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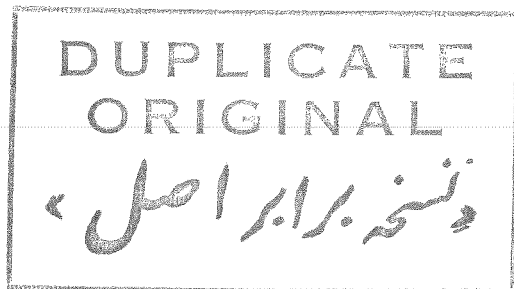
** CONCURRING OPINION of _____
- Date _____
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CASE NO. 479

CHAMBER ONE

AWARD NO. 545-479-1

IRENE BOROUMAND,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

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|---------------------------------------|---|
| IRAN-UNITED STATES CLAIMS TRIBUNAL | دیوان دآوری دعاوی ایران - ایالات متحدہ |
| FILED | ثبت شد |
| DATE | 3 FEB 1993 |
| | تاریخ ۱۳۷۱ / ۱۱ / ۱۴ |

AWARD

I. PROCEDURAL HISTORY

1. On 18 January 1982, the Claimant IRENE BOROUMAND ("the Claimant") filed a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN ("Iran" or "the Respondent") seeking compensation for the alleged expropriation, taking and confiscating of her alleged property in the amount of US\$46,145,903. The Claimant alleges that her Claim arose on 7 November 1979, when the Revolutionary Court of Isfahan allegedly ordered confiscation of the property of the Claimant's husband, father and brothers of the Claimant's husband, and their spouses, including the Claimant. She contends that pursuant to that order, Iran confiscated from her tangible and intangible personal property, residential real property, and unimproved and improved real property.

2. Iran had filed no Statement of Defense by 6 July 1983, when the Tribunal suspended further proceedings in this Case pending the decision of the Full Tribunal on the question of the Tribunal's jurisdiction in cases where the claimant was a national of Iran under Iranian law and a national of the United States under United States law.

3. 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 2 August 1984 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." In the same Order the Tribunal requested the Claimant to file by 26 September 1984 all evidence that she wished the Tribunal to consider in determining her dominant and effective nationality. Likewise, the Tribunal requested the Respondent to file by 26 November 1984 all evidence it wished the Tribunal to consider on the issue of the Claimant's nationality.

4. The Claimant submitted her evidence on 24 September 1984. The Respondent was granted four extensions until 21 July 1986. The Tribunal in its Order of 25 July 1986 granted one further extension until 21 October 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 Respondent's 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. On 22 February 1991, the Respondent filed "Respondent's Brief and Evidence on Claimant's Nationality." In view of the submission, the Tribunal by its Order of 19 March 1991 invited the Claimant to file by 21 May 1991 a response to the Respondent's filing and any additional evidence. The Tribunal also invited the Respondent to file by 22 July 1991 a response to the Claimant's submission and any additional evidence. After having been granted one extension, the Claimant filed her evidence on 20 June 1991. The Respondent was granted four extensions until 5 June 1992. In its Order of 10 June 1992, the Tribunal ordered the Respondent to file forthwith, but not later than 26 June 1992, a response to the Claimant's filing of 20 June 1991. On 26 June 1992, the Respondent filed "Respondent's Evidentiary Brief on Claimant's Nationality." On the same date, the Respondent filed a letter in which it stated that it was attempting to collect other evidence, and that any document later received would be submitted to the Tribunal immediately. On 24 July 1992, the Respondent, referring to the above-mentioned letter of 26 June 1992, filed a submission including an affidavit by Mr. Nad-e Ali Ghasseman. The Respondent requested that the affidavit be considered as an integral part of its rebuttal brief.

