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Case No. 178

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\*\* DECISION - Date of Decision \_\_\_\_\_  
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\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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CASE NO. 178

CHAMBER TWO

AWARD NO. IITL 76-178-2

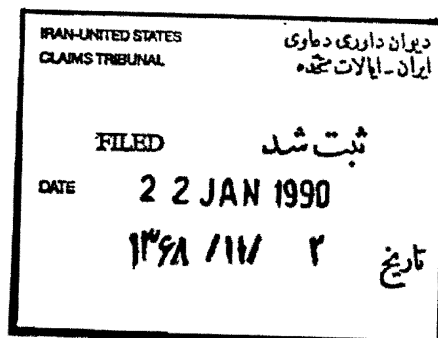
FAITH LITA KHOSROWSHAHI,  
 SUSANNE P. KHOSROWSHAHI,  
 MARCENE P. KHOSROWSHAHI,  
 KAYVAN KHOSROWSHAHI, and  
 KAMRAN KHOSROWSHAHI,

Claimants,

and

THE GOVERNMENT OF THE ISLAMIC  
 REPUBLIC OF IRAN,  
 THE MINISTRY OF INDUSTRIES AND MINES,  
 THE ALBORZ INVESTMENT CORPORATION,  
 THE KBC COMPANY, and  
 INVESTMENT BANK OF IRAN,

Respondents.

INTERLOCUTORY AWARD

I. THE PROCEEDINGS

1. The Claimants FAITH LITA KHOSROWSHAHI ("Faith Lita")<sup>1</sup>, SUSANNE P. KHOSROWSHAHI ("Susanne"), MARCENE P. KHOSROWSHAHI ("Marcene"), KAYVAN KHOSROWSHAHI ("Kayvan"), and KAMRAN KHOSROWSHAHI ("Kamran") ("the Claimants") filed a Statement of Claim on 18 December 1981 against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran") for itself and on behalf of its agencies and instrumentalities: THE MINISTRY OF INDUSTRIES AND MINES, THE ALBORZ INVESTMENT CORPORATION ("ALBORZ"), THE KBC COMPANY ("KBC") and THE DEVELOPMENT AND INVESTMENT BANK OF IRAN ("DIBI") ("the Respondents") claiming a sum totalling approximately U.S. \$8,080,742.79 plus appropriate interest for the alleged seizure and expropriation of shareholding interests in Alborz, KBC and DIBI.<sup>2</sup> According to the Claimants, their Claims arose at various times between June and September 1979.

2. Iran, in its Statement of Defence, objected, inter alia, to the Claims on jurisdictional grounds, arguing that Faith Lita Khosrowshahi because of her marriage to an Iranian national, and her children Susanne, Marcene, Kayvan, and Kamran, because of the Iranian nationality of their father, were all, under the relevant Iranian laws, nationals of Iran. Furthermore, Iran argues that with the exception of Faith Lita, all the Claimants were issued Iranian I.D. Cards which were evidence of their Iranian nationality.

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<sup>1</sup> The Claimants allege that in Persian the name "Faith" is translated as "Eman." The name Eman Khosrowshahi appears in the documentary exhibits submitted by the Claimant.

<sup>2</sup> The Claim was originally assigned to Chamber Three. By Presidential Decision of 17 June 1988 it was transferred to Chamber Two.

3. The Claimants on 29 November 1982 filed a Joint Memorial on the issue of Dual Nationality as the issue affected Cases Nos. 178 and 371. Case No. 371 related to the Claim filed by Nasrollah Khosrowshahi<sup>3</sup>, the husband of Faith Lita and father of Susanne, Marcene, Kayvan and Kamran.

4. After the Full Tribunal's decision in The Islamic Republic of Iran and The United States of America, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, the Tribunal requested the Claimants to file any further documentary evidence 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 the Claimants were nationals of both countries, evidence relating to the Claimants' dominant and effective nationality. Likewise, the Tribunal ordered the Respondents to file all documentary evidence it wished the Tribunal to consider with regard to the issue of the Claimants' nationality.

5. The Claimants submitted additional evidence of their United States nationality on 30 September 1985. The Respondents have not to date filed any evidence and brief on the nationality issue and the Tribunal proceeds to take a decision regarding its jurisdiction in this Case based on the evidence before it.

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<sup>3</sup> The Claim was dismissed by Tribunal Award No. 341-371-3 (18 Dec. 1987), reprinted in 17 Iran-U.S. C.T.R. 266, on the basis that the Claimant obtained his U.S. nationality after 19 January 1981.

