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DUPLICATE
ORIGINAL
«نسخه برابر اصل»

CASE NO. 831

CHAMBER THREE

AWARD NO. 427-831-3

ANITA PERRY-ROHANI, on her own behalf and
on behalf of her children SUDABE and CYRUS,
Claimants,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC
OF IRAN and BONYAD MOSTAZAFAN,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	رأه نامه دآوری دعاوی ایران - ایالات متحده
ثبت شد - FILED	
Date	30 JUN 1989
	۱۳۶۸ / ۴ / ۹
	مارس

AWARD

I. THE PROCEEDINGS

1. On 19 January 1982 ANITA PERRY-ROHANI ("Anita Perry") on behalf of herself and her two children, SUDABE and CYRUS, collectively, the "Claimants," submitted a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran") and BONYAD MOSTAZAFAN (collectively, the "Respondents"), claiming U.S.\$7,177,231 for the alleged expropriation and confiscation in August 1979 of the Claimants' shares and interests in real and personal property in Iran. In its Order of 12 October 1982 the Tribunal requested the Respondents to file their Statements of Defense by 18 February 1983. No Statement of Defense has been submitted by the Respondents.

2. The Claimants contend that they are United States nationals.

3. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, Decision No. DEC 32-A18-FT, p. 25, reprinted in 5 Iran-U.S. C.T.R. 251, 265, in which it determined "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."

4. On 28 June 1985 the Tribunal issued an Order requesting the Claimants to file all written evidence they wished the Tribunal to consider in determining their dominant and effective nationalities. On 28 August 1985 the Claimants submitted their memorial and evidence. The Tribunal thereafter invited the Respondents to submit "all evidence that [they wish] the Tribunal to consider on the issue of Claimant[s'] nationality." After granting three extensions of the original deadline, the Tribunal on 6 February 1987 denied the Respondents' fourth request for extension and

informed the Parties that it intended to proceed with its deliberations on the issue of jurisdiction in this Case as soon as its schedule permitted on the basis of the evidence then before the Tribunal, pursuant to Article 28, paragraph 3, of the Tribunal Rules.

5. On 13 May 1988 Iran submitted a request that the Tribunal direct the Claimants to submit additional evidence including copies of their Iranian identity cards and passports, information concerning the places and dates of their residence in Iran, details of employment in Iran, details of their visits to Iran since their emigration, and details relating to any real or personal property owned in Iran.

6. On 14 February 1989 Iran submitted its memorial and evidence on the nationality of the Claimants. Iran asserts that, due to the fact that Anita Rohani and her children are the wife and children of an Iranian national, they are nationals of Iran under Iranian law and therefore cannot raise their Claims before this Tribunal. Iran also argues that the evidence supports the conclusion that the dominant and effective nationality of the Claimants was Iranian. Iran denies the Claimants' allegation that they moved to the United States in January 1979 and that they resided there during the relevant period.

II. FACTUAL BACKGROUND

7. Anita Perry was born on 12 July 1948 in Jamestown, New York in the United States. As evidenced by copies of her parents' passports issued in 1982, her father, John Perry, was born in Poona, India and her mother, Rose Anne Perry, was born in London, England and both are United States citizens. Anita Perry allegedly spent the first four years of her life abroad, presumably in Canada where her mother resided at that time and where Anita's brother, Kin John,

was born in 1950. By 1953 Anita Perry had returned to the United States where she attended elementary school. In 1960, at the age of twelve, Anita Perry moved to Switzerland where her father was allegedly employed with an American corporation. Between 1960 and 1967 she attended the International School in Geneva. Subsequently, she moved back to the United States where in 1974 she received her bachelor's degree from Vassar College.

8. On 26 October 1972 Anita Perry married Dariush Rohani, an Iranian national, in San Francisco, California. Their marriage was registered with the Iranian Consulate in San Francisco and Anita Perry obtained her Iranian identity card there on 28 February 1973. The couple spent the Summer of 1973 in Iran and in August 1974 they moved to Iran. Anita Perry alleges that, upon her arrival in Tehran, she registered with the United States Consulate and that on 23 September 1974 she was issued a United States passport. Subsequent to their arrival in Tehran, Anita Perry and her husband bought two apartments where they allegedly resided until 1978. In early 1975 the couple established in Tehran an engineering consulting firm, the Optimal Company. During the time Anita Perry maintained her residence in Iran, she also lived part of the time at her family's house in Switzerland.

9. Her children, Sudabe and Cyrus, were born in Geneva, Switzerland on 1 March 1975 and 9 November 1977, respectively. Sudabe and Cyrus were registered as United States citizens with the United States Consulate in Bern and Geneva, Switzerland, respectively. The reports of the children's birth in Switzerland issued by the United States Consulate evidence that the permanent address of the Rohani family was in Tehran, Iran. These reports also evidence that the children's parents maintained no address in the United States at that time. The children's births were also registered with the Iranian Consulate in Geneva where their father obtained for them Iranian birth registrations and

Iranian identity cards. As soon as the children were able to travel, they were brought home to Iran. They allegedly spent their infancy and early childhood partly in Iran and partly in Switzerland.

10. Anita Perry alleges that in August 1978 she and her family left Iran for a vacation in Greece and Switzerland. While they were in Switzerland they were advised not to return to Iran due to the political situation at that time. Anita Perry further alleges that as a result thereof she and her family went to the United States and that they have resided in California since January 1979.

