

465-85

دیوان داوری دعادی ایران - ایالات متحده ۸۵

ORIGINAL DOCUMENTS IN SAFECase No. 465Date of filing: 4-2-91** AWARD - Type of Award Award- Date of Award 4 Feb 9120 pages in English25 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 _____

- Date _____

____ pages in English

____ pages in Farsi

** OTHER; Nature of document: _____

- Date _____

____ pages in English

____ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعوی ایران - ایالات متحده

CASES NOS. 461, 462,
 463, 464 & 465
 CHAMBER TWO
 AWARD NO 505-461,462,463,464&465-2

Case No. 461

ARDAVAN PETER SAMRAD,
 Claimant,
 and
 THE GOVERNMENT OF THE ISLAMIC
 REPUBLIC OF IRAN,
 Respondent.

Case No. 462

PARVIN MARIAM SAMRAD,
 on behalf of, and as Guardian of
 her minor daughter,
 ROYA SAMRAD,
 Claimant,
 and
 THE GOVERNMENT OF THE ISLAMIC
 REPUBLIC OF IRAN,
 Respondent.

Case No. 463

PARVIN MARIAM SAMRAD on behalf
 of, and as Guardian of her minor
 daughter, LEILA SAMRAD,
 Claimant,
 and
 THE GOVERNMENT OF THE ISLAMIC
 REPUBLIC OF IRAN,
 Respondent.

Case No. 464

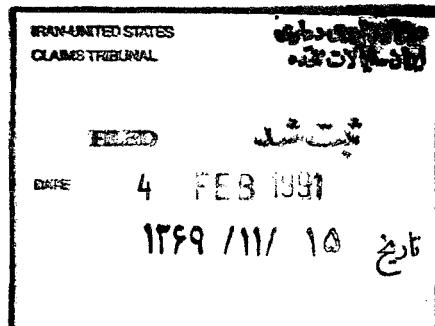
GITTY DIANA SAMRAD,
 Claimant,
 and
 THE GOVERNMENT OF THE ISLAMIC
 REPUBLIC OF IRAN,
 Respondent.

Case No. 465

PARVIN MARIAM SAMRAD,
 Claimant,
 and
 THE GOVERNMENT OF THE ISLAMIC
 REPUBLIC OF IRAN,
 Respondent.

DUPLICATE

ORIGINAL

جایگزین نیستAWARD

I. INTRODUCTION

1. On 18 January 1982 ARDAVAN PETER SAMRAD (Case No. 461), GITTY DIANA SAMRAD (Case No. 464) and PARVIN MARIAM SAMRAD on behalf of herself (Case No. 465) and on behalf and as guardian of her minor children ROYA SAMRAD (Case No. 462)¹ and LEILA SAMRAD² (Case No. 463), (collectively "the Claimants") submitted Statements of Claim against THE GOVERNMENT OF THE ISLAMIC OF IRAN ("the Respondent"). The Claimants claim a total amount of US\$86,501,768 plus interest.

2. The Respondent, in its Statements of Defence filed on 23 September and 21 December 1982, 6 January and 14 February 1983, asserted that the Claimants are exclusively nationals of Iran and that Iranian law, inter alia, does not accept dual nationality. The Respondent, therefore, objected to the Claimants' eligibility to file a claim against Iran with the Tribunal in the absence of any provision in the Claims Settlement Declaration for claims by dual nationals, and on the basis of the principle of non-responsibility of States for claims by their own nationals.

3. In accordance with its practice in similar cases, the Tribunal, citing The Islamic Republic of Iran and The United States of America, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, of the Full Tribunal, informed the Parties on 19 July and 4 October 1984, respectively, that "it had jurisdiction over claims against Iran by dual Iran-United States nationals where the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19

¹ Cases Nos. 461, 462 and 465, originally assigned to Chamber One, were reassigned to Chamber Two by Presidential decision of 26 June 1986.

² At the time this Award is rendered, Roya and Leila have already come of age.

