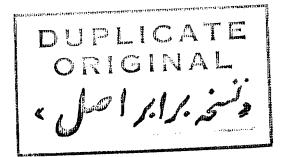
# 5/ دیوان داوری دعادی ایران - ایالات سخد،



Case No. 22/	Date of filing	g: 15 Jan 191
** AWARD - Type of Award	~'91	pages in Farsi
** <u>DECISION</u> - Date of Decision pages in English		pages in Farsi
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## **IRAN-UNITED STATES CLAIMS TRIBUNAL**



MOHSEN ASGARI NAZARI,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

# دیوان داوری دعاوی ایران - ایالات متحل

CASE NO. 221
CHAMBER ONE
AWARD NO. ITL 79-221-1

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INTERLOCUTORY AWARD

#### I. PROCEEDINGS

- On 11 January 1982 the Claimant MOHSEN ASGARI NAZARI ("the Claimant") filed a Statement of Claim against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran"). The Claimant submits five different claims, which amount, in total, to U.S.\$3,793,000. First, the Claimant seeks the recovery of U.S.\$1,150,000 as compensation for alleged refusal to repay the Claimant the funds he advanced Information behalf of Systems Iran ("ISIRAN"), corporation allegedly owned, controlled and operated by Iran, to Sherkat Khadamat Beinolmelali Mahat ("SKBM"), or International Services, an entity in which Claimant allegedly held a 34% interest, pursuant to a service contract between the two entities. This Claim arose on or about April 1978, when Iran allegedly stopped making payments under the service contract. Second, the Claimant seeks compensation for the expropriation of his 34% interest in SKBM, allegedly taken over by Iran on or about April This Claim amounts to U.S.\$1,513,000. Third, the Claimant seeks compensation for the alleged nationalization of his interest in Sherkat Pasandas Va Vam Maskan Pasargad, a savings and home loan corporation, and of the proceeds of his purchase of shares in the said company, which were deposited in the Bank Rahni Iran. Both Sherkat Pasandas Va Vam Maskan Pasargad and Bank Rahni Iran were allegedly nationalized in or about April of 1979. This Claim amounts to U.S.\$858,000. Fourth, the Claimant seeks compensation, in the amount of U.S.\$260,000, for the alleged taking of his apartment in Iran, including the contents thereof, on an unspecified date. Finally, the Claimant seeks the recovery of his salary and relocation benefits, allegedly due under a contract with SKBM. The Claim arose on or about April 1979, when Iran allegedly took over the assets and liabilities of SKBM. This last Claim amounts to U.S.\$12,000.
- 2. After having been granted three extensions, Iran filed its Statement of Defense on 3 February 1983. The Tribunal

in its Order of 6 July 1983 suspended further proceedings in this Case, pending the Full Tribunal's decision on the question of the Tribunal's jurisdiction in cases where the claimant was a dual Iran-United States national.

- 3. In accordance with its practice in similar cases, the Tribunal, citing the decision of the Full Tribunal in <u>Case No. Al8</u>, Decision No. DEC 32-Al8-FT (6 Apr. 1984), <u>reprinted in 5 Iran-U.S. C.T.R. 251</u>, 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 Claimant to file by 24 September 1985 all evidence he wished the Tribunal to consider in determining his 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 Claimant's nationality.
- The Claimant submitted the evidence on his nationality on 9 September 1985. Iran was granted two extensions until 24 June 1986. The Tribunal in its Order of 1 July 1986 granted one further extension until 24 September 1986, stating that after that date the Tribunal would make a decision regarding its jurisdiction 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. After Iran filed its "Comments and Evidence" on the Claimant's nationality on 17 August 1989, the Tribunal in its Order of 28 August 1989 invited the Claimant file by 17 November 1989 any evidence in rebuttal together with a brief, restricted to the issue of the

Claimant's nationality. The Tribunal also invited Iran to file by 17 February 1990 any evidence in rebuttal on the same issue. The Claimant filed its evidence on 23 October 1989. After having been granted three extensions, Iran filed its rebuttal evidence on 5 September 1990.

