

ORIGINAL DOCUMENTS IN SAFE

Case No. 146

Date of filing: 20 June '96

** AWARD - Type of Award Final
 - Date of Award 20 June '96
27 pages in English — pages in Farsi

♦♦ DECISION - Date of Decision _____
 _____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____

- Date _____

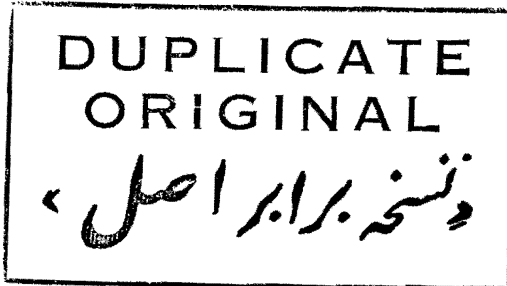
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 - Date _____
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CASE NO. 146

CHAMBER THREE

AWARD NO. 571-146-3

THOMAS K. KHOSRAVI,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دادرسی دعوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	20 JUN 1996
	تاریخ ۱۳۷۵ / ۳ / ۲۱

AWARD

Appearances

For the Claimant: Mr. Thomas K. Khosravi,
Claimant;
Mr. Frank M. Santora,
Attorney for the Claimant;
Ms. Elaine G. Santora,
Assistant to the Attorney for the
Claimant.

For the Respondent: Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran;
Dr. Ali Akbar Riyazi,
Mr. Fraidoon Momeni,
Legal Advisors to the Agent.

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

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I. INTRODUCTION

1. The Claimant in this Case is THOMAS K. KHOSRAVI, a dual national of Iran and the United States and allegedly of dominant and effective United States nationality (the "Claimant"). The Respondent is THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN (the "Respondent"). The Claimant alleges that he held 4% of the shares in Gostaresh Maskan, an Iranian company formed for the purpose of carrying out construction projects. He alleges that the Respondent expropriated his interest in Gostaresh Maskan and seeks damages in the amount of U.S.\$2,454,857.10, plus interest and costs.

2. The Respondent denies that the Claimant was a dominant and effective United States national, denies having expropriated Gostaresh Maskan, and alleges that the company in fact had a negative value. The Respondent filed a Counterclaim against the Claimant in respect of the alleged negative value of the company and allegedly unpaid taxes.

II. PROCEDURAL HISTORY

3. On 28 June 1985, the Tribunal ordered the Claimant to submit all evidence which he wished the Tribunal to consider in determining his nationality. Subsequently, on 4 April 1986, the Tribunal ordered the Respondent to submit all evidence that it wished the Tribunal to consider on the issue of the Claimant's nationality. On 3 December 1990, the Tribunal joined the jurisdictional aspects of the Case, including the question of nationality, to the merits of the Case, and ordered pleadings to be continued on this basis.

4. By submission filed on 7 June 1991, the Respondent requested that this Case be joined to Cases Nos. 44, 46 and 47 (Ebrahimi), on the ground that, apart from the question of the ownership of shares in Gostaresh Maskan, the merits aspects of those cases and the present Case involve identical facts and

arguments. By letter filed 16 July 1991, the Claimant objected to this request on the ground that the nationality issue in those cases had already been decided, so that they were considerably more advanced. The Claimant also contended that in any event his own Claim would only be worth pursuing further if the Ebrahimi claimants were successful on the merits. The Claimant stated that he agreed to be bound by any decision on the expropriation and valuation of Gostaresh Maskan that the Tribunal might make in Cases Nos. 44, 46 and 47 (Ebrahimi).

5. On 26 July 1991, the Tribunal denied the Respondent's request that this Case be joined with Cases Nos. 44, 46 and 47 (Ebrahimi), but ordered that the pleadings in this Case thenceforth be limited to the question of the nationality of the Claimant.

6. On 19 May 1995, after pleadings on the nationality of the Claimant had been completed, the Tribunal stated that it intended to decide the jurisdictional aspects of the Case before turning to consider the merits. The Tribunal also stated that "the pleadings are not of a nature to allow the Tribunal to make a decision on the dominant and effective nationality of the Claimant without a Hearing." A Hearing was held on the jurisdictional aspects of this Case on 16 June 1995.

III. JURISDICTION

7. Under Article II, paragraph 1, and Article VII, paragraph 2, of the Claims Settlement Declaration, the Tribunal has jurisdiction over "claims of nationals of the United States against Iran," provided that the claim was "owned continuously" by a United States national from the date the claim arose until 19 January 1981.¹ In Case No. A18, the Full Tribunal held that the Tribunal "has jurisdiction over claims against Iran by dual

¹ 19 January 1981 is the Tribunal's jurisdictional cut-off date.

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." Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265 ("Case No. A18").

