



RPD File No. / N° de dossier de la SPR : TB7-19132  
TB7-19136 TB7-19137 TB7-19138

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et Décision

<b>Claimant(s)</b>	XXXX XXXX XXXXXXXXXXX XXXX XXXXXXXX XXXX XXXXXXXXXXX XXXX	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	December 19, 2017 April 6, 2018	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of Decision and reasons</b>	May 4, 2018	<b>Date de la décision et des motifs</b>
<b>Panel</b>	M. Lee	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Feruza Djamalova	<b>Conseil(s) du (de la/des) demandeur(e)(s) d'asile</b>
<b>Designated Representative(s)</b>	XXXX XXXX	<b>Représentant(e)(s) désigné(e)(s)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du (de la) ministre</b>

## REASONS FOR DECISION

[1] XXXX XXXX the principal claimant, XXXX XXXX, the second claimant, XXXX XXXX, the third claimant, and XXXX XXXX, the minor claimant request protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.<sup>1</sup>

[2] XXXX XXXX was appointed as the independent designated representative of the minor claimant, according to section 167(2) of the IRPA.

[3] These claims were joined according to Rule 55 of the Refugee Protection Division Rules.

## ALLEGATIONS

[4] The claimants allege to fear persecution in Lebanon from Hezbollah because of their perceived political opinion and their religious affiliation as Sunni Muslims. The principal claimant also alleged that she feared domestic violence from her husband.

[5] The principal claimant was born in Lebanon, but moved to Kuwait after getting married. The second, third and minor claimants, the principal claimant's children, were all born in Kuwait. However, they do not have any rights to citizenship in Kuwait.

[6] Due to economic and political reasons, the claimants moved back to Lebanon in 2015. The principal claimant's husband rented a shop for his business in Lebanon. However, he had to pay Hezbollah, a terrorist group, \$300 USD each month for safety and protection.

[7] In August 2016, a group of people came into the store and threatened the principal claimant's husband with a hammer. Goods were destroyed, the husband was beaten, and the principal claimant was slapped.

[8] During their time in Lebanon, the second claimant was nearly raped by an unknown person and the third claimant's friend was shot in the leg by a member of Hezbollah.

[9] The principal claimant also alleges that they have experienced serious harassment and oppression from others because of their Sunni faith and limited connections.

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[10] In September 2017, the principal claimant's sister advised her that she could make a refugee claim at the Canadian border. The principal claimant's husband did want to come with the rest of the family for various reasons. The principal claimant indicated that he owed money to Hezbollah. The claimants left the country on their United States visas on XXXX XXXX, 2017. They came to Canada on XXXX XXXX, 2017 and made a claim at the port of entry.

## ISSUES

[11] The determinative issues are credibility, discrimination verses persecution, state protection, failure to claim in the United States.

## DETERMINATION

[12] The Panel finds that the claimants are neither Convention refugees nor are they persons in need of protection.

## Gender guidelines

[13] Since this claim involves gender related violence, the Panel considered the Chairperson's *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*.<sup>2</sup>

## IDENTITY

[14] Based on valid copies of the claimants' Lebanese passports, the Panel finds that the claimants are who they say they are, and they are citizens of Lebanon, on a balance of probabilities.

[15] According to Kuwait nationality laws, the principal claimant's testimony is consistent with the documentary evidence, in that citizenship in Kuwait in the vast majority of cases, cannot be acquired unless one's father has Kuwaiti citizenship. All the claimants traveled on Lebanese passports. The principal claimant's parents are Lebanese citizens, the second, third and minor claimants both have parents who are Lebanese citizens. The Panel accepts that despite the fact

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<sup>2</sup> *Women Refugee Claimants Fearing Gender-Related Persecution: Update*, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the *Immigration and Refugee Protection Act*.

that the second, third and minor claimants were born in Kuwait, they retained the right to live in Kuwait only through their father's family sponsorship, since their father was working in Kuwait. Their father is no longer working in Kuwait. Therefore, the Panel finds that none of the claimants are citizens of Kuwait, and nor do they have the right to reside there, on a balance of probabilities.

