

ORIGINAL DOCUMENTS IN SAFE

Case No. 356

Date of filing: 21 Jan '93

** AWARD - Type of Award Partial
 - Date of Award 21 Jan '93
20 pages in English 25 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

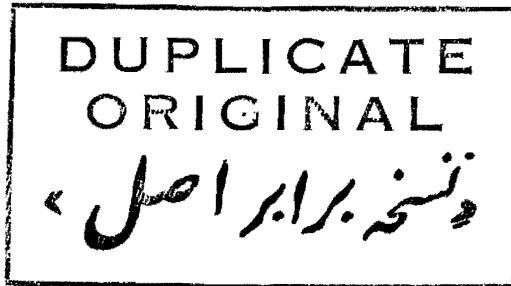
** DISSENTING OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

 - Date _____
 _____ pages in English _____ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داری دعاوی ایران - ایالات متحدہ



CASE NO. 356

CHAMBER ONE

AWARD NO. 543-356-1

JOAN WARD MALEKZADEH,
 SONYA MALEKZADEH,
 ALIREZA MALEKZADEH,
 Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
 Respondent.

| | |
|---------------------------------------|--|
| IRAN-UNITED STATES CLAIMS TRIBUNAL | دیوان داری دعاوی ایران - ایالات متحدہ |
| FILED | ثبت شد |
| DATE | 21 JAN 1993 |
| | تاریخ ۱۳۷۱ / ۱۱ / ۱ |

PARTIAL AWARD

I. PROCEEDINGS

1. On 18 January 1982, the Claimant JOAN WARD MALEKZADEH filed on her own behalf and on behalf of her children SONYA MALEKZADEH and ALIREZA MALEKZADEH (collectively "the Claimants") a Statement of Claim against THE ISLAMIC REPUBLIC OF IRAN ("Iran" or "the Respondent") seeking compensation for alleged expropriations in the amount of US\$1,502,698.¹ Portions of the Claimants' Claim allegedly arose on five different dates, and may be divided into the following five parts. First, the Claimants seek compensation for the alleged expropriation of their property rights in land, a fruit orchard, and a house in Karaj. The Claimants contend that this part of the Claim arose sometime in 1979, when the Revolutionary Guards and the Foundation for the Oppressed allegedly expropriated the property. Second, the Claimants seek compensation for the alleged expropriation of their equity interests in the Industrial and Mining Development Bank of Iran ("IMDBI"). This part of the Claim allegedly arose in June 1979, when Iran allegedly nationalized the IMDBI. Third, Joan Ward Malekzadeh seeks, on behalf of her children Sonya and Alireza Malekzadeh ("the Malekzadeh children"), compensation for the alleged expropriation of their property rights in farmland in Isfahan. According to the Claimants, this part of the Claim arose when, after the revolutionary events of 1978 and 1979, the Government of Iran authorized a seven member committee of local government officials in Isfahan to take decisions concerning the ownership of agricultural land in the area, and that the committee then allegedly proclaimed that the property in question henceforth belonged to the Foundation for the Oppressed. Fourth, Joan Ward Malekzadeh seeks, on behalf of Sonya Malekzadeh, recovery of her property rights in the Navard Shahriar Co., allegedly expropriated by Iran in 1979 or 1980. Fifth, Joan Ward

¹The Tribunal notes that in the Statement of Claim, the Claimants alleged that Iran has acted through the Government of Iran, and through agencies, instrumentalities, and entities controlled by the Government of Iran, including but not limited to, the following: the Revolutionary Council of the Islamic Republic of Iran, the Financial Organization for the Expansion of Ownership of Productive Units, Foundation for the Oppressed, Ministry of Industries and Mines, the Revolutionary Guards, the Iran National Steel Industrial Group and the Iran National Steel Company, and the Seven Member Council of Isfahan.

Malekzadeh seeks, on behalf of Alireza Malekzadeh, compensation for the alleged expropriation of his equity interest in the Kermanshah Sugar Co. This last part of the Claim allegedly arose sometime in 1979, when Iran allegedly nationalized the company pursuant to the Law for the Protection and Development of Iranian Industries.