8. The Claim arose on the date when the Respondent allegedly expropriated Gostaresh Maskan. In its Award in Cases Nos. 44, 46 and 47 (Ebrahimi), the Tribunal held that Gostaresh Maskan was expropriated by the Government of the Islamic Republic of Iran on 13 November 1979. Shahin Shaine Ebrahimi, et al. and Government of the Islamic Republic of Iran, Award No. 560-44/46/47-3, para. 79 (12 Oct. 1994) ("Ebrahimi"). As noted above (see para. 4, supra), the Claimant has stated that he considers himself bound by relevant findings of the Tribunal in Ebrahimi on the merits. At the Hearing in this Case, the Respondent also asserted that the Tribunal's finding in Ebrahimi on the date of expropriation of Gostaresh Maskan is binding in the present Case.

9. Both Parties have therefore indicated their acceptance of the Tribunal's finding in Ebrahimi that Gostaresh Maskan was expropriated by the Respondent on 13 November 1979. In the absence of any allegations of new facts which would place that finding in question, the Tribunal considers itself bound by it, and consequently determines that the present Claim arose on 13 November 1979.

10. Thus, to establish whether the Claimant has standing in the present Case, the Tribunal must first determine whether he was a national of the United States, Iran, or both the United States and Iran during the relevant period from 13 November 1979 until 19 January 1981. In accordance with its holding in Case No. A18, if the Tribunal concludes that the Claimant was a national of both the United States and Iran during the relevant period, it then must determine which nationality was dominant and effective during that period.

A. Dual Nationality

11. United States Certificate of Naturalization Number 9301597, submitted by the Claimant, establishes that he was naturalized as a United States citizen on 11 June 1970. There is no evidence that this citizenship was withdrawn or renounced after that date. Furthermore, the Claimant has submitted United States passports, issued on 24 May 1977 and 22 December 1982, which indicate that he retained United States citizenship throughout the whole of the relevant period.

12. It is not disputed by either Party that the Claimant was also a national of Iran by virtue of his birth in Iran to an Iranian father, and that he remained an Iranian national throughout the relevant period and to the present day.

13. The Tribunal thus concludes that the Claimant was a dual national of Iran and the United States during the relevant period.

B. Dominant and Effective Nationality

14. The Tribunal next must determine whether the Claimant's United States or Iranian nationality was dominant and effective during the relevant period. In making this determination, the Tribunal must consider "all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment." Case No. A18, reprinted in 5 Iran-U.S. C.T.R. at 265. All pertinent factors which cast light on the genuineness and extent of a claimant's connections to the States in question at the time the claim arose, and throughout the relevant period, are to be considered. See Reza Said Malek and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

1. Facts and Contentions

15. The Claimant was born in Iran on 4 April 1937.² He obtained Iranian nationality at birth, and he still holds that nationality (see para. 12, supra). The Claimant received his primary and secondary schooling in Iran. He alleged that at school he learned to read and write English, though he did not learn to speak it.

16. On 11 April 1959, at the age of 22, the Claimant went to the United States. At the time, his intention was simply to study there and to see what the country was like. He first lived in Washington, D.C. where he followed a three to six month course to improve his English. He then applied to go to college, and was admitted to Nebraska Junior College where he studied from 1960 to 1962. His family helped him financially for at least the first one and a half to two years of his time in the United States.

17. The Claimant's mother died in 1962 or 1963. The Claimant alleges that, after the death of his mother, he decided not to return to Iran but to establish himself in the United States and become a United States citizen. On 15 December 1963, the Claimant married an American, Betty Ann Talbot. At the Hearing, he alleged that Ms. Talbot was Christian, he Zoroastrian, and that they were married in an Episcopal Church in Virginia.

18. On completion of college in 1962, the Claimant allegedly applied for admission to University, and was eventually admitted to Howard University in Washington, D.C. The Claimant submitted an attestation from Howard University which states that he studied there for a Bachelor of Science in Civil Engineering from September 1970 to 12 May 1973. However, he states that he was

² His Iranian identity card indicates that he was born on 4 April 1937. His United States passport indicates that he was born on 5 April 1939. At the Hearing, he stated that he was in fact born in April 1937, and that the date had been misprinted in his United States citizenship documents.

already studying part time at Howard University by 1964 or 1965. In addition to his studies, the Claimant alleges that he held a range of jobs between 1959 and 1973, such as working in restaurants, on construction sites, in factories, or driving taxicabs. There is evidence that in 1965 he was employed by a restaurant.

19. The Claimant obtained a permanent United States residence permit in 1964 or 1965. In December 1965, his son Mark Roshun Khosravi was born in the United States. The Claimant states that neither his first wife nor his son speaks or understands Persian and that Mark Roshun, who is his only blood child, lives in the United States. The Claimant alleges that he remained in the United States after the birth of his son and continued to work and study there. He states that he first returned to Iran in 1966 or 1967, that the purpose of that trip was to see his father and to finalize his military service, and that he remained in Iran for only a month.

20. The Respondent contends that the Claimant returned to Iran after the birth of his son in 1965. In support of this allegation, the Respondent submits an identity card which indicates that the Claimant received it in person in Iran on 24 August 1968, and that he was domiciled in Tehran at that time. The Respondent also submits a document indicating that by 1964 the Claimant was probably exempted definitively from military service, so that it was not necessary for him to return to Iran for that reason after 1965.

