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Case No. 4

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**** AWARD**

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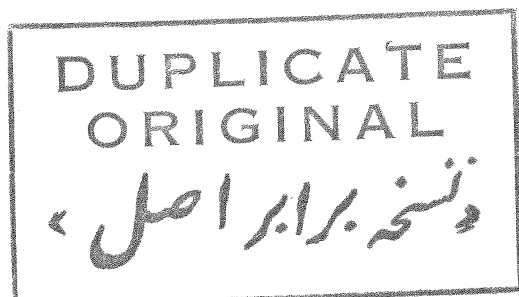
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ



CASE NO. 4

CHAMBER THREE

AWARD NO. 487-4-3

REZA NEMAZEE and
 LUZ BELEN NEMAZEE,
 Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
 Respondent.

UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	10 JUL 1990
	تاریخ ۱۳۶۹ / ۴ / ۱۹

PARTIAL AWARD

I. THE PROCEEDINGS

1. On 20 October 1981 the Claimants, REZA NEMAZEE and LUZ BELEN NEMAZEE, submitted a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN ("Iran") claiming U.S.\$525,000,000 for the alleged expropriation of their property in Iran. Iran filed a Statement of Defence on 14 May 1982.

2. The Claimants state that they are United States nationals. The Respondent asserts in its Statement of Defence that, because Luz Belen Nemazee married an Iranian national and Reza Nemazee was born in Iran, they are nationals of Iran under Iranian law and therefore may not claim against Iran before this Tribunal.

3. On 11 June 1982 the Tribunal ordered the Parties to submit memorials addressing, in particular, the nationality issues raised by the Respondent. On 23 September 1982 the Claimants filed a memorial in response to this Order.

4. On 1 November 1982 the Claimants, in order to present adequately their damages to the Tribunal, filed a request that the Tribunal compel Iran to produce documents, exhibits and other evidence allegedly seized by Iran in the course of its confiscation of the Claimants' assets. In response to this request, the Respondent on 10 January 1983 petitioned the Tribunal to consider the issue of jurisdiction as a preliminary question. On 9 March 1983 the Tribunal issued an Order declaring that it would consider the Claimants' request for the production of documents following its decision on the issue of nationality.

5. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 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."

6. On 28 June 1985 the Tribunal ordered the Claimants to file any additional evidence they wished the Tribunal to consider in determining, inter alia, their dominant and effective nationality. Following the Claimants' submission of their memorial on 31 July 1985, the Tribunal, on 7 August 1985, directed the Respondent to file "all evidence that it wishes the Tribunal to consider on the issue of the Claimant's nationality." On 13 April 1988 Iran submitted its memorial.

7. On 28 April 1988 the Tribunal issued an Order inviting the Claimants to comment on Iran's memorial and to submit further evidence¹ and inviting the Respondent subsequently to comment thereon. The Claimants filed their response on 27 July 1988 and the Respondent submitted its reply on 27 October 1988.

8. On 14 November 1988 the Claimants filed late certain "Additional Documents on Claimants' Nationality," stating that these documents were just located in the files of the United States Department of State Passport Office.

¹The Tribunal requested Luz Belen Nemazee to provide (1) a complete copy of her Iranian identity card, (2) evidence of the registration of herself and her children with the United States Embassy in Iran, (3) evidence of the maintenance of her residence and property in Puerto Rico, and (4) evidence of her trips to Puerto Rico and the United States during the time she resided in Iran, including full copies of her former United States and Iranian passports. The Tribunal requested Reza Nemazee to provide (1) evidence of his attendance and degrees from various United States colleges and universities, (2) evidence of a United States passport at and after the age of twelve, and (3) particulars concerning his residence and employment in Iran between November 1978 and August 1979.

Following several procedural communications by the Parties and the Tribunal, the Respondent submitted its response to these documents on 20 April 1989.

