IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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Case No. 273 273-54 Date of filing: 5 Oct '90

** AWARD - Type of Award _____

- Date of Award _____

_____ pages in English _____ pages in Farsi

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_____ pages in English _____ pages in Farsi

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17 pages in English — pages in Farsi

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- Date _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 273
CHAMBER ONE
AWARD NO. 490-273-1

REZA and SHAHNAZ MOHAJER-SHOJAEE,
Claimants,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

SEPARATE OPINION OF HOWARD M. HOLTZMANN
DISSENTING IN PART, CONCURRING IN PART

Introduction

1. The Award in this case holds that the Tribunal has no jurisdiction over the claims of a husband, Mr. Reza Mohajer-Shojaee, and his wife, Mrs. Shahnaz Mohajer-Shojaee.

2. I dissent from the decision concerning Mrs. Mohajer-Shojaee because I believe that the evidence, weighed in the light of the standards of proof that the Tribunal has established in other dual national cases, is sufficient to demonstrate that she was dominantly and effectively a national of the United States at all relevant times. Accordingly, I believe that the Tribunal has jurisdiction over her claim.

3. On the other hand, I agree that the Tribunal correctly denied jurisdiction over Mr. Mohajer-Shojaee's claim because

he failed to prove that he had been naturalized as a citizen of the United States before the date on which he alleges that his claim arose and by 19 January 1981.[1]

4. This Case involves relatively uncomplicated facts, and no novel legal issues. However, it is significant in that its decision comes at a time when the Tribunal already has issued interlocutory awards and awards[2] in nineteen so-called "dual national" cases. It therefore is possible, and appropriate, to use this opportunity to review these awards, and to analyze the Tribunal practices that have evolved, at least to the extent applicable to the points at issue in this case.

The Two Elements that Must Be Proven in a Dual National Case

5. In every dual-national case of this type two distinct elements must be proven in order for the Tribunal to have jurisdiction. First, when the claimant is an Iranian who alleges that he or she became a naturalized citizen of the United States, the Claimant bears the burden of proving that the naturalization occurred by the date the claim is alleged to have arisen, and that he or she continued to be a United States national until at least 19 January 1981, the date on

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[1] Under the terms of Article VII, para. 2 of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by The Government of the United States of America and the Government of the Islamic Republic of Iran (the "Claims Settlement Declaration"), the Tribunal has jurisdiction over a claim against Iran only when that claim was continually owned by a national of the United States from the date on which it arose and on 19 January 1981, the date the Claims Settlement Declaration entered into force.

[2] Typically, Interlocutory Awards are issued when the Tribunal determines that it has jurisdiction, because the case then proceeds to consideration of the merits in a second stage. Awards are issued when the Tribunal holds that it does not have jurisdiction, because that determination is a final deposition of the case.

which the Claims Settlement Declaration entered into force.[3] Second, if such naturalization is proven, the claimant is considered to be a dual national and must then demonstrate that his or her dominant and effective nationality was that of the United States.[4] So if the first element -- naturalization before the relevant dates -- is not proven, the Tribunal need not reach the issue of dominant and effective nationality.

6. In explaining my views in this Case, I will discuss each of these two elements in turn.

The Evidence Necessary to Demonstrate Naturalization

7. Documentary evidence that demonstrates naturalization as a United States citizen is simple and straightforward, and is typically either in the possession of naturalized citizens or readily obtainable by them. The form which proof of nationality must take varies according to how that nationality was obtained. In the simplest cases, involving claimants who allege continuous United States citizenship, documents that demonstrate an individual's birth in the United States, or the official birth record of the child of a United States citizen born abroad as registered with the United States Government, are adequate proof unless rebutted by evidence showing renunciation of that citizenship. When citizenship is obtained by voluntary naturalization, other forms of proof are available. The Tribunal has accepted that naturalization can be proven by submitting a copy of (i) a naturalization certificate issued at the time of

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[3] Supra note 1.

[4] See Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251.

naturalization,[5] (ii) a Special Certificate of Naturalization issued by the United States Department of Justice,[6] or (iii) a United States passport, or passports, effective on the relevant dates.[7]

8. In every dual national case, the Tribunal has required documentary proof of nationality in one of these forms, and has denied jurisdiction whenever a claimant has failed to provide it.[8] That is a reasonable standard in view of the nature and availability of these official documents.