21. In response, the Claimant submits three affidavits by friends of his stating that he was in the United States from 1960 until 1973. At the Hearing, the Claimant appeared to say that he had no clear recollection of the 1968 identity card submitted by the Respondent and that perhaps he had indeed received it in person. He indicated that his trip to Iran may have occurred in 1968 rather than 1966 or 1967. He further maintained that he did not understand the legal distinction between domicile and residence, and that he simply wrote down on the identity card the

address at which he was staying in Iran at the time. In respect of his military service, he stated that he had to obtain draft clearance documents in order to be allowed to leave Iran at the end of his stay there. This allegedly took some time because, in order to obtain these documents, he had to clarify the situation regarding his military service and find his original draft papers.

22. The Claimant and his wife purchased a house in the United States in March 1970. On 11 June 1970, the Claimant was naturalized as a United States citizen (see para. 11, supra). At the Hearing, the Claimant alleged that he had registered for the draft in the United States, and offered to submit his draft card to the Tribunal. The Tribunal noted the allegations of the Claimant on this matter, but decided that the document could not be submitted at that late stage.

23. According to the Claimant, he and his wife separated in 1971. The Claimant remained in the United States, studying for a Bachelor of Science degree in Civil Engineering at Howard University from September 1970 to May 1973. This is evidenced by the attestation referred to above from Howard University (see para. 18, supra). The Claimant and his wife were divorced in the United States in 1973, and their house was transferred into her name. The Claimant's wife obtained custody of their son, and the court's divorce order required the Claimant to pay support for his son. That he did so is confirmed by his ex-wife. He allegedly also paid his son's medical expenses, education and rent.

24. The Respondent alleges that, as the Claimant's payment of his son's education, rent and medical expenses merely constituted compliance with the divorce order of the court, it cannot be regarded as evidence of his close attachment to the United States.

25. In 1973, after the divorce and after completing his studies, the Claimant obtained a United States passport. He

alleges that he received an offer to participate in a restaurant venture in Spain with a woman whom he had met in Washington, D.C. (but whose name is not in the record). Before going to Spain to investigate the proposal in more detail, he allegedly received another offer from a Mr. Ali Ebrahimi. The Claimant alleged that he had met Mr. Ebrahimi in 1959 or 1960 when he was first in Washington, D.C., and that they had kept in touch from that time on. According to the Claimant, Mr. Ebrahimi had returned to Iran in 1965 or 1966, but sought the Claimant out in 1973 in Washington, D.C. in order to offer him a position of some responsibility in Gostareh Maskan, a company which Mr. Ebrahimi was then in the course of establishing. The Claimant alleges that Mr. Ebrahimi wanted him to work at the company because Mr. Ebrahimi trusted him and believed he would look after Mr. Ebrahimi's interests.

26. The Claimant alleges that he wanted to stay in the United States, particularly in order to be near his son, but that, since the United States economy was depressed at the time, it was difficult to find employment there. For this reason, he asserts, he agreed to consider both of the offers made to him, hoping to work outside the United States for a period and then return, having saved some money. He states that he said to both Mr. Ebrahimi and the woman that, were he to accept a position outside the United States, he would have to return there once or twice a year to see his son.

27. He allegedly first went to Spain to examine the proposed restaurant venture. As he was required to invest some of his own money in it, which investment he considered to be risky, and as he did not speak Spanish, he decided not to accept it.

28. He then travelled from Spain to Iran to examine Mr. Ebrahimi's proposition. Mr. Ebrahimi allegedly offered him a position as site manager, a salary, shares, and a position on the Board of Directors. The Claimant asserts that he told Mr. Ebrahimi that, were he to accept, he would only stay a certain period of time and then leave, and that Mr. Ebrahimi promised

that, whenever the Claimant wanted to leave, he would buy him out. The Claimant alleges that it was understood that he would nevertheless stay at least long enough to establish two job sites. Eventually, having seen the situation in Iran and being happy with Mr. Ebrahimi's offer, he accepted it.

29. From his United States income tax returns, it would appear that the Claimant resided in Iran from at least July 1973 to May 1979. Gostaresh Maskan was founded in Iran in November 1973. The Claimant was registered as a founder, shareholder and officeholder. He held 4% of the stock. From 1973 until early 1979, the Claimant worked for Gostaresh Maskan as site manager for two construction sites in Iran, and lived on site or in rental housing paid for by the company.

30. The first site he managed and lived at was very undeveloped and located in a remote area near a copper mine. The Claimant supervised between 2,000 and 5,000 employees. The Claimant asserts that at this site he was responsible for maintaining good relations with contractors and suppliers, who were often foreigners. He alleges that he had close contacts with Americans who represented General Electric Company, an important contractor, and that he had to accommodate, translate for, and entertain them. According to the Claimant, they were like his roommates or colleagues. He also allegedly socialized with the employees of the nearby copper mining company, which was an all-American organization. He contends that he did not socialize with the Iranian employees whom he supervised.

