

831-40

ORIGINAL DOCUMENTS IN SAFE

Case No. 831

Date of filing: 30 June 1989

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\*\* CONCURRING OPINION of \_\_\_\_\_  
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\*\* DISSENTING OPINION of R.C. Allison  
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DUPLICATE  
ORIGINAL

تسخیر 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	دادگاه داوری دعاری ایران - ایالات متحده
ثبت شد - FILED	
Date	30 JUN 1989
	۱۳۶۸ / ۴ / ۹
	تاریخ

DISSENTING OPINION OF RICHARD C. ALLISON

The Tribunal's conclusion that Mrs. Perry-Rohani was not, during the relevant period, of dominant and effective United States nationality seems to me clearly wrong. Having reached that erroneous determination, the Tribunal then compounds the error by visiting it upon her children as well.

I.

The essential data concerning Mrs. Perry-Rohani, as reflected in her submissions and supporting evidence, are:

1. She was born in Jamestown, New York in 1948.
2. Her childhood was spent in the States of New York and Ohio, and she received her primary education there.
3. From 1960 to 1967, she attended the English speaking International School in Geneva, Switzerland, where her father was stationed in connection with his employment overseas by an American corporation.
4. She attended Vassar College in the State of New York where she received a B.A. degree.
5. She married an Iranian national in San Francisco, California in October 1972 (thereby becoming an Iranian national by operation of Iranian law) and took up residence in Mountain View, California. In 1973 her husband acquired permanent resident status in the United States.
6. In August 1974 she and her husband went to Iran to establish "a base of business operations in Iran while the Claimant lived part of the time at her [American] family home in Switzerland . . . ." She maintains that she "never intended to remain in Iran permanently." She and her husband acquired real estate and commercial interests in Tehran, a cotton farm and other agricultural lands, and set up a consulting firm with offices in Tehran.
7. During the period of her residence in Iran (1974-1978) she bore two children, Sudabe and Cyrus, in each case in Geneva, Switzerland. Each of their births was registered with the American Consulate in Geneva as a birth abroad of a citizen of the United States of America.
8. The family left Iran in August 1978 on a vacation trip, and, while outside the country, decided not to return because of political conditions in Iran. By January 1979 the family had become residents of California again.

9. In September 1979, Mr. Mansour Rohani, Mrs. Perry-Rohani's father-in-law and a former Minister of Agriculture in the government of the Shah, was executed, and the properties of his family members allegedly were confiscated by the Islamic Republic of Iran.
10. Mrs. Perry-Rohani and her husband resided in the United States from January 1979 through at least 19 January 1981.

From this summary it is obvious that in 1978 Mrs. Perry-Rohani was a person with deep roots, of birth, family and education, in the United States. During the mid-1970s, she also developed significant connections with Iran. However, whatever plans she may have had for engaging in business activities in that country were frustrated by the fundamental changes in Iran that resulted in her definitive departure in 1978 together with her husband and children.

Mrs. Perry-Rohani maintains, in effect, that her roots in Iran were relatively shallow, and so it appears. She was married in the United States, her children were born in Switzerland, the language of the family was English, and she spent substantial time outside Iran even during the period between August 1974 and August 1978 when she had business interests in Iran. After August 1978, having decided not to return to Iran, she and her husband once again took up residence in California where, as far as the record shows, they continue to reside. There is no reason to think that a native-born American citizen, educated in the United States and at an international school in Geneva, would require an extended (if any) period of cultural orientation upon her re-entry into United States society in January 1979. Nor is there any reason to doubt the sincerity of her commitment to United States nationality.

The Tribunal reaches its decision by placing inordinate emphasis upon the four years of Mrs. Perry-Rohani's life spent partly in Iran. It gives little importance to the fact that for the first twenty-four years of her life Anita Perry-Rohani had a single nationality, that of the United States, and that during most of those twenty-four years she lived with her parents, who also were American nationals. The Tribunal's most glaring error, however, is the manner in which it treats -- or, more accurately, fails to treat -- the period from September 1979 to 19 January 1981 that, under the Full Tribunal's decision in Case No. A18,<sup>1</sup> is crucial for the purpose of determining dominant and effective nationality. Throughout that period, and starting well before it, Mrs. Perry-Rohani and her husband made their home in California, where they had previously lived when first married. The Tribunal's decision, disregarding the period we are bound to consider, is wholly preoccupied with a temporary interlude in Mrs. Perry-Rohani's life that ended, clearly and decisively, in August 1978, well before the relevant period.

It seems to me evident that, throughout the specific period with which the Tribunal must, under Case No. A18, be primarily concerned, Mrs. Perry-Rohani was of dominant and effective United States nationality.

## II.

The children's claims, which are distinct from their mother's, require separate analysis. It is probably unrealistic to expect small children to think very much about their nationality or to exhibit any marked preference where more than one possibility is present. Nationality, however,

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<sup>1</sup>Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251.

is more than just a state of mind. (Otherwise, infants could have no nationality.) Objective factors are taken into consideration, and it is implicit in this that, in determining their dominant and effective nationality, the Tribunal must form an opinion as to the Perry-Rohani children's existing and likely future national affiliation during the period that is relevant pursuant to Case No. A18. In this context, the record shows that:

1. Sudabe was born in Geneva on 1 March 1975. She spent at least the first two months of her life there and then resided with her parents in Tehran until August 1978. When she left Iran with her family she was three years old.
2. Cyrus was born in Geneva on 9 November 1977, and also spent at least the first two months of his life there. When he left Iran in August 1978 with his family he was ten months old.
3. Both children were registered shortly after birth as United States citizens and both were issued United States passports.
4. Both children resided in the United States from January 1979 through at least 19 January 1981.

It thus appears that, throughout the relevant period from September 1979 to January 1981 and for nearly a year prior to that period, the Perry-Rohani children, American citizens at birth, had their home in the United States with their mother, a native-born American national, and their father, a permanent resident of the United States. By comparison, Sudabe had lived in Iran for about thirty-nine months, and Cyrus had lived in Iran for about ten months. Neither they nor their parents were in Iran at all during the relevant period; during that time they resided solely in the United States.

From as early as August 1978, when the children left Iran with their parents, there was no realistic prospect that they would make their lives in Iran or even return temporarily to that country. Accordingly, the dominant and effective nationality of the Perry-Rohani children should, for the purposes of the Tribunal's jurisdiction, be determined to be that of the United States.

Dated, The Hague

30 June 1989



Richard C. Allison