9. Mr. Mohajer-Shojaee presented the Tribunal with copies of relevant pages of a passport issued on 6 November 1981, a date long after both the day on which he alleges his claim arose and the Tribunal's jurisdictional deadline of 19 January 1981. In an affidavit, he asserts that a prior passport had been issued on 27 July 1976, but this statement

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[5] See, e.g., Edgar Protiva, et al. and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 73-316-2 (12 Oct. 1989); Nasser Esphahanian and Bank Tejarat, Award No. 31-157-2 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 157.

[6] See Lilly Mythra Fallah Lawrence and Islamic Republic of Iran, Interlocutory Award No. ITL 77-390/391/392-1 (5 Oct. 1990).

[7] See Uiterwyk Corporation, et al. and Government of the Islamic Republic of Iran, et al., Award No. 375-381-1, para. 33 (6 July 1988), reprinted in 19 Iran-U.S. C.T.R. 107, 118; August Fredrick Benedix, Jr., et al. and Government of the Islamic Republic of Iran, Partial Award No. 412-256-2 (22 Feb. 1989).

[8] See Lilli Tour and Government of the Islamic Republic of Iran, Award No. 413-483-2, p. 4 (1 Mar. 1989); Linda J. Motamed and Mehrdad Motamed and Government of the Islamic Republic of Iran, Award No. 414-770-2, p. 3 (3 Mar. 1989); David Harounian and Government of the Islamic Republic of Iran, Award No. 450-447-3, para. 11 (27 Nov. 1989). This is not to suggest that nationality can not be proven by some other reliable form of documentary evidence, such as a letter from the United States District Court which was the naturalizing authority.

is unsupported by any other evidence. While the Tribunal has frequently in appropriate circumstances relied upon affidavit evidence as the sole basis of factual findings,[9] no such circumstances generally exist with respect to official documentation of United States naturalization, and Mr. Mohajer-Shojaee has not stated any reasons for his failure to provide such documentation. Accordingly, jurisdiction over Mr. Mohajer-Shojaee's claim must be denied.

10. In contrast, his wife presented copies of relevant pages of two passports, one issued 28 November 1977, the other issued 2 December 1982. The Award correctly finds that these passports constitute sufficient proof that she was a United States national at the time she alleges that her claim arose, and also on 19 January 1981, thereby satisfying the first element of the jurisdictional inquiry. That finding, however, is not in itself sufficient to establish the Tribunal's jurisdiction; as noted above, it also is necessary to demonstrate that her United States nationality was dominant and effective at those times.

The Evidence Necessary to Demonstrate Dominant and Effective Nationality

11. The dominance and effectiveness of the United States nationality of a dual national stems first from the very act of naturalization. That is because in taking the oath necessary to become a United States citizen each naturalized person pledges allegiance to the United States and expressly

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[9] See, e.g. Kenneth P. Yeager and Islamic Republic of Iran, Award No. 324-10199-1, para. 41 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 92, 103; Leonard and Mavis Daley and Islamic Republic of Iran, Award No. 360-10514-1, paras. 32-35 (20 Apr. 1988), reprinted in 18 Iran-U.S. C.T.R. 232, 242-243.

renounces loyalty to any other State.[10] Thus, the naturalized citizen swears that from the moment of the oath onward he or she is, and will be, predominantly attached to the United States. An individual who voluntarily makes such a solemn oath is entitled to the presumption that he or she will be faithful to it. Indeed, the United States relies on that presumption when it grants the privileges of citizenship. The presumption created by the oath, reinforced by long residence in the United States, must stand unless it is rebutted by convincing evidence that the naturalized individual has later acted in a way that shows that, notwithstanding the oath, he or she is not dominantly and effectively a national of the United States. Prior Tribunal decisions have noted the significance of the naturalization oath,[11] and recognized the presumption that flows from it.[12]

12. The presumption that arises from the act of naturalization was recognized by Professor Jennings (now Judge Sir Robert Jennings of the International Court of Justice) in his 1967 lectures at the Hague Academy of International Law (in which he quoted Professor Ian Brownlie):

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[10] 8 U.S.C. § 1448 requires a person seeking to be naturalized to "take in open court an oath . . . (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen." In prior cases the Tribunal has noted the significance of the naturalization oath, see Uiterwyk Corporation, supra note 7, para. 33, 19 Iran-U.S. C.T.R. 118.

