



کانون وکلای ایرانی در آمریکا

## IRANIAN AMERICAN BAR ASSOCIATION

### IABA Favorable Ruling in U.S. v. Banki Case

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The Iranian American Bar Association ("IABA") is pleased to report that a federal appellate court in New York ruled favorably in interpreting the Iranian Transactions Regulations ("ITR"), thereby reversing in part Mahmoud Reza Banki's June 2010 convictions for violating the Iran trade embargo.

IABA was the lead among a coalition of Iranian American, legal and civil rights organizations that filed an amicus brief in the appeal. IABA President Nahal Iravani-Sani said that the organization is pleased with the ruling of the United States Court of Appeals for the Second Circuit, in that its interpretation of the ITR clarifies that remittances between family members are permitted under the regulations.

In June 2010, Mr. Banki was found guilty by a jury in the United States District Court for the Southern District of New York on three counts that charged him with violating U.S. regulations barring trade with Iran and running an informal transfer business called a hawala. Mr. Banki allegedly used the hawala system to transfer his mother's marital estate from Iran to the U.S. which he was seeking to protect from Iran's divorce laws. Mr. Banki appealed his conviction and, on December 23, 2010, IABA and other Iranian American, legal and civil rights organizations jointly filed an amicus brief in United States v. Mahmoud Reza Banki, Case No. 10-3381 (2d. Cir.) arguing that the Second Circuit should



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reject the District Court's interpretation of the ITR. The amici argued that the District Court's interpretation of the ITR effectively eliminates the ITR's family-remittance exemption and "squarely conflicts with the plain language and purpose of the ITR - not to mention the practices of the Iranian American community and their reasonable belief that they act legally when they send money to or receive money from family members in Iran."

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The Second Circuit either vacated and/or reversed Mr. Banki's convictions on all counts regarding violations of the ITR. In relevant part, the Second Circuit rejected the government's position that the ITR only permits family remittances that are transferred through financial institutions, noting:

[T]he government's contention that only U.S. depository institutions 'are authorized' to process the permitted transfers is inconsistent - at least arguably -- with the language of the regulation. A fair reading of §560.516 is that it tells U.S. depository institutions (and securities brokers and dealers) that they are permitted to process non-commercial remittances, including family remittances, but the regulation does not provide that only U.S. depository institutions (and securities brokers and dealers) may do so. Indeed, nothing in section 560.516 specifically prohibits anyone from making a family remittance. The government's assertion that the regulation provides that family remittances 'must be transacted through U.S. banks,' Gov't's Br. at 22 (emphasis added), is not supported by the language of the regulation.

In the amicus brief, IABA and other partner organizations did not take a stance on Mr. Banki's guilt or innocence, but commented on the effect the government's interpretation of the family remittance exception would have on the Iranian American community. In its opinion, the Second Circuit referred to the amicus brief, acknowledging IABA's position that Iranian Americans commonly process family remittances by informal means because U.S. banks generally do not permit family remittance transfers due to concerns regarding the

Iran-U.S. sanctions regime.

While the Second Circuit did opine that the ITR are ambiguous, it refrained from interpreting them. In doing so, some questions are still unanswered regarding the legality of family remittances that are transferred through hawala networks.

The Court remanded the case on certain issues, which will go back to the trial court in Manhattan. IABA will seek to keep you informed regarding additional developments in this area.

## About IABA

With over 1500 members and chapters in 9 different metropolitan areas around the country, the Iranian American Bar Association ("IABA") is one of the most prominent minority bar associations in the United States. IABA chapters hold networking events, publish articles on key legal developments, and provide outreach to lawyers and law students. IABA also provides an annual scholarship to law students looking for assistance and provides lawyer mentors for those seeking guidance and helps serve the Iranian-American community and the community at-large by providing legal advocacy on important issues



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