IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No. 415 415-55 Date of filing: 9 Aug '90

** AWARD - Type of Award _____

- Date of Award _____

_____ pages in English _____ 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 _____

- Date _____

_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of Judge Ansari

- Date 19 Dec '89

8 pages in English (19 Dec '89) — pages in Farsi

** OTHER; Nature of document: _____

_____

- Date _____

_____ pages in English _____ pages in Farsi

R/12

IRAN-UNITED STATES CLAIMS TRIBUNAL
Persian version filed on
20 December 1989

دیوان داوری دعاوی ایران - ایالات متحده

In the Name of God

CASES NO. 412, 415
CHAMBER THREE
AWARD NO. ITL 75-412/415-3

CASE NO. 412

ZAMAN AZAR NOURAFCHAN,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

CASE NO. 415

GEORGE NOURAFCHAN,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

DISSENTING OPINION OF JUDGE PARVIZ ANSARI

Introduction

1. I have repeatedly expressed my reasons for dissenting to the Tribunal's injudicious and deplorable decision to admit the claims of Iranian nationals against the Government of Iran, and thus see no need to reiterate them here. See: the Dissenting Opinion of the Iranian Arbitrators in Case No. A18, Decision No. DEC 32-A18-FT (10 Sep. 1984), reprinted in 5 Iran-U.S. C.T.R. 275-337; also the Dissenting Opinion of Judge Parviz Ansari in Reza Said Malek and The Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3 (23 Jun. 1988).

Zaman Azar Nourafchan's nationality

2. As reflected in paragraph 15 of the present Award, the majority's finding on the determination of Zaman Azar Nourafchan's prevailing and effective nationality is devoid of any reasons or legal analysis. After setting forth the Claimant's background and the events in her life, mainly by repeating her own statements and only occasionally by adducing evidentiary documents in support thereof, the majority concludes -- without offering any reasons or analysis, and in a mere few lines -- that the Claimant's prevailing and effective nationality is that of the United States. As a result, one can only resort to guesses and conjectures in order to deduce how the majority arrived at this finding. In those few lines, the majority alludes to the Claimant's personal, social and economic life as evidence of the preponderance of her United States nationality, aside from mentioning matters which are tangential to her residency in the United States. For this reason, I must make a brief analysis of the Claimant's family and social life, with reference to her own statements and to the available evidence in the Case:

3. The Claimant was born in the United States in 1957, to Iranian parents who were visiting that country; several months later, she accompanied them on their return to Iran, where she spent her entire childhood, youth and elementary and high school years. As indicated by the documents and forms which the Claimant filled out for the Iranian Passport Office, her trip to the United States in 1976 was for the purpose of continuing her higher education. The Claimant went to the United States on the strength of her Iranian passport, and in 1977 too, after returning to Iran, she re-entered the United States, once again on her Iranian passport and as an Iranian student. From the time she went to the United States and until 1979, the Claimant was engaged in studies, and was supported financially by her Iranian family. According to the Claimant's own statement, her mother and father went to the United States in 1978 in order for her father to obtain medical treatment on the advice of doctors in Iran, after he was afflicted with a heart disease. Consequently, all of the Claimant's family ties and links during her stay in the United States were confined to the members of her family, all of whom were Iranian.

4. The Claimant's financial ties in the United States, which allegedly consisted of opening a personal checking account with a bank branch in her neighborhood, taking out a loan in order to buy an automobile, and insuring her car with an insurance company, do not, even assuming them to be true, serve to shift the weight of the Claimant's financial ties to the United States, in such a way as to lead to the conclusion that the Claimant's financial ties were centered on the United States, especially given that she allegedly possessed immovable property in Iran worth approximately $5 million. It is an entirely ordinary matter for someone, even if he is residing only briefly in a foreign country, to need a current banking account and an automobile; and

having an automobile involves taking out car insurance as well.

5. As for the Claimant's cultural and social ties too, there is no evidence in the record -- aside from the fact that she resided in the United States from 1976 -- which would prove that the American component of this aspect of her life prevails. The Claimant's own statements show that here too, the Iranian element prevails, and that her cultural and social life was limited to members of her Iranian family. Moreover, the Claimant's participation in religious activities, assuming this to be true, cannot constitute evidence of which nationality ties prevail, since engaging in such religious activities is not limited to the American society. Indeed, in view of the fact that this is the sole example given of the Claimant's social activity in the United States, it can be regarded as evidence for her lack of ties to the American society and not the opposite, in the absence of any political or other socially relevant activities on her part.

