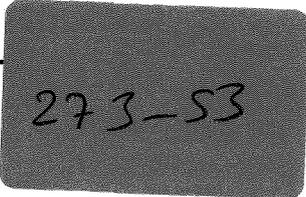


ORIGINAL DOCUMENTS IN SAFE

Case No. 273  Date of filing: 50J'90

273-53

** AWARD - Type of Award Final
- Date of Award 50J'90
9 pages in English 9 pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

DUPLICATE
ORIGINAL
«نسخہ برابر اصل»

CASE NO. 273
CHAMBER ONE
AWARD NO. 490-273-1

REZA and SHAHNAZ MOHAJER-SHOJAEI,
Claimants,
and
THE GOVERNMENT OF THE ISLAMIC REPUBLIC
OF IRAN,
Respondent.

IRAN-UNITED STATES
CLAIMS TRIBUNAL
دیوان داوری دعوی
ایران - ایالات متحدہ

FILED ثبت شد
DATE 5 OCT 1990
تاریخ ۱۳۶۹ / ۷ / ۱۳

AWARD

I. THE PROCEEDINGS

1. On 14 January 1982 the Claimants REZA and SHAHNAZ MOHAJER-SHOJAEE ("the Claimants") filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran"), seeking the sum of U.S.\$680,000 as compensation for the alleged expropriation of two parcels of land, one located in the Kalak area of the Karaj, Ghar, and the other on Saltanatabad Avenue at Heravi Avenue, Tehran. The Claimants allege that the Claim arose between late 1979 and early 1980.

2. Iran states in its Statement of Defense, filed on 20 January 1983, that the Claimants are nationals of Iran, that nationality is a domestic affair subject to the laws and regulations of Iran, and that the Claim is therefore beyond the Tribunal's jurisdiction under international law and the provisions of the Claims Settlement Declaration. The Claimants submitted a Reply to Iran's Statement of Defense on 4 March 1983, stating that the Claimants are nationals of the United States. The Claimants contend that they obtained United States citizenship on 4 July 1976, that they hold United States passports, and that their "real and effective" nationality is that of the United States.

3. In accordance with its practice in similar cases, the Tribunal, citing the decision of the Full Tribunal in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, informed the Parties on 2 August 1984 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 ordered the Claimants to file by 26 September 1984 all evidence they wished the Tribunal to consider in determining their dominant and effective nationality. Likewise, the

Tribunal requested Iran to file by 26 November 1984 all evidence it wished the Tribunal to consider on the issue of the Claimants' nationality.

4. The Claimants submitted their evidence on 21 September 1984. Iran was granted four extensions until 21 July 1986. The Tribunal in its Order of 25 July 1986 granted Iran a fifth extension until 21 October 1986, stating that after that date a decision on jurisdiction would be taken 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 a "Respondent's Brief and Evidence in Response to Claimants' Evidence of Their Alleged Dominant and Effective U.S. Nationality" on 11 December 1989, the Tribunal in its Order of 19 December 1989 invited the Claimants to file by 12 March 1990 any evidence in rebuttal together with a brief, restricted to the issue of the Claimants' dominant and effective nationality. Likewise, the Tribunal requested Iran to file by 11 June 1990 any evidence in rebuttal together with a brief on the same issue. The Claimants did not file any further evidence. On 18 April 1990 Iran filed a submission in which it referred to the expiration of the Claimants' time limit and requested the Tribunal to expedite the consideration of the Case.

II. REASONS FOR THE AWARD

5. The Tribunal must establish, for the purpose of determining whether the Claimants have standing before this Tribunal, whether the Claimants were nationals of Iran, of

the United States, or of both Iran and the United States. If the Claimants were nationals of both Iran and the United States, the Tribunal must establish their dominant and effective nationality during the relevant period from the date their Claim arose to 19 January 1981, the date on which the Claims Settlement Declaration entered into force. In this Case the relevant period commenced between late 1979 and early 1980, when Iran allegedly expropriated the property for which the Claimants seek compensation.

6. The Claimants state that they have taken, in the course of their naturalization as United States citizens on 4 July 1976, an oath pledging allegiance to the United States and renouncing their former Iranian nationality. However, the evidence before the Tribunal indicates that the Claimants were born in Iran to Iranian parents, a fact which under Iranian law establishes their Iranian nationality. The Tribunal notes that the Claimants have not disputed that each was born in Iran, nor submitted any evidence to the effect that they have relinquished their Iranian nationality in accordance with the procedures provided by Iranian law. Consequently, the Tribunal finds that during the relevant period the Claimants were nationals of Iran.

7. Reza Mohajer-Shojaee states in two affidavits that both Claimants obtained United States citizenship on 4 July 1976. In support of that assertion the Claimants have submitted photocopies of their United States passports. This evidence indicates that Reza Mohajer-Shojaee was issued a United States passport No. 020066591 on 6 November 1981 and Shahnaz Mohajer-Shojaee a United States passport No. 020375023 on 2 December 1982, replacing a United States passport issued on 28 November 1977. Reza Mohajer-Shojaee also states in his Affidavits that he was issued a United States passport on 27 July 1976; however, there is no documentary proof in the record to support his statement.

