

ORIGINAL DOCUMENTS IN SAFE

832-156

Case No. 832

Date of filing: 23 April 1997

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

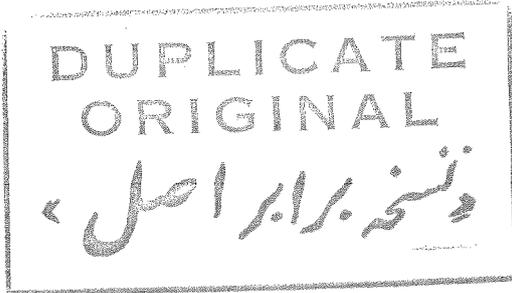
and Dissenting
** CONCURRING OPINION of Al-Liban
- Date _____
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** SEPARATE OPINION of _____
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** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi



CASE NO. 832

CHAMBER THREE

AWARD NO. 580-832-3

VIVIAN MAI TAVAKOLI,
JAMSHID DAVID TAVAKOLI,
KEYVAN ANTHONY TAVAKOLI,
Claimants,

and
THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	23 APR 1997
	تاریخ ۱۳۷۶ / ۲ / - ۲

CONCURRING AND DISSENTING OPINION
OF RICHARD C. ALLISON

1. I respectfully dissent from the Award's dismissal on nationality grounds of the claims of Keyvan Anthony and Jamshid David Tavakoli. The Tribunal's customary approach to the question of dominant nationality — focusing as it does upon social, economic and religious ties to the community — is not as readily applied to children as it is to adults. Children's interests and connections tend to be more encompassed within the family and their educational environments than the outside world. Where, as appears to be true in this Case, there is a strong parental commitment to one nationality (and the desire to inculcate its values in the children), this can be the most powerful influence of all. Given Mrs. Tavakoli's views in this regard, which seem to have been shared by her husband, and given the pervasive American atmosphere of their schooling even in Iran, it was to be expected that the Tavakoli sons would become integrated into American society with little or no delay when they made their definitive move to the United States in January 1977. That they did so is corroborated by the evidence of their

smooth adaptation to secondary school in Nashville. It can hardly be doubted that some three years later (26 November 1979, the date their claims arose) their dominant and effective nationality was that of the United States. Cf. *Reza Said Malek and The Government of the Islamic Republic of Iran*, Interlocutory Award No. ITL 68-193-3 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48.

2. The Cases cited in paragraph 47 of the Award as involving situations "comparable" to the Tavakoli family are — except for the presence of an American mother and an Iranian father — quite unlike this Case. Among the many important factual differences that distinguish *Monemi*¹ and *Malekzadeh*² from the Case in hand is the fact that the Monemi and Malekzadeh families left Iran in February 1979 and in December 1978, respectively, during the height of the revolutionary turmoil in the country, whereas the Tavakolis had relocated to the United States in January 1977, well before the revolution could have been foreseen. It seems clear, therefore, that the motivation for the Tavakoli's move was not expediency but rather a sincere attachment to the United States and the desire to make their home there. Moreover, the Tribunal in *Monemi* assumed that the children's claim had arisen "sometime after August 1979" and in *Malekzadeh* that the children's claim had arisen "sometime in 1979." Thus, in those cases the claimants had taken up residence in the United States only *several months* before their claims arose. In contrast, Keyvan Anthony and Jamshid David Tavakoli had been domiciled in the United States for nearly *three years* when their property was confiscated by Iran.

3. Although I concur in the Award's treatment of Vivian Mai Tavakoli's claim, I take exception to its statement (para. 75)

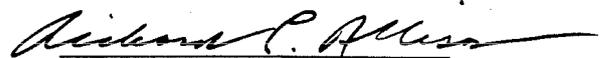
¹ *Betty Laura Monemi, et al. and The Islamic Republic of Iran, et al.*, Partial Award No. 533-274-1 (1 July 1992), reprinted in 28 Iran-U.S. C.T.R. 232 [hereinafter "*Monemi*"].

² *Joan Ward Malekzadeh, et al. and The Islamic Republic of Iran*, Partial Award No. 543-356-1 (21 Jan. 1993), reprinted in ___ Iran-U.S. C.T.R. ___ [hereinafter "*Malekzadeh*"].

with respect to the standard of compensation. Citing *Ebrahimi*³, the Award says: "In the circumstances of this Case, the Tribunal considers it appropriate that full compensation be paid to the Claimant." *Ebrahimi* was a regrettable aberration from the uniform jurisprudence reflected in all of this Tribunal's other expropriation cases, including those decided earlier by this Chamber. Every case addressing the standard of compensation under customary international law has held that the standard is full compensation, and none of the Tribunal's expropriation cases (including *Ebrahimi*) purports to award the claimant less than the full value of the property interest taken. I expressed my views on this matter in *Ebrahimi*⁴ and shall not reiterate them here. It is important to note, however, that in the present Case, as in *Ebrahimi*, the standard actually applied is that of full compensation; "appropriate" and "full" continue to be used by the Chamber synonymously in practice, consistent with Tribunal precedent and customary international law.

Dated, The Hague

23 April 1997



Richard C. Allison

³ *Shahin Shaine Ebrahimi, et al. and The Government of the Islamic Republic of Iran*, Award No. 560-44/46/47-3 (12 Oct. 1994), reprinted in ___ *Iran-U.S. C.T.R.* ___ [hereinafter "*Ebrahimi*"].

⁴ Separate Opinion of Richard C. Allison in *Shahin Shaine Ebrahimi, et al. and The Government of the Islamic Republic of Iran*, Award No. 560-44/46/47-3 (12 Oct. 1994), reprinted in ___ *Iran-U.S. C.T. R.* ___.