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CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 237
CHAMBER TWO
AWARD NO. 204-237-2

LEILA DANESH ARFA MAHMOUD,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances:

For Claimant:
Mr.A. Alan Hanshaw
Waterfall, Economidis,
Caldwell & Hanshaw, P.C.
Tucson, Arizona
Attorney

For Respondent:
Mr. Mohammad K. Eshragh,
Deputy Agent of the
Islamic Republic of Iran
Professor J. Niaki
Mr. M. Khavar,
Legal Adviser to the
Agent of the Islamic
Republic of Iran

Also Present:
Mr. Arthur W. Rovine,
Agent of the United
States of America

I. THE PROCEEDINGS

1. Mrs. Leila Danesh Arfa Mahmoud (hereinafter called "the Claimant"), stating that she has been a naturalized citizen of the United States since 20 August 1979, filed this Claim on 12 January 1982. She sought therein compensation for the alleged expropriation of her undivided 3/4 interest in real estate located outside of Tehran.

2. The Islamic Republic of Iran (hereinafter called "the Respondent"), filed a Statement of Defense on 10 June 1982 denying that the Tribunal has jurisdiction over the Claim, on the grounds that the Claimant is an Iranian national who never renounced that nationality in accordance with the laws of Iran. The Claimant filed subsequent submissions including documentary evidence, addressing the issues of jurisdiction, expropriation, and valuation, while the Respondent almost exclusively addressed the issue of jurisdiction.

3. A Hearing was held on 5 November 1982, at which the Claimant testified. Both Parties submitted post-Hearing Memorials.

4. In view of the fact that the Parties had adequately briefed the nationality issue, the Tribunal, as constituted in accordance with Article 13(1) of the Tribunal Rules, concludes that it could decide the jurisdictional issue on the basis of the documents submitted in the Case, without the necessity for a further Hearing.

II. FACTS

5. During the relevant period from the date the Claim arose until 19 January 1981, the date the Claims Settlement Declaration entered into force, the Claimant was a national of Iran and the United States, under the respective domestic laws of each country. She was born in France on 2 March

1924 to Iranian parents. She was issued an Iranian identity card number 18074 in Tehran on 24 April 1931. There is no dispute that she was a national of Iran at birth, and that she has furthermore never renounced that nationality within the meaning of Iranian domestic laws governing such matters.

6. She married Hormoz Mahmoud in Tehran in August 1969 and moved with him one month thereafter to Tucson, Arizona, where he is a professor at the University of Arizona. Mr. Mahmoud, an Iranian by birth, became a naturalized citizen of the United States in April 1958. According to the affidavit filed by the Claimant, she has resided with her husband as a homemaker in Tucson since that time. On 5 April 1979, she applied to the United States Immigration and Naturalization Service for citizenship. On 20 August 1979, she was naturalized a U.S. citizen pursuant to Petition No. 8315 before the United States District Court in Tucson. She obtained a United States passport on 6 November 1979 and voted in the 1980 United States elections.

7. On 8 June 1970, Claimant's mother, Hilda Danesh Arfa, died in Tehran. In a decision dated 6 December 1970, the Tehran District Court determined that the Claimant and her father, General Hassan Danesh Arfa, were the sole heirs of the deceased. In accordance with Iranian laws on intestate succession, the Claimant received an undivided 3/4 share interest in the property, with 1/4 going to her father, General Arfa.

8. At her death, Claimant's mother was seized of 221,697 square meters of real property near Tehran known as Larak, under a deed registered on 30 July 1937. Thereafter, a portion of the land was endowed as a mausoleum site, and another portion sold apparently to pay death taxes, leaving 143,197 square meters at the disposal of Claimant and her father.

9. The Claimant's evidence showed that Larak was largely agricultural in nature, and contained various outbuildings

as well as a home. The property included significant riparian rights on the Darabad River.

10. Between early 1975 and 7 October 1978, Claimant and her father sold 9 parcels of the property amounting to 13,746.35 square meters. There remained in Larak 129,450.65 square meters of land plus improvements on the land.

11. The Claimant contends that various persons affiliated with the regional Revolutionary Committee took up residence on Larak in March/April 1980, forcing members of the Claimant's family to leave. It is asserted that the alleged dispossession was later ratified by members of the Committee. According to the explanations of the Claimant, she ceased to receive the use and benefits of the property as a dairy farm supplying milk to Tehran. Respondent denied that it had expropriated the property.

12. The Claimant has brought this Claim to recover compensation from the Respondent for the alleged expropriation of her 3/4 share in the property valued at U.S.$ 3,100,289.60 or 228,154,768 Rials.

III. THE JURISDICTIONAL ISSUE

A. The applicable law

13. In Case No. A18, Decision No. Dec 32-A18-FT (6 April 1984) the Full Tribunal decided that it had 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". In order to apply that test, the Full Tribunal concluded that all relevant factors were to be considered and that these were to include: "habitual residence, center of interests, family ties, participation in public life and other evidence of attachment" Id. at p. 25.

