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ORIGINAL DOCUMENTS IN SAFECase No. 274Date of filing: 1 July '92

** AWARD - Type of Award Partial
- Date of Award 1 July '92
20 pages in English 21 pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

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

** SEPARATE OPINION of _____
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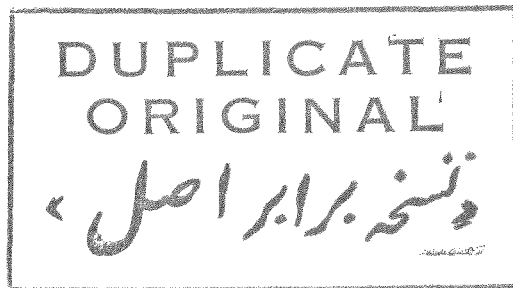
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ



CASE NO. 274

CHAMBER ONE

AWARD NO. 533-274-1

BETTY LAURA MONEMI, on behalf of
 herself and her children
 CAMERON MITCHELL MONEMI,
 SARA GLORY MONEMI,
 DANA PAUL MONEMI,

Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
 BANK MELLI IRAN,

Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	1 JUL 1992
	تاریخ ۱۳۷۱ / ۴ / ۱۰

PARTIAL AWARD

I. PROCEEDINGS

1. On 14 January 1982, the Claimant BETTY LAURA MONEMI filed on her own behalf and on behalf of her children CAMERON MITCHELL MONEMI, SARA GLORY MONEMI and DANA PAUL MONEMI (collectively "the Claimants") a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN and BANK MELLI IRAN ("the Respondents"), seeking compensation for losses allegedly arising from lost rentals on their family home, sale of their family house below the market value, and unremitted proceeds from that sale on deposit in Bank Melli (including interest), totalling U.S.\$623,750.00. Betty Laura Monemi alleges that the Islamic Revolutionary Council assumed power on 16 January 1979, and that it later granted ownership by a special decree to the tenants of residential properties, and that therefore she and her husband, Nassir Monemi, could not rent their furnished house. She also alleges that she and her husband had to sell their house because the Revolutionary Council was confiscating empty houses, and that the selling price of that house was sixty percent below its real market value as a result of measures taken by the Revolutionary Council that depressed the value of luxury residential property. Betty Laura Monemi does not specify the selling date, but rather states that in August 1979 her husband gave his brother a power of attorney to sell the house. After the sale, the proceeds were allegedly deposited in Nassir Monemi's account in Bank Melli Iran. Betty Laura Monemi contends that she had determined to hold her portion of that deposit in trust for her children, Cameron Mitchell Monemi, Sara Glory Monemi and Dana Paul Monemi ("the Monemi children").

2. The Government of the Islamic Republic of Iran and Bank Melli Iran each filed a Statement of Defense on 3 September 1982. The Claimants filed two Replies, on 23 September 1982 and on 9 November 1982, to the Respondents' Statements of Defense.

3. By its Order of 6 July 1983 the Tribunal suspended further proceedings in this Case, pending the Full Tribunal's decision

on the question of the Tribunal's jurisdiction in cases where the claimant was a dual Iran-United States national. In accordance with its practice in similar cases, the Tribunal, citing the decision of the Full Tribunal in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, informed the Parties on 25 June 1985 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." The Tribunal requested the Claimants to file by 24 September 1985 all evidence they wished the Tribunal to consider in determining their dominant and effective nationality. Likewise, the Tribunal requested the Respondents to file by 24 December 1985 all evidence they wished the Tribunal to consider on the issue of the Claimants' nationality.

4. The Claimants submitted their evidence on 20 September 1985. The Respondents were granted two extensions until 24 June 1986. The Tribunal in its Order of 1 July 1986 granted one further extension until 26 September 1986, stating that after that date the Tribunal would make a decision regarding its jurisdiction on the basis of the evidence before it. The Tribunal denied the Respondents' request for a further extension in its Order of 21 January 1987, in view of the procedural history of the Case. The Tribunal indicated that it intended to commence deliberations regarding its jurisdiction on the basis of the evidence before it, unless both Parties informed it that ongoing settlement discussions would call for a postponement of the proceedings.