2. In accordance with its practice in similar cases, the Tribunal, citing the decision of the Full Tribunal in Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, informed the Parties on 25 June 1985 that "it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." The Tribunal ordered the Claimants to file by 24 September 1985 all evidence that they wished the Tribunal to consider in determining their dominant and effective nationality. Likewise, the Tribunal requested the Respondent to file by 24 December 1985 all evidence it wished the Tribunal to consider on the issue of the Claimants' nationality.

3. The Claimants submitted their evidence on 27 December 1985. The Respondent was granted two extensions until 26 September 1986. The Tribunal in its Order of 1 October 1986 granted one further extension until 26 December 1986, stating that after that date the Tribunal would make a decision regarding its jurisdiction on the basis of the evidence before it. The Tribunal denied the Respondent's request for a further extension in its Order of 21 January 1987, in view of the procedural history of the Case. The Tribunal indicated that it intended to commence deliberations regarding its jurisdiction on the basis of the evidence before it, unless both Parties informed it that ongoing settlement discussions would call for a postponement of the proceedings.

4. After the Respondent filed a submission entitled "Respondent's Brief and Evidence on the Claimants' Nationality" on 21 November 1989, the Tribunal in its Order of 1 December 1989 invited the Claimants to file by 21 February 1990 any evidence

in rebuttal together with a brief, restricted to the issue of the Claimants' dominant and effective nationality. By that Order, the Respondent was invited to file by 21 May 1990 any evidence in rebuttal together with a brief on the same issue. The Claimants filed "Claimants' Rebuttal Memorial on Nationality" on 14 December 1990, whereafter, on 1 May 1992, the Respondent filed a submission entitled "Respondent's Evidentiary and Rebuttal Memorial on Claimants' Nationality."

5. On 13 July 1992, the Claimants filed a submission entitled "Claimants' Request for Permission to File Response to the Respondent's Late Filing of New Evidence on Claimants' Nationality." In their request, the Claimants argue that they should be allowed to reply to the Respondent's rebuttal filing of 1 May 1992 because the Respondent included in that filing new evidence potentially prejudicial to the Claimants. In particular, they allege that a document on which Iran is relying has been altered by someone other than the Claimants in a manner directly relevant to this Case. See para. 16, infra. The Respondent filed a letter on 20 July 1992 objecting to the request. In that letter, the Respondent contends that its rebuttal filing was not beyond the Claimants' rebuttal filing. As to the Claimants' contention that the document submitted has been altered, the Respondent asserts that the document was found in the records of Iran Aircraft Industries Inc. ("IACI") in its present form. By their letter of 31 August 1992, the Claimants renewed the request. Thereafter, the Respondent renewed its objection by its submission of 4 September 1992. On 13 November 1992, the Respondent filed an unauthorized submission containing documentary evidence. According to the Respondent, the documents show that Mrs. Malekzadeh was employed by IACI as an Iranian, and that the manner of employment of Iranians and foreigners was different in that company.

6. Before proceeding further, the Tribunal decides the Claimants' request. With respect to the Respondent's rebuttal filing of 1 May 1992, the Tribunal does not observe in that filing evidence which cannot be considered as rebuttal evidence. Further, the Tribunal notes that it has already twice given both the Claimants and the Respondent a full opportunity of presenting

their evidence concerning the Claimants' dominant and effective nationality. See, supra, paras. 2 and 4. Moreover, the Tribunal points out that its practice in conducting the proceedings is that a respondent is entitled to file a final rebuttal submission. With respect to the Claimants' allegation that a document signed by Joan Ward Malekzadeh has been altered after her signature, the Tribunal notes that in view of the determination discussed, see, infra, para. 25, there is no need to draw a conclusion about the allegation. On the same ground, the Tribunal does not have to decide whether to admit the Respondent's unauthorized filing of 13 November 1992. Consequently, the Tribunal does not deem it necessary to grant the Claimants' request or to otherwise permit any further filings concerning the issue of the Claimant's dominant and effective nationality.

II. FACTS AND CONTENTIONS

7. Joan Ward Malekzadeh was born on 26 December 1945 in Mayfield, Kentucky. She grew up in Hickman County, Kentucky, where she completed her primary and secondary education. Between 1963 and 1964 she attended Murray State University in Murray, Kentucky. In 1964, she left that University to take night school courses at the University of Kentucky in Lexington. There, in 1964, she met her present husband Reza Malekzadeh, an Iranian national.