January 1981 was that of the United States." The Tribunal therefore ordered the Claimants to file all evidence that they wished the Tribunal to consider in determining whether they were nationals of the United States of America or the Islamic Republic of Iran, or both, and, in case they were nationals of both, evidence relating to their dominant and effective nationality. Likewise, the Tribunal ordered the Respondent to file all evidence it wished the Tribunal to consider on the issue of the Claimants' nationality. In view of the fact that the Parties have briefed the nationality issues, the Tribunal proceeds to decide the jurisdictional issue on the basis of the documents submitted in these Cases.

II. FACTS AND CONTENTIONS

4. The five Claimants in these Cases (a mother and four children) allege that they owned interests in a group of Iranian companies, as well as various real estate holdings in Iran. They further allege that the Respondent expropriated all of these property holdings in May 1979. The Respondent alleges, inter alia, that all five Claimants were Iranian nationals during the relevant period from May 1979 until 19 January 1981, the date of the Algiers Declarations. The Respondent furthermore denies that Parvin has guardianship over her children Roya and Leila under Iranian law and argues that their father, an exclusively Iranian national, is their legal guardian. In light of its holding as to the dominant and effective nationality of the two children, the Tribunal does not find it necessary to decide this issue. The Tribunal will consider each Claimant individually, referring where appropriate to relevant evidence submitted in all of the five Cases. For convenience and clarity, the Tribunal will refer to the Claimants by their given names.

A. Parvin Mariam Samrad

5. Parvin Mariam Samrad was born in Berlin, Germany, on 21 September 1933. Her father, Hossein Djafar-Zade, was Iranian; her mother, Helene Gertrud Djafar-Zade, was German-born. The family moved to Iran in 1939. Parvin attended school in Iran and, for two years, in Switzerland. In 1951, the family moved to the United States.

6. Parvin attended professional schools in the United States and worked as an X-ray technician. In 1956, she married an Iranian, Cyrus Samrad, who was a student in an American university. The couple had two children while living in the United States: Ardavan Peter Samrad, born in 1957, and Gitty Diana Samrad, born in 1959. On 11 April 1958, Parvin was naturalized as a United States citizen. According to the Claimant, she intended at that time to reside permanently in the United States; however, her husband was offered an attractive job in Iran, and so the family moved to Tehran in 1959.

7. Two children were born to Parvin and Cyrus while they lived in Tehran: Roya Samrad, born in 1964, and Leila Samrad, born in 1971. Parvin alleges that she did not become integrated in Iranian society during the years that she lived in Tehran: Her Persian remained inferior to her English; she did not work or pay taxes in Iran; the only organization to which she belonged was the American Club. Her children attended mostly non-Iranian schools, in particular the Tehran American School. She acknowledges that she voted in one Iranian election, in 1975, but claims that she did so only because she feared that she would have difficulty obtaining an exit visa if she failed to vote. Parvin states that she used her Iranian passport only for entering and leaving Iran; outside Iran, she traveled on her American passport. The evidence in support of these contentions consists of Parvin's own affidavits and those of two cabinet ministers of the former regime of Iran who were acquainted with the Samrad family during the time they lived in Tehran.

The only passports submitted in evidence by Parvin are an Iranian passport, issued in 1977, and two American passports, issued in 1982 and 1987.

8. While Parvin's parents allegedly remained in the United States, she does not assert that she maintained any economic ties to the United States after her departure in 1959. It was while living in Tehran that she evidently acquired the Iranian assets that are at issue in this Case. In 1976, Parvin bought a co-op apartment in New York City; the following year, she indirectly purchased a house in Oyster Bay, New York through corporations that she or the family apparently controlled.

9. Parvin alleges that she left Iran and settled in the United States with her daughters Roya and Leila in August 1977. She states that her reasons for this move were "entirely personal -- largely dealing with wishing to raise and educate my two youngest children in [the United States]." Her husband Cyrus evidently continued to reside in Iran until 1978, when he moved to Europe. The Respondent maintains that Parvin resided in Iran until August 1978 and that she left then simply to avoid the turmoil of the Revolution. In support of her contention that she settled in the United States in 1977, Parvin has submitted affidavits from friends and acquaintances in the United States and copies of invoices and receipts for goods and services purchased in the United States. She has also submitted documentary evidence showing that she voted in the United States in 1980 and subsequently, and that she served on juries in New York courts in 1986 and 1988. In 1987, she opened a clothing store in New York.

