Immigration and Refugee Board of Canada
Refugee Protection Division

Commission de l'immigration et du statut de réfugié du Canada
Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : TB7-19073

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX XXXX XXXX	**Demandeur(e)(s) d'asile**
Date(s) of Hearing	November 30, 2017 January 15, 2018	**Date(s) de l'audience**
Place of Hearing	Toronto, Ontario	**Lieu de l'audience**
Date of Decision and reasons	March 21, 2018	**Date de la décision et des motifs**
Panel	John Kivlichan	**Tribunal**
Counsel for the Claimant(s)	Gerard P. Levesque	**Conseil(s) du (de la/des) demandeur(e)(s) d'asile**
Designated Representative(s)	N/A	**Représentant(e)(s) désigné(e)(s)**
Counsel for the Minister	N/A	**Conseil du (de la) ministre**

Canada

REASONS FOR DECISION

INTRODUCTION

[1] The claimant is XXXX XXXX XXXX XXXX XXXX,[1] a 41-year-old man from Hebron in the West Bank, the Occupied Palestinian Territory (OPT).

[2] The claimant fears harm on account of his race/ethnicity (stateless Palestinian) and real or imputed political opinion (anti-Israeli). He claims refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA).[2]

ALLEGATIONS

[3] In the first version of his Basis of Claim Form (BOC) at Exhibit 2 and signed by him on October 10, 2017, the claimant alleges that:

- Since 2009 there have been numerous assaults on the claimant and his family by Jewish settlers in Hebron, who have forced themselves into the claimant's family home in the night, putting the occupants out onto the street for two or three hours at a time while the settlers ransacked the home, and falsely accused the family members of writing anti-settler graffiti on town walls.

- In 2014, the claimant's son was sitting outside the family home when a group of settlers shouted profanities at him and began to beat him up. They spoke in both Arabic and Hebrew, stating that they owned the land and he had invaded it.

- On XXXX XXXX, 2015, the Israeli army shot and killed one of the claimant's neighbours in Hebron, a 17-year-old girl. They claimed that this was in self-defence as she had a knife; they planted that knife on her dead body. On XXXX XXXX, 2015, this also happened to another young neighbour, a boy aged 18.

- On XXXX XXXX, 2016 three of the claimant's young neighbours in Hebron were killed by the Israeli army while walking in town.

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[1] Listed in the IRB database, incorrectly, as "XXXX XXXX XXXX XXXX XXXX".
[2] S.C. 2001, c.27 as amended.

- On XXXX XXXX, 2015 and XXXX XXXX, 2015 there were other incidents when neighbouring Palestinians in their mid-teens were shot by the Israeli army. This also happened to a young female Palestinian on XXXX XXXX, 2016.

- The claimant's children are regularly stopped, detained, and questioned at city checkpoints four times every week while going to school. Sometimes they are detained in other areas also and held for up to an hour for no good reason, just to check their school bags and harass them.

- The claimant's parents' second story apartment was entered by Israeli soldiers who stole his mother's freshly baked bread.

- In 2004, the claimant was beaten on the street by Israeli soldiers when he was returning after a night out with friends. They hit him with their gun butts and kicked him with their boots. He was hurt in his stomach and groin area. The claimant's friend was also mistreated.

- In XXXX 2015, his 15-year-old son was detained at a checkpoint for three hours by the Israeli soldiers who shouted at him but then suddenly released him. They told him he had no country or home and did not belong there.

- In 2014, the claimant was stopped twice at checkpoints, and his car was searched and ransacked. His children were frightened and crying because the soldiers pointed their guns at them.

- The claimant was constantly stopped by soldiers, searched, and verbally abused.

- His 14-year-old son suffers from anxiety attacks and is very fearful.

- The Israeli soldiers say that the land is Israel's, and they want to ethnically clean the area. They want the Palestinians to leave. They send their people to buy Palestinian homes and push them out. The Israeli settlers on the borders of the Palestinian neighbourhoods spy on the Palestinians to get kicked out. They have closed down Palestinian-owned businesses, including the claimant's father's repair business

- The claimant fears that he would be abducted and killed by the Israeli army and/or the settlers because he is a Palestinian, and because of his perceived political opinion against the Israeli occupation and mistreatment.

- The Palestinian Authority is not allowed in the claimant's area to protect them. The claimant fears the Israeli army as the agent of persecution.

- The claimant believes there is nowhere else to go in the area.

- After his son was threatened in 2014, he decided he had had enough of the abuse and discrimination by the Israeli army and settlers, and the situation had become unbearable. He could not even work because although he was a car mechanic, the local Palestinians had no money to pay him for his services. He could not go and work in Tel Aviv because settlers would not allow him to cross their areas. He was no longer able to feed his family. The claimant left on XXXX XXXX, 2015.

- He went to the USA on XXXX XXXX, 2015, and stayed until XXXX XXXX, 2017. When he spoke to a lawyer about applying for asylum, the claimant was discouraged from making a claim as it was already over one year since he had arrived in the USA. The claimant learned that it was too late; he did not know anything about making an asylum claim previously. He had simply wanted to work in order to send money to the children. The US immigration attorney told him that the fees for his case would be between $4000 and $12,000. When the US immigration authorities came looking for the claimant, his roommate in the USA told them that the claimant had legal status in the country, so they left.