8. Joan Ward Malekzadeh contends that in the summer of 1966 she travelled to Iran with Reza Malekzadeh to visit his parents. She states that during this visit Reza Malekzadeh was offered a temporary job in Ghazuin Glass Company. According to her, Reza Malekzadeh accepted the offer and Joan Ward Malekzadeh decided to stay in Iran with him until the job was over. On 11 September 1966, Joan Ward Malekzadeh and Reza Malekzadeh were married in a Moslem ceremony in Isfahan. In that ceremony, Joan Ward Malekzadeh converted to Islam and chose the name Maryam as her Islamic name. She asserts that she did these acts solely for the purpose of the wedding, and that she has neither used the name Maryam nor practiced the Moslem religion. After the marriage, she was granted an Iranian identity card on 8 June 1967.

9. The couple's first child, Sonya Malekzadeh, was born on 1 May 1967 in Tehran. Joan Ward Malekzadeh registered the child's birth with the Consular Service of the United States at Tehran on 8 September 1969. On the same date, Sonya Malekzadeh's name was added to her mother's United States passport. A separate United States passport was issued to Sonya Malekzadeh in May 1978. Between May 1968 and September 1969, Joan Ward Malekzadeh worked as secretary to Colonel James Evans, Chief of the G-1 Division, Headquarters, Army Military Mission and United States Military Assistance Advisory Group ("ARMISH-MAAG"). Joan Ward Malekzadeh has produced a form entitled "Notification of Personnel Action". In that form, her citizenship has been marked with number 1. To clarify this notation, she has also submitted a letter from the Chief, Affirmative Employment and Work Force Development Division, Department of the U.S. Air Force, dated 10 August 1990, stating that "Citizenship 1" in the form means that the servicing Air Force civilian personnel office had determined that the appointee was a U.S. citizen. In September 1969, Joan, Reza and Sonya Malekzadeh moved to Woburn, Massachusetts where Reza Malekzadeh enrolled in a year-long graduate program. Joan Ward Malekzadeh states that after graduation her husband accepted a job offer from IMDBI, and that therefore they moved back to Iran in September 1970.

10. Mr. and Mrs. Malekzadeh's second child, Alireza Malekzadeh, was born on 20 June 1971 in Tehran. Joan Ward Malekzadeh reported his birth with the Consular Service of the United States at Tehran on 14 June 1973. Alireza Malekzadeh's name was added to his mother's United States passport on 21 June 1973. A separate United States passport was issued to him in May 1978. From 1972 to 1974, Joan Ward Malekzadeh worked as an Administrative Secretary at IACI. She contends that Iranian nationality was not required for employment. To support her statement, she has submitted a letter by Mr. Ronald J. Bettauer, Assistant Legal Adviser, United States Department of State dated 20 August 1990. Mr. Bettauer states in his letter that the Cases presented to and decided by the Tribunal with respect to the claims related to the employment at IACI show that Iranian nationality was not a condition of employment at IACI. During

the academic year of 1974-1975, Joan Ward Malekzadeh attended the University of Maryland's extension school in Tehran.

11. Sonya and Alireza Malekzadeh assert that in Tehran they both enrolled in a kindergarten run by an American woman and in Golestan Koodak which, according to them, was an American-oriented elementary school. Sonya Malekzadeh states that she attended the kindergarten between 1971 and 1972 and Golestan Koodak from 1972 until December 1978. Alireza Malekzadeh contends that he enrolled in the kindergarten in 1976 and in Golestan Koodak in 1978.

12. During her stay in Iran, Joan Ward Malekzadeh contends that she made a deliberate effort to maintain her American lifestyle and ties. Likewise, Sonya and Alireza Malekzadeh assert that their lifestyle was American. In support of their contention, the Claimants have submitted affidavits by Mrs. Orear Ward, Joan Ward Malekzadeh's mother, and Mr. Frank J. Rizzo. They both state that the Malekzadeh family lived as a traditional American family, and that they spoke English in their household.

13. Joan Ward Malekzadeh states that during the time she stayed in Iran she was a member of the American Women's Club in Tehran, and that her employment in ARMISH-MAAG entitled her to membership in the American Officers Club in Tehran. It appears that the Claimants belonged to the First Baptist Church of Clinton, Kentucky. Joan Ward Malekzadeh joined the church on 16 March 1958, Sonya Malekzadeh on 1 August 1976 and Alireza Malekzadeh on 14 March 1979. The Claimants contend that they have remained Christians all of their lives, and that during their residence in Tehran they attended services from time to time at the Community Church of Tehran.