B. Ardavan Peter Samrad

10. Ardavan Peter Samrad was born in St. Louis, Missouri on 16 October 1957. His birth was registered at the Iranian Consulate in New York on 14 January 1958, and he

was issued an Iranian identity card. He moved to Tehran with his family in 1959. According to his affidavit, Peter attended the Tehran American School for four years and then an Iranian school for two years. He states that he attended Rumsey Hall School in Connecticut for one year and then, from 1970 to 1976, attended the College du Léman in Geneva, Switzerland.

11. During the years 1976-1979, Peter was a student at Ohio Northern University in the United States. He completed his studies for a bachelor's degree at the State University of New York at Old Westbury in 1979-1981. After a year spent studying French in Paris, he returned to New York in 1982 and worked in the real estate business. He moved to California in 1983 and continued to work in the real estate business. Peter states that he has held an American passport since 1959; he also states that he has voted and paid taxes in the United States but has done neither in Iran.

12. The basis for this narrative of Peter's background is the affidavit that he submitted with his Memorial. The only documentary evidence he has submitted on the issue of his American nationality is a copy of his birth certificate. The Respondent does not challenge the substance of this narrative, except to assert that Peter did not spend a year at Rumsey Hall in Connecticut. The Respondent has, however, offered evidence showing that Peter was issued Iranian passports in 1969 and 1974 and that he used those passports to travel between Iran and Switzerland during school holidays while he was a student at the College du Léman. It has also submitted evidence according to which Peter was granted temporary exemption from his military service obligation in Iran because of his student status.

C. Gitty Diana Samrad

13. Gitty Diana Samrad was born in New York City on 2 September 1959. Her birth was registered at the Iranian

Consulate in New York on 6 October 1959, and she was issued an Iranian identity card. Gitty moved with her family to Tehran at the end of 1959, shortly after her birth. She states in her rebuttal affidavit that she and her family normally spoke English at home; they spoke Persian outside their home and with those who spoke no English. She attended the Tehran American School from first through eighth grades and then attended secondary schools in Switzerland. Gitty has not provided the names of the Swiss schools that she attended; she does, however, state that she followed an American curriculum in all but one of the years that she studied in Switzerland.

14. In 1977, Gitty began her undergraduate studies at Ohio Northern University in the United States. She received her bachelor's degree there in 1981 and went on to receive a law degree from the same university in 1984. She now practices law in New York. She states that she never voted, worked or paid taxes in Iran.

15. Evidence submitted by the Respondent shows that Gitty obtained an Iranian passport in 1973 and that she used it to travel between Switzerland and Iran during school holidays. Gitty states that she used her Iranian passport only to enter and leave Iran. She further states that she was included on her mother's United States passport in 1959 and that she was issued her first individual United States passport in 1974. Subsequent United States passports were issued in 1979 and 1984. She has submitted a letter from the U.S. Department of State attesting to the issuance of these passports. She has also submitted a copy of the 1984 passport and a copy of the first four pages of the 1979 passport, but no copy of the 1974 passport.

D. Roya Samrad

16. Roya Samrad was born in Tehran on 13 August 1964. Her birth was registered with the Iranian authorities, and she was issued an Iranian identity card on 31 August 1964. She lived in Tehran with her family during her childhood. Like her sisters, she states in her rebuttal affidavit that she and her family generally spoke English at home. She attended the Tehran American School for her elementary education.

17. In 1976, Roya traveled to the United States with her mother Parvin and her sister Leila. She was naturalized as an American citizen on 6 October 1976, pursuant to the provisions of Section 322(a) of the Immigration and Nationality Act, 8 U.S.C. §1433(a). She states in her rebuttal affidavit that she settled in New York in 1976; her mother, however, states in her own affidavits that she and the younger daughters visited New York in 1976 and settled there in 1977. From 1977, Roya attended Portledge School in Locust Valley, New York. In 1982, she enrolled at Syracuse University, in New York. She received her bachelor's degree from that university in 1986 and went on to study law in the United States.