II. FACTUAL BACKGROUND

A. Luz Belen Nemazee

9. Luz Belen Nemazee was born in Puerto Rico on 10 April 1921. Both of her parents also were born in Puerto Rico. She lived in Puerto Rico until September 1944 when she moved to Chicago, Illinois to attend the University of Chicago. Here she met Hossein Nemazee, an Iranian national, whom she married on 4 November 1944. Upon their graduation in 1946, following a brief stay in Maryland, the couple moved to Hong Kong, where they lived through 1947 and had their first child, a daughter named Rowshan. While in Hong Kong, Luz Belen Nemazee obtained a United States passport.

10. In December 1947 Luz Belen Nemazee and her husband moved to Tehran, where she registered herself and Rowshan with the American Embassy on 5 January 1948. On 15 December 1949 she amended her passport to include her son (and co-Claimant in this Case) Reza, who was born in Tehran on 22 September of that year. Luz Belen Nemazee has submitted evidence that she renewed her passport and her and the children's registration at regular intervals thereafter. On most of these applications, she stated that her legal address was in Puerto Rico and that her residence was in Iran.

11. While living in Iran she actively participated in the activities and organizations of the American community and sent her children, with whom she only spoke English, to American schools in Tehran. Submitting supporting affidavits of relatives and friends in Puerto Rico, she asserts

that after 1954 she visited the United States every two years and then, after Reza had commenced studies in the United States, more often. A copy of her United States passport issued in 1975 evidences travel to the United States in 1976, 1977, 1978 and 1979.

12. A stamp on Luz Belen Nemazee's Iranian identity card, which was issued in 1967, indicates that she voted in an election in Iran in 1975. She obtained an Iranian passport in 1979, which she claims was necessary for her exit from Iran. On 11 November 1979 she and her husband, using Swiss visas, departed Iran to relocate in the United States.

B. Reza Nemazee

13. After his birth on 22 September 1949, Reza Nemazee was baptized at the American Mission Church of Tehran in November 1949 and was registered at the United States Embassy in December of that year as a child born abroad of an American parent. Between ages four and twelve, he attended American schools in Tehran and participated in various American oriented youth organizations and activities. Affidavits from relatives and friends in Puerto Rico have been submitted to attest that Reza accompanied his mother on visits to Puerto Rico after 1954.

14. In 1962 he was sent from Iran to England to continue his education at the Bryanston School. At that time he obtained a United States passport, which he renewed in 1965. Save for holidays in Iran, he stayed in England through 1966.

15. In 1966, Reza Nemazee relocated to the United States to attend the Sanford School in Hawkesin, Delaware where he obtained a twelfth-grade diploma. In the Fall of 1967 he moved to Hobart College in New York State, where he studied until 1971 and received an undergraduate degree in

psychology. Next, he pursued graduate studies at the State University in Oswego, New York until 1973 and received a Masters degree in psychology. From 1973 through 1978 he continued his studies and worked on his dissertation at Syracuse University, also in New York State. As part of his professional training, he worked in a clinical practice in Richmond, Virginia from 1977 onwards. He was awarded a Ph.D. degree in May 1978 and had his educational record certified by the Iranian Embassy in Washington, D.C. By that time Reza Nemazee had become a member of various American professional organizations.

16. In September 1977 he applied for and received a certificate of citizenship from the United States indicating that he was a citizen at birth.² He obtained his next United States passport in January 1978.

17. In early 1978 Reza was recruited by Dr. Fatolah Samiy, a representative of the Iranian Ministry of Health and Welfare who operated from the Iranian Embassy in Washington, D.C., to teach clinical psychology at the Imperial Medical Center to be developed in Tehran. According to Reza, he accepted this offer because the Center "was affiliated with the University of Pennsylvania and the Cornell Medical School (both in the U.S.) and that would greatly add to my credentials in the United States." Reza Nemazee returned to Tehran in November 1978. Due to the political circumstances, however, the Center did not materialize. Iran asserts that Reza took up alternative employment at another state-run school.