[4] In the second version of his Basis of Claim Form (BOC) at Exhibit 6 and signed by him on October 27, 2017, the claimant adds that:

- He was shot in the right leg by the Israeli army on XXXX XXXX 2014. A stray rubber bullet hit him when the army were shooting at a group of young children near his home while he was parking his car coming home from work. The Israeli army was also shooting off smoke bombs at that time.

DETERMINATION

[5] I find that the claimant is neither a Convention refugee nor a person in need of protection.

ANALYSIS

Personal Identity

[6] I am satisfied on a balance of probabilities that the claimant has established his personal identity based on the basis of his Palestinian Authority travel document and his Jordanian passport, the originals of which were seized by the Minister.[3]

[7] The Minister's Delegate review documents[4] include the relevant IRB *Response to Information Request,*[5] which indicates that Jordanian passports are issued to stateless Palestinians but do not confer Jordanian citizenship.

> "In correspondence with the Research Directorate, an official at the Embassy of Jordan in Ottawa indicated that Jordan issues travel documents to non-Jordanians, commonly referred to as "temporary passports," that are used for travel purposes only (Jordan 22 Oct. 2015). The official noted that Palestinians from the West Bank or Gaza who do not hold a passport or citizenship from another country can apply for such a travel document (ibid.).
> …
> In 5 May 2014 correspondence with the Research Directorate, a legal officer for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) [2] stated that while Jordan declared disengagement from the West Bank in 1988, it has continued to issue Jordanian passports to West Bank Palestinians, but they are "temporary" passports valid for five years, they do not have a national number, and they do not bestow rights of citizenship to the holder (UN 5 May 2014)."

[8] The panel is further satisfied that the claimant is stateless. The country of former habitual residence, and the only country of reference in this claim, is West Bank, Palestine.

Country of Former Habitual Residences

[9] The concept of habitual residence applies in a situation where the claimant is a stateless person, and does not have a country of nationality.[6]

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[3] Exhibit 1. Various other corroborating identity documents are also included in Exhibits 7 and 8.
[4] Exhibit 1.
[5] Exhibit 4, NDP re Palestinian Territory, Tab 3.4. RIR ZZZ105324.E. 29 October 2015. "Palestine and Jordan: Passports issued to stateless Palestinians by the government of Jordan, including procedures, entitlements, differences between Jordanian passports issued to Jordanian nationals and those issued to stateless Palestinians; passports issued to Palestinians by the Palestinian Authority, including requirements and procedures, and entitlements."
[6] *Marouf v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 723 (T.D.).

[10] A former habitual residence applies to situations in which a stateless person was admitted to a country with a view of enjoying a period of continuing residence of some duration.[7]

[11] The claimant need not have to be legally able to return to a country of former habitual residence for it to be so described.[8]

[12] The claimant must, however, establish a significant period of *de facto* residence in the country in question.[9]

[13] Where the stateless claimant has more than one country of former habitual residence, s/he must show that, on a balance of probabilities:

a. s/he would suffer persecution in any country of former habitual residence, and

b. s/he cannot return to any of his/her other countries of former habitual residence.[10]

[14] Statelessness *per se* does not give rise to a claim to refugee protection.

ANALYSIS OF MOTION OF BIAS

[15] Counsel's submissions raise issues of natural justice and Member bias with regard to entry of four pages of RPD disclosure in Exhibit 15, which includes an article from the BBC and another from the Palestinian Media News Watch.[11]

[16] The test for reasonable apprehension of bias can be found in the dissent of de Grandpré, J. in *Committee for Justice and Liberty v. National* Energy Board[12] and as followed in *Satiacum v. Canada (Minister of Employment and Immigration)*:[13]

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[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] *Thabet v. Canada (Minister of Employment and Immigration)* [1998] 4 F.C. 21 (CA).
[11] Exhibit 15. (1) BBC News. 8 January 2018. "Iran bans English from being taught in primary schools." (2 pp.) (2) Palestinian Media Watch. January 30, 2013. "Venomous Antisemitism published by Palestinian Ma'an News Agency Ma'an currently lists as "partners and funders" * the Danish, Dutch and UK governments and the EU, UNDP, and UNESCO." (2 pp.)
[12] *Committee for Justice and Liberty v. National Energy Board* [1978] S.C.R. 369.
[13] *Satiacum v. Canada (Minister of Employment and Immigration)* [1985] 2 F/C/ 430 (C.A.)

> "What would an informed person, viewing the matter realistically and practically--and having thought the matter through--conclude? Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would decide fairly."

[17] The bystander test was further defined in a Supreme Court decision (*Newfoundland Telephone Co.*):[14] "Whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator."

[18] The *Code of Conduct for Members of the Immigration and Refugee Board of Canada* [15] specifies that:

> **Natural Justice**
>
> 23. Members shall comply with all procedural fairness and natural justice requirements. Members are expected to approach each case with an open mind and, at all times, must be, and must be seen to be, impartial and objective.
>
> 24. Members shall disqualify themselves from any proceeding where they know or reasonably should know that, in the making of the decision, they would be in a conflict of interest, or that their participation may create a reasonable apprehension of bias. In such a case, they shall immediately inform their manager and provide the reason for their self-disqualification.

