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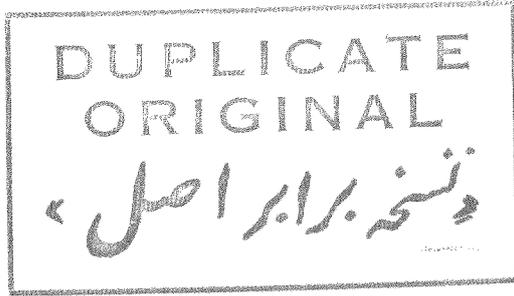
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعای ایران - ایالات متحدہ



CASE NO. 290

CHAMBER ONE

AWARD NO. 500-290-1

AFRASIAB ASSAD BAKHTIARI,

Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,

Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعای ایران - ایالات متحدہ
FILED	ثبت شد
DATE	27 DEC 1990
	تاریخ ۱۳۶۹ / ۱۰ / ۶

AWARD

I. PROCEEDINGS

1. On 15 January 1982 the Claimants AFRASIAB ASSAD BAKHTIARI and SHAHEEN TAJ BAKHTIARI ("the Claimants") filed a "Claim and Request for Arbitration" against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran"), seeking compensation for the loss of Afrasiab Assad Bakhtiari's employment rights and salary due under his contract of employment with the Development and Resources Corporation, a United States corporation, and the return of the Claimants' allegedly expropriated real and personal property in Iran or, alternatively, compensation in the amount of the value of that property. The Claims amount, in total, to U.S.\$2,233,395. The Claim to compensation for the loss of Afrasiab Assad Bakhtiari's employment rights and future salary allegedly arose in August 1979, and the Claim based on the expropriation of the Claimants' real and personal property allegedly arose in March 1980.

2. After having been granted three extensions, Iran filed its Statement of Defense on 7 February 1983, stating that the Claimants are nationals of Iran, that nationality is a domestic affair subject to the laws and regulations of Iran, and that the Claims are therefore beyond the Tribunal's jurisdiction under international law and the provisions of the Claims Settlement Declaration.

3. In its Order filed 6 July 1983 the Tribunal suspended further proceedings in this Case, pending the Full Tribunal's decision on the question of the Tribunal's jurisdiction in cases where the claimants were dual Iran-United States nationals. In accordance with its practice in similar cases, the Tribunal, citing the decision of the Full Tribunal in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, informed the Parties on 25 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 requested the Claimants to file by 24 September 1985 all evidence they wished the Tribunal to consider in determining their dominant and effective nationality. Likewise, the Tribunal requested Iran to file by 24 December 1985 all evidence it wished the Tribunal to consider on the issue of the Claimants' nationality.

4. The Claimants submitted their evidence on 20 September 1985. Iran was granted two extensions until 27 June 1985. The Tribunal in its Order of 7 July 1986 granted one further extension until 26 September 1986, stating that after that date a decision on jurisdiction would be taken on the basis of the evidence before it. The Tribunal denied Iran's request for a further extension in its Order of 21 January 1987, in view of the procedural history of the Case. The Tribunal indicated that it intended to commence deliberations regarding its jurisdiction on the basis of the evidence before it, unless both Parties informed it that ongoing settlement discussions would call for a postponement of the proceedings.

5. On 7 October 1987 Shaheen Taj Bakhtiari, one of the Claimants, filed a submission stating that she was an Iranian citizen and national and seeking to withdraw as a Claimant and to delete property allegedly owned by her alone from the Claim. On 4 December 1987 the Tribunal issued an Order in which it noted this submission and invited the other Claimant, Afrasiab Assad Bakhtiari, to clarify by 1 March 1988 whether he maintained any claim to the items Shaheen Taj Bakhtiari wished to delete from the Claim, and to submit any further comments he might have on the withdrawal. Likewise, the Tribunal invited Iran to file by the same date any comments it might have on the request to withdraw. Afrasiab Assad Bakhtiari filed his comments on 25 February 1988, stating that he had no objection to the withdrawal of Shaheen Taj Bakhtiari as a Claimant. However,

he disputed the deletion of one of the items, a plot of land in Karaj, listed in Schedule B to the Statement of Claim. Iran filed its comments on 1 March 1988, stating that it had no objection to the proposed withdrawal of the Claimant Shaheen Taj Bakhtiari. The Tribunal in its Order of 20 April 1988 noted the Parties' submissions and, pursuant to Article 34 of the Tribunal Rules, terminated the proceedings pertaining to the property of Shaheen Taj Bakhtiari, with the exception of the disputed plot of land in Karaj, and struck Shaheen Taj Bakhtiari as a Claimant in this Case.