5. After the Respondents filed a submission entitled "Evidence on the Issue of Claimant's Nationality" on 7 February 1990, the Tribunal in its Order of 20 February 1990 invited the Claimants to file by 7 May 1990 any evidence in rebuttal together with a brief, restricted to the issue of the Claimants' dominant and effective nationality. Also, the Respondents were invited to file by 7 August 1990 any evidence in rebuttal together with a

brief on the same issue. The Claimants filed their rebuttal evidence on 10 January 1991, whereafter the Respondents filed their rebuttal evidence on 27 January 1992.

II. FACTS AND CONTENTIONS

6. Betty Laura Monemi was born a United States citizen on 3 August 1935 in Danville, Virginia. Her parents, Basil Minter and Lois Minter, were both United States citizens. Betty Laura Monemi grew up in West Virginia where she completed her primary and secondary education. Between 1953 and 1958, she attended Marshall College in Huntington, West Virginia, receiving a Bachelor of Arts degree in August 1958. Upon graduating, she worked as a teacher during the years 1958-1959.

7. On 5 February 1960, Betty Laura Monemi married her husband, Nassir Monemi, an Iranian national, in a Moslem ceremony in Detroit, Michigan. A day later, a Christian wedding ceremony was performed also in Detroit. The couple's first child, Cameron Mitchell Monemi, was born on 23 December 1962 in Beckley, West Virginia.

8. Betty Laura Monemi continued to hold temporary jobs in the United States after her marriage and after the birth of her first child. She held part-time teaching jobs during the years 1960-1962. From 1963 through 1964, she attended the graduate school of Library Science at the University of Pittsburgh, Pennsylvania, receiving a Master of Arts degree in August 1965. Between September 1964 and August 1965, she was employed as a cataloger at the Carnegie Library of Pittsburgh. Mr. and Mrs. Monemi's second child, Sara Glory Monemi, was born on 4 June 1966 in Pittsburgh.

9. In 1966, Betty Laura Monemi's husband Nassir Monemi began to make arrangements to move with his family to Iran. Nassir Monemi came to the United States to study under a scholarship granted to him by the Iranian Ministry of Education. On 7 June

1958, before he left for the United States, he signed a document with the Ministry of Education in which he agreed to return to Iran and to assume duties in Iran wherever the Ministry of Education assigned him, for at least the equivalent period that he had utilized the support of the Ministry. In the same document, Mr. M. Honarparvaran guaranteed to repay, in lump sum, all the expenses paid to Nassir Monemi by the Ministry of Education in case he would not abide by the agreement.

10. In the United States, Nassir Monemi had enrolled in the University of Michigan as an undergraduate student in the School of Engineering. He received a Master of Science degree in Civil Engineering in June 1962 after which, in view of the regulations by the Ministry of Education that permitted only three years post-graduate studies, his scholarship was terminated by the Supervisor of Iranian Students in the United States. Betty Laura Monemi alleges that her husband decided at that point to continue his post-graduate studies in the United States instead of returning to Iran. In December 1962, Nassir Monemi obtained permanent residence status in the United States. After completing his doctoral program, he received a Doctor of Philosophy degree in Civil Engineering in June 1966.