14. The Claimants state that in addition to their stay in the United States from September 1969 to September 1970, they spent the entire summer months of 1973, 1974, 1976 and 1978 in Clinton with Joan Ward Malekzadeh's parents. Joan Ward Malekzadeh asserts that by 1976 she had decided with her husband that they would move to the United States for which purpose her husband applied for a United States permanent residence visa. It appears

that her husband was issued that visa (the so-called "green card") in 1977. Moreover, Joan Ward Malekzadeh states that she deliberately ensured that Sonya and Alireza Malekzadeh were integrated into the culture and social aspects of the United States before they left Iran. The Claimants also assert that in 1978 the Malekzadeh family began to make inquiries about the purchase of a house in the United States.

15. The Claimants left Iran for the United States on 20 December 1978 after which they have not returned to Iran. They first resided in Clinton, Kentucky, where Sonya and Alireza Malekzadeh attended Hickman County Elementary School, a public school, beginning in December 1978. In the summer of 1979, the Malekzadeh family moved to Rockville, Maryland, where Joan and Reza Malekzadeh purchased a house in August of the same year. In the fall of 1979, Sonya entered Tilden Junior High School and Alireza Malekzadeh entered Farmland Elementary School. Joan Ward Malekzadeh states that since 1979 she has been employed by the U.S. Government and by several private businesses in Rockville. In support of this, she has submitted a document showing that she worked as a budget analyst at the United States Food and Drug Administration of the Department of Health and Human Services in Rockville.

16. The Claimants have produced affidavits from Joan Brawley, Sonya Malekzadeh's sixth-grade teacher at Hickman County Elementary School, and from Beth Faulkner and Nancy Stevens, Alireza Malekzadeh's first and second grade teachers at the same school. Joan Brawley states that Sonya Malekzadeh spoke English without a foreign accent, adapted quickly and had no problems keeping up with her classmates. According to Beth Faulkner and Nancy Stevens, Alireza Malekzadeh's verbal skills in English were good and he fitted in well with the other children. All three teachers contend that they believe the Malekzadeh children were able to adjust so easily because of the upbringing their American mother provided.

17. Iran first argues that Joan Ward Malekzadeh has lost her U.S. nationality. Referring to the U.S. Immigration and Nationality Act, Iran states that, because of her Iranian

nationality and attachment to Iran, Joan Ward Malekzadeh has renounced her U.S. nationality. Second, Iran contends that even if Joan Ward Malekzadeh's U.S. nationality is accepted as valid, she has failed to establish that during the relevant period she was dominantly and effectively a national of the United States.

18. Iran has submitted affidavits by Mr. A. Ziraknejad, Mr. M. Fayyaz and Mr. A.M. Hooman, former colleagues of Mr. Malekzadeh at IMDBI. They state that the Malekzadeh family spoke Persian and observed the Iranian customs. Mr. A. Ziraknejad and Mr. A.M. Hooman state that the Mr. Malekzadeh family had social intercourse with Iranian families.

19. Iran asserts that if the Claimants' contention as to purchase of real estate in Karaj is accepted as true, it follows that Joan Ward Malekzadeh had to introduce herself as an Iranian during the purchase transaction. In addition, Iran argues that Joan Ward Malekzadeh relied upon her Iranian nationality in order to be employed in ARMISH-MAAG and in IACI. To support this contention, Iran states that she did not obtain a foreign national work permit from the Ministry of Labour of Iran, and that ARMISH-MAAG and IACI treated her as an Iranian national in their employment practices. Iran has submitted Joan Ward Malekzadeh's application for employment in IACI. In that application's box labelled "Citizenship" the word "American" has been crossed out and replaced with the word "Iranian". Iran has also produced a form entitled "Biographic data of the Iranian personnel" dated 3 June 1972 and a certificate by IACI stating that the employment of Mrs. Malekzadeh from 12 August 1972 had been approved by the Iranian Air Force. Further, Iran has submitted a memorandum by IACI from which it appears that Mrs. Malekzadeh's salary was paid in Rials.

20. Iran argues that Joan Ward Malekzadeh has no right to bring before the Tribunal the claims on behalf of her children. Iran contends that pursuant to the Civil Code of Iran, the children's father, Reza Malekzadeh, is the natural guardian of the children, and thus only he is entitled to bring the claims on behalf of his children.