6. Having regard to the Respondent's request, the Tribunal decides that fairness, orderliness and possible prejudice to the other party requires that it not admit the Respondent's unauthorized submission of 24 July 1992.¹

II. FACTS AND CONTENTIONS

7. The Claimant was born on 12 February 1940 in Stuttgart, Germany. Both her parents were German citizens. The Claimant lived in Germany and attended German schools until 1952. The Claimant states that she lived with her grandparents until 1949 when her parents divorced. Thereafter, according to the Claimant, she lived between 1949 and 1952 in Berlin with her mother and Walter Hanselmann, a United States citizen, whom her mother married in 1952. The Claimant contends that she learned English from, and experienced American influences through, her step-father. In April 1952, the Claimant, together with her mother and step-father, left Germany for the United States.

8. In the United States, the Claimant resided with her mother and step-father first in California between the years 1952 and 1955, and then in Shaker Heights, Ohio until 1958. The Claimant completed middle school in California and high school in Ohio. The Claimant states that between September 1958 and June 1959 she attended Western Reserve University in Cleveland, Ohio, and that from September 1959 to April 1961 she pursued studies at the University of California at Berkeley.

9. The Claimant was naturalized as a United States citizen on 28 August 1959 by the United States District Court of the Northern District of Ohio at Cleveland. As part of the naturalization decree, the Claimant changed her previous name,

¹The issue of late-filed documents was discussed in Harris International Telecommunications, Inc. and Islamic Republic of Iran, et al., Award No. 323-409-1, paras. 57-66 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31, 45-49.

Gudrun Irmgard Barth, to Irene Irmgard Hanselmann. On 19 March 1961, the Claimant married Abdolkarim Boroumand, an Iranian national, in a Moslem ceremony in San Francisco, California. Upon her marriage to Mr. Boroumand, the Claimant was naturalized as an Iranian citizen. The Claimant has produced a photocopy of her Iranian passport issued in 1977. The Claimant also received an Iranian identification card on 16 December 1962.

10. In April 1961, the Claimant moved to Iran with her husband and lived there until December 1978. During that period, three children were born to them: Yasmin on 13 March 1962, Mohammad on 19 December 1963, and Simin on 16 August 1975. The Boroumand children acquired Iranian nationality by birth to an Iranian father. The Claimant contends that she registered each child's birth with the American Consulate in Isfahan. She also asserts that her two oldest children, Yasmin and Mohammad, shared her American passport, but that in 1975 the United States Consul in Tehran revoked their United States citizenship. The Claimant alleges that the revocation forced her to use her Iranian passport as well as her American passport when travelling with her youngest daughter, Simin, who shared the Claimant's Iranian passport, but she does not explain nor proffer any evidence as to why a separate Iranian passport was not obtained for Simin which apparently was done for the two other children. The Claimant asserts that in Iran, Yasmin Boroumand attended the Rudabeh French Catholic School from September 1968 until October 1978. Mohammad Boroumand, according to the Claimant, first attended the Setareh Sobh French School between September 1969 and 1974, and then the American School of Isfahan until December 1978.

11. While the Claimant lived in Iran she was a housewife. She contends that her lifestyle was American. She also asserts that after 1965 she travelled to the United States numerous times. In support of her statements, the Claimant has produced three notarized statements. Mr. and Mrs. Hanselmann, the Claimant's uncle and aunt, assert in their statement that the Claimant's

trips from Iran to the United States were frequent and lengthy. Dr. and Mrs. Barnet contend in their statement that the Claimant had many official and non-official American friends, and that the Boroumands celebrated traditional holidays such as Thanksgiving and Christmas. They also state that the Claimant, accompanied by her children, made almost yearly trips to the United States. Furthermore, they assert that a few months before the Claimant's departure from Iran, due to the death of her step-father, the Boroumands had moved into their newly-built home in Isfahan. Mrs. Maleki states that the Claimant participated in social events of the American community in Isfahan, and that she visited the United States nearly every year.