11. In September 1967, Betty Laura and Nassir Monemi moved to Iran with their two children. Betty Laura Monemi alleges that they went to Iran because the Ministry of Education had filed a claim on 3 August 1967 against Mr. Honarparvaran, the guarantor of Nassir Monemi's scholarship-agreement, demanding the repayment of all expenses paid to Nassir Monemi by the Ministry. She further alleges that her husband's offer to repay all the expenses was refused, and that he was advised to appear personally before the Court in order to avert the judgement against Mr. Honarparvaran. She also states that her husband had during the spring of 1967 arranged a post for himself at Shiraz University School of Engineering. Before leaving for Iran, Betty Laura Monemi, Cameron Mitchell Monemi and Sara Glory Monemi obtained Iranian identification cards and passports on 20 July

1967 from the Iranian Consulate in New York. As a result of Nassir Monemi's return, the Ministry of Education withdrew its claim against Mr. Honarparvaran in 1969. According to Betty Laura Monemi, the sole reason why they moved to Iran was to resolve the dispute concerning the repayment of her husband's scholarship. She alleges that they could not foresee that they would remain in Iran for almost twelve years and she asserts that they did so against their will. Furthermore, she contends that they had always intended to make their home in the United States. In support of this statement, she points out that they returned to the United States at the first opportunity after the Shah was deposed in February 1979.

12. In Iran, Nassir Monemi accepted an appointment as associate professor in the Civil Engineering Department of Shiraz University on 6 September 1967. Betty Laura Monemi was also employed from October 1967 until December 1968 in the same University as a librarian at the Library of the Faculty of Engineering. Thereafter, she was transferred to the Library of the Faculty of Literature and Science where she worked until September 1970. During this period, she gave birth to a third child, Dana Paul Monemi, on 17 April 1968. Beginning in September 1970 she took care of the family and home on a full-time basis.

13. The Claimants made three trips to the United States while they resided in Iran, namely in 1970, 1971 and 1976. In 1975, Betty Laura Monemi's father died in the United States. Before his death he had disinherited Betty Laura Monemi in his will because she had married an Iranian Moslem and was living abroad.

14. In October 1976, Nassir Monemi received 7,500,000 rials from an Iranian Bank as a 15-year loan for house construction. Betty Laura Monemi alleges that the construction of the 20-room house was an investment by her and her husband, and that their purpose was to sell the house in due time in order to finance their children's education in the United States.

15. Betty Laura Monemi asserts that she maintained her American lifestyle and culture while staying in Iran. She has submitted affidavits by some acquaintances, Mr. and Mrs. Gibbens, Ms. C.J. McCracken and Ms. J.W. Pascale, stating that she participated in social events of the American community in Shiraz and in activities of the Christian Church in Shiraz. They also contend that Betty Laura Monemi wanted to leave Iran with her family and return permanently to the United States. In addition, they state that the Monemi children attended the English speaking International Community School in Shiraz, and that the Monemi family spoke English at home.

16. The Claimants left Iran for the United States in February 1979. They first resided in Beckley, West Virginia. In August 1979, Nassir Monemi joined them after having obtained a nine-month sabbatical leave from Shiraz University with full salary to be paid in the United States. It appears that his sabbatical leave was proposed on 19 February 1979 and finally approved in April 1979. In October 1979, the Monemi family moved to Clemson, South Carolina, where they resided until June 1981. During that period, Cameron Mitchell Monemi was attending High School there. After termination of Nassir Monemi's sabbatical leave, he asked for and Shiraz University granted him a six-month leave without pay in July 1980. Betty Laura Monemi states that the only way for them to survive in the United States was to draw money from their own Iranian bank account through the exchange allowance available to her children as students. According to her, she was required to attach her Iranian passport to the exchange application in order to receive this privilege. She also states that she renewed her passport on 5 October 1979 solely for the purpose of preserving her children's exchange privilege. On the basis of the exchange allowance, the Monemi children received transfers from Iran between the summer of 1979 and October 1980.

17. The Respondents first argue that Betty Laura Monemi has no right to bring the claim on behalf of her children before the Tribunal. The Respondents contend that pursuant to the Civil

Code of Iran and United States law, the children's father, Nassir Monemi, is the natural guardian of the children, and thus only he is entitled to bring the claim on behalf of his children. Further, the Respondents point out that because Nassir Monemi is an Iranian national, he has no right to bring the claim to this Tribunal.

