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Case No. 356

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** AWARD - Type of Award _____
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** DECISION - Date of Decision _____
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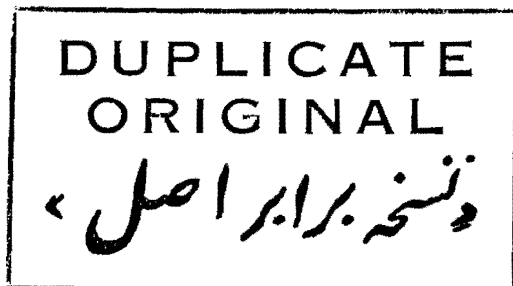
** CONCURRING OPINION of _____
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** SEPARATE OPINION of Judge Hal Zeman
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CASE NO. 356

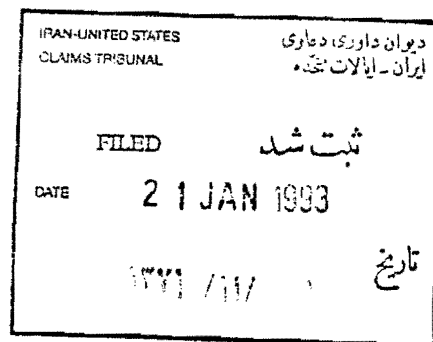
CHAMBER ONE

AWARD NO. 543-356-1

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

and

THE ISLAMIC REPUBLIC OF IRAN,
 Respondent.



SEPARATE OPINION OF JUDGE HOLTZMANN,
 CONCURRING IN PART, DISSENTING IN PART
 WITH RESPECT TO THE PARTIAL AWARD

1. The Partial Award in this Case determines the Tribunal's jurisdiction over claims by three members of the Malekzadeh family, a mother and her two children -- a daughter named Sonya, and a son, Alireza. These three individuals are dual nationals, being recognized as Iranian nationals under Iranian law, and as United States nationals under United States law. The question is thus presented as to which nationality predominates; for under the ruling in Case A-18¹ this Tribunal has jurisdiction of a claim against Iran only if a claimant's nationality was "dominantly and effectively" that of the United States from the date the claim allegedly arose until 19 January 1981, the date

¹ Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251.

the Claims Settlement Declaration came into force.² I concur in the holding of the Partial Award that the mother was dominantly and effectively a United States national during that relevant period, and I respectfully dissent from the conclusion that her children were not. I write separately to explain my views.

2. Mrs. Joan Ward Malekzadeh was born and educated in the United States. Upon her marriage to an Iranian, whom she met while he was a student in the United States, she automatically acquired Iranian nationality under Iranian law. After their marriage, the couple made their home in Iran where their two children were born. The Claimants moved to the United States in December 1978 prior to the date on which the earliest of the claims in this Case arose.

3. After carefully weighing the evidence, the Tribunal correctly concludes that Mrs. Malekzadeh was dominantly and effectively a United States national during the relevant period. In particular, the Tribunal finds that

after moving to Iran she kept an American lifestyle rather than adopting an Iranian lifestyle. It appears that she maintained American customs in her home and spoke English with her children 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.

Partial Award, para. 26. The Tribunal concludes that her "attachment to the United States has not been outweighed by her attachment to Iran." Thus, the Tribunal has jurisdiction over her claim. Id. para. 28. I join in that conclusion.

² Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (19 January 1981), reprinted in 1 Iran-U.S. C.T.R. 9.

4. The children also have claims against Iran based on alleged losses of property held in each of their names. In the eyes of Iranian law, both children are nationals of Iran by virtue of having an Iranian father. Under American law, having been born abroad of an American mother, they are United States nationals;³ they have each been issued United States passports evidencing their United States nationality.

5. The Partial Award notes that both children "had lived most of their lives in Iran before their alleged claims arose". That is correct, but it does not answer the question of which of their nationalities was dominant and effective during the relevant period. The Partial Award concludes that their Iranian nationality predominated. That finding was based on the key conclusion -- erroneous in my view -- that

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 January 1981 was too short for them to fully integrate into American society.
(Emphasis added.)

Id. para. 29. Whether or not an individual was integrated into American society when his or her claim arose has been a major element in the Tribunal's determinations of dominant and effective nationality during the relevant period.⁴ Thus, for

³ Raymond Abboud as legal guardian of Chrisline Arianne Abboud and Islamic Republic of Iran, Award No. 477-383-2, paras. 3, 12, pp. 3, 4-5 (16 May 1990), reprinted in 24 Iran-U.S. C.T.R. 266, 267; Shahin Shaine Ebrahimi, et al., and Islamic Republic of Iran, Interlocutory Award No. ITL 71-44/45/46/47-3, para 22, p. 8 (16 June 1989), reprinted in 22 Iran-U.S. C.T.R. 143.