12. In the Statement of Claim, the Claimant asserts that she and her husband "were obliged to leave, or to remain outside, Iran by reason of the political turmoil in Iran." However, later in her submissions of 24 September 1984 and 20 June 1991 the Claimant contends that following the death of her step-father, she left Iran in December 1978 to visit her mother in Texas who needed her help. She contends that thereafter, in Spring 1979, she moved with her children to Mill Valley, California. It appears from the Claimant's Iranian passport that the Claimant renewed the passport in the Iranian Consulate in San Francisco on 23 March 1979 to be valid until 10 May 1980. It also appears that she used that passport, among other times, when entering the United Kingdom in July and August 1979. Contrary to the Claimant's allegation that the Iranian passport covering both herself and her younger daughter was used only for travel by that child, while the Claimant simultaneously used her United States passport, the Tribunal finds that analysis of both passports, including stamps after the Claimant moved to the United States, does not conclusively demonstrate that this was done in all instances, and the Claimant provides no explanation nor evidence in this connection. The Claimant states that while living in Iran she had completed courses of the University of California's Extension Program under supervision of the American Consul. In April 1979, the Claimant enrolled in the University of California

at Berkeley in order to continue her studies. She received a Bachelor of Arts degree in June 1980. In addition, the Claimant has produced evidence to show that she held a bank account in Texas from 1966 onwards and in California from 1979 onwards. Further, she has submitted evidence showing that she filed U.S. tax returns for 1979, and that she has been registered to vote in Mill Valley, California since 5 September 1980.

13. Iran, while denying the Claimant's allegations in every respect, contends that the Claimant has failed to establish that during the relevant period she was dominantly and effectively a national of the United States. Iran requests the Tribunal to dismiss the Claimant's Claim for lack of jurisdiction.

14. Iran has produced evidence to show that the Claimant received Iranian passports in 1965 and 1972. Iran contends that the Claimant and her family left Iran because of the revolutionary events in Iran. In support of this, Iran has submitted a photocopy of a lease agreement concerning a building in Isfahan signed by the Claimant's husband, Abdolkarim Boroumand, as a lessor. The duration of that agreement was four years, from 21 January 1977 to 21 January 1981. According to Iran, the lease agreement demonstrates that the Boroumands did not intend to leave Iran permanently.

III. REASONS FOR THE AWARD

15. In order to determine whether the Claimant has standing before this Tribunal, the Tribunal must establish whether the Claimant was a citizen of Iran, of the United States, or of both Iran and the United States during the relevant period from the date the Claim arose until 19 January 1981, the date on which the Claims Settlement Declaration entered into force. If the Claimant was a citizen of both Iran and the United States, the Tribunal must determine the Claimant's dominant and effective nationality during that period. See Case No. A18, supra, para. 3, 5 Iran-U.S. C.T.R. 251. In this Case, the relevant period

commenced when the Respondent allegedly expropriated the property for which the Claimant seeks compensation. The relevant period for her Claim thus began on 7 November 1979.

16. The Tribunal notes that there is no dispute that the Claimant, by virtue of her marriage to an Iranian national, is an Iranian national. The Tribunal is also satisfied that the Claimant was naturalized as a United States citizen on 28 August 1959, as evidenced by a photocopy of her Certificate of Naturalization, no. 8141978. The Tribunal also notes that the Claimant has produced a photocopy of relevant pages of her United States passport, issued on 25 May 1976. There is no evidence in the record that the Claimant has relinquished either her Iranian citizenship in accordance with Iranian law or her United States citizenship in accordance with United States law. Consequently, the Tribunal finds that during the relevant period, the Claimant was a citizen of both Iran and the United States.

17. Having found that during the relevant period the Claimant was a citizen of both Iran and the United States, the Tribunal proceeds to determine her dominant and effective nationality during that period. For that purpose, the Tribunal must establish the country with which the Claimant had stronger ties. The Tribunal must consider all relevant factors, such as the Claimant's habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. See Case No. A18, supra, para. 3, p. 25, 5 Iran-U.S. C.T.R. 265. While the Tribunal's jurisdiction is dependent on the Claimant's dominant and effective nationality during the period between the date the Claim arose and 19 January 1981, the events and facts preceding that period remain relevant to the determination of the Claimant's dominant and effective nationality during that period. See Reza Said Malek and 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.

