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Wednesday, November 4, 2015

Iranian-American judge prevails in recusal battle

Judge no longer banned from hearing matters involving Iranian nationals

By Phil Johnson

An Iranian-American immigration judge is no longer banned by the U.S. Department of Justice from hearing matters involving Iranian nationals.

The government agreed to rescind an order stating that Los Angeles-based Judge Afsaneh Ashley Tabaddor's activities within her own ethnic community created the appearance of impropriety and required her recusal.

In resolving the lawsuit, the department also agreed to pay \$200,000 in attorney fees and damages.

The government will also review the application of the regulations implicated in the case. *Tabaddor v. Holder*, 14-CV06309 (C.D. Cal., filed Aug. 12, 2014).

Cooley LLP partner Ali M.M. Mojdehi represented Tabaddor.

"This was an unprecedented position by the government with no support in recusal jurisprudence," Mojdehi said. "Taken to its logical conclusion, this would mean there could be orders against African-American judges active in their community from hearing cases involving African-Americans, or whatever group."

Majed Dakak, a partner at Kesselman Brantly Stockinger LLP who was not involved in the case, described the resolution as an important vindication.

"This case was truly a slap in the face to the impartiality of the judicial branch," Dakak said.

"As an Arab-American myself, watching her through this struggle has been an inspiration," he added. "And for the public settlement to include an admission from the government of no wrongdoing on the part of the judge is, in my experience as a litigator, a rare admission from the government that they got it wrong."

Mojdehi described Tabaddor as an American success story.

"She is essentially a refugee to this country following the revolution in Iran," Mojdehi said. "She excelled in school and served as an assistant U.S. attorney. She has been a lifelong public servant, which is exactly what the Department of Justice regulations encourage."

According to court documents, Tabaddor was ordered to recuse herself in 2012 by the Office of the Chief Immigration Judge shortly after a visit to the White House.

Tabaddor was one of many Iranian-Americans who attended an event to discuss issues of concern in the Iranian-American community with members of the Obama administration.

Dakak praised Tabaddor's courage.

"She upset the people in power, people who one day may provide input on the progression of her judicial career," Dakak said.

The case attracted wide attention from ethnic bar groups, more than a dozen of which asked U.S. District Judge George H. Wu to accept amicus briefs.

Kathryn C. Davis signed the agreement with the Department of Justice, which did not return a request for comment Tuesday.

With the order dropped, Tabaddor will again handle randomly assigned cases.

"That's the bedrock of our judicial system," Mojdehi said. "The whole integrity of the judiciary, from the perspective of litigants, is random assignments."

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