

170-54

CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

Case No. 170

Date of filing: 16-june 89

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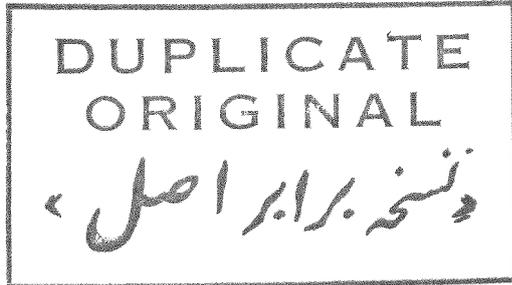
** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

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- Date _____
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CASE NO. 170

CHAMBER THREE

AWARD NO. ITL 70-170-3

NAHID (DANIELPOUR) HEMMAT,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعوی ایران - ایالات متحده
ثبت شد - FILED	
Date	16 JUN 1989
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INTERLOCUTORY AWARD

I. THE PROCEEDINGS

1. On 18 December 1981 NAHID (DANIELPOUR) HEMMAT (the "Claimant") submitted a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN ("Iran") claiming U.S.\$81,065,326 for the alleged expropriation in early 1980 of her interests in Sancour Manufacturing Corporation ("Sancour") and various real 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 was 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 22 April 1988 Iran submitted a "Statement of Defense Concerning Nationality of the Claimant." In this submission Iran points out that the Claimant was naturalized as a United States citizen on 15 February 1980 and that the Claimant in her Statement of Claim alleges that the expropriation occurred "[i]n the early part of 1980." Appended to the Statement of Defense is a copy of an Iranian newspaper article reporting the confiscation of the Danielpour property on 16 January 1980. Iran thus alleges that the Claim arose on 16 January 1980 and that, since the Claimant was not a citizen of the United States at that time, the Tribunal lacks jurisdiction to hear the Claim. Furthermore, Iran argues that the Claimant lived in the United States for twenty-one years without showing any intention to obtain American nationality. Moreover, the Claimant remained an Iranian citizen as evidenced by the fact that on 24 January 1963 she registered the birth of her child on 23 April 1962 with the Iranian Consulate in New York. According to Iran, this shows the dominance of her Iranian nationality during her lifetime.

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. On 6 April 1989 the Claimant filed an affidavit in response to Iran's 22 April 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. Nahid (Danielpour) Hemmat was born in Iran of Iranian parents on 16 April 1933. She spent her childhood and was educated in Iran. She went to the United States in 1958 at the age of twenty-five. On 2 September 1958 she married Naim Hemmat, an Iranian national who was naturalized as an American citizen on 1 May 1963. On 2 March 1959 she was admitted to the United States as an immigrant.

9. The Claimant alleges that from the time of her marriage she has lived with her husband at various locations in the United States. Since their marriage her husband has been continuously employed in the United States and their residence throughout this period has been dependent on the location of his job. On 15 February 1980 the Claimant was naturalized as a United States citizen and subsequently was issued a United States passport.

10. The Claimant states that since she took up residence in the United States she has not travelled to Iran. She further states that all of the properties now claimed to have been expropriated were acquired when she was an Iranian citizen residing in 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 clear from the record that under Iranian law the Claimant is an Iranian citizen by virtue of her birthplace and her father's nationality. At the same time, however, it is clear that the Claimant is a United States national. As evidenced by her certificate of naturalization, the Claimant was naturalized on 15 February 1980. The Claimant thus holds nationality of both Iran and the United States.

13. The pertinent issue thus becomes one of determining the dominant and effective nationality of the Claimant. In its decision in Case No. A18, the Tribunal held that it has jurisdiction over claims of dual Iran-United States nationals as long as the dominant and effective nationality of the claimant during the period from the date the claim arose until 19 January 1981 was that of the United States. As noted above, the Claimant did not become a United States national until acquiring citizenship on 15 February 1980. Therefore, any claim which arose before that date would be outside the Tribunal's jurisdiction.