5. The Claimant contends that he is a citizen of the United States alone, and that his dominant and effective nationality is that of the United States. Iran asserts that the Claimant's United States nationality was not real because he returned to Iran within five years after his naturalization as a United States citizen, which was a ground for revocation of an order of naturalization under the United States law then in force, and that even assuming that the Claimant's United States nationality was real, he had failed to establish that his dominant and effective nationality during the relevant period was that of the United States.

### II. FACTS AND CONTENTIONS

The Claimant was born in Tehran, Iran, on 10 July 1940. His parents, Hossein and Khadijeh Asgari Nazari, were both The Claimant completed his primary and Iranian citizens. secondary education in Iran. In April of 1961, at the age of twenty, he moved to the United States. He states that in September of 1961 he enrolled in the Americanization School of Languages in Washington, D.C., where he studied English for one year. He states that from 1962 to 1963 he attended Eastern Kentucky State University, and that from January 1966 to July 1969 he pursued studies at the University of the District of Columbia, receiving a Bachelor of Science degree in mathematics and business administration. 1969 to 1973 he apparently was a part-time graduate student at the American University in Washington, D.C., studying business administration and computer sciences.

- The Claimant married his present wife Judy K. Nazari, a United States citizen, in 1965. Two children were born in the United States to this marriage: Sheerien on 3 April 1967, and Tina on 14 December 1973. The Claimant was naturalized as a United States citizen on 3 March 1971 by the United States District Court of the Eastern District of Virginia at Alexandria, Virginia. On 28 July Claimant purchased a home in Burke, Virginia. He states that in December 1977 he purchased a new home in Rockville, Maryland, where he moved with his family shortly afterwards. The Claimant resided in Rockville until July 1981, when he moved to San Diego, California.
- 8. In March 1972 the Claimant began working for Computer Sciences Corporation ("CSC"), a United States government contractor that handled projects for the United States Army, United States space research and development agencies, and the Pentagon. The Claimant states that from March 1972 to September 1973 he worked in the United States as a computer programmer and supply analyst, responsible for transferring top secret information from old computer systems to newly upgraded systems, and upgrading military logistical systems. The Claimant states that many of the projects in which he worked required a top secret security clearance.
- In September 1973 CSC was granted an Iranian contract 9. conversions provided for data of Iran Industries Corporation ("IACI") and ISIRAN, both alleged to be Iranian governmental entities. A CSC executive states that the contract stipulated that no Iranians be hired by CSC to work on the project. The Claimant contends that he subsequently denied an Iranian security clearance, allegedly because he was a United States citizen. October 1973 the Claimant was transferred to Iran to work on the JACI and ISIRAN projects. It appears that in 1975 the

Claimant was also working for, or assigned to, IACI. The Claimant alleges that, while working for CSC, he made four to five one-month business trips to the United States every year.

- The Claimant remained in the service of CSC until December 1975, when both the IACI and ISIRAN projects were In January of 1976 the Claimant became the completed. managing director of SKBM, a company which was formed in Tehran, Iran, and in which the Claimant was a minority shareholder. In 1976 SKPM purchased a commercial office The Claimant states that the first and second building. floors of the building were subsequently used for business purposes, but the third floor was converted into a residence to be used by the Claimant. The Claimant states that between 1976 and 1978 he periodically spent time in Iran. He states that he made his last visit to Iran in 1978, from late March to mid-July, when he returned to the United States.
- 11. The Claimant states that in 1978 and 1979 he invested in various properties in the United States. In August 1978 he invested in Northgate Woods, a land and development project in Maryland, eventually owning a 40% share in the project. In January 1979 he purchased a 42% interest in 422 Associates, an office building redevelopment in Baltimore, Maryland, and purchased a 20% interest in PMP-1, a housing redevelopment project in Washington, D.C. The Claimant contends that, while conducting business in Iran, a part of his salary was deposited in a bank account in the United States. The Claimant also contends that in every year since 1961 he has filed a United States tax return, that he has been a registered voter in the United States since 1971,

<sup>&</sup>lt;sup>1</sup>This has been disputed by the Claimant. However, Iran has produced evidence which indicates that there was such an employment or assignment.

that since 1972 he has voted in every major national and state election in which he was eligible to vote in the United States, and that he volunteered to work on a congressional campaign.