III. THE TRIBUNAL'S DETERMINATION

11. The Tribunal has first to determine whether the Claimants were, from the time their Claims arose until 19 January 1981, nationals of the United States or of Iran or of both countries. If the Tribunal concludes that the Claimants hold both nationalities, it will have to determine which one is "dominant and effective" during the relevant time and, consequently, must prevail for purposes of jurisdiction over the present proceedings. Case No. A18, Decision No. DEC 32-A18-FT, p. 25 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265.

12. It is undisputed that Anita Perry, by virtue of her marriage to an Iranian national, is an Iranian national. As evidenced by their Iranian identity cards, her children were born to an Iranian father and are also Iranian nationals. At the same time, it is clear from the record that the Claimants are United States nationals. As evidenced by her birth certificate and her United States passport, Anita Perry was born in the United States and thus is a United States citizen. Additionally, as shown by certificates of their births abroad, her children are United States citizens

by virtue of their mother's nationality. The Claimants thus hold nationality of both Iran and the United States.

13. The pertinent issue thus becomes one of determining the dominant and effective nationality of the Claimants at the relevant time. In its decision in Case No. A18 the Tribunal noted that the determination of a claimant's dominant and effective nationality requires consideration of "all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment." Id. In this Chamber's decision in Reza Said Malek and Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), the Tribunal held that "the entire life of the Claimant, from birth, and all the factors which, during this span of time, evidence the reality and the sincerity of the choice of national allegiance he claims to have made, are relevant."

14. The Tribunal must now proceed to apply this standard to the facts before it. The record establishes that Anita Perry, except for her infancy, spent her early childhood in the United States and was educated in an American primary school. Then, however, at the age of twelve, her education in the United States was discontinued and she attended the International School in Geneva for seven years. Nothing in the record evidences that Anita Perry, while at the International School, participated in any cultural or social activities of the American community in Geneva or that she had any contacts with American expatriates there. Furthermore, nothing in the record implies that she visited her friends or relatives in the United States during her seven-year residence in Geneva. The Tribunal notes that these factors, considered together with Swiss-French, rather than American, surroundings in Geneva would normally contribute to a loosening of the cultural ties of a person with the country of his or her origin.

15. Although it can be assumed that in 1967 when she returned to the United States and commenced her higher education there she intended to reside permanently in the United States, she seems to have changed her mind upon her marriage to an Iranian national in 1972. She moved with him to Iran in 1974 and did not retain a residence in the United States.

16. This assumption is strengthened by various facts. In 1973 Anita Perry and her husband purchased two real properties in Tehran. Upon their arrival in Iran they purchased apartments in Tehran which they considered as their permanent residence. They were also engaged in establishing and developing business relationships in Iran. While asserting that during her residence in Iran she spent considerable time in Switzerland, Anita Perry does not recall any visits to the United States. She also does not mention that she cultivated or had any direct contacts with American nationals. Rather to the contrary, Anita Perry has chosen the company and friendship of the Iranian friends of her husband, as evidenced by the statements of Massoud Akhavi and Mustafa Abbassi. It can be concluded therefore that during these years in Iran her exposure to American society and culture was virtually nonexistent. Furthermore, her decision to move to the United States was made while on her summer vacation in Switzerland in 1978 and was instigated by the unstable situation in Iran rather than her national allegiance. Therefore, this decision does not outweigh the choice she once has made to center her life in Iran.

17. It is uncontested that Anita Perry acquired United States citizenship at birth and spent a few years of her life in the United States, including a short period of time immediately prior to the date her Claim is alleged to have arisen. The issue for the Tribunal to consider is whether these facts outweigh the lack of evidence before the Tribunal of Anita Perry's social and cultural ties with the

United States or at least of her exposure to American society during her residence abroad and in particular during the years preceding the relevant period of time so as to prove continuity of her allegiance to the country of her origin and so as to deem her United States nationality both effective and dominant in comparison to her Iranian nationality and ties. The Tribunal finds that they do not.

18. With respect to the Rohani children, the Tribunal notes that they were born during Anita Perry's temporary stay in Switzerland, while at that time she and her husband permanently resided in Iran. The Tribunal also notes that their parents registered their births at United States Consulates in Switzerland; it appears that the parents attached, however, no less weight to the registration of their births at the Iranian Consulate in Geneva. Furthermore, the immigration stamp in Cyrus's passport evidences that he arrived in the United States on 24 January 1979. Nothing evidences that Sudabe arrived in the United States before that date. At the time of their arrival in the United States, Cyrus was fourteen months old and Sudabe four years old; until then they had spent their entire lives outside of the United States. At the time their Claims are alleged to have arisen in late August 1979, Cyrus had resided in the United States for seven months and was still an infant, totally dependent on his mother. Even if Sudabe had resided in California since January 1979, and during the relevant period, as Anita Perry alleges, this period of residence in the United States for a child in the pre-school age is not sufficient to develop any substantial links to the American environment, so as to consider her dominant and effective nationality to be that of the United States. In view of the above and considering the Tribunal's findings concerning Anita Perry, the Tribunal finds that the children have failed to establish that their dominant and effective nationalities during the relevant period was that of the United States.

19. The Tribunal thus concludes that Anita Perry and her children have failed to establish that their dominant and effective nationalities during the relevant period are that of the United States.


IV. AWARD

20. In view of the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:


- a. The Claims of ANITA PERRY ROHANI and her children SUDABE and CYRUS ROHANI against THE ISLAMIC REPUBLIC OF IRAN and BONYAD MOSTAZAFAN are dismissed for lack of jurisdiction.
- b. Each Party shall bear its own costs of arbitration.

Dated, The Hague
30 June 1989




Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison
Dissenting Opinion



Parviz Ansari Moin