18. Second, the Respondents argue that Betty Laura Monemi has failed to establish that during the relevant period she had dominant and effective U.S. nationality. To begin with, the Respondents contend that when Betty Laura Monemi married Nassir Monemi she was fully aware of the fact that he would have to return to Iran after the completion of his studies pursuant to his scholarship contract with the Iranian Ministry of Education. The Respondents also dispute Betty Laura Monemi's allegation that Nassir Monemi was forced to return to Iran in 1967. They have produced a photocopy of the letter by Mr. Monemi, dated 10 January 1967, in which he inquired about the possibility of securing a teaching position at Shiraz University. According to the Respondents, this letter demonstrates that the Monemi family went to Iran voluntarily. The Respondents argue that although Nassir Monemi's return happened to coincide with the legal action taken by the Ministry of Education against his guarantor, this alone does not prove any connection between that legal action and his return.

19. The Respondents have produced evidence to show that Iranian nationality was one of the conditions for employment at Shiraz University where both Betty Laura Monemi and her husband were employed. In view of that, the Respondents argue that Betty Laura Monemi relied upon her Iranian nationality in order to obtain work as a librarian in that University. In addition, they have submitted an Affidavit by Mr. H. Moaref, supported by photocopies of the social security records, stating that the Claimants had been covered by Iranian Insurance Medical Services since 1974 on the basis of their Iranian nationality.

20. The Respondents have submitted Affidavits by Ms. P. Namazi and Mr. I. Barzegar, former colleagues of Betty Laura Monemi at Shiraz University as well as an affidavit by Mr. R. Razani, a former colleague of Nassir Monemi. They state that Betty Laura Monemi knew and spoke Persian, and that she socialized with the Iranians. Moreover, they contend that she listened to Iranian music and had an interest in Iranian poetry.

21. The Respondents argue that Betty Laura Monemi fully and knowingly broke away from American society and integrated into Iranian society. According to them, she was disinherited by her father because of her attachment to Iran. The Respondents, referring to the 15-year loan for house construction, contend that Betty Laura Monemi and her husband had decided to live in Iran permanently. They also assert that the Monemi family went to the United States in 1979 only because Nassir Monemi obtained a sabbatical leave from Shiraz University, and that the family intended to return to Iran after the sabbatical leave ended. To support their argument, the Respondents point out that Betty Laura Monemi, while in the United States, renewed her Iranian passport. In addition, they emphasize that Betty Laura Monemi and her family maintained their economic ties with Iran while they were staying in the United States. In this context, they point out that Betty Laura Monemi enjoyed the privilege of receiving student foreign exchange transfers for her children at the official rate, and that her husband received full salary for nine months during his sabbatical leave from Shiraz University. The Respondents conclude that if there had been no Revolution and post-revolutionary developments in Iran, the Claimants would certainly have returned to Iran.

22. Finally, the Respondents argue that the determination of the relevant period is not possible unless a claimant submits prima facie evidence to convince the Tribunal that an alleged expropriation occurred prior to 19 January 1981. According to the Respondents, in this Case, Betty Laura Monemi has not presented any evidence to show that she owns the property that

is the subject of the Claim or that the alleged Claim arose prior to 19 January 1981. The Respondents contend, therefore, that it is not possible to determine the date on which the relevant period commenced and thus the Tribunal lacks any basis upon which to rest its jurisdiction.

III. REASONS FOR THE AWARD

23. In order to determine whether the Claimants have standing before this Tribunal, the Tribunal must establish whether the Claimants were citizens of Iran, of the United States, or of both Iran and the United States, during the period from the date the Claims arose to 19 January 1981, the date on which the Claims Settlement Declaration entered into force. If the Claimants were citizens of both Iran and the United States, the Tribunal must determine the Claimants' dominant and effective nationality during that period. The Tribunal first notes that, in this Case there are in fact three different Claims, and that the Claimants have not clearly specified the dates on which the Claims arose. See, supra, para. 1. The Tribunal also notes that the Respondents argue that it is not possible to determine the date on which the relevant period commenced in view of the fact that Betty Laura Monemi has neither presented any evidence to demonstrate the date on which the alleged Claims arose nor that she owns the Claims. With regard to the Respondents' argument, the Tribunal points out that the issues of whether the Claims in fact arose prior to 19 January 1981 and whether Betty Laura Monemi in fact owns each Claim, have not been fully briefed and form part of the merits of this Case.¹ Therefore, the Respondents' argument cannot be considered at this stage of the proceedings.