6. On 4 August 1989 Iran filed a "Statement of Defence Concerning the Claimant's Nationality." The Tribunal then invited Afrasiab Assad Bakhtiari (hereinafter "the Claimant") to file by 4 November 1989 any evidence in rebuttal together with a brief, restricted to the issue of the Claimant's dominant and effective nationality. Likewise, the Tribunal invited Iran to file by 4 February 1990 any evidence together with a brief on the same issue. The Claimant filed his Rebuttal Memorial on 3 November 1989. After having been granted three extensions, Iran filed its Response on 31 August 1990.

7. On 20 November 1990 the Counsel for the Claimant filed a letter with the Tribunal, stating that the Claimant had died on 11 August 1990, and requesting the Tribunal to allow the Claimant until 15 January 1991 to submit a reply to Iran's Response. On 6 December 1990 the Respondent filed a submission, arguing that the Claimant's death raises issues of inheritance and the Counsel's powers to represent the Claimant or his heirs in this Case, and requesting the Tribunal to deny the Counsel's Request. The Tribunal in its Order of 12 December 1990 denied the Claimant's request, finding that the Tribunal's prior Orders had made clear that there would be no further briefs after Iran's Response, that this issue of the Case was fully briefed and that this stage of the proceedings was closed.

8. The Claimant stated that he is a citizen and national only of the United States and that his dominant and effective nationality at all relevant times has been that of the United States. Iran asserts that the Claimant's acquisition of United States citizenship was inconsistent with United States law, and that in any case he has failed to prove that his United States nationality was dominant and effective.

II. FACTS AND CONTENTIONS

9. The Claimant was born in Soltanabad, Arak, Iran, on 23 May 1918. His parents, Mohamad Gholi Assad Bakhtiari and Froug Zafar Bakhtiari, were both Iranian citizens. He graduated from the Alborz College, operated by the American Presbyterian Mission, in 1939, shortly before the College was taken over by the Government of Iran. Upon graduation, he worked for about a year for the British operated Imperial Bank of Iran. In 1941 he served for a period of time in the Iranian Army, in connection with his compulsory military service. The Claimant apparently was employed for a while with the U.K. Commercial Corporation, a British company, in Bushehr, south of Iran, whereafter he joined the railroad office of the United States Army in Tehran. He was employed there until 1943, assisting United States officers in running the railroad in Iran and transporting goods across Iran to the Soviet Union.

10. On 28 October 1943 the Claimant received an immigration visa from the United States Embassy in Tehran. He left Iran on 19 December 1943 and arrived in New York on 20 January 1944. After his arrival he attended English language classes at New York University for one semester, and then transferred to Kansas State College. He stated that he volunteered for military service and was inducted into the United States Army in November 1944. He was naturalized as a United States citizen by the Superior Court of Cumberland County in Fayetteville, North Carolina, on 17 January 1945,

receiving a Certificate of Naturalization No. 6093431. Towards the end of World War II the Claimant served in France and Germany, and was later assigned to serve under the United States Military Attaché, Col. W.T. Sexton, in the United States Embassy in Iran. He served in Iran for one year, until early 1947. He returned to the United States in 1947, and was posted for a time to the Pentagon, in Washington, D.C. He resigned from the United States Army on 20 June 1947, receiving an Honorable Discharge. He reenlisted the next day, but obtained a final discharge in November 1947.

11. The Claimant then attended classes at New York University, until he obtained employment with the Alaska Railroad Corporation, which was operated by the Department of the Interior of the United States Government. He worked with this Corporation, eventually as a Hotel Manager, from 1948 to 1951, when he took a leave of absence. In the fall of 1951 the Claimant enrolled in the University of San Francisco, and in 1952 he formally resigned from the Alaska Railroad Corporation. He then began working for the Standard Oil Company of California. In 1953 he married his first wife, Mildred Elaine Stoneson, a United States citizen and a resident of San Francisco. Two children were born to that marriage; Karl Eric on 25 November 1953, and David Assad on 3 September 1955. The Claimant worked for the Standard Oil Company until 1957, and he stated that he took a leave of absence at that time in order to travel to Iran, so as to obtain funds held for him by his uncle. He asserted that he travelled to Iran with a United States passport and an entry visa from the Iranian Consulate in San Francisco.

12. The Claimant stated that he was required to remain in Iran longer than he anticipated, and his employment with the Standard Oil Company was terminated in October 1957. While in Tehran he was introduced to the representatives of a United States company, the Development and Resources

Corporation. He was employed by the company in its office in Khorramshahr, Khuzestan province, and was assigned to serve as a Customs Liason Officer with the Khuzestan Water and Power Authority Development Service, a governmental entity affiliated to the Ministry of Water and Electricity. He worked for the Development and Resources Corporation until March 1979. He moved to the United States in August 1979, after a short period of employment with Levant Express Co. of Khorramshahr. Upon his arrival, he stayed in a home he owned with his wife at Baywood Circle, Los Angeles. He later put that home up for sale and moved into an apartment at Moraga Drive, Bel Air Plaza, Los Angeles. After his return to the United States he was unemployed for health reasons.