George Nourafchan's nationality

6. With respect to the other Claimant, George Nourafchan, the majority refers to events in his life from the time he went to the United States in 1970 until 1980, when he acquired United States nationality. Apparently, the fact that the Claimant lived in the United States over that period of time had a significant influence upon the majority's finding that his United States nationality prevails. What the majority has overlooked, however, is that throughout this time, the Claimant did not hold United States nationality, and was solely a national of Iran. His activities, and how he lived, over that period -- apart from the circumstances thereof and the truth or falsity of statements in this connection -- cannot constitute evidence

of, or a basis for, the preponderance of a nationality which he did not even hold over this period, given that the Claimant was then solely an Iranian national. The time during which the Claimant was a dual national, i.e., from 19 September 1980 until the date of the Algiers Declarations (19 January 1981), was too brief to deserve attention, in comparison with the 29 years during which the Claimant was an Iranian national. There is no convincing evidence in the record which would justify the astonishing and unfair conclusion that the effective and prevailing nationality of someone who was an Iranian national from his date of birth until 19 September 1980 (i.e., for 29 years) was that of the United States, as of the moment that he acquired the latter nationality.

7. Moreover, the present Claimants have never relinquished their Iranian nationality, and they have continued to maintain their cultural, sentimental and economic ties to their homeland.

8. It must be concluded that:

Firstly, it is an established principle of international law from which there can be no derogation, that, as Iranian nationals, the Claimants cannot themselves bring claims against the Iranian Government before an international forum; nor can any government espouse their claims before such a forum on their behalf.

Secondly, the Iranian nationality of these Claimants predominates and prevails over their United States nationality; and from this viewpoint as well, the Tribunal lacks jurisdiction over the claims brought before it.

The Respondent is not precluded from filing a statement of defence on the merits

9. Another fundamental objection to the present Interlocutory Award relates to the arbitral proceedings themselves. The majority treats the responses filed by the Respondent on 3 January 1983, pursuant to an Order by the Tribunal, as constituting its statements of defence. This fact, taken together with paragraph 33 (c) of the Award, which specifies that the following stage of the arbitral proceedings will be the filing of "memorials and evidence" and makes no mention of the filing of a statement of defence, deprives the Respondent of its right to submit a statement of defence.

10. It must be explained that in responding to the Tribunal's Orders dated 25 October 1982 concerning the filing of a statement of defence, on 3 January 1983 the Respondent filed a reply consisting of only one paragraph in each of the instant Cases wherein, without addressing the merits of the claims, it requested the Tribunal "to determine the issue of its jurisdiction in the case as a preliminary matter in accordance with the Tribunal's adopted procedure. It goes without saying that the Iranian Government will adduce the evidence to prove Claimant's Iranian nationality as well as Iran's nonresponsibility against the claim per a memorial as well as at the hearing which will be scheduled by the Tribunal." Following a request by the Agent of the Government of the Islamic Republic of Iran on 25 February 1983, the issue of the Tribunal's jurisdiction over the claims of dual nationals was referred to the Full Tribunal under the heading of Case A18, and the adjudication of the claims of dual national claimants was deferred in all the Chambers pending the outcome of Case A18. After the Full Tribunal announced its decision in Case A18 on 6 April 1984, the first action taken by the Tribunal in connection

with the present Cases was to direct the Claimants, pursuant to its Orders dated 28 June 1985 and in reference to the Full Tribunal's decision in Case A18, to file their memorials and evidence only on the nationality issue; and following the filing of the Claimants' memorials, by its Orders of 3 September 1985 it invited the Respondent to file its memorials on the same issue.

11. The Tribunal's practice following the Respondent's submission of its requests on 3 January 1983-- i.e., in suspending the proceedings pending the outcome of Case A18, issuing the aforementioned Orders, and requesting the Parties to file memorials and evidence solely on the issue of the Claimant's nationality -- actually signifies its approval of the Respondent's request dated 3 January 1983 that it determine "the issue of its jurisdiction... as a preliminary matter." Therefore, now that a decision has been taken as to the Claimant's prevailing nationality, it would have been necessary, as a first step in adjudicating on the merits, to give the Respondent an opportunity to submit its statement of defence and any counterclaims it might have.

12. In view of the foregoing, the majority's decision whereby, arbitrarily and without giving any reasons or sources, it regards the Respondent's requests dated 3 January 1983 as being its statements of defence, in reality constitutes a disregard for the facts surrounding the filing of Case A18, and a deviation from the policy and practice adopted by the Tribunal in connection with adjudicating the claims of dual nationals after Case A18 was brought; and in any event, its result is to deprive the Respondent of its right to file a statement of defence. Such a decision would be not only unfair, but also in violation of the Tribunal's own rules of arbitration which require, as a self-evident and elementary principle, that

the arbitrating parties be treated equally and that each party be given the opportunity to argue its case at each stage of the proceedings.

The Hague,
19 December 1989

Parviz Ansari