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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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** CONCURRING OPINION of _____

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DUPLICATE ORIGINAL
دونسخه برابر اصل

In the Name of God

CASE NO. 812
CHAMBER THREE
AWARD NO. ITL 72-812-3

ABRAHIM RAHMAN GOLSHANI,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحده
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DISSENTING OPINION OF JUDGE PARVIZ ANSARI

INTRODUCTION

1. I have time and again 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 Sept. 1984), reprinted in 5 Iran-U.S. C.T.R. 275-337; and 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).

2. From the point of view of both its logical premises and legal analysis and its presentation of the facts and events, the present Interlocutory Award is weak and unfounded, and I dissent to it for the following reasons.

ACCRUAL OF THE CLAIM

3. According to the Full Tribunal's decision in Case No. A18, the Tribunal has jurisdiction over the claims against Iran of only that category of dual nationals whose dominant and effective nationality during the relevant period (i.e. from the date the claim arose until 19 January 1981) was that of the United States. Decision No. DEC 32-A18-FT, at 19. Therefore, the first step in determining the relevant period, and ultimately the Claimant's dominant nationality, is to ascertain the date on which the claim arose.

4. In the present Case, the Claimant has not specified the date that his claim arose, for in principle, no cause of action exists such that one might determine the date on which the claim relating thereto arose. In other words, since no claim has arisen, it is not possible to ascertain the date on which it arose either; and due to the absence of such date, the Tribunal is legally and factually precluded from determining the Claimant's dominant and effective nationality. The source and basis of the Claimant's claim is the alleged expropriation of his proprietary interests in Iran which were allegedly transferred to him by virtue of a deed of conveyance. This document, which was presented to the Tribunal as proof of the Claimant's ownership of the expropriated property, was objected to by the Respondent as a forged document. A brief examination of the record and of the documents presented by the Parties, even on their face, will substantiate that there is a prima facie case for the Respondent's allegation that the documents presented by the Claimant have been forged and are inauthentic.

5. After having changed his statements and position several times, the Claimant alleges that he owns the claim, supporting this allegation by presentation of a photocopy of an ostensibly official two-page "deed of conveyance," No. 25345 dated 15 August 1978, drawn up by Notary Public's Office No. 319 in Tehran. It is alleged that by virtue of this instrument, a certain Rahman Golzar Shabestari (the Claimant's brother), as transferor, conveys 59% of his 60% share, proprietary rights and interests in a number of companies to the Claimant, in return for the astronomical transfer sum of Rls. 119,700,000,000. The several reasons which prove that the document submitted by the Claimant is a forgery are so patently obvious that they conclusively prove the Respondent's allegation of forgery.

6. I do not intend to examine each of these reasons, but shall instead briefly take up two points:

First- The form of the instrument is manifestly in violation of the regulations applied in Iran for drawing up similar official instruments, and the legal principle of locus regit actum prevents such an instrument from enjoying any validity or authenticity whatsoever[1]. Despite the enormity of the transfer sum, the particulars of the transaction have not been in the least specified, reference merely having been made to the names of 16 conveyed properties. The text of the instrument reads: "... it is not necessary to mention the details of every case of conveyance in this instrument due to the numerousness of each case; moreover, the Parties to the transaction have already set forth the details in a procès verbal which has been drawn up between them, which details are quite specific and clear..." One needs no special expertise in Iranian law

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[1] Article 969 of the Iranian Civil Code provides that "the method of drawing up a document follows the laws of the place where that document is drawn up."

in order to realize to what extent this sentence in the said instrument is unlawful and contrary to the usual method of drafting instruments. How can it be imagined that the astronomical conveyance sum of Rls. 119,700,000,000 would be transferred to a second party through an official instrument, but without the details of that transfer being set forth in that instrument, and without the full particulars of the lands transferred, their registered boundaries, and the response to the legal inquiries from the competent authorities being stated therein as well?

Second - Deed of conveyance No. 25345, drawn up by Notary Public's Office No. 319 in Tehran, which names Mr. Rahman Golzar Shabestari as the transferor and Abrahim Rahman Golshani as the transferee, has no objective existence. Through the presentation of several rebuttal documents, the Respondent has proved that the instrument drawn up under the aforementioned number by the said Notary Public is a declaration of consent by someone called Mr. Kamal Malayeri after a car accident with a certain Mr. Kazem Fallah Shokrgozar, and a waiver of the former's right to bring a claim for damages against the latter driver; and it has absolutely nothing to do with the transfer of Mr. Rahman Golzar Shabestari's shares and properties to the Claimant in the instant Case. To support the foregoing, the Respondent submitted to the Tribunal a copy of the said declaration of consent, the affidavit of the acting manager at Notary Public's Office No. 319, and the affidavit of the inspector of Notary Public's Offices.