[11] Uiterwyk Corporation, supra note 7.

[12] Leila Danesh Arfa Mahmoud and Islamic Republic of Iran, Award No. 204-237-2, para. 24 (27 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 350, 355 ("[t]he fact of voluntary naturalization is one which creates a strong and not easily rebuttable presumption").

> If voluntary naturalization -- and this would apply to other similar investitive facts of nationality -- is not to be conclusive evidence of nationality for international purposes, the alternative is that it must be regarded as creating a presumption; for clearly there must be at least a presumption in favor of the genuineness of investitive facts of this kind. Brownlie puts the reasons for such a presumption clearly and convincingly:
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> > In applying the principle of genuine link, two considerations are relevant. In the first place, there is a presumption of the validity of an act of naturalisation since the acts of governments are presumed to be in good faith. Secondly, this is reinforced by the concept of nationality as a status since a conferment of nationality which is acted upon ought not to be invalidated except in very clear cases." [Brownlie, Principles of Public International Law, p. 329.]
>
> This proposition, with respect, seems to be unassailable .... If the law is to work in practice ... the presumption created by a juridical fact such as voluntary naturalization must be regarded by any tribunal as a very strong presumption, not easily rebutted.[13]

13. Nor is the presumption that flows from naturalization merely the stuff of dry legal theory; it is a recognition of a deep personal commitment concerning the individual's future life. This human aspect of U.S. naturalization -- which is its essence -- was described by Mr. A. M. Rosenthal, former editor of the New York Times in a recent article. He wrote:

> On Friday I went down to Battery Park in New York to watch a naturalization ceremony [of 66 people]. Chief Judge Charles Brieant of the U.S. District Court for the Southern District of New York . . . had all 66 swear [the oath of allegiance]. The

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[13] Jennings, General Course on Principles of International Law, 121 Recueil des Cours, 1967/II, pp. 459-460.

> judge said nobody had to tell the new Americans the meaning of America -- they choose the country and then choose to work to take [part in] the ceremony of belonging.... [I]n the United States you become a member of the national society the moment you take the oath, and forever are so considered and name yourself: American.... [S]trangers from different parts of the world kissed; suddenly they had something dear in common.[14]

Mr. Rosenthal's vivid description puts into human perspective the meaning of the legal phrase "dominant and effective nationality" -- and it is in this human context that the presumption created by the act of naturalization must be viewed.

14. The presumption that an individual who is naturalized as a United States citizen is predominantly attached to the United States is strongly supported by long residence in the United States.[15] A review of the Tribunal's decisions makes it clear that proof of naturalization, when coupled with proof of prolonged residence in the United States, invariably leads to a conclusion in favor of dominant U.S. nationality, absent other compelling circumstances. In no less than eight cases, the Tribunal has found dominant and effective nationality when an Iranian-born person was voluntarily naturalized as a U.S. citizen, and was domiciled

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[14] Rosenthal, "To Those Who Lament Its Passing...", International Herald Tribune, 16 July 1990.

[15] This is not to say that a naturalized citizen could not be dominantly and effectively American even if living abroad. As the Tribunal has recognized, some U.S. nationals living in Tehran did not assimilate into Iranian culture in that they spoke English at home, sent their children to American schools in Tehran, joined American clubs, etc. See, e.g., Reza Nemazee and Luz Belea Namazee and Islamic Republic of Iran, Award No. 487-4-3, paras. 11, 13, 31 (10 July 1990).

in the United States for more than seven years.[16] This reflects the common human experience that persons who decide to become naturalized and to have their habitual residence in a country make efforts to integrate into the society and culture of that place, to establish family and business ties there, to participate in the community around them, and to develop other forms of attachment. As stated by the International Court of Justice in the Nottebohm Case, nationality is a "legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties."[17] Similarly, this Tribunal,

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[16] See, e.g., Katrin Abrahamian and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 74-377-3 (1 Dec. 1989); Nahid Hemmat and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 70-170-3 (16 June 1989); Abrahim Rahman Golshani and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 72-812-3 (30 June 1989); Protiva, supra note 5; Ataollah Golpira and Government of the Islamic Republic of Iran, Award No. 32-211-2 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 171; Reza Said Malek and Government of Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48; Esphahanian, supra note 5; Nemazee, supra note 15.

