





CASE NO. 309

CHAMBER THREE

AWARD NO. 489-309-3

ABBAS GHAFFARI,  
Claimant,

and

NATIONAL IRANIAN OIL COMPANY,  
THE ISLAMIC REPUBLIC OF IRAN,  
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	10 SEP 1990
	تاریخ ۱۳۶۹ / ۶ / ۱۹

AWARD

I. THE PROCEEDINGS

1. On 15 January 1982 the Claimant, ABBAS GHAFFARI, submitted a Statement of Claim against the Respondents, NATIONAL IRANIAN OIL COMPANY ("NIOC") and THE ISLAMIC REPUBLIC OF IRAN ("Iran"). Ghaffari seeks an amount in excess of U.S.\$1,133,622.00 for the alleged appropriation by Iran of an apartment in Tehran co-owned by him and for NIOC's alleged violation of his entitlements pursuant to an employment contract with that company. The Claimant further demands interest and compensation for his costs of arbitration.

2. On 30 April 1982 NIOC submitted a Statement of Defence, including a counterclaim based on debts Ghaffari allegedly owed to NIOC. As a jurisdictional defense, NIOC asserts, inter alia, that the Claimant is an Iranian national and therefore may not claim against Iran before this Tribunal. Iran filed a Statement of Defence on 11 May 1982.

3. On 11 June 1982 the Tribunal ordered the Parties to submit memorials addressing, in particular, the nationality issues raised by the Respondents. On 14 July 1982 the Claimant filed a memorial and affidavit in response to this Order, as well as a Reply to Respondents' Statements of Defense. On 30 September 1982 NIOC and Iran each submitted a Reply Memorial.

4. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 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 ordered the Claimant to file any evidence he wished the Tribunal to consider in determining, inter alia, his dominant and effective nationality. Following the Claimant's submission of his memorial on 13 November 1985, the Tribunal, on 21 November 1985, directed the Respondents to submit "all evidence that they wish the Tribunal to consider on the issue of the Claimant's nationality." Following three extensions of the deadline for this submission, the Tribunal on 6 February 1987 issued an Order denying a fourth extension request and stating that the Tribunal intended, "as soon as its working schedule permits, to proceed with its deliberations on the issues of jurisdiction in this Case on the basis of evidence then before the Tribunal."

6. On 12 December 1988 the Respondents filed a memorial on the Claimant's nationality, accompanied by a volume containing documentary evidence. On 10 January 1989 the Claimant objected to this submission, arguing that it was filed "in spite of this Chamber's clear and definite order prohibiting any further filing by Respondents on the nationality issue." In view, inter alia, of "Claimant's not having been afforded an opportunity by this Chamber to reply to Respondents' extremely detailed submission," Ghaffari requested the Tribunal to strike the Respondents' memorial from the record or, alternatively, to allow him to file a response thereto. On 17 January 1989 the Respondents petitioned the Tribunal to dismiss the Claimant's request, stating that their submission was in conformity with the terms of the Order of 6 February 1987 and Tribunal practice.

7. Since the Tribunal's determination in this Case does not rely on the Respondents' contested submission, the Tribunal finds no need to pronounce itself on the Claimant's request. See paras. 22-27, infra.

## II. FACTUAL BACKGROUND

8. Abbas Ghaffari was born in Iran in 1924, where he lived until 1946. From 1946 through 1953 he studied at Utah State Agricultural College in Logan, Utah, obtaining degrees in industrial technology, commerce, and political science. In 1952 Ghaffari married a United States citizen in Washington, D.C. In 1953 they moved to Tehran, where in 1955 they had a son.

9. In 1957 the Ghaffari family relocated to Long Beach, California, purchasing a home there in 1959. According to the Claimant, whose second son was born in 1959, he "immigrated at that time under an immigrant visa as a permanent resident of the United States. As an official permanent resident, [he] held a 'green card' and resided in the United States as a resident alien." Ghaffari took up employment with Transworld Management Corporation, a United States company. His duties included work required under a contract concluded between Transworld and NIOC pursuant to which Transworld supervised the training and recruitment of NIOC personnel and the education of NIOC-sponsored students in schools in the United States.