31. The Claimant was subsequently moved to a second construction site in or near the city of Esfahan. Allegedly, many of the workers at that site were Korean or Indian, and American consultants were again involved. He had a maid of Philippine origin, and the common language in his house was English.

32. In 1975, the Claimant married an Iranian woman, Rozi Saniee, who already had a son, Ali, and a daughter, Desiré. He

asserts that his new Iranian wife had been raised in England and Belgium and had spent most of her life in Europe.

33. In the same year, the Claimant allegedly made a down payment of the equivalent of several thousand dollars for an apartment in a high-rise building to be constructed in Tehran. The apartment was to have three bedrooms and quarters for a maid. The Claimant contends that this investment was made because the family was often passing through Tehran, and his new wife did not want to be a burden on her family whenever she was there. Apparently the building was never built. The Claimant allegedly made no further payments, but neither did he recover his initial down payment. He states that when he finally left Iran, he left a power of attorney with his in-laws to recover it. He allegedly did not purchase any other real estate in Iran.

34. It appears that the Claimant's father was a relatively wealthy man, owning a large amount of real estate in Iran as well as having business interests in Iran and India. The Claimant states that his father was "involved in his own life-style," so that he had little contact with him. According to the Claimant, his father allegedly disapproved of both of the Claimant's marriages because his wives were not Zoroastrian, and he did not attend either wedding. The Claimant asserts that there was nevertheless a lot of affection between him and his father, and that while the Claimant was in Iran, he would call his father and visit him when he had the chance, perhaps several times a year. He further confirms that, after leaving Iran, he made two trips to India to visit his father there, and his passport shows entries to India. The Claimant alleges that his father made proposals to him concerning his possible involvement in the family business or management of the family property, but asserts that he never accepted any of these proposals because of his desire to be independent and to return to the United States.

35. While in Iran, the Claimant had bank accounts there, and it appears that he kept most of his money in those accounts. He paid taxes in Iran. At the same time the Claimant held bank

accounts in the United States which generated between U.S.\$1,000-3,000 each year. He also completed United States income tax returns each year while in Iran.

36. From 1973 to 1978, the Claimant visited the United States to see his son once a year in most years, normally around Christmas, for periods of up to a month. According to affidavits from friends, he also visited various friends in the United States.

37. In 1976, the Claimant purchased a property in California, described on his tax return as "50% vacant land." In late 1977, the Claimant signed a contract to purchase a property in Westlake Village, California (described as a "house" on his 1979 tax return). Closing for the latter occurred on 23 March 1978. The Claimant paid U.S.\$164,000 for this house, of which about U.S.\$59,000 was his own money and the rest was borrowed. The Claimant gave the Westlake Village house as his United States address on his 1978 United States tax return. He alleges that it was intended to be a "home," and that, although he had planned to live there, he rented it out while completing his work in Iran.

38. In his United States tax returns for the period he was in Iran, on form 2555, reserved for "United States citizens and certain resident aliens," the Claimant listed no address in the United States, listed his address in Iran, and claimed an exemption from United States taxes for his Iranian income based on bona fide residence in Iran. On other parts of the returns, the Claimant sometimes listed various addresses in the United States, but these appear to be mailing addresses. On form 2555 of his United States tax return for the year 1978, the year in which the house in California was purchased, in response to the question "Did you maintain a home in the United States while residing abroad? If 'Yes', show . . . whether it was rented . . .," he replied "No."

39. The Claimant alleged that by 1977, after he had moved to the second job site, he decided that he had spent enough time in Iran and that he wanted to leave for the United States. He alleged that he then began discussing the sale of his interest in Gostaresh Maskan with Mr. Ebrahimi. Mr. Ebrahimi allegedly told him to wait until the second site was at least 75% complete, and he agreed. The Claimant contends that the house which he purchased in California in 1978 was bought in light of his discussions with Mr. Ebrahimi and his plan to return soon to the United States.

40. In January 1979, the Claimant and his wife were allegedly in the United States on holiday together with the Claimant's son by his first marriage. The Claimant alleges that, while they were there, he heard news reports about the appointment of Mr. Bakhtiar as Prime Minister of Iran, and decided to return to Iran immediately. The atmosphere at the building site was apparently very bleak, with no money available to pay the employees. It was not possible to continue with the work, and the Gostaresh Maskan Head Office instructed him to leave the site and move back to Tehran. Once there, the Claimant was allegedly afraid that someone would discover that he had American nationality, and that this could have had negative consequences. The fact that he was unable to work and his perception that he was in danger led him to decide to leave Iran.

41. The Claimant's wife allegedly left for Belgium in February or March, 1979. She allegedly took his United States passport with her because he feared that it might be confiscated if it was found, and she put it in a safe deposit box in Belgium.

