

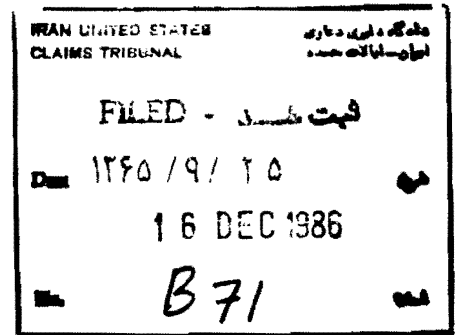
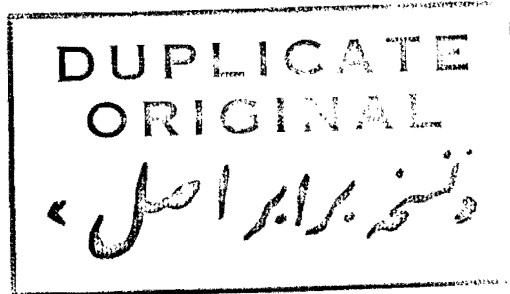
IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ

CASE NO. B71

CHAMBER TWO

AWARD NO. 277-B71-2



STATE UNIVERSITY OF NEW YORK COLLEGE
OF ENVIRONMENTAL SCIENCE AND FORESTRY,

Claimant,

and

MINISTRY OF CULTURE AND HIGHER EDUCATION,
and THE ISLAMIC REPUBLIC OF IRAN,

Respondents.

AWARD

I. INTRODUCTION AND PROCEDURAL HISTORY

1. The Claim is for \$1,437.65 in outstanding tuition and other fees allegedly owed by the MINISTRY OF CULTURE AND HIGHER EDUCATION ("the Respondent") in connection with the education in the United States of Mr. Yadolla Delaviz ("the student"), an Iranian national enrolled at STATE UNIVERSITY OF NEW YORK COLLEGE OF ENVIRONMENTAL SCIENCE AND FORESTRY ("the Claimant") during the 1978-79 academic year.

2. The Government of the United States of America originally presented this claim as a claim of less than \$250,000 pursuant to Article III, paragraph 3, of the Claims Settlement Declaration. In its Supplementary Statement of Claim filed on 19 February 1985, the United States requested re-classification of the Claim as an official claim under Article II, paragraph 2, of the Claims Settlement Declaration, stating that the Claimant is an entity controlled by a political subdivision of the United States, as defined in Article VII, paragraph 4, of the Claims Settlement Declaration. The Respondent argued in reply that the evidence submitted was inadequate to establish that the Claimant was controlled by a political subdivision of the United States and objected to re-classification of the Claim.

3. By Order of 3 April 1986, the Tribunal decided that the Claim must be regarded as an official claim and instructed the Co-Registrars to re-classify the Claim.¹ By Order of 19 June 1986, in response to objections raised by the Respondent, the Tribunal confirmed that its decision to re-classify the Claim was an administrative, not a judicial, decision.

¹The Case number was changed accordingly from Case No. 10012 to Case No. B71.

4. Following the exchange of written pleadings, the Tribunal informed the Parties in a Communication of 17 September 1986 that, in view of the nature of the Claim, it was prepared to decide the Claim on the basis of the documents submitted and would do so unless a request for a Hearing was filed by either Party by 13 October 1986. No such request for a Hearing was received by the Tribunal from either Party, and so it proceeds to its decision on the basis of the documents submitted.

II. JURISDICTION

A. The Parties

5. On the basis of the evidence submitted, the Tribunal is satisfied that the Claimant is a public educational institution created pursuant to an Act of the New York State Legislature, that the State of New York is a political subdivision of the United States, that the Claimant is financed by public funds, and that the Claimant's Board of Trustees consists of members appointed by the Governor of the State of New York, and certain elected public officials. Accordingly, the Tribunal decides that the Claimant is an entity controlled by a political subdivision of the "United States", as defined by Article VII, paragraph 4, of the Claims Settlement Declaration.

6. The Respondent, as a Ministry of the Government of the Islamic Republic of Iran, is clearly within the definition of "Iran" contained in Article VII, paragraph 3, of the Claims Settlement Declaration.

B. The Claim

7. Having determined above that the Claim is between the United States and Iran (as defined in the Claims Settlement Declaration), the remaining question is whether the Claim arises out of "contractual arrangements between [Iran and the United States] for the purchase and sale of goods and services" as required by Article II, paragraph 2, of the Claims Settlement Declaration.

8. The Claimant contends that the Claim consists of a debt incurred pursuant to a contract between it and the Respondent to provide educational services to a student designated by the Respondent. It argues that the Claim thus arises out of a contractual arrangement for the purchase and sale of services. Although educational instruction to a designated student can be the subject of a contractual arrangement for the purchase and sale of services, see Iowa State University of Science and Technology and Ministry of Culture and Higher Education and The Islamic Republic of Iran, Award No. 276-B72-2 (16 Dec. 86), for the reasons set forth below, the Tribunal is not satisfied that there existed in the present Case such a contractual arrangement between the Claimant and the Respondent.