10. In 1960 Ghaffari became the head of NIOC's New York office. For this reason, the family moved to White Plains, New York, where Ghaffari purchased a house in 1963. Ghaffari's duties as director of the New York office consisted of the following: (1) purchasing oil-related materials and services on behalf of NIOC, (2) recruiting Americans and Iranians in the United States for employment with NIOC in Iran, (3) training NIOC employees in the United States, and (4) supervising Iranian students attending schools in the United States who were sponsored by NIOC.

11. In 1962 Ghaffari and his wife had a third son. They lived in White Plains until 1975, when the couple separated.

Pursuant to a divorce decree issued by the Supreme Court of the State of New York, Ghaffari transferred title to their house to his wife and started to make child support payments to her. Ghaffari moved to New York City, where he rented an apartment. In 1976, he married an Iranian-born woman. In the same year they purchased an apartment in Tehran.

12. In 1979 Ghaffari retired from his position with NIOC. NIOC's retirement notice, as translated by the Tribunal's Language Services department, reads as follows:

You are hereby informed that it is agreed to grant you an early retirement as of 2.4.1358 [23 June 1979], at the Company's discretion.

I wish to take this opportunity to thank you for your efforts and services rendered over your many years of service with the Company.

13. On 4 June 1980 the Claimant received a copy of a notice sent from NIOC's Administration Department to its Accounting Department stating, as translated by the Tribunal's Language Services department, that "based on the decision taken by the Purge Committee" he "ha[d] been permanently dismissed from service as from the date of his retirement (2.4. 1358) [23 June 1979]." The notice further directed that "the personnel action relating to his retirement be annulled, and that the necessary measures be taken." Ghaffari contends that since then NIOC has not paid his pension or other employment benefits and has taken his company savings account.

14. As to the Tehran apartment, the Claimant asserts the following:

I made a final payment for the Apartment in 1979. At that time, Eskan Towers, where the Apartment was located, was still under construction. I instructed the management of Eskan Towers to rent the Apartment upon completion of the building, and to remit the rental to me. I have been informed by friends in Iran that Eskan Towers was completed

in late 1980, and that it has been fully occupied since that time. I have not, however, received any rental income from the Apartment. I therefore conclude that the Apartment has been taken by Iran in late 1980.

In reply, NIOC states that it is not aware that such an apartment exists or that it has been appropriated. The Respondents also assert that Ghaffari "borrowed money (from NIOC Pension Fund) to buy an apartment in Iran, the place he intended to live in future with his new wife, had the Islamic Revolution not taken place."

15. Ghaffari contends that he applied for United States citizenship in March 1979, but that action on his application was delayed when his file was misplaced. The Respondents do not deny these contentions. On 21 May 1980 Ghaffari received his certificate of naturalization. According to the Claimant, "[t]his Certificate, however, is only a formal acknowledgement of a decision I made in 1957 to immigrate to the United States and to make it my home."

16. Ghaffari asserts that after his immigration to the United States in 1957, his contacts with Iran have been minimal. He allegedly has visited Iran only seven times, all on trips made at NIOC's request. Ghaffari has paid federal, state and local taxes in the United States. He also points out that he has purchased real estate and personal property in the United States and that he has invested in the stocks of various United States companies. The Claimant's children allegedly were not raised as Moslems and do not speak Persian. They all received their education in the United States, where they currently reside.

