IRAN 45-110 AIMS TRIBUNAL

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دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASES NOS. 44, 45, 46, 47
CHAMBER THREE
AWARD NO. ITL 71-44/45/46/47-3

Case No. 44
SHAHIN SHAINE EBRAHIMI,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

Case No. 45
MARJORIE SUZANNE EBRAHIMI,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

Case No. 46
CECILIA RADENE EBRAHIMI,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

Case No. 47
CHRISTINA TANDIS EBRAHIMI,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران ـ ایالات متحده
FILED - ثبت شد
Date 16 JUN 1989
تاریخ ۱۳۶۸ /۳/ ۲۶

DUPLICATE ORIGINAL
«نسخه برابر اصل»

INTERLOCUTORY AWARD

I. THE PROCEEDINGS

1. On 16 November 1981 SHAHIN SHAINE EBRAHIMI ("Shahin Ebrahimi") (Case No. 44), MARJORIE SUZANNE EBRAHIMI ("Marjorie Ebrahimi") (Case No. 45), CECILIA RADENE EBRAHIMI ("Cecilia Ebrahimi") (Case No. 46) and CHRISTINA TANDIS EBRAHIMI ("Christina Ebrahimi") (Case No. 47) (collectively the "Claimants") submitted Statements of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran"). Shahin, Cecilia and Christina Ebrahimi (the "Ebrahimi children") allege that Iran expropriated their interests in Gostaresh Maskan Company in early 1980. Marjorie Ebrahimi alleges that Iran expropriated residential and personal property allegedly seized by Iranian Revolutionary Guards in April 1980. On 5 April, 13 April, 14 April and 1 September 1982 Iran submitted its Statements of Defense and Counterclaim. In its submission of 5 April 1982 Iran argued that the Tribunal does not have jurisdiction over the Claim of Marjorie Ebrahimi because, as the wife of an Iranian national, she is not a United States national. Iran argued further that, even if she is considered a United States national, Iranian nationality is her dominant nationality. On 11 October 1982 Iran submitted a "Rejoinder" reiterating its objections to the Tribunal's jurisdiction over Marjorie Ebrahimi's Claim. With regard to the Ebrahimi children, Iran stated in its submissions of 13 and 14 April 1982 that their Claims were not within the jurisdiction of the Tribunal because they are Iranian nationals by virtue of the Iranian nationality of their father and in the case of Christina Ebrahimi also due to her birth in Iran.

2. On 19 July 1982 the Tribunal requested the Parties to submit memorials addressing the factual and legal issues on jurisdiction and, particularly, the issue regarding the Claimants' alleged dual nationality. On 9 September and 29 October 1982, respectively, the Claimants and Iran submitted their memorials on the Tribunal's jurisdiction. On 19

November 1982 the Claimants submitted a "Memorial of the United States on the Issue of Dual Nationality." The Claimants contend in their submissions that they are United States nationals.

3. At Iran's request the Tribunal scheduled a hearing on the issue of nationality for 16 December 1982. On 29 November 1982, however, the Tribunal cancelled the previously scheduled hearing and informed the Parties that it intended to resolve the nationality issue on the basis of the documents filed.

4. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, Decision No. DEC 32-A18-FT, p. 25, reprinted in 5 Iran-U.S. C.T.R. 251, 265, 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 Claimants to submit all written evidence they wished the Tribunal to consider in determining their dominant and effective nationalities. On 14 October 1985 the Claimants informed the Tribunal that they intended to rely on their submission of 9 September 1982 as proof of their United States nationalities. The Tribunal thereafter invited the Respondent to file "all evidence it wishes the Tribunal to consider on the issue of Claimant[s'] nationality." After granting three extensions of the original deadline, the Tribunal on 6 February 1987 denied Iran's fourth request for extension and informed the Parties that it intended to proceed with its deliberations on the issue of jurisdiction in these Cases as soon as its schedule permitted on the basis of the evidence then before the Tribunal, pursuant to Article 28, paragraph 3, of the Tribunal Rules.

6. On 10 May 1988 Iran submitted letters in Cases Nos. 44, 46 and 47 requesting the Tribunal to order the Claimants in these Cases to submit additional evidence including copies of their Iranian passports, information concerning the places and dates of their residence in Iran, details of their journeys and visits to Iran and information concerning their educational backgrounds in Iran.

7. On 1 June 1988 Iran submitted a memorial on the issue of the nationality of Marjorie Ebrahimi in which Iran reiterated its allegation that she is an Iranian national. Iran argued that, after her marriage to an Iranian in September 1977, she became holder of an Iranian identity card and began to live her life as an Iranian national. Iran also pointed out that she applied for and received an Iranian passport. It further argued that, by accepting work in Iran and marrying an Iranian national, her center of interests became situated in Iran. Finally, Iran questioned the authenticity of her United States passport.

