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** CONCURRING OPINION of _____
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CASE NO. 770

CHAMBER TWO

AWARD NO. 414-770-2

LINDA J. MOTAMED,
MEHRDAD MOTAMED,
Claimants,
and
THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحده
فایل شد - FILED	
Date	3 MAR 1989
	۱۳۶۷ / ۱۲ / ۱۲ تاریخ

AWARD

I. THE PROCEEDINGS

1. The Claimants LINDA J. MOTAMED and MEHRDAD MOTAMED ("the Claimants") filed a Statement of Claim on 19 January 1982, against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent") for reimbursement of the fair market value of bank shares worth U.S.\$250,000 in the Banks of Tehran and Saderat and for the fair market value of real estate situated in Iran worth U.S.\$200,000, which were allegedly expropriated by the Respondent. The Tribunal notes, however, that on 22 March 1984, upon direction of the Claimants, the Claimants' attorney advised the Tribunal that this Claim "be arbitrarily reduced by U.S.\$250,000" and the Claim, therefore, be amended accordingly. The Claimants allege that their Claim arose sometime after October 1978.

2. In relation to this Claim, the Respondent, on 30 May 1983, filed a communication with the Tribunal that the Claimants were Iranian nationals and consequently requested the Tribunal for a stay of proceedings in this Case until the Full Tribunal issued its ruling regarding the Tribunal's jurisdiction over claims filed by nationals of both the United States and Iran.

3. After the Full Tribunal's decision in The Islamic Republic of Iran and The United States of America, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, the Tribunal requested the Claimants to file any further documentary evidence they wished the Tribunal to consider in determining whether they were nationals of the United States of America or the Islamic Republic of Iran, or both, and in case the Claimants were nationals of both countries, evidence relating to the Claimants' dominant and effective nationality. Likewise, the Tribunal ordered the Respondent to file all documentary evidence it wished the Tribunal to consider with regard to the issue of the Claimants' nationality.

4. In response, the Claimants filed on 1 November 1985 a communication with the Tribunal which states that a U.S. naturalization certificate No. 10673546 was issued through the U.S. Immigration and Naturalization Department in Providence, Rhode Island on 18 November 1977, and the certificate could not be photocopied without violating Federal law. It is not known which of the two Claimants was the beneficiary of this certificate, although the communication also states that the certificate was in the possession of Dr. Motamed. No other evidence was filed by the Claimants regarding their nationality. The Respondent also did not file any evidence relating to the Claimants' nationality.

II. REASONS FOR THE AWARD

5. In accordance with the various criteria set forth by the Full Tribunal in the A18 decision (paragraph 3, supra), the Tribunal must first determine on the basis of the evidence whether the Claimants were, during the relevant period from the time their Claim arose until the date of the Claims Settlement Declaration, 19 January 1981, nationals of the United States or of Iran, or of both countries, and, if nationals of both countries, their dominant and effective nationality during that period.

6. There can be no doubt that the Claimants bear the burden of proof with respect to their nationality during the relevant period. A mere allegation of naturalization in 1977 is not proof. The Claimants did not file any evidence that would verify their alleged U.S. nationality. The Tribunal concludes, therefore, that their Claims must be dismissed for lack of proof of the nationality of the claims as required by Article II, paragraph 1, and Article VII, paragraph 1, of the Claims Settlement Declaration.


III. AWARD

7. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

- (a) The Claim of the Claimants LINDA J. MOTAMED and MEHRDAD MOTAMED against the Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is dismissed for lack of jurisdiction.
- (b) Each Party shall bear its own costs of arbitration.

Dated, The Hague
3 March 1989




Robert Briner
Chairman

In the Name of God



George H. Aldrich



Seyed K. Khalilian