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319-60

Case No. 319

319-60

Date of filing: 15 Nov '90**** AWARD**- Type of Award Partial

- Date of Award _____

13 pages in English14 pages in Farsi**** DECISION** - Date of Decision _____

_____ pages in English

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**** CONCURRING OPINION** of _____

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**** OTHER; Nature of document:** _____

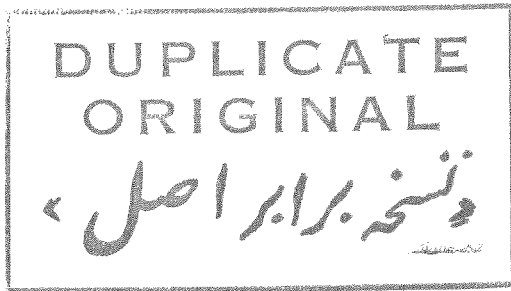
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داورى دعاوى ایران - ایالات متحدہ



CASE NO. 319

CHAMBER ONE

AWARD NO. 497-319-1

HOOSHANG and CATHERINE ETEZADI,
Claimants,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	15 NOV 1990
	تاریخ ۱۳۶۹ / ۸ / ۲۴

PARTIAL AWARD

I. THE PROCEEDINGS

1. On 15 January 1982 the Claimants HOOSHANG and CATHERINE ETEZADI ("the Claimants") filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran"), seeking, in total, a sum of U.S.\$629,393 as compensation for the alleged expropriation of a plot of land in Karaj, Iran, of a 10% interest in Shiraz Plastic Products Corporation, of their equity interest in a condominium apartment in Tehran, and of a pension of Hooshang Etezadi as a retired employee of the Ministry of Foreign Affairs of Iran. The Claimants allege that the Claim to the plot of land in Karaj arose at a date uncertain but in any case prior to 19 January 1981, the Claim to the interest in Shiraz Plastic Products Corporation within the first six months after the founding of the Islamic Republic and in any case well before 19 January 1981, the Claim to the equity interest in the condominium apartment at an unspecified date, and the Claim to the pension of Hooshang Etezadi in May 1980.

2. In its Statement of Defense, filed on 18 January 1983, Iran asserted 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 the Respondent's Statement of Defense on 10 February 1983, stating that they are citizens of the United States and that the Claim is within the Tribunal's jurisdiction.

3. By its Order of 6 July 1983 the Tribunal suspended further proceedings in this Case, pending the Full Tribunal's decision on the question of the Tribunal's jurisdiction in cases where the claimant was a dual Iran-United States national. 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 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 requested the Claimants to file by 23 September 1985 all evidence they wished the Tribunal to consider in determining their dominant and effective nationality. Likewise, the Tribunal requested Iran to file by 23 December 1985 all evidence it wished the Tribunal to consider on the issue of the Claimants' nationality.

4. Catherine Etezadi submitted her evidence on 9 September 1985. Iran was granted two extensions until 24 June 1986. The Tribunal in its Order of 1 July 1986 granted one further extension until 24 September 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 informed by both Parties that ongoing settlement discussions would call for a postponement of the proceedings. After Iran filed a "Statement of Defence on the Nationality of the Claimants" on 11 January 1988 and the Claimants filed a "Statement of Claimants in Response to Statement of Defence on the Nationality of the Claimants" on 10 March 1988, the Tribunal invited Iran to file by 26 August 1988 any evidence in rebuttal together with a brief, restricted to the issue of the Claimants' dominant and effective nationality. After having been granted three extensions, Iran filed its Reply on 15 February 1989.

5. The Claimants acknowledge that they are citizens of both Iran and the United States, and assert that their dominant and effective nationality is that of the United States. Iran asserts that the Tribunal has no jurisdiction in this Case because Hooshang Etezadi was exclusively an Iranian national on the date the Claims Settlement Declaration entered into force, and because Catherine Etezadi's Iranian nationality was dominant and effective during the period the Claims arose to 19 January 1981.