21. In addition, Iran states that, at any rate, the Tribunal does not have jurisdiction over the Malekzadeh children's claims. Iran states that Sonya and Alireza Malekzadeh are Iranian nationals because they were born to an Iranian father in Iran. Iran further contends that these children were influenced by Iranian culture, and that they attended Iranian kindergarten and elementary schools until their departure, due to revolutionary events, from Iran in December 1978. Iran contends that before the end of the relevant period Sonya and Alireza Malekzadeh's U.S. nationality was merely a potential one because after reaching the legal age they would have been able to relinquish their U.S. nationality. Iran argues that Sonya and Alireza Malekzadeh could not have integrated into American society during the short span of time from their departure until the end of the relevant period. Iran concludes its argument by stating that on these premises the provisions of Article II, paragraph 1 and Article VII, paragraph 1(a) of the Claims Settlement Declaration and the Full Tribunal's Decision in Case No. A18 are not applicable to Sonya and Alireza Malekzadeh.

III. REASONS FOR THE AWARD

22. In order to determine whether the Claimants have standing before this Tribunal, the Tribunal must establish whether the Claimants were citizens of Iran, of the United States, or of both Iran and the United States, during the period from the date the Claims arose to 19 January 1981, the date on which the Claims Settlement Declaration entered into force. If the Claimants were citizens of both Iran and the United States, the Tribunal must determine the Claimants' dominant and effective nationality during that period. The Tribunal first notes that in this Case there are in fact five different Claims. See, supra, para. 1. The Tribunal assumes, for the purpose of determining the Claimants' dominant and effective nationality, that the Claimants' earliest Claim arose sometime in 1979. The Tribunal emphasizes that by making this assumption only for the purpose of determining the Claimants' dominant and effective nationality, it does not prejudge as to whether the Claims, in fact, arose before or after 19 January 1981 for the purpose of deciding the

remaining issues in the Case. The Tribunal will decide that question, as well as any other remaining jurisdictional issues, when it considers the merits of the Case.

23. The Tribunal notes that there is no dispute that Joan Ward Malekzadeh became an Iranian national by virtue of her marriage to an Iranian national, and that Sonya and Alireza Malekzadeh are Iranian nationals because they were born to an Iranian father. The Tribunal is also satisfied that the Claimants acquired their United States citizenship at birth, as evidenced by their birth certificates. The Claimants have also submitted photocopies of relevant pages of Mrs. Malekzadeh's United States passports issued on 12 May 1966, on 21 June 1973 and on 10 May 1978, and of Sonya's and Alireza's passports issued on 18 May 1978. The Tribunal notes Iran's arguments to the effect that Joan Ward Malekzadeh has relinquished her United States citizenship, and that Sonya and Alireza Malekzadeh's United States citizenships were merely potential, but not real ones. However, there is no evidence in the record that the Claimants' United States citizenships were ever revoked by a competent United States court; nor is there any evidence in the record that the Claimants ever relinquished or otherwise lost their United States citizenships. Consequently, the Tribunal holds that during the relevant period the Claimants were citizens of both Iran and the United States.

24. Having found that during the relevant period the Claimants were citizens of both Iran and the United States, the Tribunal proceeds to determine their dominant and effective nationality during that period. For this purpose, the Tribunal must establish the country with which the Claimants had stronger ties. The Tribunal must consider all relevant factors, such as the Claimants' habitual residence, center of interests, family ties, participation in public life, and other evidence of attachment. See Case No. A18, supra, para. 2, p. 25, 5 Iran-U.S. C.T.R. 265. While the Tribunal's jurisdiction is dependent on the Claimants' dominant and effective nationality during the period between the date the Claim arose and 19 January 1981, events and facts preceding the relevant period remain relevant to the determination of the Claimants' dominant and effective nationali-

ty during that period. See Reza Said Malek and 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. 51.

25. Joan Ward Malekzadeh is a native United States citizen who lived in the United States until the age of twenty; that is, from 1945 until 1966. Thereafter, she resided in Iran from 1966 to September 1969 and from September 1970 to December 1978, and in the United States from September 1969 to September 1970 and from December 1978 until 1981. Thus, between 1945 and 1981 Joan Ward Malekzadeh resided twenty-four years in the United States and about eleven years in Iran. In light of the above, the pertinent issue in this Case is to determine whether the other evidence concerning Joan Ward Malekzadeh's life outweighs the fact that she lived twice as long in the United States as in Iran.