18. Evidence submitted by the Respondent shows that Roya received Iranian passports in 1973 and 1978. Roya states in her rebuttal affidavit that she used her Iranian passports only to enter and leave Iran. She further states that she obtained her first United States passport in 1976, shortly after her naturalization, and that she continuously held United States passports after that time. Of these, she has submitted only a copy of one issued in 1987. She has also submitted a letter from the U.S. Department of State concerning her citizenship status. The letter confirms that U.S. passports were issued to her in 1982 and 1987 but does not mention a 1976 passport.

E. Leila Samrad

19. Leila Samrad was born in Tehran on 23 August 1971. Her birth was registered with the Iranian authorities, and she was issued an identity card on 14 September 1971. She lived in Tehran with her family during her early childhood. Like her sisters, she states in her rebuttal affidavit that she and her family generally spoke English at home. She states that she first attended a French-speaking school in Tehran and then enrolled in kindergarten at the Tehran American School.

20. In 1976, Leila traveled to the United States with her mother Parvin and her sister Roya. She, too, was naturalized as an American citizen on 6 October 1976, pursuant to the provisions of Section 322(a) of the Immigration and Nationality Act, 8 U.S.C. §1433(a). She states in her rebuttal affidavit that she settled in New York in 1976. However, as in the case of her sister Roya, other evidence indicates that she did not move to the United States until 1977. Leila then attended Portledge School in Locust Valley, New York. In 1983, she went on to Walden School in New York City.

21. Evidence submitted by the Respondent shows that Leila obtained an Iranian passport in 1975 and that it was renewed in 1978. The passport itself is not in evidence. Leila states in her rebuttal affidavit that she was issued her first United States passport in 1976 and that she held United States passports continuously thereafter. She adds that she used her United States passports exclusively, except when visiting Iran. Of her United States passports, Leila has submitted only a copy of one issued in 1987. She has also submitted a letter from the U.S. Department of State concerning her citizenship status. The letter confirms that U.S. passports were issued to her in 1982 and 1987 but does not mention a 1976 passport.

III. REASONS FOR THE AWARD

22. The Tribunal notes that there is no dispute that each of the Claimants was, during the relevant period, a national of Iran. Parvin became an Iranian national at birth by virtue of the Iranian nationality of her father. Her four children, Peter, Gitty, Roya and Leila, became Iranian nationals at birth by virtue of the Iranian nationality of their father.

23. To prove her United States nationality, Parvin has submitted a copy of Form G-641, issued by the Immigration and Naturalization Service of the United States Department of Justice. Entitled "Application for Verification of Information From Immigration and Naturalization Service Records," this form certifies that Parvin Mariam Samrad was naturalized in St. Louis, Missouri on 11 April 1958. The Respondent has questioned the continued validity of Parvin's American citizenship due to her settlement in Iran in 1959. However, in response, Parvin has also submitted a letter from the United States Department of State, dated 9 June 1988, which states that "there is absolutely no evidence that Mrs. Samrad has lost her United States citizenship by performing an act made expatriating by statute under Section 349 of the Immigration and Naturalization [sic] Act [8 U.S.C. 1481] or that her naturalization was cancelled pursuant to Section 340 of that Act [8 U.S.C. 1451]." Finally, Parvin has submitted copies of her U.S. passports issued in 1982 and 1987. This evidence satisfies the Tribunal that Parvin Mariam Samrad has been a national of the United States continuously since 1958.

24. Peter and Gitty have submitted copies of their birth certificates. These documents prove that they were born in the United States and therefore acquired United States citizenship at birth. There is no evidence that they ever lost or renounced their American citizenship.

25. Finally, Roya and Leila have submitted copies of their Petitions for Naturalization. The Petitions and the approval thereof show that Roya and Leila were naturalized under Section 322(a) of the Immigration and Nationality Act on 6 October 1976. Roya and Leila have also submitted copies of their Certificates of Naturalization, as well as recent letters from the United States Department of State which confirm that they became citizens of the United States in 1976 and were issued United States passports in 1982 and 1987. This evidence satisfies the Tribunal that Roya and Leila Samrad have been United States nationals continuously since 1976.