7. In light of the foregoing, it is ab initio clear that the document presented by the Claimant lacks authenticity and is a forgery. Therefore, the Claimant does not, in principle, own a claim, such that the date on which that claim arose, and following therefrom the relevant period, might be determined in order to establish the dominant

nationality. What is ironic, however, is that despite the Respondent's requests and arguments, at this stage, the Tribunal has not taken up the crucial issue of the date on which the claim arose.

THE CLAIMANT AND THE ISSUE OF HIS NATIONALITIES

8. The Claimant, Abrahim Rahman Golshani, the holder of identity card No. 57420 issued in Tehran, was born in Iran on 28 April 1945, to Iranian parents, named Mohammad Hassan and Sakineh [2].

A. Educational Background

9. The Claimant spent his entire childhood and youth in Iran. He received his elementary education in Iranian schools, and upon completing his studies at Hashtroodi High School in Khorramshahr and Fargham High School in Tehran, he

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[2] Regarding the Claimant's date of birth, there are two apparently insignificant but noteworthy points. The first is that in Para. 8 of the Interlocutory Award, the Tribunal mistakenly writes this date of birth as 20 December 1945. Although this mistake probably arose because the Tribunal went along with the date of birth given in Para. 2 of the Claimant's affidavit which is incorporated in Document No. 36, it demonstrates how hastily the majority has dealt with the facts of the Case, and how it has sided with the Claimant's unilateral assertions without adequately examining the documents submitted. In other words, the majority accepts the Claimant's selectively chosen information as indisputable facts, and does not even take the trouble of finding out the Claimant's correct and true date of birth from the official identity card issued by the Government of Iran. The third date of birth given for the Claimant in the Case file is 20 December 1948, which appears in the official transcript for the Bachelor's Degree, issued by the University of San Francisco. Therefore, the second point is that the Claimant's statements regarding dates and facts are unreliable, so much so that even with respect to the most basic fact of his life, namely his date of birth, he presents three different versions.

obtained his high school diploma[3]. He has never alleged that during his life and studies in Iran he ever had the least contact or encounter with the American culture. After living more than twenty-four years in Iran, the Claimant went to the United States for the first time in November 1969. As the Claimant himself states, the purpose of this trip was to "pursue [his] higher education" there, and nothing else.

10. The present Interlocutory Award has successively enumerated some examples of the Claimant's actions taken upon his arrival in the United States, and might thereby create the impression that the said acts should cause his United States nationality to prevail. Acts such as enrolling in an English-language school, applying for a Social Security card, opening a bank account, paying taxes and the like are commonplace actions for a foreign student residing in the United States, and are among the basic necessities for studying in that country. The same is true even for many tourists and non-students who travel to the United States for a visit or to reside there. Even obtaining a Green Card for permanent residence in the United States was not an onerous undertaking for foreigners (especially in the 1970's). Therefore, these actions can never support the proposition that the Claimant's United States nationality is his dominant nationality.

11. It took the Claimant seven years to obtain his Bachelor's Degree, and with mediocre grades at that; he also spent a part of that time running a night club. To obtain his Master's Degree, the Claimant thereafter enrolled in an

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[3] In Para. 2 of his affidavit, the Claimant states that he obtained his high school diploma from Fargham High School in Tehran, whereas the official transcript for the Bachelor's Degree issued by the University of San Francisco mentions Hashtroodi High School in Khorramshahr as the place where he obtained his high school diploma.

unknown institution called the School for International Training[4] in Brattleboro, Vermont, and after performing his internship in Iran, he finally received his Master's Degree in August 1980. The manifest difference between the instant Case and Reza Said Malek becomes clear when the above matters are taken into account. In Malek, the majority considered the Claimant's United States nationality to be dominant, arguing that he was a successful physician and a prime example of the "brain drain." In the present Case, however, even the above-mentioned criterion does not obtain. Here, from an educational and professional point of view, the Claimant's situation is not in the least comparable to that in Malek.

12. In Para. 22 of the present Interlocutory Award, the Tribunal enumerates the Claimant's educational attachments in the U.S. after 1969 as being among the reasons for its decision. But it was for this very purpose of receiving a higher education that the Claimant had travelled to the United States. In fact, it is beyond comprehension how the Tribunal can consider the study period of an Iranian student in the United States as an "academic attachment," and therefore as a reason why his acquired United States nationality should prevail.