[19] IRPA provides that:

> **165** The Refugee Protection Division, the Refugee Appeal Division and the Immigration Division and each member of those Divisions have the powers and authority of a commissioner appointed under Part I of the *Inquiries Act* and may do any other thing they consider necessary to provide a full and proper hearing.
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> 2001, c. 27, s. 165;
>
> 2010, c. 8, s. 22

[20] The IRB *Chairperson's Guidelines 7: Concerning Preparation and Conduct of a Hearing in the Refugee Protection Division*[16] provides that:

> The roles of members and counsel
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> 2.1 Under the IRPA, RPD members have the same powers as commissioners who are appointed under the *Inquiries Act*. Note 2 They may inquire into anything they consider

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[14] *Newfoundland Telephone Co., v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623 at 636.

[15]

[16] *Effective date: December 15, 2006, Amended December 15, 2012*

> relevant to establishing whether a claim is well-founded.[Note 3] This means that they define what issues must be resolved in order for them to render a decision.
>
> 2.2 A member's role is different from the role of a judge. A judge's primary role is to consider the evidence and arguments that the opposing parties choose to present; it is not to tell parties how to present their cases. Case law[Note 4] has clearly established that the RPD has control of its own procedures. The RPD decides and gives directions as to how a hearing is to proceed. The members have to be actively involved to make the RPD's inquiry process work properly.

[21] It is therefore important to note that the RPD has both an investigative and an adjudicative function.

[22] In *Sivasamboo v. M.C.I.* (F.C.T.D., no. IMM-7460-93), Richard, November 30, 1994, at paragraph 18, notes that Members of the RPD have a role that is inquisitorial.

> "The scope of the Refugee Division's powers under the Immigration Act is wide: members may issue summonses to any persons and compel the production of documents; the legal and technical rules of evidence are relaxed in order to ensure a complete record upon which to make its decision; and it may take notice of any facts, information and opinion "that is within its specialized knowledge." […] The role of members of the Refugee Division at a hearing is characterized as inquisitorial since they not only hear the evidence which is presentable for them but must also inform themselves sufficiently about the applicants and conditions in a country of origin."

[23] Furthermore, while the *RPD Rules* set out specific rules as to the timing of disclosure by a party, as per RPD Rule 34, the RPD itself is ultimately only obliged to act with fairness and in accordance with natural justice. RPD Rule 33 does not set out specific timelines for disclosure by the RPD. The General Provisions within the RPD Rules, (at Rules 69, 70 and 71) provide sufficient flexibility in order that the RPD may fulfil its mandate, - to make well-reasoned decisions on refugee protection matters, efficiently, fairly and in accordance with the law.

[24] It is further understood that in a busy legal practice, no more or less so than in the RPD, there will be occasions when for operational reasons disclosure is submitted later than would ideally be the case. The panel notes that it received Exhibit 11, a document regarding the Occupied Palestinian Territory dated 13 April 2017, in person at the first hearing of the present claim on November 30, 2017. The panel allowed that late disclosure, even though it was clearly available before the hearing date.

[25] The specific documents in Exhibit 15 are four pages long. Counsel argues that the "Failure to give timely disclosure is a breach of natural justice as concerns the Member's production and filing of Exhibit 15."[17]

[26] Counsel cites two Federal Court decisions in support of the argument made, about production of documents from the IRB.[18] However, with respect, the panel does not think that these cases assist.

[27] In *Fi v. Canada (M.C.I.)*, (F.C.T.D., no. IMM-2091-06), Martineau, September 19, 2006; 2006 FC 1125, starting at paragraph 8, it is noted that the PRRA Officer relied upon documentation which was never even disclosed, as well as Wikipedia documents which are of questionable probative value.[19]

> [8] First, the PRRA officer violated the applicant's right to procedural fairness in the determination of his application for protection. The principles mentioned by the Federal Court of Appeal in *Mancia v. Canada (Minister of Citizenship and Immigration)(C.A.)*, [1998] 3 F.C. 461 at para. 27, are applicable here. It is apparent that the PRRA officer consulted relevant documentary extrinsic evidence found on the internet, upon which the applicant was never given an opportunity to comment. Such unilateral use of the internet is unfair (*Zamora v. Canada (Minister of Citizenship and Immigration)* (2004), 260 F.T.R. 155, 2004 FC 1414 at paras. 17-18).
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> [9] In particular, the use of information from the Wikipedia website is highly questionable, as the reliability of its sources has not been demonstrated to the Court.

[28] Similarly, in the second case counsel cited, *Zamora*, the concern raised was regarding the conduct of the PRRA officer who relied upon documents which were not disclosed.

[29] By comparison, the panel notes that counsel was provided with Exhibit 15 at the hearing on January 15, 2018, and was allowed to provide submissions, including any further documentation on point, by February 12, 2018. Therefore, counsel was afforded four weeks in which to review and consider the Exhibit 15 documents, which the panel does not perceive to be unreasonable or unfair given the documents in question are only four pages long.