8. The Tribunal finds that the evidence produced by Shahnaz Mohajer-Shojaee indicates that she obtained United States citizenship sometime prior to 28 November 1977, the date on which she was issued a United States passport, and therefore also prior to late 1979 or early 1980, the period during which the Claim in this Case allegedly arose. As far as the other Claimant, Reza Mohajer-Shojaee, is concerned, the Tribunal notes that the only corroborating evidence of his United States nationality is a photocopy of a United States passport issued on 6 November 1981. However, because the date of issuance is subsequent to 19 January 1981, the date on which the Claims Settlement Declaration entered into force, that document is inadmissible as evidence of United States nationality during the relevant period.¹ While Reza Mohajer-Shojaee states in his affidavits that he was naturalized as a United States citizen on 4 July 1976 and that he obtained a United States passport on 27 July 1976, those statements remain unsupported by documentary proof. The Tribunal notes that under the Tribunal Rules each claimant bears the burden of proof with respect to its nationality.² A mere assertion of naturalization on 4 July 1976 or of issuance of a United States passport on 27 July 1976 is not proof. Linda J. Motamed et al. and The Government of the Islamic Republic of Iran, Award No. 414-770-2 (3 Mar. 1989), para. 6, reprinted in ___ Iran-U.S. C.T.R. ___. Consequently, the Tribunal finds that the Claim in this Case, to the extent it is owned by Reza Mohajer-Shojaee, falls beyond the Tribunal's jurisdiction.

¹The Tribunal can only exercise jurisdiction over claims which arose prior to 19 January 1981 and which were owned continuously from the date the claim arose to 19 January 1981 by a United States or Iranian national, as the case may be. See Article II, paragraph 1 and Article VII, paragraph 2 of the Claims Settlement Declaration.

²Article 24, paragraph 1 of the Tribunal Rules provides that "[e]ach Party shall have the burden of proving the facts relied on to support his claim or defence."

9. In order to determine whether a dual Iran-United States national has standing before this Tribunal, the Tribunal must be satisfied not only that the claimant is a national of Iran or the United States, as the case may be, but also that the claimant's Iranian or United States nationality is the dominant and effective nationality during the relevant period. For that purpose, the Tribunal must determine the country with which the claimant had stronger ties. The Tribunal must consider all relevant factors, such as the claimant's habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. Case No. A18, supra para. 3, p. 25, 5 Iran-U.S. C.T.R. 265. Consequently, because the determination of dominant and effective nationality requires the Tribunal to scrutinize the facts and events of the claimant's life prior to the relevant period,³ it also requires the claimant to carry its burden of proof and present the Tribunal with adequate evidence, including documentary proof. However, because the evidence on the basis of which Shahnaz Mohajer-Shojaee seeks to establish the dominance of her United States nationality consists

³See Reza Said Malek and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51:

Although th[e] [relevant] period ... is crucial for the determination of the Tribunal's jurisdiction, it is not the only one to be considered in order to determine if the United States (or Iranian as the case may be) nationality of a Claimant is his "dominant and effective nationality" at the relevant time. Obviously, to establish what is the dominant and effective nationality at the date the claim arose, it is necessary to scrutinize the events of the Claimant's life preceding this date. Indeed, the entire life of the Claimant, from birth, and all factors which, during this span of time, evidence the reality and sincerity of the choice of national allegiance he claims to have made, are relevant.

almost exclusively of affidavits by her husband, also a Claimant in this Case, the bulk of the evidence before the Tribunal remains unsupported by such proof. In these circumstances, the Tribunal concludes that Shahnaz Mohajer-Shojaee has failed to prove that her United States nationality is the dominant and effective nationality, and that she therefore lacks standing before this Tribunal.⁴ The Tribunal recalls that each claimant bears the burden of proof not only with respect to its nationality but also with respect to the dominance of that nationality during the relevant period. The Tribunal provided the Claimants with an opportunity to file such evidence, but they failed to do so.

III. AWARD

10. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

(a) The Claim of the Claimants REZA and SHAHNAZ MOHAJER-SHOJAEI is dismissed for lack of jurisdiction under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.

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

⁴See Mergé Case, 14 U.N.R.I.A.A. 236, 247 (1955) ("The principle, based on the sovereign equality of states, which excludes diplomatic protection in the case of dual nationality, must yield before the principle of effective nationality whenever such nationality is that of the claiming State. But it must not yield when such predominance is not proved because the first of these two principles is generally recognised and may constitute a criterion of practical application for the elimination of any possible uncertainty.") (emphasis added). See also id. p. 248.

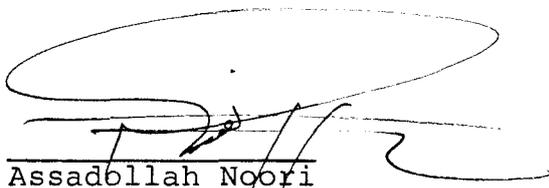
Dated, The Hague

5 October 1990



Bengt Broms
Chairman
Chamber One

In the Name of God



Assadollah Noori

I concur in the results of present Award, but believe that in principle, the Tribunal does not have jurisdiction over the claims of Iranians with dual United States nationality, either according to the Claims Settlement Declaration or pursuant to the well-established principles of international law, particularly the principle of sovereign equality, which is rightfully the applicable principle with regard to the claims of dual nationals. The 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 the principles of international law are concerned, espec-



Howard M. Holtzman

Dissenting as to the denial of the Claim of Shahnaz Mohajer-Shojaee; concurring as to the denial of the Claim of Reza Mohajer-Shojaee. See separate opinion.

ially the principle of the sovereign equality of States, that action is tantamount to a disregard for the fundamental principles of international law. In my opinion, just as the Iranian arbitrators have stated in their Dissenting Opinion in Case A18, reprinted in 5 Iran-U.S. C.T.R. 275-337, the Tribunal should rule that it lacks jurisdiction, and discontinue the proceedings, wherever it is confronted with a situation where, and determines that, these claimants have Iranian nationality.