### III. THE TRIBUNAL'S DETERMINATION

17. The Tribunal first must determine whether Abbas Ghaffari was, from the time his claim arose until 19 January

1981, a national of the United States or Iran or of both countries. If the Tribunal concludes that he holds both nationalities, it will have to determine which one was "dominant and effective" during the relevant period and, consequently, must prevail for purposes of jurisdiction in the present proceedings. Case No. A18, Decision No. DEC 32-A18-FT, p. 25, reprinted in 5 Iran-U.S. C.T.R. at 265. See also Kambiz Hakim and The Government of the Islamic Republic of Iran, Award No. 478-952-2, para. 4 (16 May 1990), reprinted in \_\_\_\_\_ Iran-U.S. C.T.R. \_\_\_\_\_, \_\_\_\_\_.

18. By virtue of his birthplace and his parents' Iranian nationality, Abbas Ghaffari is considered under Iranian law to be a national of Iran. Since 21 May 1980, he also has been a United States citizen, as evidenced by a statement of the Immigration and Naturalization Service of the United States Department of Justice submitted by the Claimant. There is no basis for determining that he ever lost this citizenship.

19. The pertinent issue thus becomes one of determining the dominant and effective nationality of Abbas Ghaffari 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 The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51, the Tribunal held that although the period from the date the claim arose until 19 January 1981 is crucial, "it is not the only one to be considered in order to determine" the dominant and effective nationality of a claimant. "Indeed, 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." Id.

20. Before applying this standard to the facts, the Tribunal notes that the Parties disagree as to the date when the claim allegedly arose. Any claim arising before the date of the Claimant's naturalization as a United States citizen, i.e., 21 May 1980, would be outside the Tribunal's jurisdiction, as would be any claim arising after 19 January 1981. The Claimant contends that NIOC's repudiation of its obligations arising from his employment contract occurred on 4 June 1980, and that his Tehran apartment was appropriated "sometime after May, 1980." The Respondents assert that the notice sent by the "purging commission" on 4 June 1980 merely confirmed its decision to discharge Ghaffari with effect from 23 June 1979, and that, consequently, Ghaffari's claim arose prior to his naturalization. They also contend that most of the Claimant's alleged rights under his employment contract would have ceased to exist upon his naturalization.

21. The Tribunal's findings concerning the dominant and effective nationality of the Claimant following his acquisition of United States citizenship eliminate the need for the Tribunal to determine the date on which Ghaffari's claim arose. See paras. 22-27, infra.

22. Turning to the analysis, the Tribunal notes that the Claimant spent much of his adult life in the United States. At age 22, he went to Utah, where he studied from 1946 through 1952. Following a period back in Iran from 1953 to 1957, he lived in the United States from 1957 onwards. Obviously, therefore, Ghaffari's habitual residence was in the United States. His connection to that country was reinforced by his marriage to a United States citizen, with whom he had three children, all of whom were raised as

American citizens. As a result, until his divorce in 1975, Ghaffari's most significant family ties were American.

23. At the same time, however, the Claimant's livelihood, center of professional interests and some of his social interests were related to Iran through his work with NIOC. His work required him to maintain contacts with Iranians both in Iran and in the United States. As NIOC's representative, he served the interests of Iran. In 1975 the Iranian government apparently awarded him the so-called 4th grade Royal Insignia honors for his services to Iran. As the Respondents point out, in 1976 at the proposal of the Iranian ambassador in Washington, D.C., Ghaffari was issued a diplomatic passport in his capacity as the head of NIOC's New York office.<sup>1</sup> Thus, the Tribunal concludes that, notwithstanding Ghaffari's residence in the United States, his economic and professional interests centered on Iran.