¹See Reza Said Malek and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, paras. 18-22 (23 June 1988) reprinted in 19 Iran-U.S. C.T.R. 48, 52-54; Hooshang and Catherine Etezadi and Government of the Islamic Republic of Iran, Partial Award No. 497-319-1, para. 19 (15 Nov. 1990), reprinted in 25 Iran-U.S. C.T.R. 264, 271.

24. In previous awards, the Tribunal - when determining as a preliminary issue the claimant's dominant and effective nationality - has for that limited purpose, accepted the date alleged by the claimant as the date on which the claim arose.² Considering the Claimants' assertions in the Statement of Claim in this Case, the Tribunal proceeds, for the purpose of determining nationality, on the assumption that Betty Laura Monemi's first Claim arose sometime after 16 January 1979 when the Revolutionary Council allegedly by a special decree granted ownership to the tenants of residential properties, but prior to her second Claim which allegedly arose after August 1979 at which time the process of the sale of the family house was allegedly started. With regard to the Claimants' Claim concerning their alleged deposit in Bank Melli Iran, the Tribunal likewise accepts the assumption that it arose after the above-mentioned second Claim, but prior to 19 January 1981. Thus, the Tribunal assumes, for the purposes of determining the Claimants' dominant and effective nationality that the relevant period concerning Betty Laura Monemi's earliest Claim arose sometime after 16 January 1979, and that the relevant period concerning Cameron Mitchell Monemi's, Sara Glory Monemi's and Dana Paul Monemi's Claim commenced sometime after August 1979, but prior to 19 January 1981. The Tribunal emphasizes that by making these assumptions only for the purpose of determining the Claimants' dominant and effective nationality, it does not prejudge as to whether the Claims, in fact, arose before or after 19 January 1981 in deciding the remaining issues in the Case. The Tribunal will determine those issues, as well as any remaining jurisdictional issues, when it considers the merits of the Case.

25. The Tribunal notes that there is no dispute that Betty Laura Monemi is an Iranian national by virtue of her marriage to an Iranian national, and that Cameron Mitchell Monemi, Sara Glory

²The issue concerning the date on which the relevant period commenced has been discussed in Albert Berookhim, et al. and Government of the Islamic Republic of Iran, et al., Award No. 499-269-1, footnote 2 (27 Dec. 1990), reprinted in 25 Iran-U.S. C.T.R. 278, 283-284.

Monemi and Dana Paul Monemi are Iranian nationals because they were born to an Iranian father. The Tribunal is also satisfied that the Claimants acquired their United States citizenship at birth, as evidenced by their birth certificates. There is no evidence in the record that the Claimants have relinquished either their Iranian citizenship in accordance with Iranian law or their United States citizenship in accordance with United States law. Consequently, the Tribunal finds that during the relevant period the Claimants were citizens of both Iran and the United States.

26. Having found that during the relevant period the Claimants were citizens of both Iran and the United States, the Tribunal proceeds to determine their dominant and effective nationality during that period. For that purpose, the Tribunal must establish the country with which the Claimants had stronger factual ties. The Tribunal must consider all relevant factors, such as the Claimants' habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. See Case No. A18, supra, para. 2, p. 25, 5 Iran-U.S. C.T.R. 265. While the Tribunal's jurisdiction is dependent on the Claimants' dominant and effective nationality during the period between the date the Claim arose and 19 January 1981, events and facts preceding that period remain relevant to the determination of the Claimants' dominant and effective nationality during the period. See Reza Said Malek and Government of the Islamic Republic of Iran, supra, note 1, para. 14, reprinted in 19 Iran-U.S. C.T.R. 51.

