

DECISIONS, AWARDS AND
INTERLOCUTORY AWARDS

MALEKZADEH *v.* IRAN

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

v.

THE ISLAMIC REPUBLIC OF IRAN, *Respondent*

(Case No. 356)

Chamber One: Broms, Chairman; Noori,^[1] Holtzmann,^[2] Members

Signed 21 *January* 1993^[3]

AWARD NO. 543-356-1

The following is the text as issued by the Tribunal:

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 U.S.\$1,502,698.⁴ 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

^[1] The signature of Mr. Noori is accompanied by the Statement printed at page 14, below.]

^[2] The signature of Mr. Holtzmann is accompanied by the words, “Concurring in part, dissenting in part. *See* Separate Opinion.” This Opinion appears at page 16, below.]

^[3] Filed 21 January 1993.]

⁴ The 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.

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 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 prejudice 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 nationality during that period. *See Reza Said Malek v. 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