26. The Tribunal thus finds that the Claimants in these Cases were nationals of both Iran and the United States during the relevant period. The Tribunal will proceed, therefore, to determine their dominant and effective nationality during that period. In the case of each Claimant, the Tribunal must determine, on the basis of the facts before it, the country with which he or she had the stronger ties. The Tribunal must consider all relevant factors, such as the Claimant's habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. Case No. A18, supra para. 3, at 25, 5 Iran-U.S. C.T.R. 251, at 265. While each Claimant's standing is dependent upon his or her dominant and effective nationality during the period between the date the claims arose and 19 January 1981, events preceding and following that period remain relevant to determining the Claimant's dominant and effective nationality during the period. Indeed, the entire life of the Claimant, from birth, and all the factors which, during the span of time, evidence the reality and the sincerity of the choice of national allegiance he claims to have made, are relevant. 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.

A. Parvin Mariam Samrad

27. Parvin contends that her United States nationality became dominant immediately upon her naturalization in 1958 and that it remained dominant while she lived in Iran. To prove that she lived as an American in Iran, she states that she belonged to the American Club there and sent her children to the Tehran American School. She also alleges that she spoke English better than Persian. However, it appears from her evidence that Parvin retained few ties with the United States when she moved to Iran in 1959: She states in an affidavit that her parents lived in the United States and that she visited family members there during the time that she lived in Iran. However, she has provided no details of those visits. In 1976, she purchased an apartment in New York City, but did not immediately begin to live in it. In 1976 as well, her son enrolled in an American university. There is no other evidence of personal, social or economic ties to the United States during her eighteen years of residence in Iran. During those years, she and her immediate family resided in Iran; the children who attended school abroad returned to Tehran during their holidays. Moreover, the family evidently acquired significant economic interests in Iran during that time. The Tribunal finds no need to opine upon Parvin's dominant nationality in 1958 but concludes that she has failed to prove that her United States nationality was dominant and effective while she resided in Iran.

28. Parvin lived in the United States for a period of time before her claim arose; the question, then, is whether she became integrated in American society to such an extent during that time that her United States nationality became dominant and effective by May 1979. The answer to this question begins with another question: When, in fact, did she settle in the United States? The Claimant alleges that she moved to the United States in August 1977; the Respondent contends that she resided in Iran until August

1978, at which time she left only to avoid the turmoil of the Revolution.

29. Evidence in the record shows that Parvin did leave Iran in August 1977 and that she returned to Iran in 1978 for a visit of only ten weeks: Stamps in her last Iranian passport show that she left Iran on 24 August 1977, re-entered the country on 18 June 1978 and left again on 28 August 1978. Her four children also visited Iran during the summer of 1978. There is little evidence, however, that Parvin settled in the United States immediately upon leaving Iran. In this connection the Tribunal notes that the evidence shows that her husband at some time established a residence in Europe. Parvin has not submitted her 1977 U.S. passport, which could have established the period of her presence in the United States. Among the many invoices and receipts that she has submitted, few relate to the period before August 1978. Those that do are simply for the purchase of relatively commonplace consumer goods -- e.g., a tape recorder -- and are not persuasive proof of her residence in the United States. In contrast, evidence relating to the period after August 1978 is more probative of her residence in the United States: In September 1978, for example, she purchased an automobile. There are also itemized phone bills, home heating bills, voter registration cards, jury service records, etc. The affidavits from her friends and acquaintances concerning her residence in the United States are imprecise and contradictory. There is evidence that Parvin's daughters attended the Portledge School in 1977-1978 -- the school's 1978 bill refers to a "Balance from 1977-1978" -- but establishing that her children were in school in the United States does not necessarily prove that she herself lived there. The Tribunal concludes that Parvin did eventually reside primarily in the United States sometime before her claim arose, but she has not proven that she did so as early as August 1977.

30. Determining when the Claimant settled in the United States is only a step toward determining her dominant and effective nationality. She might have gone to live in the United States simply to facilitate her children's schooling there and without intending to make it her home; she might have planned or hoped to return to Iran, which clearly remained the center of the family's business interests until the Islamic Revolution. The Tribunal must infer her intentions from the evidence in the record. The paucity of evidence concerning the date of her move to the United States also precludes a finding that her United States nationality quickly became dominant and effective after her arrival in the United States in 1977. It is apparent that Parvin did eventually become integrated in American society, as is shown by her civic and economic activities in the 1980s. However, the evidence does not establish that Parvin initially settled in the United States with the intention of abandoning her ties with Iran and becoming integrated in American society. The Tribunal concludes that Parvin Mariam Samrad has failed to prove that her dominant and effective nationality when her claim arose in May 1979 was that of the United States. Accordingly, her claim must be dismissed for lack of jurisdiction.