42. The Claimant contends that his name had been put on a list by Revolutionary authorities because he was a shareholder and director of Gostaresh Maskan, and that he could not leave Iran until he was "cleared." He was informed that to obtain clearance, he had to resign from the Board of Directors of Gostaresh Maskan, advertising this in a particular newspaper, and then obtain a petition from two business partners supporting his

departure and providing some form of guarantee. He followed these steps. When he went with the necessary proof and documents to the authorities, he was allegedly given permission to leave Iran, but told that he had to do so within seventy two hours. He alleged that the time limit was communicated to him by a representative of the Revolutionary Guard in charge of passports at the airport, and that he does not know why this time limit was imposed. The Claimant left Iran in May 1979.

43. The Respondent denies that the Claimant had in fact intended to remain only temporarily in Iran, and contends that, but for the Revolution, he would not have left at all. The Respondent contends furthermore that the Claimant's departure from Iran in May 1979, when there was already considerable unrest in Iran, is not acceptable as evidence of the dominance of his United States nationality. The Respondent refers to the Tribunal's Award in Anita Perry-Rohani, et al. and Government of the Islamic Republic of Iran, et al., Award No. 427-831-3 (30 June 1989), reprinted in 22 Iran-U.S. C.T.R. 194, 198.

44. At the Hearing, the Claimant stated that, but for the Revolution, he would have stayed in Iran. He subsequently indicated that what he had meant to say was that he had always intended to leave Iran eventually and that, but for the Revolution, he would have remained in Iran for a short period longer and then left.

45. On leaving Iran, the Claimant went first to Sweden, where he allegedly had relatives with whom he could stay. He had arranged to wait there until his wife called him to tell him to come to Belgium. While in Sweden, on 22 May 1979, he extended his Iranian passport until 1981 at the Iranian Consulate in Stockholm. Then he went to Belgium, picked up his United States passport, and went to the United States. He entered the United States on 30 May 1979.

46. During the period from 1973 to 1979, the Claimant held United States and Iranian passports and an Iranian identity card.

He travelled on both passports. He alleges that he generally used the Iranian passport on all flights starting from, and ending in, Iran, and the United States passport for travel between other destinations. However, an examination of his United States passport issued in 1977 and his Iranian passport issued in 1978 indicates that on several occasions he used the Iranian passport for travel between cities outside Iran.

47. When the Claimant arrived in the United States in May 1979, a tenant was occupying his house in California. Allegedly for this reason, the Claimant lived elsewhere in California for a time. By the time his own house became available to him, the Claimant had decided to move to New Jersey. The Claimant suggests that his decision to move to New Jersey was, at least in part, inspired by his wish to be near his son. On 12 July 1979, he sold the house in Westlake Village, California, and on 29 December 1979, he also sold the "50% vacant land" in California. He allegedly bought a house, a delicatessen and a bar in New Jersey in late 1979 or early 1980. He asserts that, since returning to the United States, he has also been employed by the State Highway Department for the State of Virginia and is currently employed in private industry with a firm under government contract for the District of Columbia.

48. The Claimant's father died in 1982 or 1983. The Claimant stated at the Hearing that, while he did not know exactly what happened to his father's assets in Iran and elsewhere, he did not inherit anything, not even memorabilia. He said that he would not have accepted anything even if he had been entitled to. At the Hearing, he rhetorically asked "What would I do with it?" He said that, as he was not in Iran, he could not even simply sell any assets he might inherit, although he did not explain why. His stepbrothers allegedly inherited everything, one moving to India to take over the businesses there. He said "it's their's, let them enjoy it." He asserted that he does not have close contacts with his stepbrothers and does not even know what they are doing, although he said he might speak with them once a year, or more often if they need money from him.

49. The Respondent, in contrast, asserts that the Claimant inherited substantial property from his father, and that this constituted a strong pull on the Claimant to stay in Iran. The Respondent argues that, under Iranian law, children are entitled to a share in the assets of their parents unless they make a positive act of renunciation. The Respondent contends that, even before his father died, the Claimant must have known that he stood to inherit significant assets. Referring to the Tribunal's decision in Reza Nemazee, et al. and Islamic Republic of Iran, Partial Award No. 487-4-3 (10 July 1990), reprinted in 25 Iran-U.S. C.T.R. 153, 161, the Respondent asserts that the potential future financial assets of a person are relevant in determining which nationality is dominant.

50. The Claimant states that his wife is a permanent resident of the United States. The Claimant alleges that his stepchildren have Belgian nationality and permanent United States residence permits.

51. While recognizing that the Claimant's United States nationality has not been annulled, the Respondent argues that his departure from the United States in 1973 means that it no longer has effect as a valid nationality. The Respondent points out that "one of the important elements considered by the U.S. Immigration and Nationality Act for granting nationality is the intent to permanently reside in the United States." The Respondent argues that, under the terms of the United States Immigration and Nationality Act, if a person leaves the United States within five years of naturalization to take up permanent residency in another country, the competent United States authorities are required to annul the United States nationality of the person.³ The Respondent contends that the Claimant's

³ The Act provided, during the relevant period, that departure from the United States within five years of naturalization to take up permanent residence elsewhere "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." 8 U.S.C. §1451 (d).

departure from the United States in 1971 or 1973, within the specified five year period from his naturalization in 1970, showed that he did not in fact have the requisite intent permanently to reside in the United States. According to the Respondent, this means that the "Claimant's nationality lacks one of its essential elements" and so, even though it has not been annulled, it "has lost its effect as a valid nationality." The Respondent also asserts that the Claimant's departure from the United States shows that the Claimant did not acquire the nationality in good faith "but merely as a matter of expedience." This means, the Respondent contends, that the United States nationality of the Claimant "cannot be considered effective so that it could be given preference over his Iranian nationality."