24. Also in 1976 Ghaffari married an Iranian woman, together with whom he purchased the apartment in Tehran. The Claimant insists that he bought the apartment exclusively for investment purposes. However, in view of the facts that the woman Ghaffari recently had married was Iranian, that NIOC had extended a housing loan to him, and that his decision to acquire property in Iran came after he had lived in the United States for twenty years, it is reasonable to assume that his purchase of the apartment may have reflected the possibility of relocation to Tehran. The Claimant's

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<sup>1</sup>While he acknowledges his possession of a diplomatic passport, Ghaffari contends that he never represented himself as having diplomatic status and that his office was never used in connection with any matter involving the government. He has submitted a statement issued by the United States Department of State declaring that Ghaffari "was not issued diplomatic or consular credentials and had no claim to diplomatic or consular immunity in the United States."

letter dated 8 May 1975 seeking a loan for the purchase of his apartment in Tehran further suggests that he may have purchased that apartment, not merely as an investment, but because he was considering a return to Iran in the future, perhaps after retirement. This letter, presented by NIOC, reads in part:

Now that the light of my life is fading, it came to my mind to procure a place of residence for myself, so that if one day I am expelled from here and live amongst you, at least I could have an apartment to have shelter as protection from the heat and cold of this life.

By 1976, therefore, the focus of Ghaffari's social life may have been shifting toward Iran. At the least, the Claimant's maintenance of his Iranian nationality and social contacts, his marriage to an Iranian woman in 1976, and possibly also their purchase of the apartment in Tehran in the same year, are evidence that he had not severed his social, cultural and sentimental ties with the country of his birth.

25. Considering the record as described above, the Tribunal, having addressed Ghaffari's habitual residence, his social ties and the focus of his professional interests, also must investigate any other evidence of attachment. One other fact, in the context of this Case, must be considered significant. The Claimant did not obtain his naturalization as a United States citizen until May 1980, after having resided in the United States for twenty-three years. In Malek, Interlocutory Award No. ITL 68-193-3, para. 15, reprinted in 19 Iran-U.S. C.T.R. at 52, the Tribunal observed that

[a]mong all the relevant factors, 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 to assert a claim for his property.

Delay in applying for and obtaining such nationality, however, can be explained by the circumstances of the case.

26. Ghaffari settled in the United States in 1957. He allegedly submitted his petition for naturalization in 1979. The Tribunal notes that the Claimant, while contending that his certificate of naturalization, which was awarded to him in 1980, constituted "only a formal acknowledgement of a decision [he] made in 1957 to immigrate to the United States and to make it [his] home," has failed to explain why he thus waited twenty-two years before he applied for United States citizenship. Although Ghaffari submitted his petition before the conclusion of the Algiers Accords, at a time when it was impossible to foresee the legal opportunities that the Accords would open to United States nationals, nevertheless, the factors enumerated in paragraphs 23-24, supra, support the inference that he sought United States citizenship not simply in belated confirmation of a sense of allegiance to that country, but because the revolutionary events taking place in Iran had foreclosed any plans that he may have had to return to Tehran.<sup>2</sup>

27. Taking into account all the factors discussed above, the Tribunal finds that the Claimant has failed to establish that his dominant and effective nationality during the relevant period was that of the United States.

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<sup>2</sup>This Case is to be distinguished from Malek, in which the Tribunal found that the "Claimant's decision to maintain his residence, as well as his family, professional and economic life in his adopted country was taken years before by the Claimant, without any intent later to return to the other country of which he was also a national." Id. (emphasis added).

IV. AWARD

28. In view of the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The claim of ABBAS GHAFFARI against NATIONAL IRANIAN OIL COMPANY and THE ISLAMIC REPUBLIC OF IRAN is dismissed for lack of jurisdiction.
- b. Each Party shall bear its own costs of arbitration.

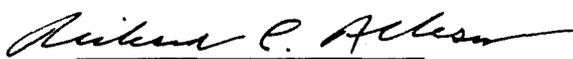
Dated, The Hague,  
10 September 1990



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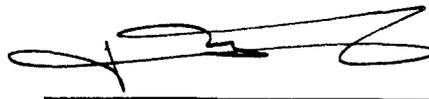
Gaetano Arangio-Ruiz  
Chairman  
Chamber Three

In the Name of God



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Richard C. Allison



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Mohsen Aghahosseini