27. Betty Laura Monemi is a native United States citizen who lived in the United States until the age of thirty-two; that is, from 1935 to 1967. Thereafter she resided in Iran until February 1979. Thus, between 1935 and 1981 Betty Laura Monemi resided thirty-four years in the United States and eleven-and-a-half years in Iran. In light of the above, the pertinent issue in this Case is to determine whether the other circumstances of Betty Laura Monemi's life were such to demonstrate a stronger

attachment to Iran despite the fact that she lived nearly three times as long in the United States as in Iran.

28. Turning, therefore, to explore those "other circumstances", the Tribunal first notes that although Betty Laura Monemi acquired Iranian nationality in 1960 by virtue of her marriage to Nassir Monemi, an Iranian national, she could not have begun to integrate into the Iranian society until she moved there in September 1967. The Tribunal notes that after moving to Iran Betty Laura Monemi kept an American lifestyle rather than adopting an Iranian lifestyle. It appears that she maintained American customs in her home, spoke English to her children, and participated in social events of the American community in Shiraz. It also appears to the Tribunal that this is so even though she was able to speak Persian, she socialized with Iranians and she was interested in the Iranian culture. In light of the above, the Tribunal finds that the facts concerning her attachment to Iran do not suggest that she fully and deliberately integrated into Iranian society. The Tribunal also notes that between October 1967 and September 1970 Betty Laura Monemi worked as a librarian at Shiraz University, and that one condition for that job was Iranian nationality. Although this fact shows that Betty Laura Monemi relied upon her Iranian citizenship for that limited period, the Tribunal holds that this evidence does neither separately nor together with the above evidence acquire predominant importance when it is seen in the whole context and against the other facts of this Case.

29. The Tribunal will next explore the evidence concerning Betty Laura Monemi's intention to live in Iran. First, the Tribunal notes that her husband, Nassir Monemi, voluntarily applied for a teaching position at Shiraz University, and that on at least two occasions the entire Monemi family was permitted to travel to the United States. Therefore, the Tribunal finds unconvincing Betty Laura Monemi's argument, that her family was forced to move to Iran and to live there involuntarily. Having thus found that the Monemis moved to Iran voluntarily, the Tribunal turns next

to examine the Respondents' allegation that Betty Laura Monemi intended to live in Iran permanently, and that she intended to leave Iran only for the period of her husband's sabbatical leave from Shiraz University. To begin with, the Tribunal notes that the fact that in 1976 Betty Laura Monemi's husband obtained the 15-year loan for house construction does not alone demonstrate that either he or she intended to stay permanently in Iran. The Tribunal also observes that while residing in Iran Betty Laura Monemi consistently expressed a desire to return to the United States. Further, the Tribunal notes that when Betty Laura Monemi left Iran in February 1979 there was no decision by Shiraz University concerning her husband's sabbatical leave. Likewise, the Tribunal takes note of Betty Laura Monemi's un rebutted statement that she renewed her Iranian passport in the United States in October 1979 because renewal was essential for her to transfer money from Iran. On the basis of the foregoing, the Tribunal holds that the evidence does not warrant the conclusion that Betty Laura Monemi intended to live permanently in Iran.

30. Considering the evidence on the whole, the Tribunal finds that Betty Laura Monemi's attachment to the United States has not been outweighed by her attachment to Iran. Consequently, the Tribunal determines that during the relevant period, Betty Laura Monemi's dominant and effective nationality was that of the United States.