## **CREDIBILITY**

[16] The principal claimant had two parts to her allegations. The Panel will assess the allegations regarding attacks from Hezbollah first, and then the gender-related allegations.

[17] Subsequently, the Panel will assess the allegations for each of the other claimants.

### **Hezbollah and criminal attack allegations are not credible for principal claimant**

[18] The principal claimant mentioned in her Basis of Claim (BOC) that she has experienced serious harassment and oppression in Lebanon because of her Sunni faith and because she lacks political affiliation.<sup>3</sup>

[19] The principal claimant indicated that Lebanon is divided into political sects, and each sect tries to protect its members. The claimants allege that they are unable to gain any protection from Hezbollah and other criminals. As the claimants do not profess loyalty to a political sect, they are subjected to attacks because of their perceived political apathy. The principal claimant alleged that she and her family are being targeted by Hezbollah because of her husband's unpaid debts to Hezbollah.

[20] The Panel did not find the principal claimant to be a reliable witness. The principal claimant alleged that she and her family were attacked by Hezbollah and other criminals on a number of occasions while in Lebanon. However, when asked to describe each of these incidents, the principal claimant's description were convoluted, inconsistent and contradictory. Some examples are below.

#### ***(i) August 2016 incident did not occur***

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<sup>3</sup> Exhibit 2, Basis of Claim, 2 (a).

[21] In the principal claimant's BOC, she indicated that a group of people came to their store threatening to destroy them and crushing goods with a hammer.<sup>4</sup> The principal claimant and her husband were both physically assaulted during this incident. She indicated that the police did nothing to help.<sup>5</sup> In oral testimony, the principal claimant provided a convoluted account of the August 2016 incident. She alleged that it was a Christian family who attacked the store. This Christian family were relatives of a particular individual. She does not know why they attacked the store but they had previously been stealing from the store. She did not know the individuals prior to the incident.

[22] The Panel asked the principal claimant how she was able to know the religion of these individuals if she did not personally know them. The principal claimant explained that her husband and sons went to report the incident to the police. The police performed a full day interrogation on these attackers and learned the personal details, and conveyed them to the principal claimant and her family.

[23] The Panel confronted the principal claimant with the inconsistent details in her oral and written BOC, regarding the profile of the attackers, and the contradictory details regarding whether or not the police had provided assistance. The principal claimant explained that she only mentioned the most important details. She further explained that the police did not give her any results after the investigation.

[24] The Panel finds this is not a satisfactory explanation for the inconsistent and contradictory testimony. The principal claimant's account of the August 2016 incident is entirely different to what is written in the BOC. Whether the police made any effort to perform an investigation or took no effort to assist is a material difference in detail. Furthermore, any knowledge of the attackers' profile is also a material inconsistency, as it speaks to what motivation the attackers may have had to target the principal claimant and her family members.

[25] The principal claimant also provided a letter from a lawyer in Lebanon and a typed letter from her husband which corroborate the August 2016 incident.<sup>6</sup> The Panel carefully considered

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<sup>4</sup> Exhibit 2, Basis of Claim, 2 (b).

<sup>5</sup> Ibid, page 3, 2 (c).

<sup>6</sup> Exhibit 10, Exhibit 12.

the evidence provided in these documents. The letter from the lawyer indicates that a formal complaint was filed regarding the attack on the husband and sons.<sup>7</sup> The lawyer's letter indicates that there was one attacker identified by name. There is no mention of there being a group of persons who attacked the store and no mention that the principal claimant herself was attacked. The husband's letter references the August 2016 incident and indicated that the attackers were unknown persons. The husband's letter appears to contradict the lawyer's letter which indicates that there was one known attacker.<sup>8</sup> These documents contradict the principal claimant's oral testimony that it was an unknown Christian family who attacked herself and her husband.

