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** CONCURRING OPINION of _____
- Date _____
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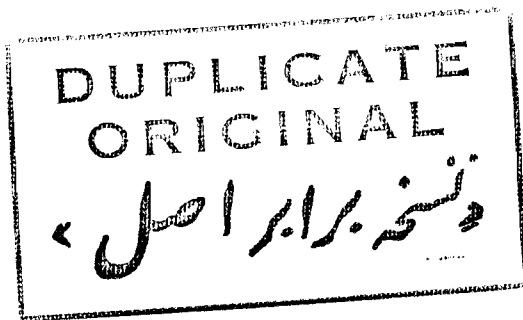
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داری دعاوی ایران - ایالات متحدہ



CASE NO. 350

CHAMBER TWO

AWARD NO. 504-350-2

ARAKEL KHAJETOORIANS,
 ANDRANIK KHACHATOURIANS,
 ARIK KHAJETOORIANS,
 ASTEGHIK KHAJETOORIANS,
 Claimants,
 and

THE GOVERNMENT OF THE ISLAMIC
 REPUBLIC OF IRAN,
 THE MINISTRY OF ROADS & TRANSPORTATION,
 BANK MARKAZI IRAN,
 BANK BAZARGANI IRAN,
 BANK TEJERAT, and
 DEUTSCH-IRANISCHE HANDELSBANK AG,
 Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	25 JAN 1991
	تاریخ ۱۳۶۹ / ۱ / ۵

AWARD

I. THE PROCEEDINGS

1. The Claimants, ARAKEL KHAJETOORIANS ("Arakel"), ANDRANIK KHACHATOURIANS ("Andranik"), ARIK KHAJETOORIANS ("Arik"), and ASTEGHIK KHAJETOORIANS ("Asteghik") a minor child represented by her father ("the Claimants") filed a Statement of Claim on 18 January 1982 against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, MINISTRY OF ROADS & TRANSPORTATION, BANK MARKAZI IRAN, BANK BAZARGANI IRAN, BANK TEJERAT, and DEUTSCH-IRANISCHE HANDELSBANK AG ("DIH") ("the Respondents"), claiming US\$5,025,475.20 for the alleged expropriation of their shareholding interests in Nasb Construction Company, various bank accounts in Bank Bazargani (presently Bank Tejarat), a parcel of land, office building, residence and personal property as well as for the loss resulting from DIH's refusal to convert the Iranian Rials into United States Dollars at the official rate allegedly on the instruction of Bank Markazi Iran on or about 9 October 1979 and the consequent forced currency exchange in the "open market." The Claimants assert that their claims, except for the one concerning DIH, arose at some unspecified date or dates prior to December 1979, when Arakel learned of the alleged expropriations during a trip to Iran.

2. Respondent Bank Tejarat filed a counterclaim against the Claimants seeking Rls.71,930,531 for their alleged outstanding liabilities to cover bank guarantees drawn by Nasb Construction Company in favor of the Ministry of Roads and Transportation.

3. Following the decision of the Full Tribunal in The Islamic Republic of Iran and The United States of America, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, the Tribunal requested the Claimants to file any additional documentary evidence they wished the Tribunal to consider in determining whether they were nationals of the United States or the Islamic Republic of Iran, or both, and, in the event the Claimants were found to

be nationals of both countries, evidence relating to the Claimants' dominant and effective nationality. Likewise, the Tribunal ordered the Respondents to file all documentary evidence they wished the Tribunal to consider with regard to the issue of the Claimants' nationality. In view of the fact that the Parties have adequately briefed the nationality issue, the Tribunal proceeds to decide the jurisdictional issue on the basis of the documents submitted in the Case.

II. FACTS AND CONTENTIONS

4. Arakel Khajetoorians was born of Iranian parents in Iran in 1929, and is the holder of Iranian I.D. card no. 444, issued in City of Sabzevar. He lived the first forty or so years of his life in Iran, where he married an Iranian woman and fathered the three children who are also Claimants, Andranik, Arik, and Asteghik, as well as another son Aram who is not a claimant here, all of whom were born in Iran. He asserts that he left Iran for the United States on an immigrant visa in 1971, taking his children with him and enrolling them in schools there. He states that his immediate family had left Iran before him: that his sister and her family moved to the United States in the mid-1960's and that his parents and two brothers moved to the United States in the early 1970's. As evidence of his intent to make the United States his home, he cites his purchase on July 1, 1975 of two lawn crypts at a cemetery in Glendale, California.

5. Arakel asserts in his pleadings that after arriving in the United States in 1971 he "established a home in the United States and earned a livelihood as a real estate investor." As evidence he submits copies of various deeds showing him as the purchaser of various pieces of property in California from 1971 through 1982. Even after arriving in the United States, however, Arakel remained the general partner and manager of Nasb Construction Company, a road paving contractor in Iran, which he owned in equal shares

with his children. The company entered into contracts for construction work with the Ministry of Roads in November 1973, February 1974, March 1975, March 1978, which form part of the basis for the claim here.