B. Ardavan Peter Samrad

31. In turning to the case of Peter, the Tribunal notes that the Claimant submitted very little evidence on the issue of his nationality -- only a two-page affidavit and a copy of his birth certificate. His affidavit is little more than a curriculum vitae, listing places of residence, schools that he attended and his employment after university. This is insufficient to prove that his United States nationality was dominant when he went to the United States in 1976 to begin his university studies. The question therefore is whether, with his background, his United States nationality had become dominant by May 1979, when his Claim arose.

32. There are several factors which suggest that Peter's dominant and effective nationality could have become that of the United States by May 1979. He had grown up in an English-speaking household. He had attended an American school, with an American curriculum, in Tehran. He spent nearly three years as an undergraduate in an American university before May 1979. However, he has submitted no evidence that indicates why he pursued his studies in the United States or that reveals the extent of his integration in American society during those years. He may simply have gone to the United States as did a great many Iranian students in order to study there, with the intention of returning to Iran where he allegedly maintained substantial property interests, to participate in his family's affairs. If that were the case, the Tribunal could not conclude that his United States nationality became dominant merely as a result of his residence and studies in the United States between 1976 and 1979.

33. The Tribunal does not doubt that it is possible for a person to become a dominant and effective United States national in the course of several years spent studying at a university in the United States, especially where that person arrives in the United States with some prior acquaintance with American culture. In this case, however, the Claimant has failed to sustain his burden of proving that it was his intention to integrate into American society and that he, in fact, did so in the years 1976-1979. He has also failed to substantiate the extent and nature of his links with the American society. Thus, while he may eventually have become a dominant and effective United States national, the Tribunal is not persuaded that he had done so by the time his claim arose, in May 1979. Accordingly, the claim of Ardavan Peter Samrad must be dismissed for lack of jurisdiction.

C. Gitty Diana Samrad

34. The evidence submitted by Gitty in her rebuttal affidavit establishes her continuous American citizenship, but it contributes little to the determination of her dominant and effective nationality during the relevant period. Her Case is thus almost indistinguishable from that of her brother as the differences are relatively minor for the purposes of this inquiry. She, too, studied in Switzerland as an Iranian student holding an Iranian passport and spent her vacations in Iran rather than in the United States. There is little evidence as to the extent and nature of her relationships with American society while studying in Switzerland. Furthermore, like her brother, she allegedly maintained substantial property interests in Iran during this period while she has not alleged the existence of property interests in the United States.

35. On the basis of the evidence, the Tribunal finds that Gitty's United States nationality was not dominant when she went to the United States in 1977 to begin her university studies. Again, while it might be possible for a person, especially one with Gitty's background, to become a dominant and effective United States national during two years as a student in the United States, the Claimant here has not sustained her burden of proving that it was her intention to integrate into American society and that she, in fact, did so in the years 1977-1979. The Tribunal therefore concludes that the claim of Gitty Diana Samrad must be dismissed for lack of jurisdiction.

D. Roya Samrad

36. Roya's Claim was filed by Parvin Mariam Samrad, "on behalf of, and as Guardian of her minor daughter, Roya Samrad." See supra, para. 4. Parvin argues that, while both she and her daughter are dominant United States nationals, it is her own nationality that should be

dispositive for jurisdictional purposes. The Respondent contends that the nationality of the beneficiary of the action must control, rather than that of the representative.

37. It has been the practice of the Tribunal to consider the nationality of a minor Claimant rather than the nationality of the parent or a guardian. See Raymond Abboud, as Legal Guardian of Chrisline Arianne Abboud and The Islamic Republic of Iran, Award No. 477-383-2 (16 May 1990). The Tribunal notes, too, that Roya is the alleged owner of the assets at issue in her case. If her dominant and effective nationality at the time her claim arose was not American, then the claim was not continuously owned by a national of the United States and must accordingly be dismissed under Article VII, paragraph 2 of the Claims Settlement Declaration. It is necessary, therefore, to consider Roya's nationality.

