IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

In the Name of God

Persian text filed
on 24 Aug. 1990

CASE NO. 4
CHAMBER THREE
PARTIAL AWARD NO. 487-4-3

REZA NEMAZEE and
LUZ BELEN NEMAZEE,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

SEPARATE OPINION OF JUDGE PARVIZ ANSARI

INTRODUCTION

1. I concur in the dismissal of the claim of Mrs. Luz Belen Nemazee and in the finding that the Tribunal lacks jurisdiction over her claim by virtue of the fact that her dominant nationality is that of Iran. However, for reasons which I shall state below, I dissent to the finding that the Tribunal has jurisdiction over the claim of Reza Nemazee on the grounds that his dominant nationality is that of the United States.

LUZ BELEN NEMAZEE

2. It is my opinion that in addition to the reasons presented in the instant Award for dismissing the claim of

Mrs. Nemazee, the Tribunal should have invoked further international decisions and precedents, in order to buttress its findings. In this connection, the judicial precedent represented by Mergé enjoys a special standing.[1] In setting forth the criteria and guidelines for determining the dominant and effective nationality of United States women who have acquired dual nationality through marriage to foreign nationals, the Mergé decision expressly states as follows:

> "With respect to cases of dual nationality involving American women married to Italian nationals, the United States nationality shall be prevalent in cases in which the family has had habitual residence in the United States and the interests and the permanent professional life of the head of the family were established in the United States."2

3. Both of the above criteria are strikingly absent in the case of Mrs. Nemazee. As attested by the record, the center of interests and the professional-economic life of Hossein Nemazee, her husband and the head of the family was, beyond a shadow of doubt, solely and continually in Iran, which was also the place of the couple's family residence. Consequently, in accordance with the Mergé decision, Mrs. Nemazee's dominant and effective nationality must be recognized as being that of Iran.

4. In my opinion, based on the foregoing, the abundant similarities between the present Case and Mergé are undeniable, and in dismissing Mrs. Nemazee's claim, the Tribunal should also have invoked the Mergé case as precedent. Even if, arguendo, one were to suppose that there were

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1 See: The Dissenting Opinion of Judge Parviz Ansari in Marjorie Suzanne Ebrahimi and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 71-44/45/46/47-3 (16 Jun. 1989), paras. 3-4.

2 Mergé Case (U.S. v. Italy), 14 R. Int'l Arb. Awards 236, 247 (1955).

dissimilarities between these two cases, judicial principles would require that the Tribunal cite the Mergé case, while distinguishing between the two. The Tribunal's failure to cite and invoke this international judicial precedent calls for criticism.

REZA NEMAZEE

5. I have repeatedly expressed my reasons for dissenting to the Tribunal's injudicious and deplorable decision to admit the claims of Iranian nationals against the Government of Iran, and thus see no need to reiterate them here. See: the Dissenting Opinion of the Iranian Arbitrators in Case No. A18, Decision No. DEC 32-A18-FT (10 Sep. 1984), reprinted in 5 Iran-U.S. C.T.R. 275-337; also the Dissenting Opinion of Judge Parviz Ansari in Reza Said Malek and The Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3 (23 Jun. 1988), reprinted in 19 Iran-U.S. C.T.R. 48.[3]

6. The majority's decision with respect to Reza Nemazee is, from the viewpoint of both its logical premises and legal analysis and also its presentation of the issues and facts, unfounded and unjustified; and thus, for the rea-

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[3] See Also: The Dissenting Opinion of Judge Parviz Ansari in the following cases: Steven Joseph Danielpour and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 69-169-3 (16 Jun. 1989); Nahid (Danielpour) Hemmat and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 70-170-3 (16 Jun. 1989); Ebrahimi and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 71-44/45/46/47-3 (16 Jun. 1989); Abrahim Rahman Golshani and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 72-812-3 (30 Jun. 1989); Katrin Zohrabegian Abrahamian and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 74-377-3 (1 Dec. 1989); Nourafchan and The Islamic Republic of Iran, Interlocutory Award No. ITL 75-412/415-3 (15 Dec. 1989).

sons set forth below, I dissent thereto.