[26] When these contradictions were pointed out to the principal claimant, she explained that she did not accompany her husband to the lawyer's office, and so she believes this is why she was not mentioned in the letter. The principal claimant further explained that her husband would not know how to write a letter properly and he did not even finish high school. She further asserted that the lawyer's letter is correct and her husband's letter is not. The Panel pointed out to the principal claimant that her husband has traveled the world and works as a manager of a company, as indicated earlier in the principal claimant's testimony. The principal claimant then explained that he may be experienced in his specific field but cannot write a legal letter.

[27] The Panel finds that the explanation regarding the contradictions in the lawyer's letter and the husband's letter is not satisfactory. It is unclear why the principal claimant's absence during the meeting with the lawyer would mean that details regarding the same attack she allegedly experienced with her husband would not also be included in the formal complaint. Her husband was allegedly present at the meeting with the lawyer, and witnessed the principal claimant being assaulted during the attack, as indicated in his letter. Regarding the husband's letter, the Panel finds that it is simply a typed letter from the husband describing his version of events. It is not a formal legal document, and so it is unclear why the husband would not be able to write an accurate account of the allegations. The Panel finds that these documents are not reliable, and they are given no weight in corroborating the incident.

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<sup>7</sup> Exhibit 12.

<sup>8</sup> Exhibit 10.

[28] The Panel further finds that given the lack of satisfactory explanation regarding her own contradictory testimony, the Panel finds on a balance of probabilities that the August 2016 incident did not occur.

*(ii) July 2016 incident did not occur*

[29] There are three contradictory accounts of the July 2016 incident. In oral testimony, the principal claimant indicated that during this incident, a group of people assaulted her because she parked her car in the wrong spot. The police were nearby and intervened. During the police investigation, she explained that the police advised her that the men were of the Shia faith. She further explained that the Lebanese individuals fled the scene but the Syrian individual was taken into custody. When asked why these men attacked her, she simply indicated that she believed it was because she parked her car in the wrong spot.

[30] In her BOC, she indicated that she was slapped by a Shia man who was harassing her when she parked her car.<sup>9</sup> There was no date mention and no details provided regarding why the Shia man was harassing her. There is no mention that it was a group of men who initially attacked her and most of them got away. In her husband's letter, he simply indicates that an incident occurred where the principal claimant was attacked, but the police did nothing to assist the principal claimant. This contradicts the principal claimant's oral testimony regarding police assistance.

[31] The principal claimant gave no explanation regarding the contradictory detail in her BOC and in her oral testimony. She simply elaborated on how the group of men who attacked her were all relatives, but the one Shia man did attack her. Regarding the husband's letter, she indicated that she was hit by the police officer and the Shia men also hit the police officer, and that this was what her husband was trying to say.

[32] The Panel finds that the principal claimant could offer no satisfactory explanation for the contradictory evidence. For the reasons above, the Panel finds that the husband is not a reliable source of evidence, as this is the second time his letter contradicts the principal claimant's account of the events. Furthermore, the Panel finds that the principal claimant is an evasive

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<sup>9</sup> Exhibit 2, BOC, 2b).

witness who has continually been unable to provide any explanation for the contradictory evidence regarding the incident. On a balance of probabilities, the Panel finds that the July 2016 incident also did not occur.

***Other forms of alleged discrimination because of principal claimant's Sunni faith not credible***

[33] The principal claimant explained one incident where she alleges she was targeted by Hezbollah because of her Sunni faith. She alleged that in February 2017, she faced a severe threat from a member of Hezbollah while she was on her way to visit her mother-in-law. The man screamed at her and demanded to know her personal information regarding who she was and where she was going. Her husband came to talk to him and apologize. The principal claimant was then able to go to get past the man. She indicated that every time she went to visit her mother-in-law, this Hezbollah member would be present and follow her and laugh.