II. FACTS AND CONTENTIONS

6. Hooshang Etezadi was born in Iran on 6 December 1923. He was brought up in Tehran, where he also completed his primary and secondary education, and thereafter moved to the United States. On 6 November 1945, after having served in the United States Army during World War II, he was naturalized as a United States citizen by the Superior Court of San Luis Obispo, California. He studied at the University of California in Berkeley from 1946 to 1948, when he received the degree of Bachelor of Arts with a major in political science, and from 1949 to 1950, when he received the degree of Master of Arts in political science. On 4 October 1949 he was appointed Second Lieutenant, Military Intelligence, in the United States Army. In January 1950 the Claimant returned to Iran. In 1951 he joined the Ministry of Foreign Affairs of Iran and expatriated himself, as required by the United States law, by turning in his United States passport to the United States Embassy in Tehran. On 18 April 1952 he received a notice of honorable discharge from the United States Army Reserve. In 1954 he was appointed as attaché to Iran's permanent delegation at the United Nations in New York.

7. Catherine Etezadi was born in Grand Rapids, Michigan, the United States, on 19 February 1925. She states that her

parents were United States citizens, and that they resided their entire lives in the United States. She met Hooshang Etezadi while working for the United States Department of State in Iran. They were married in Maryland, the United States, on 4 May 1955. From 1955 to 1959 she allegedly worked for the Regal Paper Company, a United States corporation, in New York City. On 21 September 1955 she obtained Iranian identity card No. 148 from the Iranian Consulate in New York, and in 1962 she was issued a "service" passport, No. 18990, by the Iranian Foreign Ministry. On 3 September 1969 she was issued another Iranian passport, No. 1050858, by the Iranian Consulate General in San Francisco. The Claimants have two children; Susan, born in the United States on 22 September 1958, and David, born in Iran on 10 April 1960.

8. In 1959 the Claimants returned to Iran, and Hooshang Etezadi started working at the Protocol Department of the Iranian Foreign Ministry. In 1962 he became First Secretary, and in 1964 he was appointed as Deputy Managing Director of the Ministry's Housing Organization. In 1966 he was appointed as Deputy Director for the Passport Office. During the period from 1959 to 1967 Catherine Etezadi apparently was living, as a housewife, with her husband and children in Iran.

9. In 1967 the Claimants moved to the United States. Between 1967 and 1970 Catherine Etezadi resided continuously in the United States, while Hooshang Etezadi spent the majority of his time in Iran. During this period Hooshang Etezadi obtained the status of a Lawful Permanent Resident in the United States. In 1968 Hooshang Etezadi purchased a house in Novato, California and invested in real estate in California. He also purchased and operated, allegedly along with his wife, a motel in Santa Maria, California. From 1963 to 1974 Hooshang Etezadi allegedly maintained a bank account with Manufacturers Hanover in the United States, and

from 1974 onwards maintained accounts with the Bank of America in San Rafael and other United States banks.

10. In 1970 the Claimants again returned to Iran, remaining there until 1974. During this period Hooshang Etezadi retained his status as a Lawful Permanent Resident in the United States, and allegedly made semi-annual visits thereto. In 1974 Hooshang Etezadi retired from the Foreign Ministry, and the Claimants and their children moved to the United States. Hooshang Etezadi states that except for a short visit to Tehran in 1976, he never returned to Iran. In December 1980 he applied for the United States citizenship, and was naturalized in June 1981.

11. Catherine Etezadi states that she has not returned to Iran since 1974 when she left that country. She has resided with her husband in Novato, California, and she has been a registered voter in the United States at least since 1976. She has been a member in good standing of the Bel Marin Keys Women's Club since 1974. She was an active member until 1978, when she moved away from the community, but has retained her membership. She has held a United States passport continuously since 1951.

III. REASONS FOR THE AWARD

12. In order to determine whether the Claimants have standing before this Tribunal, the Tribunal must establish whether the Claimants were citizens of Iran, of the United States, or of both Iran and the United States, during the period from the date the Claims arose to 19 January 1981, the date on which the Claims Settlement Declaration entered into force. If the Claimants were citizens of both Iran and the United States, the Tribunal must determine the Claimants' dominant and effective nationality during that

period.¹ The Tribunal notes that in this Case there are in fact four different Claims, and that the dates on which they arose remain partly unspecified by the Claimants. See supra, para. 1. In these circumstances, the Tribunal will assume that the relevant period extends from the earliest date specified by the Claimants, that is, the first six months following the founding of the Islamic Republic, to 19 January 1981. The Tribunal will further assume that the Claims for which the dates remain unspecified arose during that period. The Tribunal emphasizes that because these assumptions are made only for the purpose of determining the Claimants' dominant and effective nationality, they cannot prejudice the Tribunal's decision, when considering the merits, as to whether the Claims, in fact, arose before or after 19 January 1981.² The Tribunal will determine those issues, as well as the remaining jurisdictional issues, when it considers the merits of the Case.