A. The Claimant and the issue of his nationalities

7. The Respondent argues that the relevant authorities failed to apply the United States nationality laws properly with respect to Mrs. Nemazee and, consequently, with regard to Reza Nemazee as well.[4] The Respondent has never questioned the merits of the United States' municipal laws; what it does dispute is, whether the United States nationality laws were conformed to and validly applied in the Claimant's case. In my opinion, under the circumstances of the Case at hand, the Tribunal had a duty not to consider the Claimant's certificate of citizenship as

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[4] Since the Tribunal has dismissed Mrs. Nemazee's claim, I need not reiterate the Respondent's exceptions taken to her United States nationality. In connection with Reza Nemazee, the Respondent's exceptions to the validity of the means by which he was granted United States nationality include, in part, the following:

In order for Reza to qualify as a United States national from his date of birth, by virtue of having been born to an American mother outside the territorial jurisdiction of the United States, pursuant to the terms and conditions of Section 201 (g) of the U.S. Immigration and Nationality Act of 1940, his mother had to have lived in the United States for at least ten years (of which at least five years had to fall after her 16th birthday) before giving birth to Reza. On the one hand, since the Claimant's mother, who became a United States citizen under the terms of the 1940 Nationality Act (which came into force on 13 January 1941), had not yet lived in the United States for the required ten years as of the date of Reza's birth in 1949, Reza Nemazee therefore did not qualify under the provisions of the aforementioned Section, and he cannot be regarded as having been a United States national. Moreover, if Reza Nemazee had in fact been a United States national from birth, why did the Claimant himself entertain doubts and misgivings in this regard, so that in 1977 he requested issuance of a certificate of United States citizenship? Therefore, in view of the facts surrounding Reza Nemazee's life, the United States authorities' issuance of his certificate of citizenship in September of 1977 was based on an error.

constituting prima facie proof of his nationality; instead, it should have endeavored to satisfy its judicial conscience by examining whether the said certificate was validly and properly issued. Without relying upon any precedent or authority whatsoever, the majority states in footnote 3 to page 9 of the Award that it is not incumbent upon an international tribunal to investigate the conformity to a State's nationality laws of the acts by which the State in question has granted its nationality. In my opinion, the majority's legal position is incorrect.

8. The position that international tribunals are competent to examine and investigate the validity of evidence in support of nationality has been upheld by valid international decisions and precedents. In this connection, the Flegenheimer Case [5] is highly significant and deserving of mention. In the course of the proceedings therein, the United States Government insisted that under United States law, the certificate of citizenship issued for Albert Flegenheimer constituted conclusive proof of his United States nationality, and that it was therefore binding upon the tribunal. Furthermore, the United States Government argued, in reliance on a number of precedents, that the prima facie proof of Flegenheimer's United States nationality was sufficient and, moreover, that in principle there was no need for the tribunal to make any investigations and examination thereof.[6] The Italian-United States Conciliation Commission, presided over by Professor Sauser-Hall, carefully considered the arbitrating parties' legal positions and minutely traced the judicial precedents and doctrine, and then, by unanimous decision, it ruled as follows in its detailed and thoroughly reasoned

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5 Flegenheimer Case (U.S. v. Italy), 14 R. Int'l Arb. Awards 327-390 (1958).

6 Id. at 338.

decision issued on 20 September 1958:

> "This Commission owes it to itself, as it owes it to the two States who have placed their confidence in it so as... to make an objective search for the truth and to clarify the legal position which, as far as the Commission, in its capacity as an international organ, is concerned is Albert Flegenheimer's factual position." 7

The Commission then concluded that:

> "From the standpoint of merit, even certificates of nationality the content of which is proof under the municipal law of the issuing State, can be examined and, if the case warrants, rejected by international bodies rendering judgement under the Law of Nations, when these certificates are the result of fraud, or have been issued by favor in order to assure a person diplomatic protection to which he would not be otherwise entitled, or when they are impaired by serious errors, or when they are inconsistent with the provisions of international treaties governing questions of nationality in matters of relationship with the alleged national State, or, finally, when they are contrary to the general principles of the Law of Nations on nationality which forbid, for instance, the compulsory naturalization of aliens. It is thus not sufficient that a certificate of nationality be plausible for it to be recognized by international jurisdictions; the latter have the power of investigating the probative value thereof, even if its prima facie content does not appear to be incorrect. This is particularly true before international arbitral or conciliation commissions who are called upon to adjudicate numerous disputes following troubled international situations that are the outcome of war, internal strife or revolutions."8

The judicial weight and importance of the decision in Flegenheimer becomes particularly clear when we take into account that it was issued some years after the Nottebohm decision,[9] and is thus more nearly contemporary.

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7 Id. at 348.

8 Id. at 348-349.

9 Nottebohm Case (Liechtenstein v. Guatemala), [1955] I.C.J. Rep. 4.

B. Assessment of Claimant's United States nationality

9. Even if we were to assume that the Claimant has, by virtue of his mother's United States nationality, been a United States national ever since his date of birth, he has still failed to prove conclusively that this nationality is his dominant and effective nationality, and that it prevailed over his Iranian nationality during the relevant period.

10. Reza Nemazee was born in Tehran on 22 September 1949, to an Iranian father and into a wealthy Iranian family with a long lineage, and shortly thereafter, Identity Card No. 615 was issued in his name. He completed his elementary and secondary school education in Tehran, and then continued his studies in England, as an Iranian student. It should not be forgotten that in view of his family's wealth, it was altogether normal for Reza Nemazee to have attended foreign-language schools in Tehran and to have travelled to England for further studies; this cannot be taken into account as evidence that his other nationality prevailed.

11. It is stated in the instant Award that Reza Nemazee relocated to the United States in the latter part of 1966, on the strength of his United States passport, "to continue his education." Reza Nemazee's supposed possession of a United States passport at that time is highly questionable, in view of the fact that the Claimant has been unable to present the alleged passport despite the Tribunal's Order dated 28 April 1988 to do so; and also in light of the evidence submitted by the Respondent (Doc. No. 63, Exhibits 12 and 13). The evidence presented by the Respondent indicates that on 22 July 1967, the Claimant requested, on his father's guaranty, an extension of his Iranian passport and the granting of an exit permit "to continue his education," and it also shows that he listed Tehran as his place of residence. Moreover, on the

relevant form, in response to the item asking him to list any trips outside Iran which he had so far made, indicating the dates thereof, he wrote, "European countries." This document (Doc. No. 63, Exh. 12), which has been signed by Reza Nemazee and also bears his father's stamp and signature, shows clearly that up to the summer of 1967, Reza Nemazee had, by his own admission, travelled only to European countries and had never set foot in the United States. In that same summer, according to Doc. No. 63, Exhibit 13, Reza Nemazee requested a United States entry visa from the United States Embassy in Tehran. On 7 August 1967, the "Security Section of the United States Embassy" in Tehran sent the Tehran Police Department a letter requesting information relating to Reza Nemazee's intended journey to the United States, asking it to "Please have a security check run on the background of the below-mentioned individual, and inform this Office of the results thereof. All of the information provided to the Embassy will be treated as confidential." Several important points emerge from this letter: firstly, Reza Nemazee's occupation is given as "student"; secondly, his address is given as "Tehran." Finally, what is more important and more problematical, is that if, in accordance with the majority's statement, Reza Nemazee was indeed a United States national, and if his name had indeed been registered from his date of birth with the United States Embassy, owing to his having been born to a mother who was a United States national, and also if he really had been issued a United States passport, then why did the United States Embassy make such inquiries about him? Regrettably, the majority has overlooked these matters, and not taken the trouble to examine the above points -- or even to mention them.