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[17] Exhibit 17, Counsel's submissions, February 12, 2018. Page 9
[18] Ibid., p.11
[19] A Wikipedia excerpt is included in the claimant's disclosure, in Exhibit 13.

[30] The first is dated January 8, 2018 from the BBC, a respected news source on the Internet, and notes that both broadcast and print media in Iran are control by the state, including several English language outlets such as Press TV. The second article is from Palestinian Media Watch, and makes reference to the Palestinian MAAN news agency, citing a specific anti-Semitic article from that news agency's website.

[31] Country condition documentation from both the Iranian Press TV and the Palestinian MAAN news agency is found within the claimant's disclosure, in Exhibits 12 and 16. The claimant's disclosure also includes articles from Al Jazeera, a state-owned Qatari news service.

[32] Much has been written about the situation of Palestinians. In order to assess the weight to be given to any country documentation, the panel must consider whether any country documents are timely, objective, trustworthy, and without taint of bias.

[33] In conclusion, the panel disagrees with counsel's submissions regarding bias for the RPD Member, and determines that the test for reasonable apprehension of bias has not been met in all the circumstances of this matter. The panel does not agree either, that there has been any lack of natural justice or fairness regarding the Exhibit 15 documents.

Claimant's Failure to claim asylum in the US, Failure to comply with RPD Rule 11

[34] The panel notes that the claimant obtained a United States of America Visitor visa,[20] based upon his Jordanian passport, and issued in Jerusalem on XXXX XXXX, 2015. He entered the USA on XXXX XXXX, 2015 and remained there until XXXX XXXX, 2017. The US visa stamp of admission dated XXXX XXXX, 2015, makes reference to a "B-2" visa, a common tourist type, and has a subscript date of "XXXX XXXX 2015" to indicate the end of the term of validity. Therefore, it is apparent that the claimant remained illegally in the USA after XXXX XXXX, 2015 and until XXXX XXXX, 2017.

[20] Exhibit 1, Jordanian passport, issued XXXX XXXX, 2014, USA Visa.

[35] This was not his first visit to the USA, as he had gone there for a brief trip of about a month in 2005, and then returned as a "visitor" between XXXX 2006 and XXXX 2008.[21] He was also refused entry to the USA in XXXX 2008.[22]

[36] During both the 2006-2008 and 2015-2017 periods, he overstayed his visitor visas and worked illegally in the USA., specifically in Irving, Texas.

The US Biometrics

[37] The U.S. Biometrics[23] records indicate that the claimant was first fingerprinted at the US Visa Post in Jerusalem on XXXX XXXX, 2005 when he applied for his Non-Immigrant Visa. The next entry is on XXXX XXXX, 2005 when he was fingerprinted by Department of Homeland Security, Customs and Border Protection, Special Alien Registration. That organization fingerprinted him again on XXXX XXXX, 2006, and also on XXXX XXXX, 2008; on the latter date the Organisation Unit listing is "APPREHEND".

[38] Then the claimant was fingerprinted again by the US visa post in Jerusalem after his return to his home area, this time when applying for a visa in Jerusalem on XXXX XXXX, 2009. The final entries for the US biometrics were his most recent application for a US visa in Jerusalem on XXXX XXXX, 2015, followed by his arrival at Chicago O'Hare International airport on XXXX XXXX, 2015.

[39] At his oral hearing on November 30, 2017, the claimant was asked why he had not made an asylum claim upon arrival in the USA in 2015. He replied that he did not know that there was a refugee process. The claimant asserted that he had gone to the USA because of the problems he had faced in 2014 where he had been living.

[40] The panel asked if he was not afraid to remain illegally in the USA, and he replied in the affirmative. The panel asked him why he had not spoken to a US Immigration attorney. He

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[21] Ibid, CBSA, Notes to File, Examining Officer Notes, p.2. 6 October 2017. "Q: How long have you been in the United States? A: In 2005 I was visiting from one month. In 2006 to 2008 I was living and working in the US. I returned back to Palestine and returned to live and work in the US from 2015 to present."
[22] Exhibit 10, U.S. Biometrics.
[23] Ibid.

replied that he had gone to a lawyer who told him that he was too late to file for asylum, and wanted between $4,000 and $12,000 to act on his behalf.

[41] The IRB RPD Case Management Officer wrote to the claimant and counsel on October 19, 2017[24] advising that the RPD Member had instructed that the claimant provide: (1) Copy of US B1/B-2 Visitor Visa application; and, (2) Corroboration of any consultation/communication with immigration/asylum attorney while in USA.[25]

[42] The claimant provided a business card for Marc Esquenazi, Attorney-at-law, in Dallas Texas[26] and a form purporting to be his US application to extend his non-immigrant status.[27] However, there is no clear indication on the form that this was in fact filed.

[43] The panel noted to the claimant that the request from the Case Management Officer letter specifically asked for corroborating documentation about the advice given by the US immigration attorney. The claimant's counsel referred to the XXXX 2015 extension application for the non-immigrant status.

[44] Both the panel and counsel had to repeatedly ask the claimant about the absence of documents which would corroborate that he spoke to the US immigration attorney about an asylum claim or, for that matter, his immigration status. The claimant said that he had gone to a lawyer and asked. He said that he had a business card.