B. Application of the law to the facts in this Case

14. The question before the Tribunal is whether the Claimant's dominant and effective nationality during the relevant period commencing on the date the alleged Claim arose (March-April 1980) and ending on 19 January 1981 was that of the United States.

15. The Full Tribunal in its A18 Decision adopted the rule which searched for the "stronger factual ties between the person concerned and one of the States whose nationality is involved", quoting the Nottebohm decision (Liechtenstein v. Guatemala, 1955 I.C.J. 4, p. 22). This search for the stronger factual ties implies that, when each of two nationalities is real and effective, the Tribunal is to determine which one is dominant. In applying this standard, the Tribunal must examine the Claimant's contacts with the United States and her contacts with Iran during the period preceding, contemporaneous with and following the date the Claim arose in order to determine which connection predominated during the relevant period.

16. The evidence before the Tribunal of Claimant's activity during the relevant period is that she had voted in the United States elections in 1980 and that she continued to live with her husband in Arizona. The relevant period during which the Claimant was a U.S. national was a very short one. This period coincided with the Iranian Revolution. During that period, her contacts with Iran were obviously limited.

17. Looking to the evidence as a whole, in support of the Claimant's dominant U.S. nationality are the act of naturalization in August 1979, marriage to a U.S. naturalized citizen since 1969 and the residence in the United States since 1969 with her husband who enjoyed permanent employment there.

18. In support of a finding of dominant Iranian nationality are the facts that the Claimant had only Iranian nationality for the first 55 years of her life, that she sought U.S. nationality only after nine years or more of residence in the United States (although United States law would have permitted her to apply much earlier), that she became a U.S. national only eight months prior to the date her Claim arose and that she retained significant family ties in Iran particularly concerning the real estate at issue in this Case, prior to the date the Claim arose.

19. With respect to the real estate, it was only as an Iranian national that the Claimant was able to inherit the property in 1970 and to continue to enjoy the benefits as landowner and conduct property transaction which occurred up to the fall of 1978. The Claimant continued to own her interest in the property after her U.S. naturalization until the date of the alleged expropriation.

20. Iranian law governing nationality does not recognize dual nationality. Articles 976 to 991 of the Civil Code of Iran identifies the persons who shall be entitled to be considered Iranian nationals, while Article 988 specifically outlines the procedures by which an Iranian may divest himself of his Iranian nationality.

21. According to Article 988 of the Civil Code, Iranian nationals who had abandoned the Iranian nationality had to undertake "to transfer, by some means or other, to Iranian nationals, within one year from the date of the renunciation, all rights that they possess on landed properties in Iran or which they may acquire by inheritance ...". A failure to comply with the above provision entitles the local Public Prosecutor under the terms of Article 989 of the Civil Code to sell all the landed property and to pay the proceeds of sale to the individual concerned after deduction of the expenses of sale. Article 989 applies also in cases such as that of the Claimant where a second natio-

nality was acquired but no effort was made to renounce Iranian nationality.

22. According to Iranian law, therefore, the Claimant could only have kept the property for one year from the date of her naturalization. The period of one year had not yet expired at the date of the alleged expropriation and thus the question of her enjoyment of property rights contrary to Iranian law does not fall to be decided. The Claimant, until the alleged expropriation, continued to legally enjoy the ownership of her interest in Larak.

23. Further, as the Claimant was solely an Iranian national until her naturalization in 1979, and as she could have legally owned property in Iran until August 1980, her case is not one where she could be alleged to have made fraudulent use of one nationality.

24. In the circumstances of this Case where the relevant period is so short and the evidence in respect of the various periods evenly balanced, the question for the Tribunal is how to weigh the significant factors. How much weight is to be given to the fact of naturalization when the Claimant has waited so long before applying to become naturalized? The fact of voluntary naturalization is one which creates a strong and not easily rebuttable presumption (Cf. Jennings, R., "General Course on Principles of International Law", Recueil des Cours, 121, 1967/II, p. 459) . However, 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.

25. The Claimant, who lived in Arizona with her husband on whom she claims to have been totally dependant, maintained strong family ties in Iran, and continued to benefit from the fact that she had not become an American citizen until

1979. The Claimant was thereby able to benefit from her Iranian nationality which allowed her to continue to enjoy her rights as an owner of the real estate which she inherited from her mother in 1970.

26. In the light of all the above considerations, the Claimant has failed to satisfy the Tribunal that her dominant and effective nationality during relevant periods was that of the United States.

IV. COSTS

27. Each party shall bear its own costs.

V. AWARD

For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

1. The Claim is dismissed for lack of jurisdiction.

2. Each party shall bear its own costs.

Dated, The Hague
27 November 1985

Robert Briner
Chairman

George H. Aldrich
dissenting opinion

In the name of God,
Concurring, due to
the inadmissibility
of such claims.
Hamid Bahrami-Ahmadi