²Reza Nemazee claims he applied for the certificate of citizenship because he mistakenly thought he had lost his United States citizenship at age eighteen, and would regain it only upon five years residence in the United States. Thus, he explains that, when the United States passport he used to travel to the United States in 1966 expired, he
(Footnote Continued)

18. In April 1979 he married an Iranian national in Iran. A stamp on his Iranian identity card indicates that he voted in the Iranian Referendum of that month, although he contends that his father's employees took his card to the voting place merely to have it stamped.

19. On 18 June 1979 Reza obtained an exemption from military service in Iran. He claims that he needed this exemption, along with an Iranian passport, to leave the country. Upon receiving his Iranian passport on 18 July 1979, Reza left Iran with his wife in August 1979. They have had two children since their return to the United States, where he has resumed his professional career.

III. THE TRIBUNAL'S DETERMINATION

A. Luz Belen Nemazee

20. The Tribunal first must determine whether Luz Belen Nemazee was, from the time her claim arose until 19 January 1981, a national of the United States or Iran or of both countries. If the Tribunal concludes that she holds both nationalities, it will have to determine which one was "dominant and effective" during the relevant period and, consequently, must prevail for purposes of jurisdiction in the present proceedings. Case No. A18, Decision No. DEC 32-A18-FT, p. 25, reprinted in 5 Iran-U.S. C.T.R. at 265.

21. It is undisputed that Luz Belen Nemazee is an Iranian national by virtue of her marriage to an Iranian national. At the same time it is clear from the record that she is a United States national. As evidenced by her birth

(Footnote Continued)

believed he had to use his Iranian passport for several years for travel to the United States.

certificate and United States passport, Luz Belen Nemazee was born in Puerto Rico of Puerto Rico-born parents. On both of these grounds, she is therefore a United States citizen. Further, there are no grounds for determining that she ever lost this citizenship.³

22. The pertinent issue thus becomes one of determining the dominant and effective nationality of Luz Belen Nemazee 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 The 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, the Tribunal held that although the period from the date the claim arose until 19 January 1981 is crucial, "it is not the only one to be considered in order to determine" the dominant and effective nationality of a Claimant. "Indeed, 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

³The Respondent asserts that Luz Belen Nemazee's United States citizenship is invalid because it is based on the allegedly incorrect application by United States authorities of the United States nationality laws, in particular those relating to the status of Puerto Ricans. This assertion is disputed by Luz Belen Nemazee on the basis of the relevant laws. However, in the absence of manifest grounds for questioning the validity of the certification of citizenship, it is not incumbent upon an international tribunal to investigate either the merits of the national legislation on the basis of which nationality has been conferred or the conformity to such legislation of the acts by which the State in question has granted such nationality. These are both matters of domestic jurisdiction. For the purpose of the Tribunal's determination, the submission of convincing evidence that citizenship has been conferred must suffice.

national allegiance he claims to have made, are relevant."
Id.

23. Before applying this standard to the facts, the Tribunal notes that the Parties disagree as to the date when the claim allegedly arose, marking the beginning of the relevant period for the Tribunal's determination of the dominant and effective nationality. The Claimants contend that their assets were expropriated in January 1980, while the Respondent contends that the relevant expropriation concerned the property of Luz Belen Nemazee's father-in-law (Reza Nemazee's grandfather) and his immediate family, and that it took place in April 1979. The Tribunal finds that the issue of the date of the alleged expropriation has not yet been fully briefed by the Parties. Moreover, applying the norm laid down in Malek, id., reprinted in 19 Iran-U.S. C.T.R. at 51, the Tribunal, upon examination of the record relating to Luz Belen and Reza Nemazee, does not view as critical to its determination of dominant and effective nationality whether the claim arose in April 1979 or in January 1980. The Tribunal therefore reserves this issue for the further proceedings in the Case.