[45] The claimant was asked if he requested written documents to corroborate the consultation. Counsel interjected, and opined that he did not think the claimant understood the question. The panel invited counsel to rephrase the question, which he did. Then the claimant said that he had gone with a friend to the US lawyer, and later asked the friend to get that information. But the friend had not been successful.

[46] The panel asked the claimant why he could not have written directly by letter to the lawyer or by email (given the address and email listed on the business card). The claimant replied, "I don't know if he will remember me. I thought my friend could refresh his memory."

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[24] The panel has entered this post hearing as Exhibit 18
[25]
[26] Exhibit 7, p.30
[27] Exhibit 9, tab 1

[47] The panel notes that the claimant failed to provide the requested evidence regarding the alleged consultation with the US immigration attorney. There is no corroboration that he ever spoke to that lawyer and raised the issue of his problems in his home area, as alleged.

[48] It is reasonable to expect that the claimant would provide appropriate supporting documentation or at least make some effort to obtain the documents to substantiate the reason he failed to file a refugee claim in the USA. The onus to provide disclosure corroborating identity and other important aspects of a claim is on the claimant, and the claimant was well aware of his obligation in this matter.

[49] The panel notes that between the first and the second hearing dates of this matter, the claimant provided the Confirmation page for his US non-immigrant visa.[28] However, that does no more than confirm the fact of the visa, which is not in dispute. In addition, the claimant has provided the United States Freedom of Information/Privacy Act Request in which his counsel requested a copy of the visa applications and information. However, this request was only sent to the United States authorities by email dated XXXX XXXX, 2017,[29] which is two months after the October 19, 2017 letter request was sent by the IRB Case Management Officer[30] advising of the panel's request for such documents. The panel finds that the request was not filed on a timely basis.

[50] Rule 11 of the *Refugee Protection Division Rules* states that:

> "The claimant must provide acceptable documents establishing identity and other elements of the claim. If the claimant does not provide acceptable documents, he must explain why they were not provided, and what steps were taken to obtain them."

[51] The panel finds, on a balance of probabilities, the claimant is in default of aspects of RPD Rule 11.

[52] The panel finds that the claimant has not provided any reasonable explanation for the failure to provide acceptable documents establishing that he ever consulted with a US immigration attorney about making an asylum claim in the USA.

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[28] Exhibit 12. Personal and Country disclosure, received by the IRB on January 2, 2018.
[29] Ibid.
[30] Exhibit 18

[53] Experienced counsel represents the claimant. The claimant was on notice that credibility was an issue. It is not unreasonable to expect that a claimant who has consulted with a qualified immigration attorney in the United States, and whose address is clearly listed on the business card, should provide the documentation which was requested of him. The claimant's explanation for not doing so was not reasonable. The panel therefore draws an adverse inference from this lack of documentation and also regarding the claimant's credibility.

[54] The panel can only conclude, on a balance of probabilities, that the claimant (and counsel) have taken this position because the documents, which would otherwise be disclosed, would negate the allegation that the claimant ever consulted with any US immigration attorney regarding any asylum claim, or brought any alleged problems in the claimant's home area to that person's attention.

[55] Where there are valid reasons to doubt a claimant's credibility, a failure to provide corroborating documentation is a proper consideration for a panel if the Board does not accept the claimant's explanation for failing to produce that evidence.[31]

[56] Such conduct seriously undermine the claimant's credibility.

Failure to claim in the USA, Reavailment in 2008

[57] The claimant first went to the USA in 2005 then returned to the West Bank. He said that he had not made a claim during the first or even the second visit because he did not know about refugee matters. He returned, and reavailed, because he missed his children.

[58] The claimant testified that he entered the US for the third time in XXXX 2015, overstayed his visa (as he had also done in 2006 until 2008) and worked there in illegally until XXXX 2017. That US stay was for thirty months.

[59] He did not present himself to immigration authorities after the alleged application to extend his visitor visa in XXXX 2015, but chose to work illegally. He did not make a claim for

[31] *Amarapala v. Canada (MCI)*, 2004 FC 4, at para. 10 per Justice Kelen.

asylum. He alleged that he knew nothing of the procedures to make an asylum claim in the United States when he arrived there even though he was in fear of return to the West Bank.

[60] He also testified that his alleged application to extend his US visitor visa was rejected within two months, by XXXX or XXXX 2015, and "They came to the house looking for me".

[61] I do not accept the claimant's explanation for his failure to claim asylum in the USA during his most recent sojourn there.

[62] He entered the country illegally then he proceeded to work without authorization, for 30 months in 2015. The United States Biometrics indicate that he was previously apprehended and fingerprinted by officials of the Department of Homeland Security in XXXX 2008, during a previous visit to the USA. He testified that on the XXXX 2008 occasion he had been trying to enter the USA with identity documents in a slightly different name, and was therefore barred from the USA for five years as a consequence.