12. Iran has submitted evidence that establishes that the Claimant held an Iranian identity card, no. 418, and that he was issued an Iranian passport in 1975, 1977 and 1978. The Claimant's children also were issued Iranian identity cards by Iranian consular officers in the United States. The Claimant alleges that the identity cards were required because the Iranian Consulate in Washington, D.C. refused to grant his children visas on the ground that their father was an Iranian citizen.

#### III. REASONS FOR THE AWARD

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 his dominant and effective nationality during that period. The Tribunal notes that in this Case the dates on which the Claims arose remain partly unspecified by the Claimant. See supra para. In these circumstances the Tribunal will assume, for the purpose of determining the Claimant's dominant and effective nationality, that the relevant period extends from the earliest date specified by the Claimant, that is, April 1978, to 19 January 1981, and that the Claims for which the dates remain unspecified arose during that period. Hooshang and Catherine Etezadi and The Government of the Islamic Republic of Iran, Partial Award No. 497-319-1, para. 12 (15 Nov. 1990), reprinted in \_\_\_ Iran-U.S. C.T.R. \_\_\_.

- The Claimant asserts that he renounced his Iranian citizenship on 3 March 1971, when he became a naturalized United States citizen. However, the Tribunal notes that the Claimant was born in Iran to Iranian parents, and that under Article 976(2) of the Civil Code of Iran these factors establish his Iranian citizenship. There is no evidence in record, nor has the Claimant contended, Claimant has relinguished his Iranian citizenship accordance with Iranian law. The Tribunal is also satisfied that the Claimant was naturalized as a United States citizen 3 March 1971, as evidenced by a photocopy of Certificate of Naturalization, no. 9521515. The Tribunal also notes that the Claimant has produced a photocopy of relevant pages of his United States passport, issued on 29 There is no evidence in the record that the August 1973. Claimant's United States citizenship was ever revoked by a United States court or other authority competent under United States law. Consequently, the Tribunal finds that during the relevant period the Claimant was a citizen of both Iran and the United States.
- Having found that during the relevant period Claimant was a citizen both of Iran and of the United States, the Tribunal must now determine his dominant and effective nationality during that period. For that purpose, the Tribunal must determine 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, in public life, other evidence participation and of See Case No. A18, supra para. 3, p. 25, 5 attachment. Iran-U.S. C.T.R. 265. While the Tribunal's jurisdiction is dependent on the Claimant's dominant and nationality during the period between the date the Claims arose and 19 January 1981, events and facts preceding that period relevant to the determination remain Claimant's dominant and effective nationality during the period. See Reza Said Malek and The Government of the

<u>Islamic Republic of Iran, Interlocutory Award No. ITL</u> 68-193-3, para. 14 (23 June 1988), <u>reprinted in 19 Iran-U.S.</u> C.T.R. 48, 51.

- As noted above, the Claimant is a native Iranian citizen who spent his childhood and a part of his youth in Iran. In 1961, at the age of twenty, he moved to the United States, where he lived continuously until 1973. to 1975 the Claimant spent the bulk of the time in Iran, and from 1975 to 1978 he apparently divided his time between Iran and the United States. Consequently, between 1940 and 1981 the Claimant spent a total of twenty-three years in Iran and fifteen years in the United States; during the remaining three years' period, from 1975 to 1978, he lived periodically in both Iran and the United States. Tribunal also notes that the Claimant was naturalized as a United States citizen while still a young man, in 1971, that he has been married to a United States citizen since 1965, and that his two children were born, and have lived almost of their lives, in the United States. circumstances, the Tribunal is satisfied that the Claimant integrated into United States society bv Consequently, the pertinent issue in this Case becomes one of determining whether the Claimant's center of interests shifted from the United States to Iran during the period from 1973 to 1978. The Tribunal finds that, on balance, this is not the case.
- 17. The Tribunal notes that several factors indicate that even during the period the Claimant resided in Iran, his center of interests remained in the United States. First, the Claimant bought a home in the United States in 1972, just before he left for Iran, which indicates that he intended eventually to return to the United States. While the Claimant spent the bulk of his time from 1973 to 1975 in Iran, he was working for a United States corporation, in a job that required a top secret security clearance. Even though the Claimant subsequently began working for an