The only cases where a person who was voluntarily naturalized was not recognized as having dominant and effective U.S. nationality were those where the claimant did not reside in the U.S. during the relevant period, Benedix, supra note 7, where the claimant was found to have deliberately delayed seeking naturalization in order to benefit from continued Iranian citizenship, Mahmoud, supra note 12, and where the claimant evidenced a clear intent to return to Iran to live permanently, and only applied to be naturalized as a U.S. citizen after the outbreak of the Revolution in Iran, Abbas Ghaffari and National Iran Oil Company, et al., Award No. 489-309-3 (10 Sept. 1990). None of these circumstances are even remotely applicable in this case.

[17] Nottebohm Case (Liechtenstein v. Guatemala), 1955 I.C.J. 4, 23 (Judgment of 6 April). See also Griffin, The Right to a Single Nationality, 40 Temple Law Quarterly 57, 59 (1966) (describing the modern meaning of the bond of nationality as a "sociological reality.").

following the lead of the International Court of Justice, has stated that when determining dominant and effective nationality it "will consider all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment."[18]

15. I turn now to a brief review of the types of evidence that the Tribunal has accepted as constituting sufficient proof of dominant and effective nationality. The evidence of proof of naturalization, which is a key element, is discussed in para. 7 above. Evidence of residence in the United States is typically provided by an affidavit, corroborated by some type of documentary evidence indicating the fact of residence. In addition to the prima facie case of dominant United States nationality thus established, in most cases there are one or more affidavits that give examples of some of the Claimant's activities in order to illustrate his or her predominant attachment to the United States.

16. In some dual national cases claimants have provided documentary support for some of the facts described in their affidavits, while in other cases claimants have not done so. The Tribunal has based findings of fact on affidavit

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[18] Case No. A18, supra n. 4, p. 25, 5 Iran-U.S. C.T.R. 265. Similarly, see Mergé Case (U.S. v. Italy), 14 R. Int'l Arb. Awards 236, 247 (1955) ("The United States nationality shall be prevalent in cases in which the family has had habitual residence in the United States and the interests and the permanent professional life of the head of the family were established in the United States"), cited with approval by Judge Parviz Ansari in his dissenting opinions in Marjorie Suzanne Ebrahami and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 171-44/45/46/47-3 (16 June 1989), paras. 3, 4; and Reza Namazee and Luz Belen Namazee and Islamic Republic of Iran, supra note 16.

evidence, even when unsupported by documentary evidence.[19] In particular, affidavit evidence has been credited when Iran has presented no rebuttal evidence that shakes the credibility of the affiant.

17. Prior Tribunal Interlocutory Awards emphasize the significance of the lack of rebuttal evidence by Iran. Thus, in the Protiva Case, the Tribunal

> note[d] that the activities described above by the Claimants in support of their U.S. nationality have been on the whole been unrebutted . . . . Nor is there any evidence that contradicts facts relating to the Claimants' conduct such as economic interests, social, political and family life including domicile, which support their dominant and effective U.S. nationality, particularly during the relevant period from the time their claim arose until 19 January 1981. For these reasons, the Tribunal concludes that the Claimants' Claim satisfies the jurisdictional requirements of Article VII, paragraph 1, of the Claims Settlement Declaration.[20]

Similarly, in the Malek Case the Tribunal

> note[d] that the Claimant's allegations about the main facts of his life and the evidence appended to his statement have not been seriously disputed by the Respondent. In the absence of contradictions within these allegations, and considering that there are nor other reasons in this case to doubt their veracity, the Tribunal deems that it can safely rely on them.[21]

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[19] See supra note 9, and infra paras. 22 - 24.

[20] Protiva, supra note 5, at para. 17.

[21] Reza Malek and Government of the Islamic Republic of Iran, supra note 16, para. 23, 19 Iran-U.S. C.T.R. 54. See also Faith Khosrowshahi, et al. and Government of Islamic Republic of Iran, Interlocutory Award No. ITL 76-178-2 (22 Jan. 1990).