13. The Tribunal notes that there is no dispute as to the Iranian citizenship of Hooshang Etezadi. He was born in Iran to Iranian parents, a fact which under Iranian law establishes his Iranian citizenship. Moreover, although he was naturalized as a United States citizen in 1945, there is no dispute that he relinquished that citizenship in 1951. Although he was renaturalized as a United States citizen in

¹Article VII, paragraph 1(a) of the Claims Settlement Declaration defines a "national" of Iran or the United States, as the case may be, as "a natural person who is a citizen of Iran or the United States." See Case No. A18, supra para. 3, 5 Iran-U.S. C.T.R. 251.

²The 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 citizen, as the case may be. See Article II, paragraph 1 and Article VII, paragraph 2 of the Claims Settlement Declaration.

June 1981,³ this date is subsequent to 19 January 1981, the date on which the Claims Settlement Declaration entered into force. Consequently, the Tribunal holds that the Claims of Hooshang Etezadi do not fall within the Tribunal's jurisdiction.

14. The Tribunal notes that Iran has disputed Catherine Etezadi's United States citizenship. Catherine Etezadi was born in the United States, which under the law of that country establishes her United States citizenship. However, Iran asserts that when she married an employee of the Iranian Foreign Ministry, who allegedly are not permitted to marry foreigners, she waived her United States nationality and voluntarily acquired Iranian nationality. The Tribunal also notes that Catherine Etezadi has produced as evidence of her United States citizenship a photocopy of her birth certificate and photocopies of relevant pages of her United States passports issued on 23 October 1958, 24 October 1962, 8 May 1967, 25 April 1972, 22 March 1977, and 20 September 1982. In the light of this evidence, and in the absence of any indication that Catherine Etezadi ever relinquished her United States citizenship in accordance with United States law, the Tribunal determines that during the relevant period Catherine Etezadi was a United States citizen. The Tribunal further notes that under clause (6) of Article 976 of the Civil Code of Iran she also became, upon her marriage to an Iranian citizen, a citizen of Iran on 4 May 1955. There is no evidence in the record that she has relinquished her Iranian citizenship in accordance with Iranian law. Consequently, the Tribunal finds that during the relevant period Catherine Etezadi was a citizen of both Iran and the United States.

³The Claimant states that he was naturalized in June 1981, but he has not specified the precise date of naturalization. However, he has submitted a photocopy of relevant pages of a United States passport issued on 10 July
(Footnote Continued)

15. Having found that during the relevant period Catherine Etezadi was a citizen of both the United States and Iran, the Tribunal must now determine her dominant and effective nationality during that period. For that purpose, the Tribunal must establish the country with which she had stronger factual ties, considering all relevant factors, such as the Claimant's habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. See Case No. A18, supra para. 3, p. 25, 5 Iran-U.S. C.T.R. 265. While the Tribunal's jurisdiction is dependent on the Claimant's dominant and effective nationality during the period between the date the Claims arose and 19 January 1981, events and facts preceding that period remain relevant to the determination of the Claimant's dominant and effective nationality during the period. See 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.

16. As noted above, the evidence in the record establishes that Catherine Etezadi was born in the United States. It also indicates that her parents were United States citizens, and that they lived in the United States for their entire lives. Between 1951 and 1974 Catherine Etezadi lived for long periods both in Iran and the United States. Apparently from 1951 to 1955 she resided in Iran, where she was employed by the United States Department of State. From 1955 to 1959, while her husband was working as attaché to the permanent delegation of Iran at the United Nations, she resided in the United States, where she apparently worked for a United States corporation. The period from 1959 to 1967 she spent in Iran, apparently as a housewife. From 1967 to 1970 she resided continuously in the United States,

(Footnote Continued)

1981. In view of the date of issuance, the Tribunal is satisfied that the Claimant was naturalized in June 1981.

whereafter she again returned to Iran. She remained in Iran until 1974, when she moved to the United States, allegedly never returning to Iran. Her residence in Novato, California, since 1974 is demonstrated by a letter from the Novato Police Department and a letter from the Office of the Assessor-Recorder of Marin County, California.⁴ The Tribunal notes that from 1951 to 1981 Catherine Etezadi resided almost equally long periods in Iran and in the United States. The Tribunal also notes that prior to 1974 Catherine Etezadi's husband (except for the years between 1967 and 1970) and, prior to 1955, Catherine Etezadi herself, were in the diplomatic service, which at least partly explains their repeated changes of residence. However, since the retirement of her husband in 1974, Catherine Etezadi, her husband and their two children have resided permanently in the United States, where she also has participated in public and social life.