B. Family and Financial Situation

13. While still a student, the Claimant married Catherine Vinci[5], a U.S. national, in December 1973. At the time of

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[4] In the copy of his academic diploma, the full name of this institution is given as The Experiment in International Living's School for International Training.

[5] The name of the spouse has been given as Catherine Miller in the marriage certificate. However, neither the Claimant nor the majority, which follows suit in the present Interlocutory Award, provides any explanation for the discrepancy between the two names.

her marriage with the Claimant, his wife had a four-year-old son from her first marriage who, according to her affidavit, has never been legally adopted by the Claimant. Once again, Para. 16 of the Interlocutory Award naively describes the events and states that the Claimant's "other" two children, namely "Kaveh Vince" and "Veda Katherine," were born in the United States[6]. As described hereinabove, the Claimant has not legally adopted the son that his wife had from her first marriage, and therefore, the fact that the "elder son [is] already attending Catholic school" is irrelevant to the Claimant's dominant nationality and is immaterial in this regard. Similarly, the majority's point that the Claimant's daughter was born in the United States is in principle out of place and immaterial to the present Case, since her birthdate is 10 September 1982, i.e. posterior to 19 January 1981, which is the date on which the Algiers Declarations came into effect. As for the Claimant's allegation that his children are being brought up as Catholics or that they do not speak Persian, it should be borne in mind that it is almost impossible for the Respondent to present rebuttal documents to counter this allegation; in particular, based on the remarks made regarding the unreliability of the Claimant's statements and the illegality of his actions, the Claimant's assertions simply cannot be accepted. In addition, generally speaking, the issue of the religion according to which the Claimant's children are allegedly being brought up cannot have any impact on determining the dominant nationality. In principle, a person's religion does not play a determining role in the issue of nationality, which is the juridical crystalization of a social fact, just as the nationals of one country may adhere to different religions.

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[6] Once again, mention of a small and insignificant point demonstrates the majority's hasty approach in dealing with the documents in the Case. The name of the Claimant's son has mistakenly been given as Kaveh Vince in Para. 16 of the Interlocutory Award, whereas according to his birth certificate, his name was Kaveh Vinci at the time of birth.

14. The majority has given undue weight to the Claimant's financial and commercial attachments in the United States. As a married student, the Claimant was compelled to somehow gain his livelihood in the country where he was studying. Generally speaking, one does not need American nationality to have a hand in business or in real estate or to pay taxes in the United States, and these matters cannot, per se, constitute proof of the dominance of that country's nationality as far as the Claimant is concerned. On the contrary, the important point is that the property that the Claimant alleges to have been expropriated was allegedly transferred to him during his stay in Iran, and as an Iranian, he became its alleged owner. For the purposes of examining which nationality prevails, it should be noted that in itself, this alleged transfer supports the idea that the Claimant intended to settle down in Iran once again and, in due course, to transfer his family to Iran as well.

EVALUATION OF THE CLAIMANT'S ACQUIRED NATIONALITY

15. I believe that from a legal point of view, the Tribunal is not at liberty to treat those acts that the Claimant took exclusively under his Iranian nationality and up to the moment when he was formally and legally naturalized as a United States national, as acts which would prove the dominance of his future United States nationality. In other words, until the very moment that he actually acquired and gained his second nationality, the Claimant was acting solely as an Iranian national, and in principle, he did not possess any second nationality which might prevail over his original nationality. Thus, until 9 August 1978, when the Claimant acquired United States nationality, he had been exclusively an Iranian national for thirty-three years and three months and ten days; moreover, from that date onwards he has never taken any action to renounce his Iranian nationality, and has thus never lost it. Therefore, from the date when he acquired his second nationality until the

date when the Algiers Declarations came into effect (19 January 1981), the Claimant was recognized as a United States national only for a period of less than two and a half years, whereas his original Iranian nationality was more than thirty-five and a half years old as of the date of the Algiers Declarations.