[63] The panel finds that the claimant is not and was not naive about immigration matters. Aside from his dealings with the United States, this includes a rejected application for a Canadian Temporary Resident Visa at the Canadian embassy in Amman, Jordan, which was denied on XXXX XXXX, 2008.[32]

[64] The panel finds and determines that it lacks sufficient credible and trustworthy evidence upon which it could have been satisfied that he made any real efforts to seek advice about his options in the US. I find that his illegal overstay,for the second time, his subsequent unauthorized employment, and his failure to make an asylum claim upon his entry all serve to impugn the veracity of his claim that his life was at risk in his home area.

[65] In *Mesidor*,[33] the Federal Court pointed out that:

> [11] In *Assadi v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 331 (QL), 70 A.C.W.S. (3d) 892, Justice Max Teitelbaum decided that the failure to immediately claim international protection can impugn a claimant's credibility even with regard to events in his or her country of origin.

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[32] Exhibit 1. *Schedule A Background/Declaration*. p. 2 of 5

[33] *Mesidor, Josue Peterlee* v. *M.C.I.* (F.C., no. IMM-2233-09), Shore, December 4, 2009, 2009 FC 1245, at para. 11 et seq.

[12] In addition, the courts have consistently held that a claimant's delay in filing a refugee claim can justify the rejection of a refugee claim in a case where this delay was not satisfactorily explained.

[13] For example, in *Espinosa v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324, 127 A.C.W.S. (3d) 329, Justice Paul Rouleau determined the following:

> [17] The Board states correctly that while the delay is generally not a determinative factor in a refugee claim, there are circumstances where the delay can be such that it assumes a decisive role; what is fatal to the applicant's claim is his inability to provide any satisfactory explanation for the delay.

(Also, Duarte v. Canada (Minister of Citizenship and Immigration), 2003 FC 988, 125 A.C.W.S. 137; Singh v. Canada (Minister of Citizenship and Immigration), 2006 FC 181, 146 A.C.W.S. (3d) 325; Ayub v. Canada (Minister of Citizenship and Immigration), 2004 FC 1411, 134 A.C.W.S. (3d) 485).

[14] In *Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 743, 149 A.C.W.S. (3d) 479, Justice Teitelbaum dismissed the judicial review on the basis of unexplained delays:

> [49] The case law on the issue of delay is clear. Very recently, i.e. on April 3, 2006, in *Bhandal v. MCI*, [2006] F.C.J. No. 527, 2006 FC 426, I decided that a delay was sufficient to dismiss an application for judicial review, relying on earlier case law.
>
> . . .
>
> [55] It is not patently unreasonable that the RPD determined that the applicant was not a credible witness.

[15] Recently, these principles were reiterated in *Semextant v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 29, [2009] F.C.J. No. 20 (QL):

> [23] In the present case, Ms. Semextant did not provide a reasonable explanation for the delay. The Board was, therefore, justified to conclude as it did on a lack of subjective fear (*Sainnéus*, above).
>
> [24] Consequently, there was no error on the part of the Board in concluding that Ms. Semextant's behaviour, in and of itself, undermined the credibility of her testimony.
>
> [25] The Board, therefore, was in a position to reject Ms. Semextant's claim for refugee protection, simply, on the basis of incompatible conduct with a "subjective fear":

> [8] There are many ways to make determinations in matters of credibility. In assessing the reliability of the applicant's testimony the Board may consider, for example, vagueness, hesitation, inconsistencies, contradictions and demeanour (*Ezi-Ashi v. Canada (Secretary of State)* [1994] F.C.J. No. 401, at paragraph 4). In *El Balazi v. Canada (Minister of Citizenship and Immigration)* 2006 FC 38, [2006] F.C.J. No. 80, at paragraph 6, Mr. Justice Yvon Pinard states that even in some circumstances, the applicant's conduct may be enough to deny a refugee claim:
>
> > The respondent correctly says that the IRB may take into account a claimant's conduct when assessing his or her statements and actions, and that in certain circumstances a claimant's conduct may be sufficient, in itself, to dismiss a refugee claim (*Huerta v. Minister of Employment and Immigration* (March 17, 1993), A-448-91, *Ilie v. Minister of Citizenship and Immigration*(November 22, 1994), IMM-462-94 and *Riadinskaia v. Minister of Citizenship and Immigration* (January 12, 2001), IMM-4881-99). [Emphasis added].
>
> (Biachi v. Canada (Minister of Citizenship and Immigration), 2006 FC 589, 152 A.C.W.S. (3d) 498).

[66] With regard to the issue of delay in seeking refugee status, I find that the claimant's actions and lack of action for approximately thirty months are not demonstrative of a genuine subjective fear of returning to his home area. I further find that the claimant's delay in seeking refugee protection also seriously undermines his credibility as someone who fears persecution in the West Bank.

[67] The panel finds it reasonable for Mr. XXXX to have sought the protection of the USA if he genuinely went to that country fearing for his life, as it has ratified the *United Nations Convention Relating to the Status of Refugees.* The claimant did not make any refugee or asylum claim in the USA, and the panel draws a negative inference regarding his credibility as a result. The panel also finds that this leads it to draw a negative inference regarding subjective fear. The panel acknowledges that such a finding only goes to the refugee claim under section 96 of the IRPA, and not a claim for protection under section 97.[34]

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[34] *Sanchez* v. *Canada (Minister of Citizenship & Immigration)*, (F.C.A., no. A-310-06), Richard, Sharlow, Malone, March 8, 2007, 2007 FCA 99 at paras. 14-15, see also, *Odetoyinbo* v. *Canada (Minister of Citizenship & Immigration)*, (F.C., no. IMM-4856-08), Martineau, May 14, 2009, 2009 FC 501 at para. 7.

