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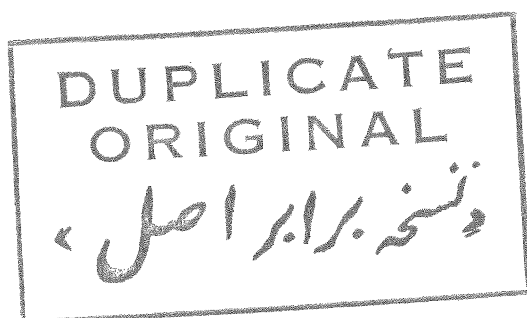
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CASE NO. 316

CHAMBER TWO

AWARD NO. ITL 73-316-2

EDGAR PROTIVA,

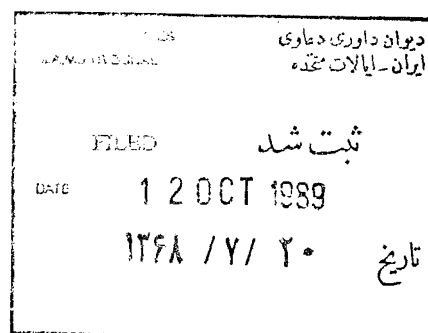
ERIC PROTIVA,

Claimants,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,

Respondent.

INTERLOCUTORY AWARD

I. THE PROCEEDINGS

1. The Claimants EDGAR PROTIVA and ERIC PROTIVA ("the Claimants") filed a Statement of Claim on 15 January 1982, against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent") and/or its various agents, jointly claiming the sum of U.S.\$1,525,000 plus interest, as compensation for the alleged expropriation by the Respondent of real property interests and bank deposits in Iran, which were allegedly inherited by the Claimants upon the death of their father. According to the Claimants their Claim arose sometime in July 1979.

2. The Respondent in its Statements of Defence, filed on 24 August 1982 and 30 November 1982, objected, inter alia, to the Claim on jurisdictional grounds arguing that the Claimants were exclusively Iranian nationals.

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

4. The Claimants submitted their evidence on 23 September 1985. The Respondent, on 3 January 1989, filed with the Tribunal its evidence and brief regarding the issue of the Claimants' nationality. On 13 February 1989, the Claimants filed with the Tribunal an unsolicited response to the latter filing and the Tribunal by its Order of 28 April

1989, gave the Respondent a final opportunity of rebuttal. The Respondent filed its rebuttal on 16 May 1989.

II. THE FACTS

5. One of the Claimants, Edgar Protiva, was born in Iran on 20 March 1941 to a Czechoslovakian father, who was later naturalized as an Iranian national, and a mother also of European origin. Edgar Protiva was apparently issued an Iranian Identity Card in Tehran, recording his birth (Identity Card No. 5680). After having attended the American Community School in Tehran, during his early years, Edgar Protiva asserts that he emigrated to the United States in September 1957.

6. In the United States, Edgar Protiva states that he initially attended the Menlo-Atherton High School in Menlo Park, California from 1957 to 1959. He then attended the University of California in Berkeley, California and San Jose State College in San Jose, California. After graduating from the latter College, he attended the University of Santa Clara and obtained a Masters Degree in Business Administration.

7. Edgar Protiva was naturalized as a citizen of the United States in the United States District Court for the Northern District of California on 15 January 1974. He alleges that he married an American citizen by birth in 1967 and has three children from that marriage. He claims that all three children were born in the United States, and that their births were never registered with an Iranian Consulate or Embassy.

8. Edgar Protiva further states that he presently lives and resides in the United States, has paid taxes, voted and registered for military service in that country since his naturalization as a United States citizen. He asserts that he has not resided in Iran since 1957 and only travelled to

Iran between 1975 and 1977 as an employee of the Union Bank. He also states that he used an Iranian passport to enter Iran, but that otherwise he had used his U.S. passport at all times.

9. The other Claimant, Eric Protiva, the older brother of Edgar Protiva, was born in Iran on 29 April 1936. He was allegedly issued Iranian Identity Card No. 61 in Tehran, recording his birth. Eric Protiva also had his early education in the American Community School in Tehran and emigrated to the United States in October 1952.

10. Eric Protiva attended the Campbell High School in San Jose, California from 1952 to 1954 and thereafter attended Stanford University for his undergraduate and graduate studies which he completed in 1963, when he obtained a Masters Degree in Business Administration.

11. Eric Protiva was naturalized as a citizen of the United States by the District Court for the Northern District of California on 24 April 1964. He alleges that he married an American citizen in 1964 and has three children by that marriage. He states that two of the children were registered with an Iranian Consulate in 1964, solely for the purpose of travel to Iran. The third child, however, has never been similarly registered. He asserts that his present residence is in the United States and adds that he has not resided in Iran since 1952. Eric Protiva further asserts that since his naturalization as a United States citizen he has paid taxes, voted and had registered for military service under the United States Selective Service Laws in 1964. He further claims that he is in possession of a U.S. passport and admits to having possessed an Iranian passport which he used only for the purposes of travel to Iran.

III. REASONS FOR THE AWARD

12. In accordance with the various criteria set forth by

the Full Tribunal in the A18 Decision (see paragraph 3, supra), the Tribunal must first determine on the basis of the evidence before it whether the two Claimants were, during the relevant period from the time their Claim arose until the date of the Claims Settlement Declaration, 19 January 1981, nationals of the United States, or of Iran, or of both countries.