[34] The Panel finds that the explanation in the BOC regarding this incident is vague and omitted important details provided in her oral testimony. The principal claimant did not mention the date of this incident nor did she mention that she continued to encounter this Hezbollah member and that he acted in an intimidating manner toward her. When confronted with these omissions, the principal claimant explained that she mentioned the most important things in the BOC and that because the Hezbollah member did not confront her or bother her again, she did not think it was important to mention that she continued to encounter her.

[35] The Panel does not find this to be a satisfactory explanation for the omission of these details. Whether the Hezbollah member was someone she saw again is important, as it conveys the persistence of the threat to her. Furthermore, in her BOC, the instructions clearly indicate that the principal claimant is to "include everything that is important for your claim. Include dates, names and places wherever possible."<sup>10</sup> The BOC is signed and sworn as a statement made under oath. The principal claimant was also represented by counsel at the time of the hearing. Therefore, the Panel draws a negative inference to the principal claimant's credibility for the omission of these details.

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<sup>10</sup> Exhibit 2, BOC, age 2.



[36] Taking into account the principal claimant's oral and written testimony regarding her alleged experiences with Hezbollah and other persons who attacked her in Lebanon, the Panel finds on a balance of probabilities that the principal claimant was never attacked by Hezbollah or any criminal because of her religion, her lack of political affiliation.

[37] The husband was not a claimant at the hearing, and the only personal account by the husband regarding his personal experience with Hezbollah was documented in his support letter, which was already found to be unreliable. Based on the unreliable evidence, and the credibility problems with the principal claimant's testimony thus far, the Panel finds on a balance of probabilities that the husband was not attacked by Hezbollah on a balance of probabilities, and therefore, his situation did not put any of the claimants in danger.

[38] Because of the convoluted nature of the allegations, it was not always clear from the principal claimant the motivation behind any of these attacks, and therefore whether there was truly a nexus. However, the Panel finds that the allegations not credible on a balance of probabilities.

[39] Therefore, the Panel finds that the principal claimant would not face a serious possibility of persecution because of any alleged past experiences with Hezbollah or with criminals in Lebanon, nor does she on a balance of probabilities, face any personalized risk to her life, of torture, or of cruel and unusual treatment or punishment.

**Principal claimant amends BOC at second sitting and indicates she fears husband due to domestic violence**

[40] The Panel had some concerns regarding why the husband did not travel with the rest of the claimants, given the allegations suggested that he was the primary target of Hezbollah.

[41] In the port of entry notes, the principal claimant told the Canadian immigration officials that her husband was kidnapped by Hezbollah, and she did not know his whereabouts.<sup>11</sup> In her BOC in 2h), the principal claimant explained that she lied during her interview, as she did not

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<sup>11</sup> Exhibit 1, Port of entry notes.

want Canadian immigration officials to know that she left Lebanon with the children, without her husband's consent.<sup>12</sup>

[42] On October 23, 2017, the principal claimant's original BOC indicated that her husband wished to remain in Lebanon to deal with Hezbollah.<sup>13</sup> The principal claimant alleged she could not convince him to leave with the rest of the family and so she left Lebanon without permission from her husband.

[43] On November 7, 2017, the husband provided a support letter explaining that he changed his mind, and he now supported the claimants making their refugee claim in Canada.<sup>14</sup> As indicated above, the Panel has already found that the husband's support letter is unreliable evidence.

[44] On November 9, 2017, the principal claimant amended her BOC indicating that her husband made the decision to remain in Lebanon because he owed money to Hezbollah, and so he stayed behind in Lebanon to pay off debts because it was too dangerous for him to leave Lebanon.<sup>15</sup>

[45] On November 16, 2017, the principal claimant filed a parental consent affidavit from the husband giving her permission to travel with the minor claimant outside of Lebanon and to make a refugee claim.<sup>16</sup>

[46] On March 14, 2018, prior to the second sitting, the principal claimant filed yet another addendum to her BOC, indicating that she feared returning to Lebanon because her husband was abusive to her.<sup>17</sup> This was the third explanation regarding her husband's absence in Canada, and why she chose to travel without him.