14. The Statement of Claim alleges that the expropriation occurred in early 1980. The copy of a newspaper article appended to the Statement of Claim reports the confiscation of the Danielpour property on 16 January 1980, pursuant to a criminal judgment against the Claimant's brothers. The article also reports that "[the] court forwarded the files

to Tehran in order that [the] Attorney General [] review and finalize sentences." Iran argues that the expropriation occurred on the date of the criminal sentence, that is, on 16 January 1980. In such a case the Tribunal clearly would not have jurisdiction to hear the Claim since at that time the Claimant was not a United States national and thus the Claim would not have been continuously owned by a United States national since the date it arose, as required by the Claims Settlement Declaration.

15. The Tribunal notes that Iran only recently forwarded the above-mentioned contentions and that the issue has not yet been fully briefed by the Parties and, therefore, is not ripe for decision. Consequently, the Tribunal joins to the merits the question of the determination of the date on which the Claim arose. The Tribunal, however, reserves its right to decide upon its jurisdiction in relation to this date on the basis of written evidence to be submitted by the Parties, if it deems it appropriate. In the present Interlocutory Award the Tribunal confines itself to the determination of the dominant and effective nationality of the Claimant on the hypothesis that the Claim arose after 15 February 1980 without prejudice to its future decision on this point.

16. 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, evi-

dence the reality and the sincerity of the choice of national allegiance he [or she] claims to have made, are relevant."

17. The Tribunal must now proceed to apply this standard to the facts before it. The record establishes that the Claimant emigrated to the United States in 1959 and remained there until the present time without going back to Iran. It further shows that her husband has been continuously employed with American corporations in the United States and that her place of residence in the United States has been dependent upon her husband's place of employment. Thus, it may be said that, although she had relatives in Iran, the Claimant's center of interests and immediate family ties had been in the United States for approximately twenty years prior to the time she alleges her claim to have arisen. At the same time, however, the record makes clear that during this period the Claimant was solely an Iranian national, not having been naturalized as a United States citizen until 15 February 1980.

18. While it appears that the Claimant could have obtained her United States citizenship some years earlier, she did not do so until February 1980. The issue for the Tribunal to consider, therefore, is the effect of this delay on the Claimant's dominant and effective nationality. Such a delay in obtaining United States nationality, coupled with other factors, was regarded as significant by Chamber Two in Leila Danesh Arfa Mahmoud and Islamic Republic of Iran, Award No. 204-237-2 (27 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 350. In Danesh Chamber Two noted that "where a party makes a deliberate decision to postpone the acquisition of a nationality and within that same period that party has been able to benefit from another nationality with respect to the property at issue, a benefit that could not have otherwise been enjoyed, the evidentiary burden of proof on that party is higher." Id. p. 7. More recently, this Chamber

acknowledged in Malek that "the date of acquisition of the alleged dominant and effective nationality certainly deserves special attention, particularly if it demonstrates that this nationality was obtained at a time when the Claimant could foresee that its acquisition could better position him [or her] to assert a claim for his [or her] property." Malek, supra, para. 15. Such delay, however, could be explained, as it was in Malek, by evidence which shows that a claimant had decided, years prior to his or her naturalization, to maintain his or her life in the country of his or her domicile "without any intent later to return to the other country of which he [or she] was also a national." Id.

19. Here, the Claimant delayed for years in obtaining her United States citizenship. During those years, however, she was living the life of an American citizen absent formal naturalization procedures. For twenty years she lived as a housewife in various parts of the United States depending on her husband's place of employment. It is apparent that at the time her Claim is alleged to have arisen she was fully integrated into American society. This extended period of residence in the United States and the fact that she never returned to Iran subsequent to her departure in 1958 strongly suggest that she had made a decision to remain permanently in the United States. The Tribunal thus concludes that the Claimant's years of residence in the United States prior to her naturalization so integrated her into American society that her dominant and effective nationality was that of the United States upon her naturalization on 15 February 1980.

IV. AWARD

20. 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 NAHID (DANIELPOUR) HEMMAT is that of the United States.
- b. The issue regarding the date on which the Claim arose is joined to the merits.
- c. The schedule for submission of memorials and evidence on all remaining issues will be established by a separate order.

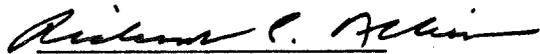
Dated, The Hague

16 June 1989

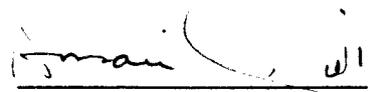


Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Parviz Ansari Moin
Dissenting Opinion