2. Reasons for Decision

52. The Tribunal turns to examine the Respondent's arguments concerning the validity and effectiveness of the Claimant's United States nationality. The Tribunal first notes as a general point that the conferral and withdrawal of nationality is the prerogative of a State and rests within the domestic jurisdiction of that State. See Nottebohm Case (Liechtenstein v. Guatemala), 1955 I.C.J. 4, 20 (Second Phase Judgment of Apr. 6, 1955) (the "Nottebohm Case"). The Tribunal's clear practice is that "[i]n the absence of manifest ground to the contrary, the Tribunal shall not question the validity or effectiveness of an act of naturalization by a competent national authority." Fereydoon Ghaffari and Islamic Republic of Iran, Award No. 565-968-2, para. 18 (7 July 1995) ("Ghaffari"). See, e.g., Afrasaib Assad Bakhtiari and Government of the Islamic Republic of Iran, Award No. 500-290-1 (27 Dec. 1990), reprinted in 25 Iran-U.S. C.T.R. 289, 295-96; Albert Berookhim, et al. and Islamic Republic of Iran, et al., Award No. 499-269-1 (27 Dec. 1990), reprinted in 25 Iran-U.S. C.T.R. 278, 283-84; Reza Nemazee, et al. and Islamic Republic of Iran, Partial Award No. 487-4-3 (10 July 1990), reprinted in 25 Iran-U.S. C.T.R. 153, 157 n.5.

53. The Respondent's argument regarding the validity and effectiveness of the Claimant's United States nationality revolves principally around the interpretation of the relevant provision of the United States legislation on naturalization. It is worth quoting that provision in full:

If a person who shall have been naturalized shall, within five years 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 naturalization as having been obtained by concealment of a material fact or by willful misrepresentation and such revocation . . . 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 . . . 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 . . . 8 U.S.C. §1451(d)

54. The Claimant did leave the United States and return to his country of nativity within five years of his naturalization. The Respondent alleges that, because of this fact, the United States by virtue of its legislation regards the Claimant as not having had the requisite intention to reside permanently in the United States when he was naturalized, considers his certificate of naturalization as having been "obtained by concealment of a material fact or by willful misrepresentation," and requires its agents to revoke that naturalization. An international tribunal, according to the Respondent's argument, cannot regard such a nationality as effective as against another State.

55. This argument is based on a misconception of the effect of the United States provision and the role of an international

tribunal. While departure from the United States within five years of naturalization is considered a serious matter under the legislation, it is not the sole consideration set out therein. In addition, for a person's naturalization to be liable to be revoked, the provision requires that it be shown that the individual has taken up permanent residence in the country to which he goes. Moreover, there must be no countervailing evidence. Most importantly, the provision is not self-executing; the United States authorities must in fact act to revoke the nationality.

56. The Tribunal notes that, to its knowledge, the United States authorities have not seen fit to take steps to revoke the Claimant's United States nationality. The Tribunal is in no position to itself act on the basis of the legislative provision in question in the absence of any measures by the said authorities. Consequently, the Tribunal concludes that the legislative provision referred to by the Respondent does not establish sufficient grounds for regarding the Claimant's United States nationality as invalid for the purposes of international law.

57. The Respondent also asserts that the Claimant acquired his United States nationality "merely as a matter of expedience," and that his United States nationality cannot therefore be given preference over his Iranian nationality. Although the attribution of nationality falls within the domestic jurisdiction of a State, international law does impose limits on the validity of nationality in so far as it concerns the relations between States. This is reflected in the practice of earlier arbitration bodies. In the Flegenheimer Case, the Italian-United States Conciliation Commission stated that:

From the standpoint of merit, even certificates of nationality the content of which is proof under the municipal law of the issuing state, can be examined and, if the case warrants, rejected by international bodies rendering judgement under the Law of Nations, when these certificates are the result of fraud, or have been issued by favor in order to assure a

person diplomatic protection to which he would not be otherwise entitled, or when they are impaired by serious errors, or when they are inconsistent with the provisions of international treaties governing questions of nationality in matters of relationship with the alleged national State, or, finally, when they are contrary to the general principles of the Law of Nations on nationality which forbids, for instance, the compulsory naturalization of aliens.⁴

Reference may also be made to the Nottebohm Case. In the opinion of the International Court of Justice, the acquisition of Liechtenstein nationality by the individual in question, Mr. Nottebohm, lacked the requisite "genuineness" as it was done mainly in order to avoid the status of enemy alien rather than to reflect or establish a real connection with Liechtenstein.⁵ The Court concluded that his naturalization was not effective in international law to enable Liechtenstein to exercise diplomatic protection as against Guatemala.