18. As noted above, the Claimant is a native German citizen who lived in Germany until the age of twelve; that is, from 1940 to 1952. Thereafter, the Claimant resided in the United States from 1952 to 1961 and from December 1978 to January 1981, and in Iran from 1961 to December 1978. The Tribunal notes that even though the Claimant visited the United States several times between 1965 and 1977, there is no evidence in the record suggesting that these visits amounted to permanent residence in the United States. In light of the above, the pertinent issue in this Case is to determine whether the other evidence concerning the Claimant's life outweighs the fact that the Claimant lived an essentially longer period in Iran than in the United States.

19. Turning, therefore, to explore other evidence, the Tribunal first notes that although the Claimant lived with her mother and American step-father in Berlin between 1949 and 1952, she could not have begun to integrate into American society until she moved there in 1952.² Further, the Tribunal notes that the evidence to support the Claimant's assertions of her American oriented lifestyle while in Iran is minimal. The notarized statements from those who knew the Claimant while she lived in Iran are short and largely lacking in specificity. With regard to her trips to the United States, the Tribunal observes that the record is largely barren of evidence that would provide a more detailed picture of her trips. Thus, the evidence of the Claimant's attachment to the United States throughout the period she lived in Iran is not sufficient to undermine the fact that the Claimant voluntarily moved to Iran and lived there for a period of almost 18 years as a housewife with her Iranian husband.

20. The Tribunal also finds that in the period between the time when the Claimant arrived in the United States in 1978 until her Claim allegedly arose, she had not cut her long-standing and substantial ties with Iran. For example, the Tribunal notes that

²See Betty Laura Monemi, et al., and Islamic Republic of Iran, et al. Partial Award No. 533-274-1, para. 28 (1 July 1992), reprinted in ____ Iran-U.S. C.T.R. ____.

her Iranian passport shows that in March 1979 it was renewed until 10 May 1980 at the Iranian Consulate in San Francisco and that the Claimant has neither given a satisfactory explanation nor any evidence concerning its use in travel to Europe even after she moved to the United States. See paras. 10 and 12, supra.

21. In these circumstances, the Tribunal concludes, based on the evidence before it, that the Claimant's attachment to the United States does not outweigh her attachment to Iran. Consequently, the Tribunal determines that during the relevant period the Claimant's dominant and effective nationality was not that of the United States, and that therefore the Claim of Irene Boroumand does not fall within the Tribunal's jurisdiction.

IV. AWARD


22. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

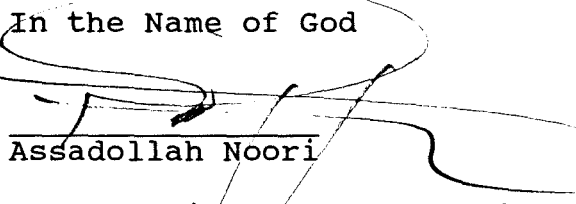
- a) The Claim of the Claimant IRENE BOROUMAND is dismissed for lack of jurisdiction under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.
- b) Each Party shall bear its own costs of arbitration.

Dated, The Hague

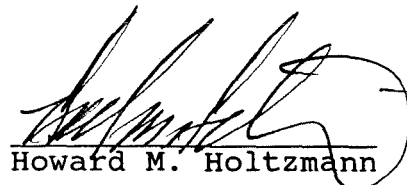
3 February 1993


Bengt Broms
Chairman
Chamber One

In the Name of God


Assadollah Noori

I concur in the results of
the present Award, but


Howard M. Holtzmann

believe that in principle, the Tribunal does not have jurisdiction over the claims of Iranians with alleged dual United States nationality, either according to the Claims Settlement Declaration or pursuant to the well-established 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 members of the Full Tribunal in Case A18, in resorting to the principle 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 are concerned, especially the principle of the sovereign equality of States, that action is tantamount to a disregard for the fundamental principles of international law. In my opinion, just as the Iranian arbitrators have stated in their Dissenting Opinion in Case A18, re-printed in 5 Iran-U.S. C.T.R. 275-337, 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.