26. Turning, therefore, to explore the other evidence, the Tribunal first notes that after moving to Iran Joan Ward Malekzadeh kept an American lifestyle rather than adopting an Iranian lifestyle. It appears that she maintained American customs in her home and spoke English to her children. It also appears to the Tribunal that this is so even though she was able to speak Persian, and had some social contacts with Iranians and also observed certain Iranian customs. The Tribunal does not see any evidence suggesting that Joan Ward Malekzadeh fully and deliberately integrated into Iranian society, or that she intended to live in Iran permanently. With respect to the affidavits by Mr. Malekzadeh's former colleagues, see, supra, para. 18, the Tribunal notes that these affidavits are short and do not provide any other information than the conclusion that the Malekzadeh family spoke Persian and observed Iranian customs. The Tribunal observes, for example, that none of them testify that they had family or other close contacts with that family. As to Joan Ward Malekzadeh's employment in ARMISH-MAAG, the Tribunal notes that she has submitted evidence to show that she relied upon her United States citizenship during that period. See, supra, para. 9. With respect to Iran's argument that Joan Ward Malekzadeh did not have any work permit, the Tribunal holds that this alone does not show that she relied upon her Iranian

citizenship during her employment in ARMISH-MAAG, or that ARMISH-MAAG was required to acquire such permits. Rather, the evidence in the record shows that her United States citizenship was the predominant reason for her employment with ARMISH-MAAG. The Tribunal notes that there is also a dispute between the Parties as to whether Joan Ward Malekzadeh relied upon her Iranian citizenship in order to be employed in IACI. See, supra, paras. 5, 10 and 19. The Tribunal need not draw a conclusion about this matter. Even if the Tribunal were to hold that Joan Ward Malekzadeh's application for employment in IACI demonstrates that she relied upon her Iranian citizenship for that limited period, this evidence is not separately, nor together with the other evidence, sufficient to outweigh the other evidence concerning Mrs. Malekzadeh's genuine link and attachment to the United States.²

27. Next, the Tribunal considers Iran's argument that Joan Ward Malekzadeh has purchased real estate in Iran as a national of Iran. Iran states that if Joan Ward Malekzadeh's contention that she purchased real estate is true she must have introduced herself as an Iranian during the purchase transaction. The Tribunal notes that the issue of whether Joan Ward Malekzadeh concealed her American nationality in order to get benefits available only to Iranians in obtaining the property rights may be relevant as far as the merits are concerned.³ Therefore, the Tribunal merely concludes that this issue, which has not been fully briefed, forms a part of the merits of this Case, and that it cannot be considered at this stage of the proceedings.⁴

² See Betty Laura Monemi, et al. and Islamic Republic of Iran, et al., Partial Award No. 533-274-1, para. 28 (1 July 1992), reprinted in ___ Iran-U.S. C.T.R. ___.

³ See Case No. A18, supra, para. 2, p. 26, 5 Iran-U.S. C.T.R. 265-66, in which the Full Tribunal added to its conclusion the following caveat: "In cases where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the Claimant, the other nationality may remain relevant to the merits of the claim."

⁴ See Frederica Lincoln Riahi and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 80-485-1, para. 41 (10 June 1992), reprinted in ___ Iran - U.S. C.T.R. ___.

28. Considering the evidence on the whole, the Tribunal finds that Joan Ward Malekzadeh's attachment to the United States has not been outweighed by her attachment to Iran. Consequently, the Tribunal determines that during the relevant period, Joan Ward Malekzadeh's dominant and effective nationality was that of the United States.

29. The Tribunal turns now to determine the Malekzadeh children's dominant and effective nationality.⁵ The Tribunal notes that the Malekzadeh children were born to a native American mother and an Iranian father, and that they were both born in Iran. It appears to the Tribunal that the Malekzadeh children had lived most of their lives in Iran before their alleged Claims arose sometime in 1979. With respect to their life in Iran, the Tribunal holds that although they spoke English at home and apparently attended American-oriented elementary school in Tehran, this alone does not acquire predominant importance when determining their dominant and effective nationality. The Tribunal further notes that the Malekzadeh children lived in Iran not only with their mother but also with their native Iranian father, and that the children maintained their residence and center of interests in Iran for nearly all of their lives prior to the relevant period. The Tribunal deems that although the Malekzadeh children had experienced American influences through their mother, their residence in the United States between December 1978 and 19 January 1981 was too short for them to fully integrate into American society. It appears to the Tribunal that this is so even though the Malekzadeh children adapted quickly to elementary schools in the United States.

