IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

170-60

**ORIGINAL DOCUMENTS IN SAFE**

**Case No.** 170 **Date of filing:** 10/11/89

** AWARD - Type of Award _____

- Date of Award _____

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** DECISION - Date of Decision _____

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** CONCURRING OPINION of _____

- Date _____

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** SEPARATE OPINION of _____

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** DISSENTING OPINION of Mr Ansari

- Date 10/11/89

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دیوان داوری دعاوی ایران - ایالات متحده

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DUPLICATE
ORIGINAL
«نسخه برابر اصل»

In the Name of God

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
دیوان داوری دعاوی ایران - ایالات متحده
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DISSENTING OPINION OF JUDGE PARVIZ ANSARI

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Introduction

1. I have repeatedly 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 Sep. 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 issues, the present Interlocutory Award is unfounded and unjustified. In addition to my objections in connection with the important issue of how the claim arose, I dissent to this Interlocutory Award for the following reasons:

The Claimant and the issue of her nationalities

3. The Claimant was born in Hamadan of Iranian parents on 16 April 1933, and Identity Card no. 31 was issued in her name. After having lived in Iran for twenty-five years, she went to the United States in 1958. Several months later, she married Mr. Naim Hemmat, an Iranian national, and registered her marriage with the Iranian Consulate in New York. On 24 January 1963, she also registered the birth of her daughter with the Iranian Consulate in New York and obtained an Iranian identity card for her. On 2 March 1959, the Claimant was issued a United States permanent resident card ("green card") and was admitted to the United States as an immigrant. Although the Claimant became qualified to petition for naturalization as a United States citizen in 1964, she deferred doing so for sixteen years. On 15 February 1980, one year after the victory of the Islamic Revolution in Iran and only a few months prior to the signing of the Algiers Declarations, the Claimant finally acquired United States nationality.

4. From the foregoing, it is clear that up to 15 February 1980, the Claimant's sole nationality was that of Iran, and that all of her foreign travel, whether to Iran[1]

[1] The Claimant has never submitted her passport to the Tribunal so that it may be ascertained whether or not her unilateral assertion that she has not travelled to Iran is true. Moreover, the Respondent cannot be expected to find access to this sort of personal private document which is only in the possession of the Claimant, or to refute it by presenting rebuttal evidence of its own.

or to other parts of the world, was made on the strength of her Iranian passport. The Claimant became a dual national as from 15 February 1980, the date on which she was naturalized as a United States citizen.

5. From the date of her naturalization to the date on which the Algiers Declarations took effect (19 January 1981), the Claimant may be regarded as having been a United States national for less than one year, whereas she had held her original Iranian nationality for more than forty-seven years as of the date of the Declarations. The Claimant has never relinquished her Iranian nationality; nor has she ever initiated any measures to that end.

Evaluation of the Claimant's acquired nationality

6. The majority's main argument in its determination of the Claimant's dominant nationality is reflected in paragraphs 18 and 19 of the Interlocutory Award. That argument pivots upon the long duration of the Claimant's residence in the United States and upon the point that she made no trips to Iran. The Claimant could have filed a naturalization petition with the relevant United States authorities in early 1964 (i.e., five years after she was granted permanent resident status in the United States), but she chose not to do so until February 1980. Neither the Claimant nor the majority has anywhere offered a convincing explanation for this sixteen-year delay. The most logical reason which comes to mind is that the Claimant took this step solely for the purpose of taking advantage of such United States nationality and the diplomatic protection which it extended, in order to bring a claim in favor of the Danielpour family or else to enjoy the benefits accruing to a possible settlement of claims between the two Governments. For this reason, the Claimant's acquisition of United States nationality, particu-

larly on 15 February 1980 (i.e., less than one year after the date on which the underlying claim arose), can never be regarded as involving a simple, unsuspicious process.[2] This Tribunal's judicial practice, as set forth in Leila Danesh Arfa Mahmoud and Islamic Republic of Iran, Award No. 204-237-2, para. 24 (27 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 350, is absolutely clear and explicit. Moreover, the Claimant, who in light of the available evidence does not appear even to have completed her secondary education, cannot be compared in the slightest to the Claimant in Malek, who has been regarded as a prime example of the "brain drain." The facts in the present Case categorically and undeniably match and correspond to those in Leila Danesh Arfa Mahmoud, whereas they are irrelevant to those in the Award in Malek.

7. Taken together, a number of reasons will demonstrate that the Claimant's original Iranian nationality is her 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 her Iranian nationality;

b. Continuing family and sentimental ties with Iran;

c. Her sixteen-year delay in filing a petition for naturalization as a United States citizen.

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[2] In my opinion, in such instances as this, the Tribunal is obliged to give careful scrutiny to the Claimant's acquisition of United States nationality initiated during a période suspecte for the purpose of obtaining special advantages, among other ends, and it should consequently draw adverse inferences therefrom in deciding whether or not such a claimant's United States nationality prevails.

In the light of the more than forty-seven years over which the Claimant was solely an Iranian national, the above reasons and circumstances leave no room or credibility whatsoever for the position that her acquired United States nationality, which was of less than one year's duration, was her dominant nationality.

Conclusion

8. Based on the foregoing,

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

Secondly, the Claimant's Iranian nationality predominates and prevails over her acquired nationality; and from this point of view as well, the Tribunal lacks jurisdiction over the claim brought before it.

The Hague,
5 October 1989

Parviz Ansari