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** DECISION - Date of Decision _____
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** CONCURRING OPINION of George H. Adelstein
- Date 22 Jan '93
3 pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
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CASE NO. 298

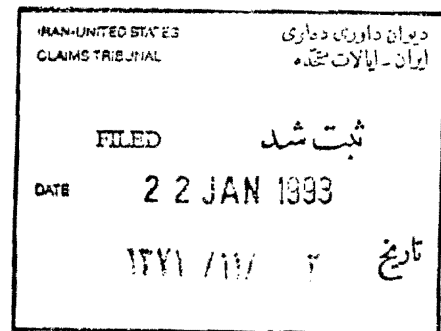
CHAMBER TWO

AWARD NO. 544-298-2

JAMES M. SAGHI, MICHAEL R.
SAGHI and ALLAN J. SAGHI,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondents.



CONCURRING OPINION
OF GEORGE H. ALDRICH

1. I concur fully in the present Award and write separately for the sole purpose of explaining more fully several points relevant to the meaning of the "caveat" to the Full Tribunal's holding in Case No. A/18. While the Award properly summarizes the history of the caveat in the Tribunal's practice (paragraphs 49-54) and properly applies the caveat to Allan Saghi's claim (paragraphs 55-64), I believe it useful to emphasize three salient elements of the caveat as dealt with in this Award.

2. First, Allan Saghi's situation is probably unique among claims presented to the Tribunal. As the Tribunal notes in paragraph 58 of the Award, most, if not all, dual national claims before the Tribunal involve claims of dual nationals who did not seek Iranian nationality, but rather had Iranian nationality

imposed upon them by Iranian law, either by birth to an Iranian father or by marriage to an Iranian man.¹ In contrast to that common situation, Allan Saghi voluntarily sought and obtained Iranian nationality in 1977 for the sole and obvious purpose of minimizing the adverse impact on the largely family-owned company, Novzohour Paper Industries ("N.P.I."), of the Iranian Law for Expansion, which imposed limits on the percentage of certain types of companies that could be registered in the names of non-Iranians. In those unique circumstances, the Tribunal concluded (paragraph 59) that it would be inequitable and would constitute an abuse of right to permit him to recover, on the basis of his United States nationality, compensation from Iran for its taking of his ownership interest in N.P.I., without regard to whether that interest was limited by applicable Iranian law to Iranian nationals. Thus, in this case, the Tribunal did not need to decide -- as it would in other dual-national claims -- the proper interpretation of the Law for Expansion or, indeed, even whether that law remained relevant to N.P.I. at the date of taking. In that connection, I note that no shares of N.P.I. were ever transferred pursuant to the Law for Expansion, and the post-Revolution Act for the Protection and Development of Iranian Industries, pursuant to which Iran in fact took over N.P.I. (unlike the pre-Revolution Law for Expansion), permitted the taking to occur without compensation. Except in the extraordinary circumstances of Allan Saghi's claim, it would seem to me inequitable to permit Iran to invoke the caveat by means of a law Iran itself chose, in the event, not to implement with respect to N.P.I.

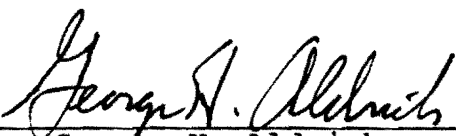
3. Second, it should be clearly understood that, in normal circumstances where a dual national has not voluntarily sought Iranian nationality as Allan Saghi did, the caveat has no

¹ While abandonment of Iranian nationality is not, in theory, impossible under Iranian law for persons who are more than 24 years old, it requires the consent of the Iranian Council of Ministers, involves restrictions upon visits to Iran and the ownership of real property in Iran, and evidently rarely occurs in practice. See Article 976 of the Iranian Civil Code.

application unless the dual national has used his Iranian nationality to obtain benefits limited by applicable Iranian law to Iranian nationals. The mere use of Iranian nationality does not engage the caveat if the benefits were not so limited by law. See Ataollah Golpira and The Islamic Republic of Iran, Award No. 32-211-2 (29 March 1982), reprinted in 2 Iran-U.S. C.T.R. 171. Moreover, even in the present Case, the caveat has no application to a claim by Allan Saghi with respect to his ownership interests in Novin, a company that was not of a type covered at all by the Law for Expansion.

4. Third, the present Award makes clear something that was implicit in the Tribunal's decision in Case No. A18 -- that the caveat can be invoked only with respect to claims of dual nationals. If any doubt was created by language used in the Esphahanian or Schott Awards,² it is resolved by the present Award. The caveat has no application to claims of United States Nationals who were not also Iranian nationals.

Dated, The Hague
22 January 1993


George H. Aldrich

²Nasser Esphahanian and Bank Tejarat, Award No. 31-157-2 (29 March 1983), reprinted in 2 Iran-U.S. C.T.R. 157 and Robert R. Schott and Islamic Republic of Iran, et al., Award No. 474-268-1 (14 March 1990), reprinted in 24 Iran-U.S. C.T.R. 203.