⁵ It has been the Tribunal's practice to consider the nationality of a minor Claimant separately, rather than to assume that he or she has the nationality of the parent or guardian. See Betty Laura Monemi, et al. and Islamic Republic of Iran, et al., supra, note 2, para. 31, note 3, reprinted in ___ Iran-U.S. C.T.R. ___; Ardavan Peter Samrad, et al. and Government of the Islamic Republic of Iran, Award No. 505-461, 462, 463, 464 & 465-2, para. 37 (4 Feb. 1991), reprinted in 26 Iran-U.S. C.T.R. 44, 56.; Raymond Abboud, as legal guardian of Chrisline Arianne Abboud and Islamic Republic of Iran, Award No. 477-383-2, paras. 10-15 (16 May 1990), reprinted in 24 Iran-U.S. C.T.R. 265, 267-69; Anita Perry Rohani, et al. and Government of the Islamic Republic of Iran, et al., Award No. 427-831-3, para. 18 (30 June 1989), reprinted in 22 Iran-U.S. C.T.R. 194, 199.

30. In light of the above, the Tribunal finds that during the relevant period, the Malekzadeh children's ties to Iran outweighed their ties to the United States. Consequently, the Tribunal determines that during the relevant period, the Malekzadeh children's dominant and effective nationality was not that of the United States. In view of this holding, there is no need to decide the issue of whether Joan Ward Malekzadeh has the right to bring before the Tribunal the claims on behalf of her children.⁶

31. The subsequent proceedings in this Case remain subject to the caveat of the Full Tribunal in Case No. A18, supra, para. 2, p. 26, 5 Iran-U.S. C.T.R. 265-66, that "where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the Claimant, the other nationality may remain relevant to the merits of the claim."

IV. AWARD

32. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

- a) The Claims of the Claimants SONYA MALEKZADEH and ALIREZA MALEKZADEH are dismissed for lack of jurisdiction under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.

⁶ See Betty Laura Monemi, et al. and Islamic Republic of Iran, et al., supra, note 2, para 32, reprinted in ___ Iran-U.S. C.T.R. ___; Ardavan Peter Samrad, et al. and Government of the Islamic Republic of Iran, supra, note 5, para. 4, reprinted in 26 Iran-U.S. C.T.R. 44, 46.

- b) The Claimant JOAN WARD MALEKZADEH has standing before this Tribunal under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration.
- c) The remaining jurisdictional issues are joined to the merits.

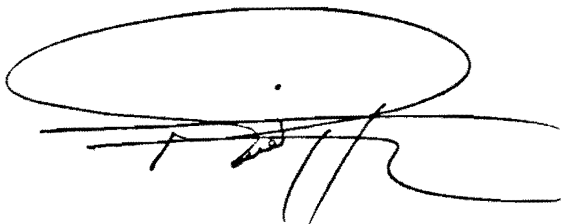
Dated, The Hague

21 January 1993



Bengt Broms
Chairman
Chamber One

In the Name of God



Assadollah Noori

In my opinion, the Tribunal does not, in principle, have jurisdiction over the claims of Iranians with dual United States nationality, either according to the Claims Settlement Declaration or pursuant to recognized principles of international law, particularly the principle of sovereign equality, which is rightfully the applicable principle with regard to the claims of dual nationals. The action taken by the majority of the Full Tribunal in its Decision issued in Case No. A/18, wherein it resorted to the theory of dominant and effective nationality, constitutes, so far as the Algiers Declarations are concerned, a disregard for both the letter and the spirit of those Declarations. And insofar as the principles of international law, especially the principle of the sovereign



Howard M. Holtzmann
Concurring in part,
dissenting in part.
See Separate Opinion

equality of States, are concerned, that action is tantamount to a disregard for the fundamental principles of international law. It is my opinion, just as the Iranian arbitrators have stated in their Dissenting Opinion in Case A/18, reprinted in 5 Iran-U.S. C.T.R. 275-337, that the Tribunal should rule that it lacks jurisdiction, and discontinue the proceedings, wherever it is confronted with a situation where, and determines that, these claimants have Iranian nationality.