18. I move from the analysis of principles developed by the Tribunal in earlier cases to the application of those concepts to the evidence before us concerning the dominant and effective nationality of Mrs. Mohajer-Shojaee. As the Tribunal correctly determined she was voluntarily naturalized as a United States citizen sometime prior to 28 November 1977, the date of her earliest passport in evidence. According to United States law she was required to have permanently resided in the United States for a minimum of 5 years prior to filing a petition for naturalization.[22] Thus, the fact of naturalization is proof that she has lived in the United States at least since November 1972. This is also proven by the official birth certificate of her daughter Dineh, dated 2 September 1972, which states that the mother was a resident of Troy, Michigan on that date. Thus, there is documentary proof of residence that is fully consistent with, but independent of, the affidavit by her husband that she had been a resident of the United States since 1969. The majority Award is, therefore, inaccurate when it finds that the evidence in support of Mrs. Mohajer-Shojaee's dominant and effective U.S. nationality "consists almost exclusively of affidavits by her husband." Award, para. 9.

19. Iran has produced no evidence to rebut this. While the Brief filed by Iran's counsel argues that the affidavit describing Mrs. Mohajer-Shojaee's residence and family life in the United States is unsupported and entitled to no weight, Iran does not offer any evidence -- or even any allegation -- that after 1969 she lived in Iran, not Michigan. Iran acknowledges in its submissions in this Case that it has the means to determine from records available to it whether Mrs. Mohajer-Shojaee and her children were living in Iran during the period the Claim states that she was

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[22] 8 U.S.C. §1427(a).

living in the United States. Thus, for example, Iran requested four extensions of the deadlines for filing its evidence because it said it needed more time to search, inter alia, for "documents and evidence . . . kept in various departments",[23] and for "records, documents, papers and consular archives".[24] Iran had more than 5 years in which to submit evidence, from 2 August 1984 when it was first ordered to file "all evidence that it wishes the Tribunal to consider on the issue of [Mrs. Mohajer-Shojaee's] nationality" until it eventually filed a "Brief and Evidence" on 11 December 1989. Yet Iran presented no evidence whatsoever showing that Mrs. Mohajer-Shojaee, her children or her husband lived in Iran after 1969, or otherwise rebutting the prima facie showing that her habitual residence and family ties were in the United States from 1969 onward.

20. As noted above, place of residence has been an important factor in determining dominant and effective nationality in every dual nationality case. Thus, residence in the United States of approximately the same duration as Mrs. Mohajer-Shojaee's was the primary basis for the holding that the Tribunal has jurisdiction in Katrin Abrahamian and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 74-377-3 (1 Dec. 1989) (resided in U.S. since 1979); Hemmat, supra note 16 (resided in U.S. since 1969); and Golshani, supra note 16 (resided in U.S. since 1969).

21. The evidence suggests that Mrs. Mohajer-Shojaee is a housewife and that her main activities center around her home and raising her children. A number of Interlocutory Awards have attached significance to the place where the

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[23] Letter requesting extension of time, filed by the Agent of The Islamic Republic of Iran, 21 October 1986.

[24] "Request for Extension of Time", filed by the Agent of The Islamic Republic of Iran, 25 February 1985.

claimant's children were born and raised. See, e.g., Golshani, supra note 16, p. 7; Golpira, supra note 16, p. 5, 2 Iran-U.S. C.T.R. 174; Protiva, supra note 5; Esphahanian, supra note 5. Birth certificates in evidence demonstrate that both of Mrs. Mohajer-Shojaee's children were born in the United States. The younger daughter has lived in the United States all of her life, as has the older daughter, except when she was 3-4 years old. The decision of Mrs. Mohajer-Shojaee and her husband to raise their children in the United States attests to her desire to integrate into United States society.

22. Purchasing a home in the United States is mentioned in several Interlocutory Awards as indicating commitment to the country. See Golshani, supra note 16; Golpira, supra note 16; Khosrowshahi, supra note 21; and Esphahanian, supra note 5. The affidavit supporting Mrs. Mohajer-Shojaee's claim states that she and her husband first purchased a family home in the United States in 1970, and upon selling that house bought another in 1978. Some claimants have supported affidavit evidence of home ownership with documentary proof, but others have relied solely on the sworn statement in an affidavit. The Tribunal has in several dual national cases taken home ownership into account on the basis of affidavit evidence alone. See Golpira, supra note 16; Malek, supra note 16; Hemmat, supra note 16.

