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Case No. 168

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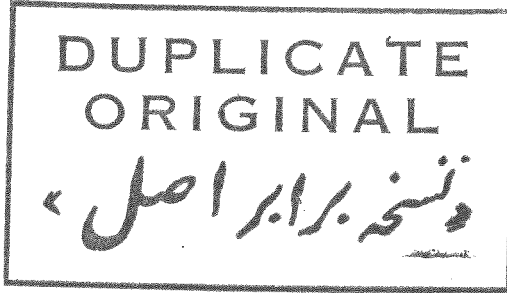
** CONCURRING OPINION of _____
- Date _____
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CASE NO. 168

CHAMBER THREE

AWARD NO. 424-168-3

MICHELLE DANIELPOUR,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داورى دعوى ایران - ایالات متحده
ثبت شد - FILED	
Date	16 JUN 1989
	تاریخ ۱۳۶۸ / ۳ / ۲۶

AWARD

I. THE PROCEEDINGS

1. On 18 December 1981 MICHELLE DANIELPOUR (the "Claimant") submitted a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN ("Iran") claiming U.S.\$14,103,493 for the alleged expropriation in early 1980 of her interests in Sancour Manufacturing Corporation, Arialand Agro Industrial Company, Ariapad Land Company and other property in Iran. On 31 May 1982 Iran filed its Statement of Defense.

2. The Claimant contends that she is a United States national. Iran asserts that, due to the fact that her father is an Iranian national, the Claimant is a national of Iran under Iranian law and therefore cannot raise her Claim before this Tribunal.

3. On 25 June 1982 the Tribunal ordered the Parties to submit memorials addressing the factual and legal issues regarding the Claimant's alleged dual nationality. On 18 October 1982 the Claimant submitted a preliminary statement and documentary evidence in response to this Order. On the same day Iran filed its memorial on the nationality of the Claimant.

4. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, Decision No. DEC 32-A18-FT, p. 25, reprinted in 5 Iran-U.S. C.T.R. 251, 265, in which it determined "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."

5. On 28 June 1985 the Tribunal issued an Order requesting the Claimant to file all written evidence she wished the Tribunal to consider in determining her dominant and effective nationality. On 2 September 1985 the Claimant informed

the Tribunal that she intended to rely on her submission of 18 October 1982 as proof of her United States nationality. The Tribunal thereafter invited the Respondent to file "all evidence that it wishes the Tribunal to consider on the issue of Claimant's nationality." After granting three extensions of the original deadline, the Tribunal on 6 February 1987 denied Iran's fourth request for extension and informed the Parties that the Tribunal intended to proceed with its deliberations on the issue of jurisdiction in this Case as soon as its schedule permitted on the basis of the evidence then before the Tribunal, pursuant to Article 28, paragraph 3, of the Tribunal Rules.

6. On 18 May 1988 Iran submitted a "Statement of Defense Concerning Nationality of the Claimant." In this submission Iran points out that at the time of the Claimant's birth her parents acquired an Iranian identity card for her and that later she obtained an Iranian passport for her travel to the United States. Iran also points out that in her application to renew her Iranian passport dated 16 June 1978 the Claimant stated that her country of domicile was Iran and that she was travelling to the United States as a visitor. In sum, Iran argued that, since the Claimant has spent the majority of her life in Iran, her dominant and effective nationality is Iranian.

7. On 6 July 1988 the Claimant submitted a letter noting Iran's submission and requesting the Tribunal to refrain from taking action in this Case until her response to Iran's Statement of Defense was submitted.

8. On 5 April 1989 the Claimant filed an affidavit in response to Iran's 18 May 1988 submission (the "Affidavit"). On 11 April 1989 Iran objected to the filing of the Affidavit and requested the Tribunal either to strike it or to grant Iran an opportunity to respond thereto. On 24 April 1989 the Claimant objected to Iran's request for an

opportunity to reply to the Affidavit. Iran reasserted its request on 5 May 1989. Since the Tribunal's present Award is not based upon the Claimant's Affidavit, the Tribunal need not address the Parties' requests.