24. Turning now to the analysis, the Tribunal observes that the facts relating to Luz Belen Nemazee raise the question whether it is probable that a person who has lived in a state for over thirty years, having married a national of that state, still could retain the dominant nationality of another state. While the person may not have become emotionally attached to the new country merely because she has resided there for a long time, such prolonged residence may have the effect of alienating the person from her roots. The issue before the Tribunal is whether or not Luz Belen Nemazee has resisted this effect sufficiently to preserve the dominance of her original United States nationality. In weighing this issue, the Tribunal notes the following factors, inter alia.

25. Her American cultural ties, created by upbringing and education, were reflected in her choice to participate in activities of the American community in Tehran. She decided to send her children, with whom she spoke English, to American schools in Tehran, and subsequently, to send Reza to England and the United States to continue his education. The numerous passport application and renewal forms submitted by Luz Belen Nemazee bear out her intention to remain connected to the United States nationality. After 1954 she apparently visited the United States every two years; her 1975 United States passport evidences more frequent visits, prior to her 1979 departure from Iran, during the years 1976, 1977 and 1978. All of these factors bespeak an intention on the part of Luz Belen Nemazee to preserve her American ties and to have aspects of American culture valued in her home.

26. However, the Tribunal also must consider the following facts. Although she claims to have maintained a residence in Puerto Rico, in her applications she refers to her relatives' addresses and in her pleadings she does not claim ownership of any property in Puerto Rico or any other part of the United States. Her husband's connections were rooted in Iranian society, and the substantial holdings of her husband's family were concentrated mostly in Iran. Most of her United States passport application and renewal forms give no indication that prior to 1979 she had an intention to return to the United States permanently. For example, in response to the 1967 form's statement that "I intend to continue to reside abroad for the following period and purpose," she declared "Indefinitely (Married to an Iranian)." The Tribunal further notes that Luz Belen Nemazee, according to a stamp in her Iranian identity card, participated in Iranian elections in 1975, that she had a daughter living in Iran until 1979, and that she left Iran only after the outbreak of the hostage crisis.

27. It must be concluded that during her years in Iran Luz Belen Nemazee's exposure to American society and culture was

minimal in comparison with her exposure to Iranian influences. Cf. Anita Perry-Rohani, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 427-831-3, para. 16 (30 June 1989), reprinted in ___ Iran-U.S. C.T.R. ___, ___. Therefore, after her arrival in the United States in 1979 it would have taken her time to integrate fully into American society so as to offset the effects of the many years spent with her husband in Iran under the influence of the society and culture of that country.

28. Although on the basis of the record as a whole the issue is a close one, the Tribunal finds that, while her origins are American and her participation in public life contained American elements, these factors do not outweigh the Iranian ties developed by Luz Belen Nemazee over more than thirty years of residence as part of an Iranian family in Iran. The Tribunal concludes that she has failed to establish that her dominant and effective nationality during the relevant period was that of the United States.

B. Reza Nemazee

29. By virtue of his birthplace and his father's Iranian nationality, Reza Nemazee is considered under Iranian law to be a national of Iran. By virtue of his mother's United States nationality, he is also a United States citizen, as evidenced by his United States certificate of citizenship and his United States passports. There is no basis for determining that he ever lost his United States citizenship. See supra n. 3.

30. The pertinent issue thus becomes one of determining Reza Nemazee's dominant and effective nationality. For this purpose, the Tribunal now must proceed to apply the standards previously articulated in this Award (see supra para. 22) to the facts before it.