⁴ See, e.g., Betty Laura Monemi, et al. and Islamic Republic of Iran, et al., Partial Award No. 533-274-1, para. 31, p. 15 (1 July 1992), reprinted in ____ Iran-U.S. C.T.R. ____; Michelle Danielpour and Islamic Republic of Iran, Award No. 424-
(continued...)

example, the Monemi Case⁵ also considered two minor children who had grown up in Iran with a mother who was held to be dominantly and effectively a United States national, and who had moved to the United States. In Monemi, the Tribunal held, using almost identical words to those in the present Partial Award, that the Monemi children's period of residence in the United States before their claims arose "was too short for them to integrate into American society". Monemi, para. 31. But families are different and the evidence concerning the Malekzadeh children persuasively demonstrates that they, in fact, quickly become part of the American community and that by the time their claim allegedly arose they were already fully integrated into the American society into which their family had moved.

6. The ability of the Malekzadeh children to integrate quickly into American society resulted in part from the fact that during 1973, 1974, 1976 and 1978 they spent the entire summer months in Clinton, Kentucky, where they lived in the home of their maternal grandparents. The evidence is uncontested that during these extended visits they were part of a close American family in a relatively small rural community, playing with their cousins and other neighborhood children, participating in community activities, and attending Vacation Bible School classes at their church. When Mrs. Malekzadeh and her children moved from Iran to the United States in 1978, they again lived in the grandparental house in Clinton where they were thoroughly at home as a result of frequent earlier visits.

⁴(...continued)
168-3, para. 16, p. 6 (16 June 1989), reprinted in 22 Iran-U.S. C.T.R. 121; Ebrahimi, supra, para. 30, p. 10, reprinted in 22 Iran-U.S. C.T.R. 145; Reza Said Malek and Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, para. 25, p. 11 (23 June 1988), reprinted in 19 U.S.-Iran C.T.R. 55; cf. Moshen Asgari Nazari and Islamic Republic of Iran, Interlocutory Award No. ITL 79-221-1, para. 16, p. 9 (15 Jan. 1991), reprinted in 26 Iran-U.S. C.T.R. 13.

⁵ Betty Laura Monemi and Islamic Republic of Iran, supra.

7. Arriving in December, 1978, the two children were immediately enrolled in the local public elementary school in Clinton. The younger child, known to his teacher as Ali, was placed in the first grade, and the elder, Sonya, was put in the sixth grade. The evidence before the Tribunal includes an affidavit from each of the children's teachers. These affidavits reflect careful observation and are entirely credible. Both teachers have bachelor's and master's degrees in education and their affidavits demonstrate their professional training and qualifications.

8. Ms. Betsy Faulkner, the first grade teacher, described her observations of Ali, with whom she "worked closely". She states

I concluded that his learning and language skills were on a par with the other six-year-olds in the class. . . . Despite the fact that Ali joined my class in the middle of the school year, he adjusted immediately to his new environment. . . . I have taught or known of a number of children coming from other countries who had communication and adjustment problems. . . . [M]any of these children become withdrawn and find it difficult to make new friends. . . . Ali did not have any such problems or special needs. He fit right in with other children. . . . I believe Ali was able to adjust so easily because his mother was American and he was brought up speaking English at home, reading American books and watching American television. . . . When he arrived [in Clinton], Ali already knew American children's stories and games. For these reasons I believe that Ali had no difficulty adapting to his new surroundings. (Emphasis added.)

This is a convincing portrayal of a child who was fully and quickly integrated into American society at, or shortly after, December 1978.

9. Sonya's teacher, Ms. Joan Brawley, gives a similar picture of a child who was well-adjusted to the community. Ms. Brawley's affidavit reflects careful professional observation of Sonya, who was one of a class "limited to approximately twenty-eight students". She describes Sonya "as a happy child" who was "articulate and spoke English without a foreign accent". Ms. Brawley further states

Despite the fact that Sonya joined my class in the middle of the school year, she adapted quickly and had no problems keeping up with her classmates. She was energetic, outgoing and well-adjusted and immediately made friends with her classmates. . . I am sure that her upbringing, together with the fact that Sonya was a bright child, contributed to making her adjustment an easy one. (Emphasis added.)

Thus, there is objective evidence that Sonya, like her brother, quickly fit into and became integrated with the American society in which she found herself.

10. The Partial Award correctly notes that "the Malekzadeh children lived not only with their mother but also with their native Iranian father". Para. 28. There is no evidence in the record concerning Mr. Malekzadeh's relationship with his children. It is, however, reasonable to infer from the testimony of the two teachers and the documentary evidence of the children's confirmation in the First Baptist Church shortly after their arrival in Clinton, that he did not inhibit their integration into American life.

11. For these reasons, I conclude that the Malekzadeh children were dominantly and effectively nationals of the United States by the time the relevant period began and during the relevant period. Therefore, I must respectfully dissent from the holding of the Partial Award that denies the Tribunal's jurisdiction over their claims.


Howard M. Holtzmann

21 January 1993
The Hague