[47] The principal claimant testified that when she first came to Canada, her original intentions at the time were to flee persecution due to Hezbollah. She considered including allegations

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<sup>12</sup> Exhibit 2, BOC, 2h).

<sup>13</sup> Exhibit 2, BOC, 2f).

<sup>14</sup> Exhibit 11.

<sup>15</sup> Exhibit 7.

<sup>16</sup> Exhibit 7, parental consent.

<sup>17</sup> Exhibit 15.

regarding domestic violence, but did not do so because her children discouraged her from doing so, and because she was ashamed.

[48] In some cases, there can be credible reasons for failing to disclose evidence earlier in the hearing; especially for female claimants. Guilt and shame with regard to domestic violence is a valid reason that can make testifying difficult for some claimants.

[49] However, the credibility of each case must be assessed on its individual merits, and the evidence for each claimant must be assessed as a whole. The Panel considers the fact that the principal claimant has continued to add changes to her BOC, to explain the absence of her husband from the refugee claim since the time she made her claim. The Panel finds that this is evidence of an evolving testimony.

[50] Nonetheless, The Panel still evaluated the evidence submitted by the principal claimant in support of these new allegations. The assessments are below.

*(i) Support letters and lack of witness testimony*

[51] The principal claimant filed four handwritten support letters from her sister in Canada, and her brother, her husband's cousin, and her father in Lebanon.<sup>18</sup> All four letters indicate that the principal claimant had been unhappy and had been mistreated during her marriage.

[52] The principal claimant's sister explained in her affidavit that the principal claimant did not want to include these allegations earlier due to shame and fear, and that her children had asked her not to do so, as they wanted her to give her husband another chance.

[53] The principal claimant's sister was proposed to be a live witness at the hearing. However, she was not present at the hearing for some family-related reasons, according to the principal claimant. Therefore, the Panel did not have the opportunity to question the sister regarding the contents of her affidavit, or regarding how the sister came to learn about the abuse. There was no evidence from the sister that her absence was due to an unforeseen family-related reason as explained by the principal claimant. There was no request to have the sister testify via teleconference if she was unable to come in person.

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<sup>18</sup> Exhibit 16.

[54] Furthermore, the Panel also notes that the sister personally translated a number of the claimants' personal documents. Therefore, having the sister available as a live witness would have given the Panel an opportunity to assess the weight of her testimony, in light of what involvement she may have had in helping the claimants prepare for their hearing.

[55] Given the level of detailed changes made to the principal claimant's BOC from the last sitting, live testimony from a family member would have been probative evidence to consider. The Panel draws a negative inference to the absence of the live witness at the hearing.

[56] There have already been conflicting explanations regarding why the husband did not accompany the claimants, and whether he supported them leaving, and what the present dynamics of the marriage are, and whether the husband has a present interest in harming the principal claimant on a balance of probabilities. The Panel finds that the letters from her family members are insufficient to overcome the already existing credibility concerns, and therefore, they are given little weight.

*(ii) Text messages and voicemails from husband*

[57] The claimant provided a text message conversation that allegedly took place with her husband on November 17 and written texts of voicemails received on January 20.<sup>19</sup> Upon close examination, there are no dates on the original messages, but in the translated copy, the dates are written as 2017 and 2018 respectively. It is unclear how the translator assumed that these were the correct years, or how this information came about. The Panel also notes that the tone of the text message writer is noted as "sarcastically".<sup>20</sup> It is unclear how the translator was able to account for the tone of a written text message. The Panel finds that the translator's personal opinions about the text message to affect the overall reliable nature of the document itself.

[58] The Panel also takes into account that the husband has already been known to provide unreliable evidence, as shown by his support letter. The first text message exchange took place on November 17, 2017, allegedly ten days after filing the support letter and one day after filing the parental consent letter. Given the numerous different explanations for the husband's absence, and

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<sup>19</sup> Exhibit 16.