II. FACTUAL BACKGROUND

9. Michelle Danielpour was born on 15 April 1961 in Forest Hills, New York, in the United States to Iranian parents. On 5 June 1963 the Claimant obtained an Iranian identity card from the Iranian Consulate in New York. In 1963, at the age of two, she returned to Iran with her parents, where she spent her childhood and received all of her elementary and most of her secondary education. On 14 June 1977 the Claimant obtained a United States passport from the United States Embassy in Iran. On 16 June 1978 she applied for and was issued an Iranian passport. In August 1978 she allegedly went to the United States and lived at first with relatives in Mendham, New Jersey where she completed her high school studies. In September 1979 she entered the College of New Rochelle in New Rochelle, New York. By that time her parents had moved from Iran to Queens, New York, in the United States and she has since resided with them.

10. The Claimant alleges that since her arrival in the United States in 1978 she has not travelled to Iran.

III. THE TRIBUNAL'S DETERMINATION

11. The Tribunal has first to determine whether the Claimant was, from the time the Claim arose until 19 January 1981, a national of the United States or of Iran or of both countries. If the Tribunal concludes that the Claimant holds both nationalities, it will have to determine which one is "dominant and effective" during the relevant time and, consequently, must prevail for purposes of jurisdiction over the present proceedings. Case No. A18, Decision No.

DEC 32-A18-FT, p. 25 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265.

12. It is undisputed that the Claimant is an Iranian national by virtue of her father's nationality. It has not been contended that she ever applied, pursuant to Iranian law, to relinquish her Iranian nationality or that she had otherwise lost that nationality. At the same time it is clear from the record that the Claimant is a United States national. As evidenced by her birth certificate and United States passport, the Claimant was born in the United States and thus is a United States citizen.

13. The pertinent issue thus becomes one of determining the dominant and effective nationality of the Claimant at the relevant time. In its decision in Case No. A18 the Tribunal noted that the determination of a claimant's dominant and effective nationality requires consideration of "all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment." Id. In this Chamber's decision in Reza Said Malek and Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), the Tribunal further clarified that "the entire life of the Claimant, from birth, and all the factors which, during this span of time, evidence the reality and the sincerity of the choice of national allegiance he [or she] claims to have made, are relevant."

14. The Tribunal must now proceed to apply this standard to the facts before it. The record establishes that prior to the Claimant's arrival in the United States in August 1978 she spent fifteen years of her life in Iran, virtually her entire life, with Iranian parents in an Iranian environment. She attended Iranian schools and was exposed almost exclusively to Iranian culture. While the Claimant mentions having relatives in the United States, she has presented no

evidence to suggest that she maintained contact with them or that she visited them during her years in Iran.

15. It is uncontested that the Claimant lived and studied in the United States approximately one and a half years prior to the time her Claim is alleged to have arisen in early 1980. The issue for the Tribunal to consider is whether the Claimant's relocation to the United States in August 1978 is enough to obviate the fact that she had spent almost her entire life in Iran, so as to deem her United States nationality dominant and effective.

16. It does not appear that the Claimant was exposed to American culture prior to her relocation to the United States. Therefore, after arriving in the United States it would have taken her some time to integrate into American society even though she had acquired United States citizenship at birth. In the view of the Tribunal, given the lack of prior exposure to American society and culture, the short period between the time she arrived in the United States and the relevant period would not have been adequate for the Claimant to integrate into American society and to familiarize herself with American culture so as to predominate over her years spent in Iran under the influence of her Iranian family and of the society and culture of Iran. The Tribunal thus concludes that the Claimant has failed to establish that her dominant and effective nationality during the relevant period was that of the United States.


IV. AWARD

17. In view of the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:

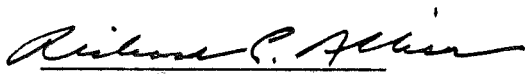
- a. The Claim of MICHELLE DANIELPOUR against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is dismissed for lack of jurisdiction.
- b. Each Party shall bear its own costs of arbitration.

Dated, The Hague
16 June 1989




Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Parviz Ansari Moin