

ORIGINAL DOCUMENTS IN SAFE

Case No. 952

952-46

Date of filing: 16 May '90

**** AWARD**

- Type of Award Final

- Date of Award 16 May '90

5 pages in English

5 pages in Farsi

**** DECISION** - Date of Decision _____

_____ pages in English

_____ pages in Farsi

**** CONCURRING OPINION** of _____

- Date _____

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**** SEPARATE OPINION** of _____

- Date _____

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**** DISSENTING OPINION** of _____

- Date _____

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**** OTHER; Nature of document:** _____

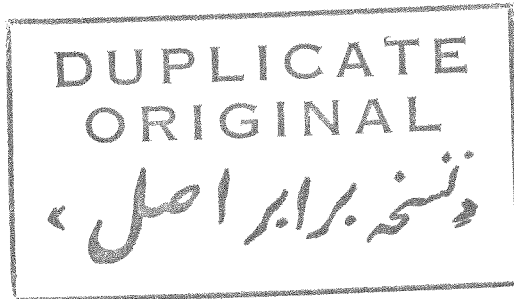
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داورى دعاوى ایران - ایالات متحدہ



CASE NO. 952

CHAMBER TWO

AWARD NO. 478-952-2

KAMBIZ HAKIM,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	16 MAY 1990
	تاریخ ۱۳۶۹ / ۲ / ۲۶

AWARD

I. THE PROCEEDINGS

1. On 19 January 1982, the Claimant KAMBIZ HAKIM ("the Claimant") filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent") and its agencies, instrumentalities and controlled entities, seeking compensation, amounting to a total of US\$17,066,666.08 plus interest at 17 percent and costs, for the alleged expropriation of the Claimant's shares in the Pars Manufacturing Company and Pars Machine Company and of real property located in Iran. According to the Claimant his Claim arose "on or about the date of April 1, 1979".

2. Following the Full Tribunal's decision in The Islamic Republic of Iran and The United States of America, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, the Tribunal, by its Order of 9 July 1985, requested the Claimant to file all documentary evidence he wished the Tribunal to consider in determining whether he was a national of the United States of America, or the Islamic Republic of Iran, or of both, and in case the Claimant was a national of both countries, evidence relating to the Claimant's dominant and effective nationality during the relevant period from the date the Claim arose until 19 January 1981, the date of the Claims Settlement Declaration. Likewise, the Tribunal ordered the Respondent to file all documentary evidence it wished the Tribunal to consider with regard to the issue of the Claimant's nationality.

3. The Claimant submitted his evidence on 20 December 1985. The Respondent on 30 August 1988 filed with the Tribunal its evidence and brief regarding the issue of the Claimant's nationality. The Parties filed their rebuttal memorials on this issue on 24 July 1989 and 28 September 1989, respectively.

II. REASONS FOR THE AWARD

4. In Case No. A18 (para. 2, supra), the Full Tribunal decided that it has jurisdiction over claims brought against Iran by Iran-United States nationals only when the "dominant and effective nationality" of the claimant is that of the United States "during the relevant period from the date the claim arose until 19 January 1981". These two dates determine the jurisdiction of the Tribunal, since Article VII, paragraph 2, of the Claims Settlement Declaration states, in part, "'[c]laims of Nationals' of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that state. . . ."

5. The Claimant has filed documentary evidence that he became a naturalized citizen of the United States on 9 April 1980. Therefore, any claim which arose before this date would be outside the jurisdiction of the Tribunal. In the Statement of Claim it is stated that the Claim arose on or about 1 April 1979.

6. The Claimant in his rebuttal memorial submitted on 24 July 1989 requested that the Tribunal grant "additional time to elaborate on [the date the Claim arose]." He stated that in due course he would prove that "the confiscation effectively took place between the dates of April 9, 1980 and January 19, 1981."

7. The Tribunal holds that the request to change the date the Claim allegedly arose, from April 1, 1979, as stated in the Statement of Claim, to more than one year thereafter, is not a clarification but an amendment to the Statement of Claim.

8. Amendments of claims are governed by Article 20 of the Tribunal Rules of Procedure, the relevant part of which reads: "During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances."

9. Pursuant to the Tribunal's decision in Case No. A18 (para. 2, supra) it was the clear duty of the Claimant to present the necessary evidence regarding his dominant and effective nationality during the relevant period. The Tribunal by its Order of 9 July 1985 requested that the Claimant submit such evidence. The request to amend, however, was made only in the Claimant's rebuttal filing in July 1989, five years after the Tribunal's decision in Case No. A18 and more than seven years after the filing of the Statement of Claim. The Tribunal finds that both the delay in requesting this amendment and the nature of the proposed amendment, which would render essentially meaningless the filings of both Parties since 1985 on the question of the nationality of the Claim and thus would prejudice the Respondent, justify the conclusion by the Tribunal that such an amendment would be inappropriate at this stage of the proceedings in light of Article 20 of the Tribunal Rules.

10. Consequently, the Tribunal lacks jurisdiction over this Claim, as the Claimant has failed to meet the requirements of Article VII, paragraph 2, of the Claims Settlement Declaration.

III. AWARD

11. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

(a) The Claim of KAMBIZ HAKIM against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is dismissed for lack of jurisdiction.

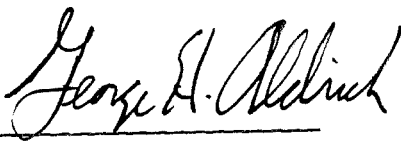
(b) Each Party shall bear its own costs of arbitration.

Dated, The Hague
16 May 1990



Robert Briner
Chairman
Chamber Two

In the Name of God



George H. Aldrich



Seyed K. Khalilian