12. The Claimant remained in the United States until 1978, when he completed his university studies. It is noteworthy that throughout this period, Reza Nemazee was

in the United States solely as an Iranian student, and only with the intention of "continuing his education," and furthermore that all of his expenses were being borne by his father in Iran. From an examination of all the available evidence in this Case, it can be seen that Reza Nemazee's goal in continuing with his university studies was to obtain a PhD degree and to avail himself of it upon his return to Iran, in finding employment there. Immediately after receiving his PhD in Psychology, he had his educational record certified and stamped by the Iranian Embassy in Washington, D.C. on 13 July 1978. After being reassured by the successful outcome of his interview and negotiations with the "resident representative of the Ministry of Health and Welfare at the Iranian Embassy in Washington, D.C.," and upon being formally recruited to work at the newly-established Imperial Medical Center in Tehran, Reza Nemazee returned to Iran in or about November 1978. The available evidence indicates that after his return to his homeland, Reza Nemazee obtained a military conscription exemption card, and that he began working at the College of Hygiene and Rehabilitation, affiliated with the Ministry of Science and Higher Education. The Claimant participated in the referendum to determine Iran's political system following the Revolution; and finally, on 29 April 1979, he married an Iranian woman, in Tehran.

13. A number of highly important points emerge from the foregoing. Why did Reza Nemazee, who alleges that he had become assimilated into the American society, return to Iran immediately upon completing his studies, in the very midst of the Revolution? Why did Reza Nemazee, who was supposedly a member of a number of professional societies in the United States, hurry so eagerly back to Iran even at the very height of the Revolution, immediately after obtaining his PhD, in order to work and teach at the Iranian Government centers? Why should someone in the

Claimant's position leave his tranquil environment and his assured professional future in the United States and hasten, directly after completing his studies, to his birthplace which was in the throes of a revolution? And at that, someone who, according to the majority, did not even know how to read and write Persian! This issue is so important that the majority was compelled to raise this question as well, and to find an answer thereto. In my opinion, however, the majority's answer is, regrettably, unconvincing and devoid of any legal justification. The real answer to this question is that Reza Nemazee's links to and interests in the Iranian society had never been severed. A mere consideration of the timing of his return to Iran clarifies the issue. The Claimant returned to Iran at the height of the political-social upheaval and conflict, only a few months before the final victory of the Islamic Revolution; and enduring the hardships surrounding those times, he even continued to live in Iran until the end of the summer of the following year. If the Claimant's ties to and interests in the American society were as strong as the majority imagines, Reza Nemazee should have taken advantage of his opportunity in those troubled times, and quickly boarded a plane out of Iran as the foreigners and followers of the old regime were doing -- and without needing, as alleged, any military conscription exemption document to leave Iran. However, due to the strength of all the relevant factors, including his family's habitual place of residence, his center of economic interests and family and sentimental ties, and the other evidence of his attachments to Iran, he had taken a decision to live with his family, to marry, to work in his area of studies and, finally, to live in Iran. No obstacle could deter him from carrying out his intention. He married an Iranian woman and established a family of his own, and he began working, to the extent that the turmoil around him permitted the State institutions to function. Therefore, in my opinion, the mere

fact of Reza Nemazee's return to Iran, immediately after completing his higher education and at the very height of the Revolution -- and more important still, his intention and purpose in so returning -- effectively tips the scales in favor of Reza Nemazee's Iranian nationality, and against his other nationality, during the relevant period.

14. A further point deserving of notice is, the legal significance and ramifications of Reza Nemazee's recruitment by institutions and organizations of the Iranian Government. As for the legal consequences of accepting employment with a foreign State's governmental organizations, let it suffice to note that under the United States Immigration and Nationality Act of 1952, [10] such an act constitutes grounds for depriving a United States national of his U.S. nationality. Apart from whether or not the United States legislature softened this provision pursuant to the 1986 Act, which makes such loss of nationality contingent upon "the intention of relinquishing United States nationality,"[11] and also aside from whether or not the ratification of the subsequent provision in 1986 can have an effect on the Tribunal's evaluation of an Act that was in force during the "relevant period," the point which should be considered is the actual act, as perceived by the legislator himself. It may be that United States nationals who accept employment with the organizations and institutions of foreign countries are no longer faced with deprivation of their United States nationality, but the odiousness of the act in question cannot ipso facto be ameliorated by the subsequent modification of the Act's provisions. This is particularly true here, where Reza Nemazee accepted employment with a State organization of a country of which he was also a national.