In addition to the foregoing, I dissent to the present majority's decision whereby it finds that Mrs. Malekzadeh's dominant and effective nationality is that of the United States. In this Case Mrs. Malekzadeh visited Iran prior to her marriage with Mr. Malekzadeh, who had intended to return permanently to his homeland upon his graduation, and she married her Iranian husband with the concrete intention of residing permanently in Iran. Despite the majority's effort to make it appear as if the Claimant held Christian beliefs and to stress her alleged but unproven ties to the American culture and traditions, the Case record clearly shows -- and the majority has indicated in scattered places in its own Award (paragraphs 8-9) -- that Mrs. Malekzadeh married her husband in observance of Iranian and Islamic rituals and customs alone. Not only did she never register this marriage with the United States Consulate in Iran, but she reported the birth of her child (and then, for the purpose of benefitting from travel facilities) only when the opportunity arose

of accompanying her husband to the United States for his training assignment. From 1966 until prior to accompanying her husband in September 1969, Mrs. Malekzadeh did not travel to the United States, and until December 1978 she made only a few short trips there in order to visit her parents.

The majority has gone to considerable lengths to establish that the Malekzadeh family apparently decided sometime in 1976 to leave Iran. The circumstances of this Case clearly show that Mr. Malekzadeh sent his family to the United States solely due to the revolutionary conditions prevailing in late 1978 in Iran, and that he himself remained in Iran until well after the victory of the Islamic Revolution, in hopes that the situation would improve and they could return to Iran. The Case record clearly shows, and the majority's Award indicates as well (paragraphs 14-15), that Mrs. Malekzadeh and her children, who had travelled to the United States on 6 July 1978 to spend about two months of their summer vacation, arranged their return to Iran on 7 September of that same year, i.e., before the start of the scholastic year, so that her children could enroll in the Iranian schools. Once the school year began, Sonya and Alireza enrolled and studied, like any other Iranian pupil, in a school in Tehran until they left again in December 1978. In my view the majority has failed to reconcile, in any logical and justifiable way, the aforementioned facts including the seemingly trivial but in reality very important point that Mr.

Malekzadeh remained at his work and was engaged in his other life affairs in Iran until the summer of 1979, on the one hand, and on the other hand, the Claimant's belated assertion, which the Tribunal echoes, that the Malekzadeh family had intended from 1976 to leave Iran, whereas it actually left Iran only at the height of the Revolution in December 1978, rather than in 1976.

In addition to the above, in this Case the majority has regrettably paid little attention to the fact that Iran was the center of the family's considerable financial and other interests, including those of the head of the family (Mr. Malekzadeh), as well as the alleged financial and economic ties of Mrs. Malekzadeh and her children (as described in paragraph 1 of the Award); and in fact, it has disregarded the impact of these factors in determining the Claimant's dominant and effective nationality, in violation of the settled principles of law and of the explicit language of the Full Tribunal's Decision in Case No. A/18, (mentioned above) whereas the Tribunal has paid particular attention to these factors in its numerous awards, and on the basis of such factors it has also found in a number of them that the dominant and effective nationality of the claimants was not that of the United States (see, e.g. Leila Danesh Arfa Mahmoud and The Islamic Republic of Iran, Award No. 204-237-2 (paras. 19 and 24), reprinted in 9 Iran-U.S. C.T.R. 350, 354 and 355; Anita Perry-Rohani, et al. and The Government of the Islamic

Republic of Iran, et al., Award No. 427-831-3 (para. 16), reprinted in 22 Iran-U.S. C.T.R. 194, 198; Abbas Ghaffari and National Iranian Oil Company et al., Award No. 489-309-3 (para. 24), reprinted in 25 Iran-U.S. C.T.R. 178, 184; Arakel Khajetoorians, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 504-350-2 (para. 16), reprinted in 26 Iran-U.S. C.T.R. 37, 41; and Ardavan Peter Samrad, et al. and The Government of the Islamic Republic of Iran, Award No. 505-461/462/463/464/465-2 (para. 34), reprinted in 26 Iran-U.S. C.T.R. 44, 55).