

169-52

TES CLAIMS TRIBUNAL

دیوان داری دعاوی ایران - ایالات متحدہ 52

ORIGINAL DOCUMENTS IN SAFE

Case No. 169

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- Date _____
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CASE NO. 169

CHAMBER THREE

AWARD NO. ITL 69-169-3

STEVEN JOSEPH DANIELPOUR,

Claimant,

and

THE GOVERNMENT OF THE

ISLAMIC REPUBLIC OF IRAN,

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحده
شیت شد - FILED	
Date	16 JUN 1989
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INTERLOCUTORY AWARD

I. THE PROCEEDINGS

1. On 18 December 1981 STEVEN JOSEPH DANIELPOUR (the "Claimant") submitted a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN ("Iran") claiming U.S.\$12,632,064 for the alleged expropriation in early 1980 of his interests in Sancour Manufacturing Corporation, in a poultry farm and in a fruit orchard in Iran. On 31 May 1982 Iran filed its Statement of Defense.

2. The Claimant contends that he is a United States national. Iran asserts that, due to the fact that his father is an Iranian national, the Claimant is a national of Iran under Iranian law and therefore cannot raise his 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 he wished the Tribunal to consider in determining his dominant and effective nationality. On 2 September 1985 the Claimant informed the Tribunal that he intended to rely on his submission of 18 October 1982 as proof of his 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 16 May 1988 Iran submitted a "Statement of Defense Concerning Nationality of the Claimant." Although primarily addressing the merits of the Case, the submission contends that the Claimant's contacts with the United States have been "so insignificant" that they "cannot be compared with" the Claimant's contacts with Iran.

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 his response to Iran's Statement of Defense was submitted. On 6 April 1989 the Claimant filed an affidavit in response to Iran's 16 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 Interlocutory Award is not based upon the Claimant's Affidavit, the Tribunal need not address the Parties' requests.

II. FACTUAL BACKGROUND

8. Steven Joseph Danielpour was born on 5 September 1954 in Forest Hills, New York, in the United States to Iranian parents. Soon after his birth his parents allegedly obtained for him an Iranian identity card from the Iranian Consulate in New York. According to the Claimant, he lived

the first nine years of his life with his parents in New York. In 1963 the family is alleged to have moved to Iran where the Claimant received the remainder of his primary and secondary education. On 13 January 1971 the Claimant obtained a United States passport, which he renewed on 20 April 1976, and on 21 August 1972 he allegedly went to the United States where he initially lived with relatives of his mother. That same year he registered for the United States draft. As evidenced by a registration certificate, the Claimant was notified on 1 December 1972 by the Selective Service System of his classification for induction into United States military service. Thereafter, the Claimant allegedly attended Syracuse University in Syracuse, New York until 1977. According to the Claimant and as evidenced by his wage and tax statements, he was employed by the American Telephone & Telegraph Company in the State of New York in 1977 and thereafter.

III. THE TRIBUNAL'S DETERMINATION

9. 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.

10. It is undisputed that the Claimant is an Iranian national by virtue of his father's nationality. It has not been contended that he ever applied, pursuant to Iranian law, to relinquish his Iranian nationality or that he 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 his certificate of birth and United States passport, the Claimant was born in the United States and thus is a United States citizen.

11. 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 claims to have made, are relevant."

12. The Tribunal must now proceed to apply this standard to the facts before it. The record establishes that, after going to the United States in 1972, the Claimant lived and worked in the United States on a continuous basis from at least 1977 to at least 19 January 1981. As evidenced by his W-2 tax forms for the years 1977-1981, the Claimant was employed during this period by the American Telephone & Telegraph Company in New York. As established by copies of his apartment leases, the Claimant maintained a residence in New York during this time. The Claimant's departure from Iran in 1972 and his continuous residence in the United States subsequent to that departure suggest that the Claimant intended to remain in the United States and make it his home. This suggestion is further evidenced by a letter, dated 29 June 1978, to the Claimant from his father in Iran urging the Claimant to return to Iran and take over the family business. The Claimant's failure to do so implies that he had decided to remain and make his career in the United States. Thereafter, his immediate family moved to the United States.

13. The Tribunal finds that, before the time his Claim is alleged to have arisen, the Claimant had decided to live in

the United States and to assert his United States nationality. The Tribunal therefore concludes that his dominant and effective nationality during the relevant period is that of the United States.


IV. AWARD

14. In view of the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:


- a. For the purpose of the Tribunal's jurisdiction, the dominant and effective nationality of the Claimant STEVEN JOSEPH DANIELPOUR is that of the United States.
- b. The schedule for submission of memorials and evidence on all remaining issues will be established by a separate order.

Dated, The Hague
16 June 1989

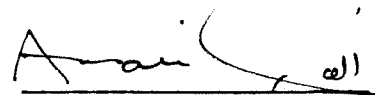


Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Parviz Ansari Moin
Dissenting Opinion