13. The Claimant stated that while he was living in Iran between 1957 and 1979 he travelled to the United States regularly and took his vacations there at least every two years, staying either in hotels or with his sister, and later in his own home in Los Angeles. The Claimant asserted that all his wages, less any draws of rials he took for personal expenses in Iran, were deposited by his employer in his bank account in New York City in United States dollars. He also stated that he paid taxes to the United States and voted in the presidential elections of 1952, 1956 and 1980. He owned, with his third wife, Shaheen Taj Bakhtiari, residential property in southern California between June 1976 and October 1980. The Claimant contended that, while in Iran, he consistently was treated as an American expatriate employee. He stated that he declined to accept an appointment as the shahrdar, or mayor, of Khorramshahr, because such employment would have been inconsistent with his status as a United States citizen. The Claimant stated that he has never directly owned real estate in Iran, although he did purchase land in Karaj in the name of Shaheen Taj Bakhtiari.

14. Iran has submitted evidence which establishes that the Claimant was issued an Iranian identity card, serial no. 921354, on 25 October 1960, replacing a previously issued identity card, no. 18465. Iran also asserts that the Claimant was issued an identity card, serial no. 764573/1, on 25 December 1963. The Claimant held an Iranian passport, no. 1815967, and participated in at least the Iranian General Election in 1975. Iran has submitted evidence which shows that the Claimant used his Iranian passport to release imported personal goods during the year 1977. Also, Iran has submitted various letters and telegrams in which the Claimant declared allegiance to the Shah of Iran.

15. The Claimant married twice during his residence in Iran. In 1963 he was married in Tehran to Lili Vazir Daftari, an Iranian national, in a Moslem ceremony. The marriage was witnessed by the United States Vice Consul, who also recorded the event for the United States Embassy in Iran. A son, Chahriar Assad, was born of this marriage on 22 August 1964. The marriage ended in divorce on 31 January 1971. The Claimant married again in 1973, and this marriage, with Shaheen Taj Bakhtiari, an Iranian national, ended in divorce on 27 May 1981, at a time when both lived in the United States. A daughter, Manijeh Assad, was born of this marriage on 27 November 1973. Two of the Claimant's four children, Karl Eric and David Assad, who were born of the Claimant's first marriage, were educated in the United States and have always resided there. Chahriar Assad, who was born in Iran of the Claimant's second marriage, is now a resident of the United States. The Claimant's daughter Manijeh Assad, who was born in the United States of the Claimant's third marriage, lived at times with the Claimant in California and the balance of the time in France, where she apparently pursues studies. The Claimant's sister, Jahan Assad, also lives permanently in the United States, while other members of the Claimant's family still live in Iran.

III. REASONS FOR THE AWARD

16. In order to determine whether the Claimant has standing before this Tribunal, the Tribunal must establish whether the Claimant was a citizen of Iran, of the United States, or of both Iran and the United States during the relevant period from the date the Claims arose to 19 January 1981, the date on which the Claims Settlement Declaration entered into force. If the Claimant was a citizen of both Iran and the United States, the Tribunal must determine the Claimant's dominant and effective nationality during that period. See Case No. A18, supra para. 3, 5 Iran-U.S. C.T.R. 251. The Tribunal notes that in this Case there are in fact two different Claims, and that the Claims allegedly arose on different dates; the claim to compensation for the loss of the Claimant's employment rights and future salary arose in August 1979 and the claim to compensation for the expropriation of his real and personal property arose in March 1980. In these circumstances, the Tribunal will assume that the relevant period extends from the earliest date specified by the Claimant, that is, from August 1979 to 19 January 1981.

17. The Claimant argued that since 17 January 1945 he was a citizen and national only of the United States and of no other country. He contended that his actions in becoming a citizen of the United States, as well as the fact that he served in the United States Army, show that he had renounced his former Iranian citizenship. However, the Tribunal notes that the Claimant was born in Iran and that his parents were Iranian citizens. Under Iranian law, these factors establish his Iranian citizenship. The Tribunal further notes that there is no evidence in the record that the Claimant ever relinquished his Iranian citizenship in accordance with the procedures provided by Iranian law. The Tribunal is also satisfied that the Claimant was naturalized as a United States citizen on 17 January 1945, as evidenced by a photocopy of his Certificate of Naturalization, no.

6093431. The Claimant also submitted photocopies of relevant pages of a United States passport issued on 13 February 1977. The Tribunal notes Iran's argument to the effect that the Claimant's acquisition of United States citizenship was fraudulent on the grounds that there was an error in his petition for naturalization as to the date of birth. However, there is no evidence in the record that the Claimant's naturalization was ever revoked by a competent United States court; nor is there any evidence in the record that the Claimant ever relinquished or otherwise lost his United States citizenship.¹ Consequently, the Tribunal holds that during the relevant period the Claimant was a citizen of both Iran and the United States.