58. In the present Case the Respondent has not convincingly explained why the acquisition of United States nationality by the Claimant should be considered as merely a matter of expedience. The Claimant had lived in the United States for twelve years prior to his naturalization as a United States citizen, and he remained there for a further two years; he had also purchased a house, been employed, married and had a child in the United States. Consequently, the Tribunal concludes that the Respondent's allegations do not raise sufficient grounds to

⁴ Flegenheimer Case (1958), 14 RIAA 327, 348-349. See also the Pinson Case (1928), 5 RIAA 327; the Polish Nationals in Danzig Case (1931), Ser. A/B, no. 44, p. 24.

⁵ Mr. Nottebohm, a German citizen, lived in Guatemala for some thirty years. Then, at the outbreak of the Second World War, he acquired Liechtenstein nationality, though continuing to reside in Guatemala for some time thereafter. At that stage, he had never lived in Liechtenstein, never purchased a house there, and the only person he knew well there appears to have been his brother. He was subsequently expelled by Guatemala, and Liechtenstein sought to bring a claim against Guatemala in exercise of diplomatic protection.

question the validity of the Claimant's United States nationality for the purposes of international law.

59. The Respondent also argues that, even if the Claimant's two nationalities are both valid and effective in international law, the United States legislation referred to above is relevant to the question as to which of the Claimant's two nationalities is dominant. The Respondent refers particularly to that legislation's provision that if a person who has been naturalized shall, within five years of the date of naturalization, go to another country and take up permanent residence there, this was to be regarded by United States authorities as prima facie evidence that the naturalized person lacked the intention to reside permanently in the United States at the time he applied for naturalization and, in certain circumstances, was to be sufficient to justify, subject to appropriate legal proceedings, the revocation of the naturalization (the text of the provision is set out in full at para. 53, supra). Such a person, the Respondent concludes, cannot be regarded as having made a genuine and sincere choice of allegiance to the United States so as to permit his United States nationality to be regarded as dominant.

60. The Tribunal has earlier noted that this provision sets out a number of conditions in addition to departure from the United States and that, even where all the conditions are fulfilled, it is not self-executing but rather is directed to United States authorities, which do not appear to have taken any action in this case. In such circumstances, the Tribunal is not bound or limited by the evidentiary provision set out in the legislation.⁶ In determining which of the Claimant's two nationalities was dominant, the Tribunal's task under international law remains to assess all the available factual evidence directly concerning the Claimant's behavior and

⁶ Were the United States provisions in question self-executing, or had the United States authorities acted on the basis of them, there would be no need to compare the Claimant's nationalities, as the United States nationality would have ceased to be valid.

attachments. The United States legislation relied upon by the Respondent simply is not directly relevant to this assessment. Accordingly, the Tribunal next turns to that assessment.

61. The Claimant spent the first twenty two years of his life in Iran with Iranian parents. There is no suggestion that during this period he lived anything but a normal Iranian life. The Claimant was thus clearly of dominant Iranian nationality when he went to the United States in 1959.

62. In the United States, the Claimant followed various courses of study, worked in a range of temporary jobs, married a United States national in 1963, obtained a permanent residency permit in 1964 or 1965, had a child in 1965, purchased, with his wife, a house in 1969, and was granted United States nationality in 1970. He left the United States in 1973.

63. The Respondent has alleged that the Claimant was in fact in Iran from 1965 until 1970. The Tribunal notes that a number of items of evidence tend to support the Claimant's allegations. Firstly, the papers relating to the divorce of the Claimant and his wife indicate that they remained together until 1971. Secondly, affidavits from friends of the Claimant support his statement that he was in the United States during the period in question. Thirdly, the Claimant and his wife purchased a home in the United States in March 1970. Finally, on 11 June 1970, the Claimant was naturalized as a United States citizen, which normally only occurs consequent to a period of residence in the United States. The Tribunal also notes that the notations on the Claimant's 1968 identity card are consistent with the Claimant's allegation that he visited Iran during that period.

64. In light of these considerations, the Tribunal concludes that the balance of the evidence indicates that the Claimant remained in the United States during the period from 1965 until 1970, except for a visit to Iran which probably occurred in 1968.

65. The fourteen years which the Claimant spent in the United States from 1959 until 1973, together with his family, professional and material ties to the country during that time, constitute a strong connection to the United States. However, in 1971, he separated from his wife, and they were formally divorced in 1973. Their house was transferred to her and their son remained with her. He left the United States and returned to Iran. He thus severed some of his principal connections with the United States, and returned to the country of his birth.

66. The Claimant remained in Iran from 1973 until May 1979. During those six years, he held an important position with a dynamic and growing company in Iran and owned shares in that company. The record suggests that those shares were his most significant investment at that time. He was also married to an Iranian national who had two children, and made a down payment on an apartment in Tehran. He visited his father, who was in Iran, on a regular basis. He held Iranian bank accounts and paid Iranian taxes.