31. In the Tribunal's view, Reza Nemazee's education at American schools in Tehran, his departure from Iran at the age of twelve, and his studies and other activities in the United States from 1967 through 1978 had made his United States nationality dominant by the end of this period, if not earlier. While he spent his early childhood in Iran, Reza was not raised as a normal Iranian child or encouraged to assimilate significantly into Iranian culture. Cf. Michelle Danielpour and The Government of the Islamic Republic of Iran, Award No. 424-168-3, para. 14 (16 June 1989), reprinted in ___ Iran-U.S. C.T.R. ___, ___. Further, during his time in the United States he received his undergraduate, graduate and post-graduate education and obtained employment. Virtually all of Reza's adult life from ages 17 through 29 was spent in the United States, and the record shows that he deliberately integrated himself into American society. The issue the Tribunal must consider, therefore, is whether Reza's return to Iran for almost nine months between November 1978 and August 1979 was sufficient to offset the dominance of his United States nationality.

32. Reza Nemazee contends that he returned to Iran mainly because working at the Imperial Medical Center in Tehran would enhance his subsequent career opportunities in the United States. While it appears to be true that the Center would have been associated with two prominent medical schools in the United States, that Reza was recruited for the position, that he was to teach in the English language only, and that he was a member of several American professional societies, to some extent the question remains why someone who claims he wanted to build a career in the United States would leave that country at the beginning of his career, i.e., after completion of an extensive United States education.

33. A possible answer is that Reza returned to Iran to develop his Iranian ties. This notion is supported by his marriage to an Iranian woman shortly after his return to Tehran. A further factor to be considered is the vast business interests of his family in Iran, part of which he would normally inherit in the future. The Tribunal finds that, if Reza's departure from the United States did not by itself imply a choice for an Iranian future, his actions at least created the conditions from which such a choice might follow.

34. Nevertheless, any such plans that he might have developed were quickly changed by the fundamental changes occurring in Iran, resulting in his departure in August 1979. The Tribunal is of the opinion that Reza Nemazee, following his return to Iran in November 1978, did not stay long enough to offset the dominance of his United States nationality, developed over many years of upbringing by an American mother and education in the United States. It is reasonable to assume that the more than ten years he spent in the United States, a country he entered as a boy, without his family, and left as an educated adult, had left a strong impression on him. This is further borne out by factors such as his registration for the United States draft, his application in 1977 for a United States certificate of citizenship, and his membership in American professional societies. It is likely, therefore, that even if his decision to return to Iran had carried with it the potential of a long term commitment, it would have taken Reza more than the nine months he spent in Iran to be assimilated into the Iranian culture and to loosen his strong connection to the United States. Indeed, it appears that merely learning to write, read and speak Persian properly would have required much more time.

35. The Tribunal recalls that in Perry-Rohani, Award No. 427-831-3, at para. 17, reprinted in ___ Iran-U.S. C.T.R. at

___, it based its rejection of dominant and effective United States nationality on "the lack of evidence before the Tribunal of [the Claimant's] social and cultural ties with the United States or at least of her exposure to American society during her residence abroad and in particular during the years preceding the relevant period of time." (Emphasis added.) The Tribunal notes that Reza's exposure to United States culture, lasting more than ten years, continued until shortly prior to the latest alleged expropriation date.

36. The Tribunal concludes that the dominant and effective nationality of Reza Nemazee during the relevant period was that of the United States.

37. This jurisdictional determination of the dominant and effective nationality of Reza Nemazee remains subject to the caveat added by the Full Tribunal in its decision in Case No. A18, supra, that "the other nationality may remain relevant to the merits of the claim."

IV. AWARD

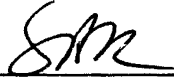
38. In view of the foregoing,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The claim of LUZ BELEN NEMAZEE against THE ISLAMIC REPUBLIC OF IRAN is dismissed for lack of jurisdiction.
- b. For the purpose of the Tribunal's jurisdiction, the dominant and effective nationality of REZA NEMAZEE is that of the United States.
- c. The Tribunal shall decide on the Claimants' Request for Order to Respondent Iran to Compel Production of

Documents, Exhibits and Other Evidence and shall set the schedule for submissions on all remaining issues by separate order.

Dated, The Hague,
10 July 1990



Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Parviz Ansari Moin
Dissenting in part
Concurring in part