<sup>20</sup> Exhibit 16, page 18.

whether he supports the refugee claim and the principal claimant's decision or not, the Panel finds that the existence of these electronic exchanges does not outweigh the already existing credibility concerns with the claim. Consequently, the Panel assigns the text messages little weight.

[59] It is not for the Panel to speculate on which parts of the principal claimant's testimony are likely more true than the other parts of her testimony. It is also not up to the Panel to speculate on which of the many explanations regarding why she left Lebanon without her husband is more credible than the others.

[60] The Panel has already determined that the principal claimant is not a reliable witness. Consequently, the Panel finds that on a balance of probabilities, that the principal claimant has not met her onus to prove on a balance of probabilities that she faces a serious possibility of persecution if she were to return to Lebanon, because of domestic violence by her husband.

#### **Second claimant does not face risk of persecution in Lebanon**

[61] The second claimant indicated that she was sexually assaulted by a person whom she believes is a member of Hezbollah. She indicated that although it was dark at the time, and that he was wearing a yellow shirt, and Hezbollah members are known to wear yellow. She also believed that she was targeted by a Hezbollah member because her family was being attacked at the time, and so she believed she was being targeted by them. Other than a yellow shirt, the second claimant did not recall any other details about her attacker that would characterize him as a member of Hezbollah. This attacker was a stranger to her, and she could not clearly see everything because it was dark, other than the colour of his shirt.

[62] The Panel finds that the second claimant's belief that she was targeted by a Hezbollah member to be speculative. The second claimant associates her attacker with Hezbollah because of the colour of his shirt. The documentary evidence does not indicate that Hezbollah members are the only persons in Lebanon who wear the colour yellow. As indicated above, the Panel disbelieves that the claimants were targeted by Hezbollah.

[63] Given the lack of detail about the attacker or why she was attacked in the first place, the Panel finds that the second claimant has not met her burden of proof to show that she would be targeted once again in the future, because of a Convention ground; whether gender, lack of

political affiliation, or her religion. Therefore, the Panel finds that the second claimant does not face a serious possibility of persecution if she returns to Lebanon, and she would not face a personalized risk to her life, of torture, or of cruel and unusual punishment.

### **Third claimant and minor claimant do not face risk of persecution in Lebanon**

[64] The minor claimant was seventeen years old at the time of the hearing, and was weeks away from his eighteenth birthday. Therefore, he testified on his own behalf during the hearing.

[65] Both the third and the minor claimant alleged that they faced a personalized risk of harm to their lives if they returned to Lebanon, because their father is being targeted by Hezbollah, and as family members associated with their father, they would also face persecution by proxy.

[66] Both the third and the minor claimants testified that they have never been harmed by Hezbollah in the past, and nor have they ever threatened by them.

[67] The minor claimant testified that he believed that he could be harmed by Hezbollah in the future, because his sister, the second claimant, was previously targeted.

[68] The third claimant believes that he could be harmed by Hezbollah in the future, because he had a friend who was shot in the leg by Hezbollah in the past, so believes that the threats of Hezbollah are serious.

[69] The Panel finds that the threat of Hezbollah and any serious possibility of persecution, or any potential personalized risk to the lives of the third and minor claimants are based on speculation. For the reasons above, the Panel does not find that the claimants' father was attacked by Hezbollah. As a result, the Panel finds that the third and minor claimant's allegations are not credible on a balance of probabilities, and they do not face a risk of being targeted by Hezbollah if they return to Lebanon, because of their Sunni faith, their lack of political affiliation, or any other reason.

### **CONCLUSION**

[70] The Panel has carefully considered all the oral and written evidence in the claim. For the reasons above, the Panel finds that the claimants do not face a serious possibility of persecution if

they were to return to Lebanon; nor do they face a risk of torture, cruel and unusual treatment or punishment, or a personalized risk to their lives.

[71] Therefore, the claims are rejected.

*(signed)*

**“M. Lee”**

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**M. Lee**

**May 4, 2018**

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**Date**