67. The Tribunal notes that the Claimant chose to return to Iran in January 1979 from holiday. It is common knowledge that because of the hostile atmosphere, most Americans in Iran had left or were preparing to leave the country by January 1979. The fact that the Claimant chose to return to this environment, and to go to a large construction site where he was well known, suggests that he was not perceived as being particularly American at the time.

68. The Tribunal also notes that the Claimant's assertions regarding his exclusion from inheritance appear to exhibit some contradiction or confusion. However, as the matter arose for the first time at the Hearing, the Tribunal concludes that there is insufficient evidence relating to this matter for it to have a bearing on the determination of the Claimant's dominant nationality.

69. The Claimant did maintain some contacts with the United States while in Iran. He purchased an investment property there in 1976 and a house in 1978. He had bank accounts generating between \$1,000 and \$3,000 interest and filed United States tax returns. He visited the United States for a month most years to see his son and friends. However, these links were of substantially lesser significance than those which he maintained and developed with Iran during the same period.

70. The Claimant alleges that his departure from the United States in 1973 was dictated solely by economic circumstances, and that he had always intended to leave Iran after a limited period of time. He argues that his purchase of a house in California in 1978 is evidence in support of this intent.

71. The Tribunal is not satisfied that the Claimant has established that he intended only to stay in Iran for a limited period of time. In Iran, the Claimant was involved in a major enterprise and married to an Iranian woman. The Tribunal considers that it is not clear that the house in California was anything other than an investment property. It was located on the other side of the United States from his son, whom he allegedly wished to be near. In addition, at the same time that he purchased the house in California, the Claimant was involved in the purchase of an apartment in Tehran. There is no suggestion that he sought to sell his interest in that apartment while he was in Iran, and it appears that he only attempted to recover his down payment once he had been forced to leave the country. Finally, when the Claimant did return to the United States, he did not in fact live in the house in California, but sold it and allegedly purchased property in New Jersey. This was despite the fact that the house in California had been purchased only a little over a year earlier.

72. The Tribunal turns to consider the significance of the six months which the Claimant spent in the United States immediately prior to the expropriation of Gostaresh Maskan. The Tribunal notes that the record contains few precise and clear

allegations and very little evidence of the Claimant's activities after his return to the United States in 1979, particularly for the years 1979 and 1980. The Tribunal therefore is unable to find that the Claimant significantly strengthened his connection to the United States during the time he spent there from May until November 1979.

73. The Tribunal finally notes that the Claimant gave little evidence at the Hearing of assimilation into United States culture. Reasonable minds may differ over the Claimant's exact level of proficiency in English, and due regard must be had to the stress which a claimant is under during a Hearing. Nevertheless, the Tribunal notes that the Claimant did not seem to be proficient in English, despite his alleged use of it in his study, work and private life since 1959.

74. In light of the above considerations, the Tribunal concludes that at the beginning of the relevant period, 13 November 1979, the Claimant's connections to the United States did not outweigh his connections to Iran. The Tribunal thus determines that on the date the Claim arose the Claimant was not dominantly and effectively a United States national. Consequently, the Tribunal does not have jurisdiction over the Claim under Article II, paragraph 1, of the Claims Settlement Declaration.

IV. THE COUNTERCLAIM

75. Under Article II, paragraph 1, of the Claims Settlement Declaration, the Tribunal has jurisdiction over counterclaims brought by the Government of the Islamic Republic of Iran against claimants at the Tribunal. However, it is well established in the Tribunal's practice that jurisdiction over a counterclaim is dependent upon having jurisdiction over the main claim. See, e.g., Kaysons International Corporation and Government of the Islamic Republic of Iran, et al., Award No. 548-367-2, para. 76 (28 June 1993); Plicoflex, Inc. and Islamic Republic of Iran, et

al., Award No. 535-354-1, para. 20 (16 Oct. 1992); Reliance Group, Inc. and National Iranian Oil Company, et al., Award No. 15-90-2 (8 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 384, 385. As the Tribunal does not have jurisdiction over the Claim in the present Case, the Counterclaim accordingly also falls outside its jurisdiction.

V. AWARD

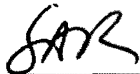
76. In view of the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a) The Claim of THOMAS K. KHOSRAVI against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is dismissed for lack of jurisdiction under Article II, paragraph 1, of the Claims Settlement Declaration.
- b) The Counterclaim of THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN against THOMAS K. KHOSRAVI is dismissed for lack of jurisdiction under Article II, paragraph 1, of the Claims Settlement Declaration.
- c) Each Party shall bear its own costs of arbitration.

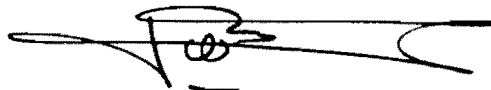
Dated, The Hague

20 June 1996



Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Mohsen Aghahosseini
Concurring



Richard C. Allison