18. Having found that during the relevant period the Claimant was a citizen of both Iran and the United States, the Tribunal proceeds to determine his dominant and effective nationality during that period. For that purpose, the Tribunal must establish the country with which the Claimant had stronger factual ties. 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 attachment. See Case No. A18, supra para. 3, p. 25, 5 Iran-U.S. C.T.R. 265. While the Tribunal's jurisdiction is dependent on the Claimant's dominant and effective nationality during the period between the date the Claims arose and 19 January 1981, events and facts preceding that period remain relevant to the determination of the Claimant's dominant and effective nationality during the period. See Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL

¹Cf. Reza Nemazee and Luz Belen Nemazee and The Islamic Republic of Iran, Partial Award No. 487-4-3, para. 21, fn. 3 (10 July 1990), reprinted in ___ Iran-U.S. C.T.R. ___.

68-193-3, para. 14 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

19. The Tribunal notes that between 1918 and 1981 the Claimant spent a total of forty-eight years in Iran and fourteen years in the United States. While the Claimant spent the years between 1947 and 1957 in the United States, he continuously resided in Iran during the years between 1957 and 1979, a period of twenty-two years. The evidence in the record indicates that at the end of that period, if not earlier, the Claimant was fully reintegrated into the Iranian life. Although the Claimant maintained some of his ties to the United States while he resided in Iran, the Tribunal finds that those ties gradually weakened during that period. The Tribunal notes, for instance, that while the Claimant's second marriage, which was his first marriage in Iran, was recorded in the United States Embassy in Tehran and also was witnessed by the United States Vice Consul, the Claimant's third marriage in 1973 apparently was not so recorded, nor witnessed by any United States representatives in Iran. The Tribunal also notes that while the Claimant stated that he declined to accept an appointment as mayor of Khorramshahr because such employment would have been inconsistent with his status as a United States citizen, this statement is of ambivalent value as evidence of his dominant and effective nationality. Even assuming that the Claimant's conduct reflected his wish to guard his status as a United States citizen, the proposed appointment indicates that he was so integrated into the community in which he lived that he was viewed as an Iranian national, capable of, and qualified for, public service. The Tribunal also takes into account a letter written by the Claimant to the Shah of Iran in May 1978 asking for the Shah's assistance in obtaining a certain position. In this letter the Claimant characterized himself as a subject of the Shah.

20. In these circumstances the Tribunal finds that after twenty-two years of continuous residence in Iran, the

country of his birth, and in light of the evidence of his reintegration into Iranian society, the Claimant's dominant and effective nationality during the relevant period was not that of the United States. In view of this evidence, the fact that the Claimant worked for a United States corporation does not outweigh his contacts to Iran. Consequently, the Tribunal determines that the Claims in this Case do not fall within the Tribunal's jurisdiction.

IV. AWARD

21. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

(a) The Claim of the Claimant AFRASIAB ASSAD BAKHTIARI 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,
27 December 1990

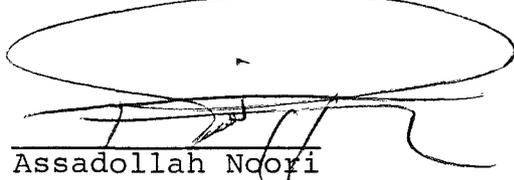


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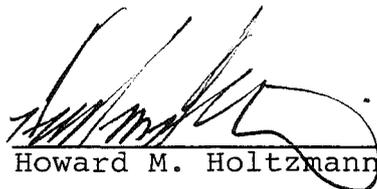
Chairman

Chamber One

In the Name of God



Assadollah Noori



Howard M. Holtzmann

I concur in the results of the present Award, but believe that in principle, the Tribunal does not have jurisdiction over the claims of Iranians with alleged dual United

States nationality, either according to the Claims Settlement Declaration or pursuant to the well-established principles of international law, particularly the principle of sovereign equality, which is rightfully the applicable principle with regard to the claims of dual nationals. The action taken by the majority of the members of the Full Tribunal in Case A18, in resorting to the principle of dominant and effective nationality, constitutes, so far as the Algiers Declarations are concerned a disregard for both the letter and the spirit of those Declarations. And insofar as the principles of international law are concerned, especially the principle of the sovereign equality of States, that action is tantamount to a disregard for the fundamental principles of international law. In my opinion, just as the Iranian arbitrators have stated in their Dissenting Opinion in Case A18, reprinted in 5 Iran-U.S. C.T.R. 275-337, the Tribunal should rule that it lacks jurisdiction, and discontinue the proceedings, wherever it is confronted with a situation where, and determines that, these claimants have Iranian nationality.