8. On 13 June 1988 the Tribunal requested Marjorie Ebrahimi to submit the originals of her United States passport, Iranian identity card and Iranian passport. On 12 July 1988 Marjorie Ebrahimi submitted the originals of her United States passport and Iranian identity card. She stated that she "has not been able to find her Iranian passport."

9. On 13 June 1988 Iran submitted a memorial on the issue of the nationality of Shahin Ebrahimi asserting that his Iranian nationality is dominant and effective. Iran pointed out that the birth of Shahin Ebrahimi was registered by his parents with the Iranian Consulate in Washington and that he had held an Iranian passport. Iran argued that he was raised in Iran and attended schools there and thus was exposed predominantly to Iranian culture.

10. On 3 March 1989 Iran submitted memorials on the issue of the nationalities of Cecilia and Christina Ebrahimi asserting that their Iranian nationalities are dominant and effective.

II. FACTUAL BACKGROUND

A. The Ebrahimi children

11. The three Ebrahimi children are the children of Ali Ebrahimi, an Iranian national, and Cecilia De Fries, a United States citizen by birth.

12. Shahin Ebrahimi was born in Cheverly, Maryland on 20 August 1962, Cecilia was born on 3 January 1970 in Silver Spring, Maryland and Christina was born on 27 April 1971 in Tehran. Shahin's birth was registered on 25 July 1968 with the Iranian Consulate in Washington, and Christina's birth was registered on 15 November 1971 with the American Consulate in Tehran.

13. In 1968 the Ebrahimi family moved to Iran. While they lived in Iran, the Ebrahimi children and their mother returned to the United States for three months each summer. In 1975 the parents of the Ebrahimi children separated, and their mother allegedly left Iran for the United States together with the children. Since then the Ebrahimi children have resided in Maryland and have travelled to Iran to spend their summer vacations with their father. Cecilia and Christina also spent one Thanksgiving vacation in Iran. In addition, Shahin apparently spent the period between August 1976 and August 1977 in Iran due in part to an investigation concerning his Iranian passport. After obtaining his renewed Iranian passport and exit permit, he allegedly departed in August 1977. Since the summer of 1978 none of the Ebrahimi children has visited Iran.

14. Each of the Ebrahimi children has held both an Iranian and an American passport as well as an Iranian identity card.

15. Shahin alleges that, after receiving the majority of his first three years of elementary education in public schools in Maryland, he continued through the seventh grade in English-speaking schools in Iran. Upon returning to the United States he completed his secondary education in Maryland and later studied at the University of Utah in Salt Lake City, Utah. Allegedly, Cecilia and Christina attended English-speaking nursery schools in Iran, and Cecilia attended English-speaking kindergarten there. Upon moving to the United States in 1975, Cecilia and Christina continued their elementary educations in Maryland.

B. Marjorie Ebrahimi

16. Marjorie Ebrahimi was born Marjorie Suzanne Tunnell in Texas City, Texas on 4 October 1948. She received her elementary and secondary education in the United States and beginning in 1966 attended Texas Christian University in Fort Worth, Texas. In 1970 she continued her studies at the École Lemania in Lausanne, Switzerland, after which she attended the University of Lausanne.

17. While she was studying in Switzerland, her father served as president of the Kharg Chemical Company in Iran from 1971 to 1973, during which period she visited her father in Iran during school vacations. While completing her education in Switzerland, she secured part-time work with Westinghouse Electric Corporation in Iran. In 1975 she began working full time for Westinghouse in Iran. While living in Iran between 1975 and 1977 she visited her family in the United States on several occasions. After finishing work for Westinghouse in April 1977, she returned to the United States. Throughout this period she entered Iran

solely as a United States citizen using her United States passport.

18. In September 1977 Marjorie Tunnell married Ali Ebrahimi, an Iranian national, in Annapolis, Maryland. She and her husband moved to Iran in October 1977.

19. Shortly before moving to Iran she obtained an Iranian identity card and an Iranian passport. She asserts that she used her Iranian passport only to enter Iran to live with her husband and that she continued to use her United States passport for other travel throughout the world. She also asserts that, while she learned to speak some Persian, English has always been her primary language.

20. As indicated by a stamp on her Iranian identity card, Marjorie Ebrahimi apparently voted in the Islamic Revolution referendum of Iran in Tehran in April 1979. She and her husband left Iran in July 1979. Neither has since returned to Iran.

III. THE TRIBUNAL'S DETERMINATION

21. The Tribunal has first to determine whether the Claimants were, from the time their Claims arose until 19 January 1981, nationals of the United States or of Iran or of both countries. If the Tribunal concludes that the Claimants hold both nationalities, it will have to determine which one is "dominant and effective" during the relevant time and, consequently, must prevail for purposes of jurisdiction over the present proceedings. Case No. A18, Decision No. DEC 32-A18-FT, p. 25 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265.