[68] Such an analysis has also been supported by the Federal Court in the cases of *Huang* and *Sun*. The Court noted in *Huang*:[35]

> The evidence is quite clear that the Applicant came to the United States from China but failed to make a claim for asylum there, preferring Canada because "it's easier for Canada to accept your refugee claim". Neither the Board nor the Court likes country shopping (see *Remedios v Canada (Minister of Citizenship and Immigration)*, 2003 F.C.T. 437 at paragraphs 23 and 24).

[69] And in *Sun*:[36]

> As for the negative inference on the Applicant's credibility relating to his subjective fear drawn from the fact that he did not seek protection in the US, the Board did not err. Although refugee claimants are not obliged to seek asylum in the first country they enter after flight, the failure to claim is considered a relevant consideration to impugn the credibility of a claimant, provided it is not the sole basis of the credibility finding (*Gavryushenko v Canada (MCI)*, [2000] FCJ No 1209, at para 11). It should also be noted that the United States is a designated country under section 101(1)*(e)* of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (see *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 159.3), and therefore claimants arriving through the US are not normally eligible for referral to the Board. In the circumstances, the Board did in fact consider the Applicant's explanation that he thought refugees were ill-treated in the US, but did not accept it, and considered it to be one element amongst many that impugned the Applicant's credibility. On this point alone, I do not think the Board's reasoning was unreasonable.

The Claimant's Bigamous Marriage in the USA

[70] According to the *Generic Application Form for Canada*,[37] the claimant has been legally married to his spouse in Hebron, Ms. XXXX XXXX XXXX XXXX, since XXXX XXXX, 1998. She is the mother of his five children, born from 2000 until 2009. His family resides in Hebron, Palestine.

[71] However, in the same *Generic Application Form for Canada*,[38] the claimant has listed a second spouse, Ms. XXXX XXXX XXXX XXXX, to whom he was married in Texas from XXXX XXXX, 2016 until XXXX XXXX, 2017. She is not listed in the claimant's first Basis of

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[35] *Huang, Cuiqiong,* v. *M.C.I.* (F.C., no. IMM-8000-13), Hughes, March 24, 2015, 2015 FC 369, at para. 10.
[36] *Sun, Hongxin* v. *M.C.I.* (F.C., no. IMM-8088-13), de Montigny, March 27, 2015, 2015 FC 387, at para. 28.
[37] Exhibit 1, p.2 of 6.
[38] Ibid.

Claim Form, [39] but is mentioned in an addendum to the second BOC[40] were she is listed as "second Muslim wife".

[72] In reality, the second spouse legally married the claimant in Texas; it was not simply a religious marriage. The claimant provided a copy of the Original Petition for Divorce[41] regarding that second marriage, filed in Dallas County Texas and dated XXXX XXXX, 2017. Subsequently, the claimant has also provided a copy of the State of Texas, Certificate of Marriage.[42]

[73] At the start of the oral hearing on November 30, 2017, the panel asked the claimant about his marital status. He agreed that he had been legally married to the first spouse in Hebron, and testified that after he went to the USA he married his second spouse according to Islamic law, following which he engaged in a civil marriage with that second spouse. However, he was still legally married to his first wife, and remains so to this day.

[74] It is no more than general knowledge that many persons seeking to legalize their status in the USA, or Canada, will enter into a marriage of convenience to attain their immigration objectives. The panel asked the claimant whether he had entered into the marriage in the United States in order to obtain immigration sponsorship from that spouse.

[75] The claimant did not address the issue directly, but replied, "I got married in XXXX 2016 in the USA then divorced about XXXX XXXX, 2017." Why had he filed for legal divorce? He said that his second wife wanted this.

[76] The panel was entirely puzzled as to how the claimant was able to get married legally in the USA to the second spouse, given his pre-existing and ongoing legal marriage with the first spouse. The claimant blamed the American wife: "She told me to keep quiet about the existing marriage. She led me into everything!"

[77] The panel asked the claimant if he had not surely known that the second marriage could not be legal. Again, the claimant blamed the American wife: "She seduced me! She made a joke of me!'

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[39] Exhibit 2
[40] Exhibit 6
[41] Exhibit 9
[42] Exhibit 14

[78] In response to the panel's direct question, the claimant denied that he had entered into this bigamous marriage in the USA in order to obtain immigration sponsorship. The panel was puzzled and asked if there was another reason. The claimant replied, "I wanted to have sex, but not commit a sin, so we had to get married." The foregoing was the claimant's testimony regarding the bigamous marriage from the first hearing of his refugee protection claim, on November 30, 2017.

[79] During redirect testimony on this point at the second hearing on January 15, 2018, the claimant said that he had first met the American wife back in Hebron in about 2014, and she said that if he came back to the USA he should contact her.