17. As noted above, Catherine Etezadi has resided long periods in Iran and has been married to an Iranian citizen since 1955. She was issued an Iranian identity card in 1955 and Iranian passports in 1962 and 1969. While travelling to and from Iran she used her Iranian passport; however, this fact does not necessarily indicate that she was more closely attached to Iran than to the United States.⁵ Catherine Etezadi states that she has had no blood relatives in Iran since 1974, when she and her family left the country.

⁴Iran has submitted a copy of an application for membership in the Imperial Country Club in Tehran, allegedly signed and submitted by Catherine Etezadi in 1977. The Claimant contests the authenticity of the document. The Tribunal notes that the application is not dated. In view of this, the Tribunal finds that there is no need to consider the questions raised by the Parties.

⁵See Lilly Mythra Fallah Lawrence and The Islamic Republic of Iran, Interlocutory Award No. ITL 77-390/391/392-1, para. 12 (5 Oct. 1990), reprinted in Iran-U.S. C.T.R. _____; Nasser Esphahanian and Bank Tejarat,
(Footnote Continued)

18. In these circumstances the Tribunal finds, on the basis of the evidence before it, that during the relevant period Catherine Etezadi's ties to the United States outweighed her ties to Iran. Consequently, the Tribunal determines that during the relevant period Catherine Etezadi's dominant and effective nationality was that of the United States.

19. The Tribunal notes Iran's argument to the effect that the Claims in this Case, if eventually proved, belong to Hooshang Etezadi alone, and that Catherine Etezadi has not been able to show that she has a direct interest in the Claims set forth. However, the Tribunal finds that the question of whether Catherine Etezadi has a legal interest in the subject matter of the Claim, as well as the question of whether her property rights, if any, were expropriated or otherwise affected by measures taken by Iran, belongs to the merits of the Case, and therefore cannot be decided at this stage of the proceedings. Moreover, the determination of a claimant's dominant and effective nationality, which is a preliminary determination, cannot prejudice the Tribunal's decision on the merits. See supra para. 12.⁶

(Footnote Continued)

Award No. 31-157-2, pp. 17-18 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 157, 167-68.

⁶See also South West Africa Cases (Eth. v. S.A.; Lib. v. S.A.), 1966 I.C.J. 6, 38 (Judgment of 18 July):

[W]hatever observations the Court may have made on [the Applicants' legal right or interest], it remained for the Applicants, on the merits, to establish that they had this right or interest in the carrying out of the provisions which they invoked, such as to entitle them to the pronouncements and declarations they were seeking from the Court. Since decisions of an interlocutory character cannot pre-judge questions of merits, there can be no contradiction between a decision allowing that the Applicants had the capacity to invoke the jurisdictional clause -- this being the only question which, so far as this point goes, the Court was then called upon to decide, or could decide, -- and a decision that the Applicants have not established the legal basis of their claim on the merits.

20. The subsequent proceedings in this Case remain subject to the caveat of the Full Tribunal in Case No. A18, supra para. 3, p. 26, 5 Iran-U.S. C.T.R. 265-66, that "where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the Claimant, the other nationality may remain relevant to the merits of the claim."

IV. PARTIAL AWARD

21. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

(a) The Claim of the Claimant HOOSHANG ETEZADI is dismissed for lack of jurisdiction under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.

(b) The Claimant CATHERINE ETEZADI has standing before this Tribunal under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.

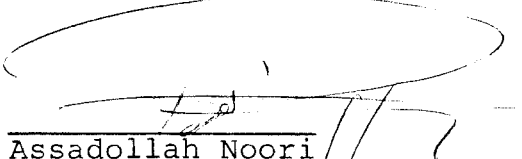
(c) The remaining jurisdictional issues are joined to the merits.

Dated, The Hague
15 November 1990



Bengt Broms
Chairman
Chamber One

In the Name of God



Assadollah Noori

In my opinion, the Tribunal does not, in principle, have jurisdiction



Howard M. Holtzmann

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, especially 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.