II. FACTS RELATING TO THE NATIONALITY OF THE CLAIMANTS

6. Faith Lita Khosrowshahi was born Faith Lita Knobel in New York City, New York, U.S.A., on 15 September 1932 to parents who were American citizens. According to the evidence submitted, Faith Lita was raised in the United States and received all of her education in that country. In April 1956, Faith Lita married Nasrollah Khosrowshahi, who was an Iranian national at the time. The other Claimants, Susanne, Marcene, Kayvan and Kamran are all children born from this marriage. Faith Lita, together with her husband, purchased real estate in the United States and presently resides in Irvington, New York. The evidence justifies a finding that Faith Lita and her children all resided continually in the United States, and that they visited Iran only occasionally prior to the Islamic Revolution. There is evidence that Faith Lita was certified as a registered voter in the United States and that she in fact had voted in the elections held in New York in every year from 1972 through 1984. She was in possession of a valid U.S. passport which was issued on 28 July 1980. The evidence also indicates that Faith Lita possessed an Iranian passport and that she had used the passport to travel to and from Iran.

7. Susanne Pari Khosrowshahi was born in New Jersey, U.S.A. on 10 January 1957. She grew up in New Jersey and had her primary and secondary education exclusively in the United States. She received her High School diploma from the Masters School in Dobbs Ferry, New York on 8 June 1974. She then enrolled as an undergraduate at Manhattanville College in Purchase, New York, U.S.A., and graduated with a Bachelor of Arts Degree on 20 May 1978. Undertaking graduate studies at Boston University, Boston, Massachusetts, Susanne received a Master of Science Degree in Journalism on 15 May 1983. She possesses a valid U.S. passport which was issued to her on 23 April 1980. According to the evidence

submitted, Iran alleges, and it has not been denied by the Claimant that she was issued an Iranian I.D. Card No. 6 by the Iranian Consulate in New York. She also possessed an Iranian passport which she used to enter and leave Iran. Susanne states that she has lived continuously in the United States and at present is employed with H.W. Wilson Company, Inc. in Cambridge, Massachusetts and resides in Boston, Massachusetts.

8. Marcene Pari Khosrowshahi, now Cecconi, was born in New Jersey, U.S.A. on 27 May 1960. She too grew up in New Jersey and attended primary and secondary school exclusively in the United States, receiving her high school diploma on 10 June 1978 from the Masters School in Dobbs Ferry, New York. Marcene pursued her undergraduate studies at Wellesley College, Massachusetts, U.S.A., and graduated with a Bachelor of Arts Degree on 4 June 1982. In May 1984, Marcene married Alessandro Cecconi, a permanent resident of the United States. She lived continuously in the United States and avers that she presently lives in Boston, Massachusetts. She is employed with Cecco Inc/Nassi Inc. in Boston, Massachusetts. She possesses a valid U.S. passport issued to her on 25 June 1980. Iran alleges, and it has not been denied by the Claimant, that she was issued an Iranian I.D. Card No. 2 by the Iranian Consulate in New York. She also possesses an Iranian passport which she used to enter and leave Iran.

9. Kevin Kayvan Khosrowshahi, was born in New Jersey, U.S.A. on 20 August 1963. Kayvan attended elementary and secondary school in the United States and received his high school diploma on 6 June 1981 from Hackley School in Tarrytown, New York. At the time of filing evidence by the Claimants in 1985, Kayvan was pursuing his undergraduate studies at Purdue University in West Lafayette, Indiana. Kayvan possesses a valid U.S. passport issued to him on 11 March 1983. Iran alleges, and it has not been denied by the

Claimant, that he was issued an Iranian I.D. Card No. 469 by the Iranian Consulate in New York. He also possesses an Iranian passport which he used to enter and leave Iran. He lived continuously with his parents in New Jersey and New York, except while he was attending Purdue University, when he resided in West Lafayette, Indiana.

10. Cameron Kamran Khosrowshahi was born in New Jersey, U.S.A., on 18 October 1968. Kamran attended elementary and secondary school exclusively in the United States and at the time of filing of evidence by the Claimants in 1985 he was attending the eleventh grade at Hackley School in Tarryton, New York. Kamran possesses a valid U.S. passport issued to him on 10 March 1983. Iran alleges, and it has not been denied by the Claimant, that he was issued an Iranian I.D. Card No. 11 by the Iranian Consulate in New York. He also possesses an Iranian passport which he used to travel to and from Iran. He has resided and continues to reside with his parents in New York, U.S.A.

### III. REASONS FOR THE AWARD

11. In accordance with the various criteria set forth by the Full Tribunal in the A18 Decision (see para. 4, supra), the Tribunal must first determine on the basis of the evidence before it whether the Claimants were, during the relevant period from the time their Claim arose in 1979 until the date of the Claims Settlement Declaration, 19 January 1981, nationals of the United States, or of Iran, or of both countries.

12. The Tribunal notes that there is no dispute as to the Iranian nationality of the Claimants despite the assertions by the Claimants that they were conferred Iranian nationality without any affirmative actions by themselves to acquire such nationality. The Tribunal notes in this regard

that under Article 976 of the Iranian Civil Code, Faith Lita by her marriage to an Iranian national was considered an Iranian national under Iranian law. The Iranian Identification Cards issued to the rest of the Claimants attest to the Iranian nationality of Susanne, Marcene, Kayvan, and Kamran. All the Claimants also possessed Iranian passports which further attests to their Iranian nationality. In view of the fact that none of the Claimants took legal steps to renounce their Iranian nationality, the Tribunal concludes that the Claimants were Iranian nationals during the relevant period under consideration.