Iranian company, the evidence before the Tribunal indicates that he remained more closely attached to the United States than to Iran and that his interests in Iran were primarily of an economic, and not a social, nature. The Tribunal notes, for instance, that the Claimant's family resided mainly in the United States and, while in Iran, was treated as an American family by their friends, as evidenced by unrebutted affidavits. The Tribunal also notes that the Claimant voluntarily returned to the United States in July 1978, prior to the beginning of the Islamic Revolution.

- 18. In these circumstances the Tribunal finds, on the basis of the evidence before it, that during the relevant period the Claimant's ties to the United States outweighed his ties to Iran. Consequently, the Tribunal determines that during the relevant period the Claimant's dominant and effective nationality was that of the United States.<sup>2</sup>
- 19. The subsequent proceedings in this Case remain subject to the caveat of the Full Tribunal in <u>Case No. A18</u>, <u>supra</u> para. 3, p. 26, 5 Iran-U.S. C.T.R. 265-66, that "where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the Claimant, the other nationality may remain relevant to the merits of the claim."

#### IV. INTERLOCUTORY AWARD

20. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

The Tribunal recalls that the determination of the Claimant's dominant and effective nationality, which is a preliminary determination, cannot prejudge the remaining jurisdictional issues or the Tribunal's decision on the merits. See Hooshang and Catherine Etezadi, supra, para. 19.

- (a) The Claimant MOHSEN ASGARI NAZARI has standing before this Tribunal under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.
- (b) The remaining jurisdictional issues are joined to the merits.

Dated, The Hague, 15 January 1991

Bengt Broms

Chairman

Chamber One

In the Name of God

Assadollah Noory

In my opinion, the Tribunal does not, in principle, have jurisdiction over the claims of Iranians with dual United nationality, States according the Claims to Settlement Declaration to wellpursuant the established principles of particinternational law, ularly the principle of sovereign equality, which is rightfully the applicable principle with regard to the claims of The dual nationals. 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 principles of international law are concerned, especially the principle of sovereign equality States, that action is tantamount to a disregard for the fundamental principles international law. It is my opinion, just as the Iranian arbitrators have stated their Dissenting Opinion Al8, reprinted in Iran-U.S. C.T.R. 275-337, that the Tribunal should rule that lacks jurisdiction, discontinue the proceedings, wherever it is confronted with a situation where, and determines that, these claimants have Iranian nationality.

In addition to the above mentioned observations, I dissent from the majority's decision in this Case that the dominant and effective nationality of the Claimant is that of the United States. Although the Claimant allegedly lived the U.S. since 1961 and married an American citizen in 1965, he lived in the U.S. solely as an Iranian national until 1971. In other words, until 1971 his center of interests, and the sole country to which he was subject, was Iran. The Claimant has failed to fulfill his burden of proof that alleged diverse activities in economical, social and cultural fields in the U.S. society were sufficient to shift his center of interests from Iran to the U.S., and that his Iranian nationality was weakened in comparison with his U.S. nationality.

Even if we assume that the Claimant's center of interests had shifted from Iran to the U.S. by 1973, the majority's

finding that in the period after 1973, when the Claimant lived in Iran, his center of interests remained in United States is inconsistent with the Claimant's own allegations. The Claimant has asserted, inter alia, that while he was in Iran he possessed considerable movable immovable properties there, and was the Managing Director of a large Iranian Company. The Claimant's position as a managing director would require his full time presence in Iran. The fact of the matter is that the Claimant further tightened longstanding ties with his home country by returning to Iran in 1973 and living there with his family for more than five years.