31. The Tribunal turns now to determine the Monemi children's dominant and effective nationality.³ The Tribunal first notes

³It has been the Tribunal's practice to consider the nationality of a minor Claimant separately rather than assume that he has the nationality of his parent or guardian. See Anita Perry Rohani et al. and Government of the Islamic Republic of Iran, et al., Award No. 427-831-3, para. 18 (30 Jun. 1989), reprinted in 22 Iran-U.S. C.T.R. 194, 199; Raymond Abboud, as legal guardian of Chrisline Arianne Abboud and Islamic Republic of Iran, Award No. 477-383-2, paras. 10-15 (16 May 1990), reprinted in 24 Iran-U.S. C.T.R. 265, 267-68; Ardavan Peter Samrad, et al. and Government of the Islamic Republic of Iran, Award No. 505-461, 462, 463, 464 & 465-2, para 37 (4 Feb. 1991), reprinted in ____ Iran-U.S. C.T.R. ____.

that the Monemi children were born to an American mother and an Iranian father. The Tribunal also notes that Cameron Mitchell and Sara Glory Monemi were born in the United States in 1962 and 1966, respectively, and that Dana Paul Monemi was born in Iran in 1968. It appears that the Monemi children had lived most of their lives in Iran before their alleged Claim arose sometime after August 1979. With respect to their life in Iran, the Tribunal first refers to its finding above that there is no persuasive evidence showing that the Monemi family stayed involuntarily in Iran. See, supra, para. 29. Although the Monemi children spoke English at home and attended the International School at Shiraz, the Tribunal finds that this alone does not acquire predominant importance when determining their dominant and effective nationality. The Tribunal further observes that the Monemi children lived in Iran not only with their mother but also with their native Iranian father, and that the children maintained their residence and center of interests in Iran for nearly all of their lives prior to the relevant period. The Tribunal holds that even though the Monemi children had experienced American influences through their mother, their residence in the United States between February 1979 and 19 January 1981 was too short for them to integrate into American society.

32. In light of the above, the Tribunal finds that during the relevant period, the Monemi children's ties to Iran outweighed their ties to the United States. Consequently, the Tribunal determines that during the relevant period, the Monemi children's dominant and effective nationality was not that of the United States. In view of this holding, there is no need to decide the issue of whether Betty Laura Monemi has the right to bring the claim on behalf of her children before the Tribunal.⁴

⁴See Ardavan Peter Samrad, et al. and Government of the Islamic Republic of Iran, supra, note 3, para. 4, reprinted in Iran-U.S. C.T.R. ____.

33. The subsequent proceedings in this Case remain subject to the caveat of the Full Tribunal in Case No. A18, supra, para. 3, p. 26, 5 Iran-U.S. C.T.R. 265-66, that "where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the Claimant, the other nationality may remain relevant to the merits of the claim."

IV. AWARD

34. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

- a) The Claims of the Claimants CAMERON MITCHELL MONEMI, SARA GLORY MONEMI and DANA PAUL MONEMI are dismissed for lack of jurisdiction under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.
- b) The Claimant BETTY LAURA MONEMI has standing before this Tribunal under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.

- c) The remaining jurisdictional issues are joined to the merits.

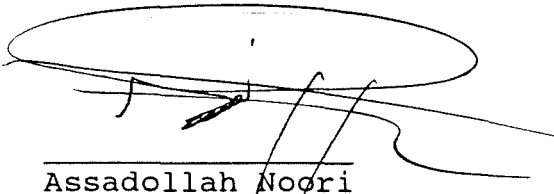
Dated, The Hague

1 July 1992

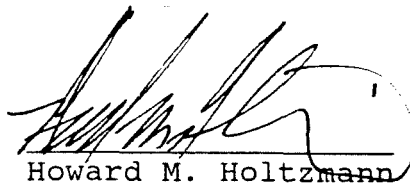


Bengt Broms
Chairman
Chamber One

In the Name of God



Assadollah Noori



Howard M. Holtzmann

In my opinion, the Tribunal does not, in principle, have jurisdiction over the claims of Iranians with dual United States nationality, either according to the Claims Settlement Declaration or pursuant to recognized principles of international law, particularly the principle of sovereign equality, which is rightfully the applicable principle with regard to the claims of dual nationals. The action taken by the majority of the Full Tribunal in its Decision issued in Case A/18, wherein it resorted to the theory of dominant and effective nationality, constitutes, so far as the Algiers Declarations are concerned, a disregard for both the letter and the spirit of those Declarations. And insofar as the principles of international law, especially the principle of the sovereign equality of States, are concerned, that action is tantamount to a disregard for the fundamental principles of international law. It is my opinion, just as the Iranian arbitrators