38. While Parvin's nationality is not legally dispositive in a claim brought on behalf of her daughter, a parent's nationality is factually relevant when determining the dominant and effective nationality of her young child. The fact that Roya's father was solely Iranian and the Tribunal's decision that her mother was not a dominant and effective United States national when her claim arose do not necessarily preclude a different decision concerning Roya. However, that decision does place a heavy burden upon Roya to show that her integration in American society was more rapid and more complete than that of her mother. Recalling the criteria enunciated in Case No. A18, it remains necessary for Roya to show that her habitual residence and family ties, her center of interests and participation in public life focused upon the United States.

39. The evidence that Roya has submitted shows that she gained some exposure to American culture as a child growing up in Tehran: She generally spoke English at home, and she went through elementary school at the Tehran American School (where she recalls daily recitals of the American

Pledge of Allegiance). She was naturalized as a American citizen in 1976, but under a provision of the Immigration and Nationality Act that did not require five years' prior residence in the United States. While she appears to have moved in 1977 to the United States, where she pursued her secondary education, she apparently did not obtain a U.S. passport until five years later, in 1982. She has provided no details of her life in the United States, except to describe briefly in her rebuttal affidavit her school curriculum and the social work that she did as an extracurricular activity.

40. This evidence is insufficient to prove that Roya's United States nationality became dominant immediately upon her naturalization in 1976. The evidence for the period after 1976 provides no substantial grounds for distinguishing Roya's nationality from that of her mother. In short, Roya has failed to prove that, by May 1979, her dominant and effective nationality had become that of the United States. The Tribunal therefore concludes that the claim of Roya Samrad must be dismissed for lack of jurisdiction.

E. Leila Samrad

41. The issues presented in Leila's Case are similar to those encountered in Roya's Case. Parvin presented Leila's claim in her capacity as Leila's guardian. See supra para. 4. As in Roya's case, Leila's dominant and effective nationality during the relevant period must have been that of the United States for her claim to fall within the jurisdiction of the Tribunal. See supra para. 37. Leila could, like Roya, prove that her dominant nationality differed from that of her mother. However, for a child of her age -- six years old when she moved to the United States and less than eight years old when her claim arose -- the burden of proof would be even greater.

42. Leila has submitted evidence to show that she, too, had some contact with American culture, but -- because of her age -- less than in Roya's case. She had grown up in an English-speaking household and attended kindergarten at the Tehran American School. She was naturalized as an American citizen in 1976, at the age of five. She apparently did not obtain a U.S. passport until six years later, in 1982. She moved to the United States in 1977 and continued her elementary education at a school where the students regularly recited the American Pledge of Allegiance. Later, during and after the relevant period, she attended summer camps in New England.

43. This evidence is insufficient to prove that Leila's United States nationality became dominant immediately upon her naturalization in 1976. The evidence for the period after 1976 provides no substantial grounds for distinguishing Leila's nationality from that of her mother. In short, Leila has failed to prove that, by May 1979, her dominant and effective nationality had become that of the United States. The Tribunal therefore concludes that the claim of Leila Samrad must be dismissed for lack of jurisdiction.

IV. AWARD

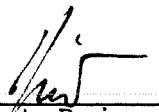
44. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

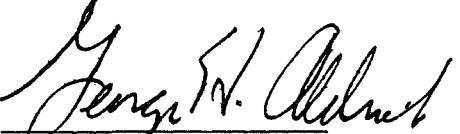
- a) The Claims of ARDAVAN PETER SAMRAD, ROYA SAMRAD, LEILA SAMRAD, GITTY DIANA SAMRAD, and PARVIN MARIAM SAMRAD are dismissed for lack of jurisdiction.

b) Each Party shall bear its own costs of arbitration.

Dated, The Hague
04 February 1991


Robert Briner
Chairman
Chamber Two

In the Name of God


George H. Aldrich
Separate Opinion


Koorosh H. Ameli

Koorosh H. Ameli
Concurring