A. The Ebrahimi children

22. It is undisputed that the Ebrahimi children are Iranian nationals by virtue of their father's nationality. At the

same time, it is clear from the record that they are United States nationals. As evidenced by their birth certificates, Shahin and Cecilia are United States citizens by virtue of their birth in the United States. Similarly, Christina is a United States citizen as evidenced by her United States passport as well as the certificate of registration of her birth abroad to an American mother with the American Consulate in Tehran. The Ebrahimi children thus hold nationality of both Iran and the United States.

23. The pertinent issue thus becomes one of determining the dominant and effective nationality of the Ebrahimi children 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 Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 14 (23 June 1988), the Tribunal further clarified that "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."

24. The Tribunal must now proceed to apply this standard to the facts before it. The record establishes that the Ebrahimi children lived in Iran from as early as 1968 until 1975 when their parents separated. At that time they accompanied their mother to the United States. With respect to Christina and Cecilia, these facts are supported by, among other things, United States immigration stamps dated 8 June 1975 in their United States passports. While Shahin's passport is not in the record, requests made in 1977 for the renewal of his Iranian passport indicate that his country of domicile at that time was the United States.

25. The move by the Ebrahimi children to the United States with their mother, a United States citizen by birth, years before their Claims are alleged to have arisen suggests that their Iranian father, upon their separation, was in agreement or at least accepted the fact that his children would be brought up in the United States in an American environment. Given their young age at the time of their arrival in the United States and the fact that their custody parent was a native American, the Tribunal finds that it would not have taken long for the children to integrate into American society. Clearly, by the time their Claims are alleged to have arisen, some four or five years after their departure from Iran, the children would have been so integrated.

26. The Tribunal therefore concludes that the dominant and effective nationality of each of the Ebrahimi children during the relevant period is that of the United States.

B. Marjorie Ebrahimi

27. It is undisputed that Marjorie Ebrahimi holds nationality of both the United States and Iran. As evidenced by her birth certificate and her United States passport, she is a United States citizen. At the same time, she is considered an Iranian national under Iranian law by virtue of her marriage to an Iranian national. The Tribunal therefore must apply the test of dominant and effective nationality articulated by the Tribunal in its decision in Case No. A18. See supra para. 22.

28. Applying this standard to the record, the Tribunal notes that Marjorie Ebrahimi's initial contact with Iran was as an American employed in Iran. Upon her marriage to an Iranian she acquired Iranian nationality. It would seem that when she moved to Iran in 1977 she may have intended to make Iran her home. The fact that she applied for an

Iranian identity card and stated in her application for an Iranian passport that she was willing to set up her domicile in that country indicates such an intention. However, she also renewed her United States passport shortly before leaving for Iran in 1977, and her extensive travels abroad including the United States during the period of 1977-1979, evidenced by stamps in her United States passport, shortened her physical presence in Iran to a period of some fifteen months.

29. The question to be resolved is what effect her residence in Iran between 1977 and 1979 had, in the context of her whole life, on her dominant and effective nationality during the relevant period from the date her Claim allegedly arose in early 1980 until 19 January 1981. Similarly, the Tribunal has to consider the relevance of her participation in the Iranian referendum, seen against the background of other facts in her life.

30. The Tribunal notes that Marjorie Ebrahimi's residence in Iran in the years 1977-1979 was not continuous and that she travelled with some frequency outside that country. Although she was married to an Iranian national, her life was that of an American expatriate in Iran. Furthermore, if in 1977 Marjorie Ebrahimi had intended to make Iran her home, and despite her participation in an Iranian referendum, her definite departure from Iran to the United States in 1979 suggests that she intended to give up her home in Iran in favor of her native country. Given her extensive western background and the short time of her residence in Iran, it would not have taken her long to reintegrate into American society. Once she relocated to the United States, months prior to the date her Claim is alleged to have arisen, her American nationality became predominant. Based on these facts, the Tribunal concludes that her dominant and effective nationality during the relevant period is that of the United States.

IV. AWARD

31. In view of the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. For the purpose of the Tribunal's jurisdiction, the dominant and effective nationality of the Claimants SHAHIN SHAINE EBRAHIMI, MARJORIE SUZANNE EBRAHIMI, CECILIA RADENE EBRAHIMI and CHRISTINA TANDIS EBRAHIMI is that of the United States of America.

b. The schedule for submission of memorials and evidence on all remaining issues will be established by separate orders.

Dated, The Hague,
16 June 1989

Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the name of God

Richard C. Allison

Parviz Ansari Moin
Dissenting Opinion