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10 Sec. 349 (a) (4)(A), Immigration and Nationality Act of 1952; 8 U.S.C. 1481 (a) (4) (A).

11 Act of Nov. 14, 1986, 100 Stat. 3658.

15. The final point is that the first page of the Claimant's identity card clearly shows that on 1 April 1979, he went to the ballot box in Tehran and participated in the referendum held to determine Iran's governmental system following the Revolution. Even though he was under no compulsion to do so, Reza Nemazee took part in the momentous referendum that was to leave its mark on Iran's political system.[12] Here, I feel that it is necessary to reiterate my reasoning made in the preceding paragraph.[13] As to the legal significance and ramifications of participating in the political elections of a foreign country, it must be recalled that the United States Immigration and Nationality Act of 1952[14] treated such an act as grounds for depriving United States nationals of their U.S. nationality. It is true that the provisions in question were subsequently amended,[15] and that the legislature no longer treats such an act as grounds for deprivation of United States nationality; but once more, the point to be considered is, the actual act involved. Perhaps participation by United States nationals in the elections of foreign countries no longer entails deprivation of their United States nationality; but at any event, the

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12 The Claimant's allegation that "his father's employees took his card to the voting place merely to have it stamped," was made simply in order to evade the consequences and results of that act; and this excuse is not only flimsy, but unsupported by any evidence whatsoever. At any event, this allegation can not possibly carry any weight, because as an adult, i.e., as a person of legal age, the Claimant is responsible for the legal consequences of acts which, according to the contents of his identity card, were taken with his consent and in his name.

13 See also: The Dissenting Opinion of Judge Parviz Ansari in Ebrahimi, para. 10 (op cit, supra).

14 Sec. 349 (a) (5), Immigration and Nationality Act of 1952; 8 U.S.C. 1481 (a) (5).

15 Sec. 2, Act of Oct. 10, 1978, P.L. 95-432, 92 Stat. 1046.

odiousness of the act cannot ipso fact be ameliorated by the passage of the subsequent law.

In other words, if participation in a political referendum in a foreign country does not entail the penalty of being stripped of United States nationality, at least such an act results in a fundamental weakening of the bond of United States nationality, especially given that Reza Nemazee participated in the fateful referendum of a country of which he was also a national. As a result, in my opinion, in assessing Reza Nemazee's nationalities, that single act of the Claimant in participating in the political referendum held in revolutionary Iran does, of itself, cause his original Iranian nationality to prevail and predominate.

16. Taken altogether, a number of arguments demonstrate that Reza Nemazee's effective and dominant nationality is that of Iran. These arguments consist, insofar as they are reflected in the evidence, of the following:

a) His failure to take steps to relinquish his Iranian nationality;

b) His continuing family and sentimental ties with Iran;

c) His university studies in American educational institutions, with the intention of benefitting therefrom on his return to Iran;

d) His formal employment with Iranian State institutions; and

e) His participation in the referendum on Iran's political system.

These reasons and circumstances leave no weight or credibility whatsoever to the notion that Reza Nemazee's United States nationality was his dominant nationality. It seems highly unjustified for the majority to hold that the dominant nationality of this Iranian national, who was born in Iran to an Iranian father, and whose mother's effective and dominant nationality is also that of Iran, is that of the United States.

C. Conclusion

17. Firstly, it is a settled and established principle from which there can be no derogation that, as an Iranian national, the Claimant cannot himself bring claim against the Iranian Government before an international forum; nor can any government espouse his claim before such a forum on his behalf.

Secondly, the Iranian nationality of this Claimant predominates and prevails over his United States nationality; and from this viewpoint as well, the Tribunal lacks jurisdiction over the claim brought before it.

The Hague,

24 August 1990.

Parviz Ansari