16. The most important point in evaluating the Claimant's dominant nationality is the issue of his continuing relationships and attachments in Iran. During his studies in the United States, the Claimant made trips to Iran for the purpose of visiting his family, and as he admits in Para. 22 of his affidavit, he was in touch with his mother in Iran. The Claimant's last and most significant trip to Iran occurred in 1978. He alleges that he travelled to Iran for a 6-month internship, which formed a part of his curriculum for the Master's Degree. The role played by the Claimant's second stay in Iran during 1978-79, during which time he worked for his brother, is of paramount importance in evaluating his dominant nationality. The Claimant has unfortunately refrained from presenting the precise dates when his second stay in Iran commenced and ended, leaving the Tribunal in the dark in that regard.[7] In Paras. 10 and 16 of his affidavit, the Claimant alleges that he travelled to Iran in 1978 to perform his student internship with his brother's company, and that he returned to the United States in May 1979. Circumstantial evidence indicates, however, that his sojourn was much longer than 6 months. Even the Claimant's forged document which allegedly proves his

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[7] It is likely that these deliberate ambiguities have been created for the purpose of hiding or misrepresenting the facts pertaining to the forgery.

ownership of the claim shows that he was in Tehran on 15 August 1978[8]. Therefore, the Claimant resumed his residence in Iran for a period of at least ten months.

17. Numerous and noteworthy questions come to mind in connection with this trip by the Claimant to Iran, for which neither the Claimant nor the majority has provided any convincing answers. In Para. 8 of his affidavit, the Claimant admits that "as a part of the curriculum at the School for International Training, students were required to perform a 6-month management internship with a U.S. or foreign company." The important question that arises is why the Claimant chose to perform the internship in Iran, rather than in the United States. How is it that although, as he always contends, he went to the United States without any intention of returning permanently because of "dissatisfaction with his future prospects in Iran," and despite the fact that he was fascinated by and assimilated in the American way of life, the Claimant suddenly decided to perform his internship in Iran and with the company of his brother, Rahman Golzar Shabestari, whereas he could also have performed his internship in the United States itself and was not required to go abroad and should, in principle, have chosen the United States for his internship in view of the fact that his wife was a United States national and he had work and business experience in the United States and, particularly, because he always alleged that "he saw his future in the United States"?

18. The answer to all these questions may easily be summarized in one sentence: the Claimant had seriously decided to return permanently to his original country after completing his university studies, and to start work in his brother's company. Even the throes of the Revolution during the last months of 1978 and the beginning of 1979 did not make the

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[8] In document No. 54, the Claimant mentions 2 July 1978 as the date on which the forged document was drawn up, whereas the correct corresponding date should be 15 August 1978.

Claimant depart from Iran and fly back to the United States to be present for his wife's delivery (which led to the birth of their first child, Kaveh). The Claimant remained in Iran until at least May 1979. The Claimant's allegation that he did not succeed in returning to the United States to be present for his wife's delivery because the airport was closed is frivolous and baseless. He had many months to take measures to leave Iran and to return to the United States, if he had so wished. The only point that might, in this connection, seemingly support the majority's view is the fact that the Claimant refrained from taking his wife with him to Iran. In the first place, however, taking all the other circumstances and circumstantial evidence into consideration, this point can not by itself negate the dominance of the Claimant's Iranian nationality; and secondly, this decision could most probably have been due to innumerable other reasons and not to an intention on the Claimant's part to return to Iran only temporarily. By way of example, it could be that the Claimant's spouse did not accompany him so that he could have sufficient time to arrange the necessities of life and to find accommodations in Iran; or most importantly, it could be that the Claimant's wife was unable to take a long flight, since she was in the midst of her pregnancy.

19. Taken altogether, a number of reasons will demonstrate that the Claimant's original Iranian nationality is his dominant and effective nationality. These reasons, in so far as they are reflected in the evidence, are as follows:

a. Lack of any attempt to relinquish his Iranian nationality;

b. Continuing family, sentimental, and occupational ties with Iran;

c. Continuation of his university studies in the United States, for the purpose of benefitting therefrom upon returning to Iran; and

d. Trips to, and internship, sojourn, and work in Iran, despite the possibility of performing the internship in the United States.

In the light of the more than thirty-five and a half years over which the Claimant held only his original Iranian nationality, the above reasons and other circumstances leave no room whatsoever for the position that his acquired United States nationality, of less than two and a half years' duration, was his dominant nationality.

CONCLUSION

20. In view of the foregoing, the following conclusions ought to be drawn:

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

Secondly, in principle, no claim has arisen such that one might determine the date on which it arose or, following therefrom, the relevant period therefor, and for this reason the claim is altogether inadmissible.

Thirdly, the Claimant's Iranian nationality is dominant and prevails over his acquired nationality; and from this point of view as well, the Tribunal lacks jurisdiction over the claim brought before it.

The Hague,
7 September 1989

Parviz Ansari