6. In May 1977, Arakel was remarried in Iran to Fatemeh Rajab Pour Anvar, an Iranian woman who was identified on the marriage certificate as a housewife residing in Tehran. Arakel was identified on the marriage certificate as a Moslem and citizen of Iran, with his occupation given as engineer. A daughter was born to Arakel and Fatemeh on September 1, 1978 in Los Angeles, and a son on December 18, 1980, in Newport Beach, both in the United States. In August 1979, Arakel and Fatemeh purchased real estate in Glendale, California as joint tenants. Arakel asserts that they were divorced in 1983.

7. Arakel contends that he maintained significant personal property in a condominium in Tehran owned by his son Arik, which he asserts was expropriated together with the condominium. The Respondents, however, submit an affidavit dated 22 April 1989 from Fatemeh's mother stating that she has lived in the condominium since 1979 on the request of Fatemeh and Arakel when they left Iran. After a visit to Iran in December 1979, when Arakel allegedly discovered the expropriations, he asserts in the pleadings that "he did not reside, visit or work in Iran." He was naturalized as an American citizen on November 23, 1979.

8. Andranik Khachatourians was born in Tehran in 1955, and spent his childhood in Iran. In 1971, he asserts, he moved to the United States on an immigrant visa. He attended John Marshall High School in Los Angeles from September 1971 until he graduated in June 1974. After graduating from high school, Andranik contends that he worked in the United States at some unspecified job or jobs until 1985, when he was working at Security National Bank in Glendale, California. He admits owning property in Iran, but states in the pleadings that "he has had no substantial

connection with Iran since he arrived in the United States in 1971," and that "from the time his claims arose through January 19, 1981 he did not reside, visit or work in Iran." He was naturalized as an American citizen on March 20, 1978.

9. Arik Khajetoorians was born in Tehran in 1958, and spent his childhood in Iran. In 1971, he asserts, he moved to the United States on an immigrant visa. He attended Washington Irving Junior High School in Los Angeles, leaving in June 1973 for John Marshall High School, which he attended from September 1973 until December 1975. He states that he then joined the United States armed forces, was stationed in California, and in 1981 received an honorable discharge. He admits owning property in Iran, but states in the pleadings that "he has had no substantial connection with Iran since he arrived in the United States in 1971." He concedes that he has not been sworn in as an American citizen, although he asserts that he has satisfied all of the other requirements for citizenship. On 29 May 1990 Arakel informed the Tribunal that Arik had been killed in a motorcycle accident. No information has been provided to the Tribunal regarding the date of the death, the identity of the successor and the status of his Claim subsequent to Arik's death.

10. Asteghik Khajetoorians was born in Tehran in 1965, and spent the early part of her childhood in Iran. Arakel, bringing the Claim on behalf of his minor daughter, asserts that she moved to the United States with the rest of the family in 1971 on an immigrant visa. She attended Atwater Avenue Elementary School in Los Angeles from September 1971 through June 1975. Thereafter she was a full-time boarding student at The Howard School in Santa Barbara, California from September 1976 through June 1977, and was enrolled there for the 1977-1978 school year. Arakel contends that Asteghik continued to attend The Howard School through June 1982, at which point she entered the Elliott-Pope Preparatory School in Idyllwild, California. He admits that she owns property in Iran, but states in the pleadings that "she has

had no substantial connection with Iran since she arrived in the United States in 1971," and that "from the time her claims arose through January 19, 1981 she did not reside, visit or work in Iran." She became an American citizen by operation of law on November 23, 1979 when her father was naturalized.

III. REASONS FOR THE AWARD

11. Arakel, Andranik, Arik, and Asteghik all were born in Iran, and acquired Iranian nationality by virtue of their fathers' Iranian nationality. It is undisputed that they have not taken the necessary legal steps to have their Iranian nationality revoked. The Tribunal finds, therefore, that all four have been Iranian nationals at all times during their lives.

12. Arakel and Asteghik were naturalized as American citizens on November 23, 1979, while Andranik was naturalized as an American citizen on March 20, 1978, as evidenced by the copies of their certificates of naturalization submitted into evidence. The Tribunal finds, therefore, that the three have also been United States nationals since those dates.

13. Arik, however, never became an American citizen. As he concedes in the pleadings, he never took the oath of allegiance, which is an essential prerequisite for citizenship. 8 U.S.C. §1448(a) ("A person who has petitioned for naturalization shall, in order to be and before being admitted to citizenship, take in open court an oath"). Because Arik remained solely an Iranian national at all times prior to January 19, 1981, the Tribunal concludes that it lacks jurisdiction over his claim.

14. Because Arakel, Andranik, and Asteghik are nationals of both Iran and the United States, the Tribunal must

determine which of these nationalities was their dominant and effective nationality during the relevant period from the time their claims arose until the signing of the Algiers Accords on January 19, 1981. Case A18, supra. In making this determination, the Tribunal considers "all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment." Id. These factors must be considered "during the period preceding, contemporaneous with, and following the date the Claim arose". Leila Danesh Arfa Mahmoud and The Islamic Republic of Iran, Award No. 204-237-2 (27 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 350, 353.