13. Although different reasons have been adduced by the Parties, the Tribunal notes that there is no dispute as to the Iranian nationality of the Claimants. The Iranian Identification Cards issued to the Claimants further attest to their Iranian nationality. In view of the fact that the Claimants did not take the legal steps to repudiate their Iranian nationality, the Tribunal concludes that the Claimants were Iranian nationals during the relevant period under consideration.

14. The Tribunal notes in relation to evidence submitted by the Claimants to establish their U.S. nationality, copies of U.S. naturalization certificates issued to the Claimants, in 1974 and 1964 respectively, by the U.S. District Court for the Northern District of California. The Tribunal, therefore, concludes that the Claimants were, during the relevant period under consideration, also naturalized citizens of the United States.

15. Based on the conclusion that both Claimants were nationals of the United States as well as Iran during the relevant period under consideration, the Tribunal proceeds to determine their dominant and effective nationality for the purpose of its jurisdiction over their Claim. In order to examine whether the Claim meets the jurisdictional requirements under Article VII, paragraph 1, of the Claims Settlement Declaration, the Tribunal must, in view of the reasoning in the Full Tribunal's decision in Case No. A18, supra), satisfy itself that the dominant and effective nationality of the Claimants was that of the United States

during the relevant period between the time that they allege their Claim arose and 19 January 1981, which is the date of the Claims Settlement Declaration. In order to make such a determination, the Tribunal must consider the entire life of the Claimants, from birth, and all relevant factors which evidence the reality and the sincerity of the choice of national allegiance they claim to have made. These factors include Claimants' habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. See also Reza Said Malek and Islamic Republic of Iran, Award No. ITL 68-193-3 (23 June 1988).

16. The Tribunal notes in this regard the assertions made by the Respondent, inter alia, that the Claimants had at various times used their Iranian passports to enter and leave Iran. They also, at various times used local addresses in Iran. Furthermore, the Respondent has argued that the registration of the spouse and two children of one of the Claimants with an Iranian consulate in the United States establishes the exclusivity, if not the dominance, of that Claimant's Iranian nationality. In relation to the use of their Iranian passports by the Claimants to enter and leave Iran, the Tribunal has concluded in the past that Iranian law required the use of Iranian passports for Iranian nationals who had taken a foreign nationality, and who sought to enter or leave Iran. See Nasser Esphahanian and Bank Tejarat Award No. 31-157-2 (29 March 1983) reprinted in 2 Iran-U.S. C.T.R. 157; see also Ataollah Golpira and The Government of the Islamic Republic of Iran Award No. 31-211-2 (29 March 1983) reprinted in 2 Iran-U.S. C.T.R. 171. In the circumstances, the use of Iranian passports by the Claimants to enter and leave Iran does not establish the dominance of the Claimants' Iranian nationality. In reviewing the evidence as a whole, the Tribunal also concludes that the registration of some family members of one of the Claimants with an Iranian consulate in the United States is not sufficiently persuasive to establish the

exclusivity, nor the dominancy of the Iranian nationality of the Claimants.

17. On the other hand, the Tribunal notes that the activities described above by the Claimants in support of their U.S. nationality have on the whole been un rebutted. The Respondent has not adduced any evidence that would otherwise cast a reasonable doubt on the assertions of the Claimants in relation to the acquisition, use and maintenance of their U.S. nationality since their naturalization in 1964 and 1974, respectively. Nor is there any evidence that contradicts facts relating to the Claimants' conduct such as economic interests, social, political and family life including domicile, which support their dominant and effective U.S. nationality, particularly during the relevant period from the time their Claim arose until 19 January 1981. For these reasons, the Tribunal concludes that the Claimants' Claim satisfies the jurisdictional requirements of Article VII, paragraph 1, of the Claims Settlement Declaration.

18. This jurisdictional determination of the Claimants' dominant and effective U.S. nationality remains subject to the caveat added by the Full Tribunal in its decision in Case No. A18, supra, that "the other nationality may remain relevant to the merits of the Claim." The Tribunal will therefore in the further proceedings examine all circumstances of this Case also in light of this caveat, and will, for example, consider whether the Claimants used their Iranian nationality to secure benefits available under Iranian law exclusively to Iranian nationals or whether, in any other way, their conduct was such as to justify refusal of an award in their favor in the present Claim filed before the Tribunal.

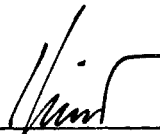
IV. THE INTERLOCUTORY AWARD

19. In accordance with its findings above,

THE TRIBUNAL DETERMINES AS FOLLOWS:

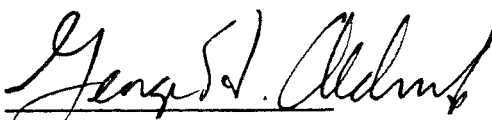
- (a) During the relevant period, the dominant and effective nationality of the Claimants, EDGAR PROTIVA and ERIC PROTIVA, was that of the United States.
- (b) All other jurisdictional issues are joined to the merits.

Dated, The Hague
12 October 1989




Robert Briner
Chairman

In the Name of God



George H. Aldrich



Seyed K. Khalilian
Dissenting
(My legal position in this Case coincides with that which the Iranian Arbitrators filed in their Dissenting Opinion in Case A-18. See Dissenting Opinion of the Iranian Arbitrators in Case A-18 Concerning the Jurisdiction of the Tribunal over Claims Presented by Dual Iranian - United States Nationals against the Government of Iran, 5 Iran-U.S. C.T.R. 275-337).