III. REASONS FOR THE AWARD

9. The student applied in the Fall of 1977 for admittance to the graduate program in chemistry at the Claimant institution. As part of the application process, the student submitted a Confidential Statement of Finances indicating that the Jundi Shapur University in Iran would provide him with financial support for the anticipated period of study at the Claimant institution. This Statement was certified

by the Dean of the College of Sciences at the Jundi Shapur University. Based on this assurance of financial support, the Claimant contends that it granted admission to the student.

10. The student appeared the next year for registration at the Claimant institution bearing a letter from the Respondent dated 26 July 1978. The Claimant alleges that the letter is "the standard Scholarship Agreement form" which the Respondent had provided to the Claimant on behalf of other scholarship recipients, except that the letter presented by the student in this Case contained a "nonmaterial clerical error".

11. The scholarship letter reads in pertinent part:

TO WHOM IT MAY CONCERN:

This is to certify that: MR YADOLLAH DELAVIZ
who is studying in the field of POLYMER CHEMISTRY
at the University of SOUTHERN CALIFORNIA
has been awarded a Scholarship by the Ministry of
Science and Higher Education.

It states that the financial supports include, among other things, "... university tuition fees" and concludes stating:

The University concerned is requested to send the
account of the above named student to the Imperial
Iranian Embassy in Washington for payment.

12. The Claimant contends that despite the reference to the University of Southern California in the scholarship letter, as the student had previously applied to its college and as the Government of Iran, through the Jundi Shapur University, had certified that it would finance the student's studies at the College, the College Bursar had regarded the "obviously incorrect reference to the University of Southern California as a nonmaterial clerical error". The Claimant alleges that upon the student giving an assurance that a corrected

Scholarship Agreement would be provided, the College permitted him to complete registration and to enroll in classes so as not to disrupt his course of study.

13. The student attended classes in the Fall of 1978 and the Spring of 1979. The student's tuition and other fees for the Fall 1978 semester, in an amount of \$507.65 and fees for the Spring semester in an amount of \$930.00, had been billed to the Iranian Embassy, but remain unpaid. The Claimant contends that the Government of Iran, under the Scholarship Agreement, is obligated to pay this amount.

14. While the letter constitutes an offer to purchase educational services for the benefit of the student named therein, see Iowa State University of Science & Technology and Ministry of Culture and Higher Education and The Islamic Republic of Iran Award No. 276-B72-2 (16 Dec. 86), the question arises as to whether the Claimant was qualified to accept the offer. There is no reference in this letter to the Claimant; the letter does mention another institution, the University of Southern California. The evidence submitted indicates that the student was never enrolled at the University of Southern California prior to the date of this letter. Accordingly, the Tribunal does not consider that the reference to the University of Southern California should be understood as merely a description of the student. The reference could be construed as designating the place of intended study of the student, thus restricting the offer to the University of Southern California, or could be construed as a "nonmaterial clerical error", as contended by the Claimant.

15. The Tribunal notes that when this letter was presented by the student at the time of registration, the Claimant itself realized the ambiguity created by the reference to the University of Southern California. The Claimant's

Bursar had accordingly obtained an assurance from the student that a new letter either deleting the specification or designating the Claimant institution as the place of study would be provided. The student was however, permitted to enroll and to pursue his studies while awaiting the corrected documentation. Such corrected documentation was never obtained.

16. This reference to another university obviously made the offer ambiguous, as the Claimant recognized. In these circumstances and in the absence of any subsequent clarification or ratification by the Respondent, the Tribunal holds that the Claimant has failed to prove that it was qualified to accept the offer contained in the letter.

17. Nor could the assurance of financial support certified by the Jundi Shapur University in the Confidential Statement of Finance form the basis of a contractual arrangement for the purchase and sale of services between the Claimant and the Jundi Shapur University. By issuing such certificate the Jundi Shapur University only certified that such funds as indicated therein would be made available to the student. It did not thereby undertake any obligation for itself to pay the student's fees.

18. In these circumstances, the Tribunal is not satisfied that there existed a contractual arrangement between the Claimant and the Respondent for the purchase and sale of services. The Claim must therefore be dismissed for lack of jurisdiction.

IV. COSTS

19. Each Party shall bear its own costs of arbitration.

V. AWARD

20. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Claim of STATE UNIVERSITY OF NEW YORK COLLEGE OF ENVIRONMENTAL SCIENCE AND FORESTRY is hereby dismissed for lack of jurisdiction.

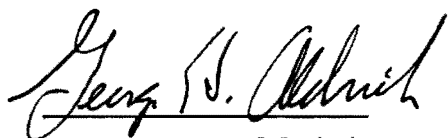
(b) Each Party shall bear its own costs of arbitration.

Dated, The Hague

16 December 1986

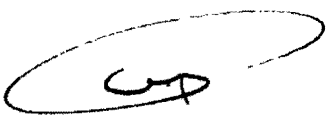


Robert Briner
Chairman



George H. Aldrich

In the name of God



Hamid Bahrami-Ahmadi
Concurring