have stated in their Dissenting Opinion in Case A/18, reprinted in 5 Iran-U.S. C.T.R. 275-337, that the Tribunal should rule that it lacks jurisdiction, and discontinue the proceedings, wherever it is confronted with a situation where, and determines that, these claimants have Iranian nationality.

In addition to the foregoing considerations, for a number of reasons -- only the most important of which I mention briefly in the following lines -- I dissent to the present majority's finding that Mrs. Betty Laura Monemi's dominant and effective nationality is that of the United States:

In the present Case, Mrs. Monemi became an Iranian national in 1960 upon her marriage to an Iranian student who was on a scholarship. In 1967, after arrangements made early in that same year and in the latter half of 1966 immediately after Mr. Monemi obtained his PhD in Engineering, she moved to Iran where she lived, as the spouse of an Iranian professor at Shiraz University, throughout the approximately 12-year period until February 1979, without any significant interruption and without having the slightest political, economic, social or cultural link with the United States (paras. 7-12 of the Award). Mrs. Monemi travelled to the United States only a few days before her husband took steps to obtain a sabbatical leave, and Mr. Monemi rejoined his family in August 1979 after his sabbatical leave was finally approved. From that date until the end of 1980, the Monemi family lived in the United States as the family of an Iranian professor and with the consent of Shiraz University, in two different capacities (from August 1979 through June 1980, on

August 1979 through June 1980, on the basis of Mr. Monemi's sabbatical leave; and for the following six months, based on his leave without pay) (para. 16). Therefore, in effect, until about 18 days before the end (19 January 1981) of the relevant period, whose starting point is entirely uncertain (paras. 1 and 24 of the Award), Mrs. Monemi resided in the United States not as an American but rather as the spouse of an Iranian professor (the head of the family), with close social and economic ties to Iran. For this reason, it is not at all clear how the majority has been able to regard the dominant nationality of such a claimant during the relevant period as being that of the United States.

In addition to the abovementioned problems, the majority has also mutilated the Respondents' arguments and objections in connection with the point that the Claimant's dominant nationality is not that of the United States, such as the fact that the family moved for the purpose of living permanently in Shiraz, i.e., the place where Mr. Monemi and his relatives were born and lived; the Claimant's employment relationship with Shiraz University as an Iranian national; the Claimant's extensive knowledge of and interest in the Persian language and in the culture and literature of Iran; her association with Iranian friends and families; her enjoyment of the Iranian social security services; the fact that the head of the family obtained a substantial fifteen-year home loan, and his construction of a luxury residence in Shiraz; the fact that the family had the benefit of the husband's university salary during the nine months of his sabbatical leave and of the exchange allowance

which were the family's sole means of income and subsistence in the United States; and finally, the extension of her passport (for whatever reason), as well as her other social, economic and cultural ties with Iran. Then, examining each of those elements in isolation instead of weighing them in the over-all context of the Claimant's life, the majority has dealt with those elements one by one in such a way as to make it seem that none of them could, taken alone, outweigh Mrs. Monemi's ties and links with the United States (paras. 18-21, 28-30). Yet, in my opinion, not only has Mrs. Monemi failed to carry the burden of proof that her United States nationality is her dominant and effective nationality, but an examination of her life taken as a whole clearly demonstrates that the sum total of her ties with the Iranian society, whether during the relevant period or in the years prior thereto, far outweigh the sum total of her ties with the United States society.