23. Payment of taxes in the United States is a factor which has been considered by the Tribunal in several dual national cases. In the present case, the affidavit supporting Mrs. Mohajer-Shojaee's Claim states that she and her husband have paid United States taxes since they began living there. No copies of tax returns are attached to that affidavit, as has been done by some other claimants. It is to be noted, however, that the Tribunal has given weight to tax payments in a number of other cases based solely on the affidavit of the taxpayer. See Protiva, supra note 5; Golpira, supra note 16; Malek, supra note 16.

24. Voting by the Claimant in United States elections is a strong expression of citizenship. Accordingly, the Tribunal has in several dual national cases referred to voting as one of the elements supporting its holding of dominant and effective United States nationality. See Golshani, supra note 16; Khosrowshahi, supra note 21; Protiva, supra note 5; Golpira, supra note 16; Esphahanian, supra note 5; and Ebrahami, supra note 18. In four cases in which the Tribunal has referred to voting in U.S. elections the claimants have supported statements in affidavits with documentary evidence from official sources, but in an equal number of cases the Tribunal has taken voting into account when a claimant -- as in the present case -- has relied entirely on a sworn statement in an affidavit.

Conclusions as to Mrs. Mohajer-Shojaee

25. In sum, there is ample evidence to demonstrate the dominant and effective United States nationality of Mrs. Mohajer-Shojaee. Not only is there the presumption arising from her naturalization oath, but there is prima facie proof that she resided in the United States since 1969, and uncontestable documentary proof that demonstrates her United States residence at least since 1972. Iran has had five years in which to search the records available to it, but has produced no counter-evidence to show that she lived in Iran during the period she asserts that she was a United States resident. In addition, by way of illustration of her ties to the United States, there is affidavit evidence that (i) she and her husband owned homes in the United States, (ii) she raised their children there, (iii) she paid United States taxes and (iv) she voted in United States elections -- all factors mentioned by the Tribunal in other cases holding that the claimant was dominantly and effectively a United States national. While the Claimant presented no documentary evidence to support the sworn affidavit evidence as to these last four factors, Tribunal decisions in other cases have found that such factors existed based solely on

affidavit evidence. The Tribunal's task in dual national cases is facilitated when affidavits are supported by other evidence; yet, analysis of prior decisions shows that the Tribunal does not hesitate to credit affidavit evidence standing alone when -- as in this Case -- there is no reason to doubt credibility. The fact that Mrs. Mohajer-Shojaee could have presented more documentary evidence is not a reason to ignore the evidence, both by documents and affidavits, that was presented.

26. The majority's Award preaches at length the obvious litany that claimants bear the burden of proof. Having thus clothed itself in an incontestable generality, the Award curtly disposes of the key issues in two sentences -- the first inaccurate, and the second merely conclusory:

> [B]ecause the evidence on the basis of which Shahnaz Mohajer-Shojaee seeks to establish the dominance of her United States nationality consists almost exclusive of affidavits by her husband, also a Claimant in this Case, the bulk of the evidence before the Tribunal remains unsupported by such proof. In these circumstances, the Tribunal concludes that [she] has failed to prove that her United States nationality is the dominant and effective nationality, and that she therefore lacks standing before this Tribunal.

Award, para. 9. Recalling that the Tribunal Rules require that "[t]he arbitral tribunal shall state the reasons upon which the award is based" (Article 32, para. 3), I regret that the majority fails, inter alia, to give the reasons (i) why it ignores the presumption of permanent commitment to the United States that flows from the oath of naturalization, or how that presumption has been rebutted; (ii) why it fails even to mention the birth certificate of Mrs. Mohajer-Shojaee's daughter, which states that Mrs. Mohajer-Shojaee's "residence" was in the United States in 1972, and thus constitutes official documentary evidence corroborating the affidavit of her husband concerning her long residence in the United States, (iii) why it does not

discuss the Respondent's failure to provide any evidence in rebuttal. I hope that this Case is an aberration, and that this Chamber will, in the future, follow the standards set by long-established Tribunal practice -- as it does in the cases of Lilly Mythra Fallah Lawrence, also filed today.[25] But that is little consolation for Mrs. Mohajer-Shojaee, who must bear the burden of the majority's incorrect and unreasoned result.

Dated, The Hague
5 October 1990

Howard M. Holtzmann

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[25] Lawrence, supra note 6.