13. The Tribunal notes in relation to evidence submitted by the Claimants to establish their U.S. nationality, copies of their U.S. birth certificates. They also possess valid U.S. passports that are further evidence of their U.S. nationality.<sup>4</sup> The Tribunal, therefore, concludes that the Claimants were, during the relevant period under consideration, also citizens of the United States by birth.

14. Based on the conclusion that the Claimants were nationals of the United States as well as Iran during the relevant period under consideration, the Tribunal proceeds to determine their dominant and effective nationality for the purpose of its jurisdiction over their Claims. In order to examine whether the Claims meet the jurisdictional requirements under Article VII, paragraph 1, of the Claims Settlement Declaration, the Tribunal must, in view of the reasoning in the Full Tribunal's decision in Case No. A18, supra, satisfy itself that the dominant and effective

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<sup>4</sup> The Tribunal notes that some of the U.S. passports submitted have dates of issue that are subsequent to the date of the Claims Settlement Declaration. The Tribunal, however, concludes that in light of the official birth certificates that are evidence of the Claimant's birth in the U.S.A., their U.S. passports merely complement their U.S. nationality.



nationality of the Claimants was that of the United States during the relevant period between the time that they allege their Claims arose and 19 January 1981, the date of the Claims Settlement Declaration. In order to make such a determination, the Tribunal must consider the entire life of the Claimants, from birth, and all relevant factors which evidence the reality and the sincerity of the choice of national allegiance they claim to have made. The factors include the Claimants' habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. See Reza Said Malek and Islamic Republic of Iran, Award No. ITL 68-193-3, at 6 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, at 52.

15. The Tribunal notes that evidence of the activities described above by the Claimants in support of their U.S. nationality have on the whole been unrebutted. The Respondents have not presented any evidence that would otherwise cast a reasonable doubt on the evidence presented by the Claimants in relation to their U.S. nationality. Nor has any evidence been presented that contradicts facts relating to the Claimants' education, economic interests, social, political and family life including habitual residence, which support their dominant and effective U.S. nationality, particularly during the relevant period from the time their Claim arose until 19 January 1981. The only evidence before the Tribunal of the links that the Claimants had with Iran are, in relation to Faith Lita, that she was married to an Iranian national, and in relation to the rest of the Claimants, that their father was an Iranian national. Nor is the evidence of limited use of Iranian passports by the Claimants to enter or leave Iran, or possession of Iranian I.D. Cards issued by the Iranian Consulate in New York by four of the Claimants, dispositive of their dominant Iranian nationality in the absence of any evidence that would contradict the overwhelming documentary evidence presented

by the Claimants in proof of their dominant U.S. nationality. For these reasons, the Tribunal concludes that the Claimants' Claim satisfies the jurisdictional requirements of Article VII, paragraph 1, of the Claims Settlement Declaration.

16. This jurisdictional determination of the Claimants' dominant and effective U.S. nationality 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." The Tribunal will therefore in the further proceedings examine all circumstances of this Case also in light of this caveat, and will, for example, consider whether the Claimants used their Iranian nationality to secure benefits available under Iranian law exclusively to Iranian nationals or whether, in any other way, their conduct was such as to justify refusal of an award in their favor in the present Claims filed before the Tribunal.

IV. THE INTERLOCUTORY AWARD

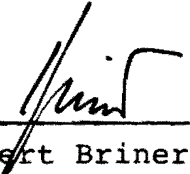
17. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

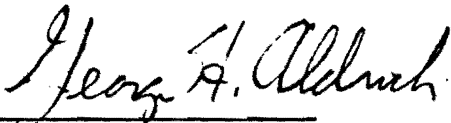
- (a) During the relevant period, the dominant and effective nationality of the Claimants, FAITH LITA KHOSROSHAHI, SUSANNE P. KHOSROSHAHI, MARCENE P. KHOSROSHAHI, KAYVAN KHOSROSHAHI and KAMRAN KHOSROSHAHI, was that of the United States.


(b) All other jurisdictional issues are joined to the merits.

Dated, The Hague  
22 January 1990

  
\_\_\_\_\_  
Robert Briner  
Chairman  
Chamber Two

In the Name of God

  
\_\_\_\_\_  
George H. Aldrich

  
\_\_\_\_\_  
Seyed K. Khalilian  
Dissenting  
(My legal position in this Case coincides with that which the Iranian Arbitrators filed in their Dissenting Opinion in Case A-18. See Dissenting Opinion of the Iranian Arbitrators in Case A-18 Concerning the Jurisdiction of the Tribunal over Claims Presented by Dual Iranian United States Nationals against the Government of Iran, 5 Iran-U.S. C.T.R. 275-337).