even allege that the claims falling within this category were outstanding on the date of the Claims Settlement Declaration, there is no basis for the Tribunal's jurisdiction. Consequently, the Tribunal dismisses all of these claims for lack of jurisdiction.

C. Claim Arising out of the Alleged Ransacking of the Claimant's New York City Apartment by the Police in 1971

11. The Claimant alleges that he was arrested and imprisoned for one night and his documents stolen and destroyed by the police in New York City in 1971. The Claimant also asserts that during the same year the harassment continued and that his apartment was robbed and his documents and passport stolen by agents of the Iranian secret police, with the approval of the United States Government.

12. The Tribunal notes that, although the Claimant has identified the actions and events which gave rise to this part of his Case, he has failed to produce any evidence whatever to support his allegations. Consequently, this part of the Claim must be dismissed for failure of proof. In these circumstances the Tribunal need not decide any questions concerning its jurisdiction over the matter.

D. Claim Arising out of the Dispute Over the Claimant's Immigration Status

13. This part of the Claim arises out of the Claimant's detention on 20 May 1980, upon his entry to the United States, at John F. Kennedy airport in New York City and out of his subsequent placement in federal custody and becoming subject to deportation orders. The Tribunal notes that there is no dispute between the Parties as to the facts relating to this incident.

1. Facts

14. On 16 February 1972, the Claimant was granted the status of a lawful permanent resident in the United States, and he was issued an Alien Registration Receipt Card (Form I-151). Between 1972 and 1979, the Claimant frequently travelled between Iran and the United States. On 10 August 1979, the Claimant left the United States for Iran, where he remained until 7 May 1980, when the relevant U.S. federal regulations governing the admission of aliens were amended to the effect that they barred the readmission to the United States of returning lawful permanent resident aliens after travel to, in, or through Iran unless the Secretary of State had granted permission for such travel.

15. On 20 May 1980, the Claimant sought entry into the United States at John F. Kennedy airport by presenting the United States Immigration and Naturalization Service (hereinafter INS) with his Form I-151. The INS detained the Claimant and confiscated his passport and Form I-151, pending a hearing before an immigration judge. After the hearing, the immigration judge ruled that the Claimant was inadmissible because he had abandoned his permanent resident status in 1978 and because he had travelled in and through Iran after 7 May 1980, without the permission of the Secretary of State, thereby violating the federal regulation in question.

16. After the Claimant's appeal of the immigration judge's ruling had been rejected by the United States Board of

Immigration Appeals, the Claimant sought a writ of habeas corpus in the District Court for the Central District of California. The District Court granted the writ, rejecting both of the grounds relied upon by the INS for the purposes of the Claimant's exclusion. The District Court held that the amended regulations could not apply to the Claimant because he was already in Iran when the amendments went into effect, and that the immigration judge had erred in concluding that the Claimant did not intend to stay in the United States and that he had abandoned his permanent residence status. The United States Government appealed from the District Court judgment. It subsequently withdrew its appeal, which was then dismissed by the U.S. Court of Appeals. The Claimant's passport and Form I-151 were not returned to him until after the dismissal of the U.S. appeal on 26 August 1991. The Claimant seeks compensation for his lost income as a qualified civil engineer for the period during which his documents were held by the Respondent. The Claimant suggests that because of these measures the Respondent deprived him of proper employment and carrying on trade or engaging in commerce in the United States as well as from being able to freely travel abroad in pursuit of his business in violation of the provisions of Articles II(1) and IV(1) of the Treaty of Amity.

2. The Tribunal's Findings

17. Under Article II, paragraph 1 of the Claims Settlement Declaration the Tribunal has jurisdiction over claims arising "out of debts, contracts ..., expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the [General Declaration], and claims arising out of the actions of the United States in response to the conduct described in such paragraph [that is, the seizure of 52 United States nationals on 4 November 1979]." The Claimant suggests that the claim arising out of the immigration incident falls within the Tribunal's jurisdiction because the measures taken by the INS are "other measures affecting property rights." The Respondent disputes the Tribunal's jurisdiction, arguing that the Claimant was detained in application of regulations taken in

response to the seizure of the American Embassy in Tehran. According to the Respondent, the fact that the application of those regulations to the Claimant was subsequently determined to be erroneous does not change the fact that the action taken by the INS was "in response" to the seizure.

18. The Tribunal notes that the Claimant was detained, became subject to deportation orders, and his passport and Form I-151 were confiscated on two separate and independent grounds: first, on the ground that the Claimant had travelled in and through Iran after 7 May 1980; and second, on the ground that he had abandoned his permanent resident status. Consequently, the Tribunal finds that it has jurisdiction over the Claim, to the extent it arises out of the Claimant's detention on the ground that he had abandoned his permanent residence. In these circumstances the Tribunal need not consider whether it would also have jurisdiction on the ground that the Claimant's detention could not have been an action taken in response to the seizure of the American Embassy because it was subsequently determined to be erroneous.

19. On the merits, the Claimant suggests that he has suffered a property deprivation as a result of his detention and subsequent placement in federal custody and becoming subject to deportation orders. However, he has not only failed to specify the property rights allegedly affected, but also to produce any evidence of the suggested property deprivation. While the Claimant argues that his employment with Gruen Associates was terminated subsequent to his detention and placement in federal custody, there is no evidence before the Tribunal to support the assertion that the alleged termination of his employment was related to his immigration status; indeed, the Claimant has failed to submit any evidence that he was ever employed by Gruen. Moreover, as the Claimant concedes that his alleged employment with Gruen was terminated in June 1981, the Tribunal could not have jurisdiction over the Claim, to the extent it is based on the termination of his employment, even if it had been substantiated by evidence. Consequently, the Tribunal dismisses

this part of the Claim for lack of proof and, to the extent the Claimant concedes the Claim arises out of actions and events subsequent to 19 January 1981, for lack of jurisdiction.

III. AWARD

20. For the foregoing reasons,

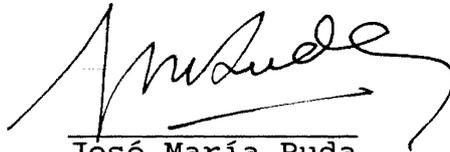
THE TRIBUNAL DETERMINES AS FOLLOWS:

The Claim of Parviz Karim-Panahi:

- (a) arising out of actions taken during and after the 1953 coup in Iran is dismissed for failure to state a cognizable claim;
- (b) arising out of actions and events which arose after 19 January 1981 is dismissed for lack of jurisdiction;
- (c) arising out of the alleged ransacking of the Claimant's New York City apartment by the police in 1971 is dismissed for lack of proof;
- (d) arising out of the Claimant's detention at John F. Kennedy airport on 20 May 1980, his placement in federal custody and his becoming subject to deportation orders is dismissed for lack of proof and, to the extent it arises out of actions and events subsequent to 19 January 1981, for lack of jurisdiction;

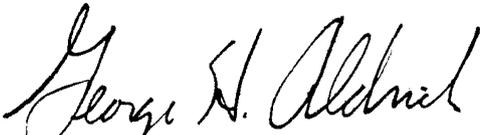
(e) Each Party shall bear its own costs of arbitration.

Dated, The Hague
26 June 1992



José María Ruda
Chairman
Chamber Two

In the Name of God



George H. Aldrich



Koorosh H. Ameli
Concurring in
paragraphs 20 (a),
(b), (c) and (e);
dissenting as to
paragraph 20 (d)
of the dispositif.
See Separate
Opinion.