15. Arakel lived his entire life prior to 1971 in Iran, working in Iran, marrying an Iranian woman, and fathering and raising children in Iran. Although Arakel asserts that he moved to the United States in 1971, a date which his real estate purchases and the enrollment of his children in school support, the evidence shows that even after that time Arakel's principal attachments remained with Iran.

16. Initially, Arakel's business interests remained centered in Iran. His activities with Nasb Construction Company in Iran continued to be substantial after 1971. The company entered into significant contracts with the Ministry of Roads in Iran in 1973, 1974, 1975, and 1978, and Arakel himself characterizes his presence in Iran as crucial to the company's operations. Although Arakel asserts that he earned a living as a real estate investor in the United States after leaving Iran, the evidence does not support this assertion: there is no indication that he ever derived any income from the purchased properties, and it appears that the family's income came primarily, if not entirely, from Arakel's business activities in Iran.

17. Arakel's personal life continued to be focused on Iran as well; indeed, he wed his second Iranian wife there

in 1977. Although Arakel and his second wife apparently did leave for the United States thereafter, and their two children were born in the United States, the marriage gave Arakel further ties with Iran. Moreover, there is no evidence that at any point after moving to the United States Arakel made any attempt to integrate himself into American society. For example, he has submitted no evidence of what his home life was like or of any community activities in which he was involved (such as voting, paying taxes, membership in organizations, and the like), and the evidence he has submitted is not persuasive: his purchase of two burial vaults indicates at most an intention to have his final resting place be in the United States; it does not, as he claims, indicate an intention not to return to Iran, since it is clear that his business activities remained centered in Iran.

18. In addition, the evidence suggests that Arakel spent substantial amounts of time in Iran after 1971. Arakel admits visiting Iran as late as December 1979, and his significant business and personal interests make numerous earlier visits likely. These suggestions that Arakel continued to spend significant amounts of time in Iran make his failure to submit into evidence a copy of his Iranian passport particularly telling, since his passport would document his entries into and departures from Iran.

19. The evidence in this Case does not support a finding that the ties to the United States evidenced by Arakel's voluntary acquisition of United States nationality in November 1979 predominated over his continuing ties with Iran. See, Mahmoud, supra, para. 24. Therefore, the Tribunal concludes that Arakel Khajetoorians has failed to prove that his dominant and effective nationality at the time his claims arose was that of the United States.

20. For Andranik and Asteghik, the Tribunal notes the paucity of the evidence they submitted on their dominant and effective nationality. Their documentary evidence consists

solely of copies of their certificates of naturalization and of school records showing that they spent several years after 1971 attending schools in the United States. Even this documentary evidence is incomplete, since Andranik graduated from high school in 1974 and since several years when Asteghik allegedly was attending school are not covered by her certificates of attendance. Furthermore, schooling in the United States does not necessarily mean attachment by the individual to that country. Moreover, none of the Claimants have filed affidavits or other evidence in support of the factual assertions in their briefs: the only "affidavit" filed is nothing more than a rebuttal brief by Arakel containing argument about the few facts that are in the record.

21. As a result, there is virtually no evidence in the record of Andranik's and Asteghik's ties with the United States. Andranik has not provided any evidence of where he lived after graduating from high school, what sorts of jobs he held, or whether he voted in American elections once old enough to vote. Asteghik has not provided any evidence of what she studied in boarding school or where she spent school vacations. Neither provides evidence of what language they customarily spoke with friends and family, what activities they participated in during their free time, or how much time they spent in Iran. Like their father, neither submitted copies of their Iranian passports. Although the evidence in the record is not as suggestive of their continued ties to Iran as it is of their father's, the mere lack of such evidence is not enough, by itself, to prove that a claimant has dominant American nationality. Therefore, the Tribunal concludes that Andranik Khachatourians and Asteghik Khajetoorians have failed to prove that their dominant and effective nationality at the time their claims arose was that of the United States.

22. Because the Tribunal finds that it lacks jurisdiction over the Claimants' Claim, Bank Tejarat's Counterclaim likewise must be dismissed for lack of jurisdiction.

IV. AWARD


23. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

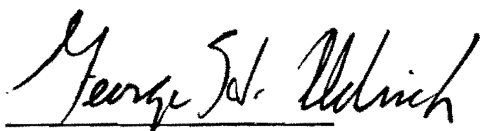
- a) The Claims of ARAKEL KHAJETOORIANS, ANDRANIK KHACHATOURIANS, ARIK KHAJETOORIANS, and ASTEGHIK KHAJETOORIANS are dismissed for lack of jurisdiction.
- b) The Counterclaim of Bank Tejarat is also dismissed for lack of jurisdiction.
- c) Each Party shall bear its own costs of arbitration.


Dated, The Hague

25 January 1991


Robert Briner
Chairman
Chamber Two

In the Name of God


George H. Aldrich


Koorosh H. Ameli
Concurring

I should add that Arik's Claim must a fortiori also fail as he died while the Case was still pending and the Tribunal was not notified of his heir or legatee, nor of whether such person intended to pursue the Claim.