[80] Next, the claimant said that it was her idea to get legally married in the USA. The claimant added that she told him that he could get legal status on that basis and would not be deported.

[81] The panel interjected, as the claimant's testimony in this regard was now beginning to evolve, and given that his evidence at the first hearing failed to indicate that the clear immigration advantage was on anyone's mind in Texas. The panel asked the claimant, again, "Did you get married in the USA for an immigration advantage?" This time, the claimant replied "She told me let's get a civil marriage so that your status will be legal. I know nothing about the law."

[82] Counsel then asked the claimant whether the American spouse had applied to sponsor him. Mr. XXXX replied that she had not done so, and he had asked the lawyer if she had. Again, he blamed the American spouse.

[83] The panel finds that the claimant's assertions in this regard, about being entrapped by the American spouse into the illegal and bigamous marriage, strain credulity. The panel notes that his testimony evolved over time and was not consistent. The claimant has been in the USA on three occasions. He overstayed his visa twice, and worked illegally for a year and a half to two years each time.

[84] The panel is also guided by the Federal Court of Appeal's decision in *Shahamati,* wherein Pratte, J.A., writing for the court, states, in part: "Contrary to what has sometimes been said, the

Board is entitled, in assessing credibility, to rely on criterion such as rationality and common sense".[43]

[85] The Federal Court of Appeal held in *Orelien* that "[O]ne cannot be satisfied that the evidence is credible or trustworthy, unless satisfied that it is probably so, not just possibly so."[44] Therefore, findings of fact, as well as the determination as to whether any claimant's evidence is credible, are made on a balance of probabilities.

[86] The events which precede the XXXX 2016 bigamous marriage include:

- The claimant's most recent entry into the USA on XXXX XXXX, 2015 with permission to stay until XXXX XXXX, 2015.[45] This followed his apprehension and immediate removal when he tried to enter the USA on XXXX XXXX, 2008[46], and was then barred from the USA for five years.

- The application, as alleged, to extend the U.S. Non-immigrant status, on or about XXXX XXXX, 2015.[47]

- The rejection of that application by U.S. authorities, as noted in oral testimony, in XXXX or XXXX 2015.

- The claimant's continued stay in the U.S., although he was without legal status.

- The claimant's employment in Irving, Texas as an auto lube mechanic from XXXX 2015 until he left the U.S. for Canada in XXXX 2017.[48]

[87] The panel does not know why this marriage sponsorship scheme was aborted. In the panel's view it does not matter whether or not any immigration sponsorship was pursued. The panel finds and determines that the claimant's evidence regarding the bigamous marriage in the

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[43] *Shahamati, Hasan* v. *M.E.I.* (F.C.A., no. A-388-92), Pratte, Hugessen, McDonald, March 24, 1994.
[44] *Orelien, Joseph* v. *M.E.I.* (F.C.A., no. A-993-90), Heald, Mahoney, Stone, November 22, 1991. Reported: *Orelien* v. *Canada (Minister of Employment and Immigration*) [1992] 1 F.C. 592 (C.A.); (1991), 15 Imm. L.R. (2d) 1 (F.C.A.), at 605, per Mahoney J.A.
[45] Exhibit 1. Jordanian passport. Stamps and handwritten date on US Visa page.
[46] Exhibit 10. US Biometrics.
[47] Exhibit 9, Tab 1.
[48] Exhibit 1. *Schedule A. Background Declaration*.p.3 of 5. Personal History.

USA was singularly lacking in credibility. The panel further finds and determines that such conduct by him indicates the extent to which he is willing to pursue his goal of achieving legal status in North America. It is therefore appropriate to draw a further negative inference regarding the claimant's overall credibility.

Analysis of the claimant's evidence regarding problems in the West Bank

[88] At the initial hearing of this matter on November 30, 2017, the claimant said that he had gone to the United States in XXXX 2015 because in 2014 he had faced problems where he was living. "They put weapons to my son's head. They attacked him and problems erupted back then in Hebron." The claimant said that the problems were caused by the "Jewish sons of settlements and by the soldiers". He reiterated that his son was scared, while he was fearful of the soldiers.

[89] At the hearing on January 15, 2018, he stated that his and his children's lives were in danger, and on XXXX XXXX, 2017 they had raided his house at 3 a.m., causing havoc and wrecking the property. He alleged that this was being done because the "settlers wanted to kick us out of the area." He then said that an older, extremist settler had brought soldiers to his home at that time and alleged that there was somebody present in the household who had been throwing stones. The claimant added that this had happened to 4 or 5 other Palestinian homes as well on the same evening. His wife had telephoned him that same night to advise him of these events.

[90] The claimant did not ask his wife for any written statement of corroboration, but she had emailed him photographs[49] showing that the property had been "ransacked", as he put it. The panel asked the claimant if he had any written statement from his wife to corroborate this alleged event. The claimant said he did not have one but had only spoken to his spouse on the telephone. The panel asked if he had requested a written statement from her, and again he asserted that they had only spoken on the telephone.

[91] The panel notes that the claimant's oral evidence was that this was the first such incident since 2014. His evidence below, regarding such incidents, was not credible or trustworthy. In that context, and given the extensive subjective fear and credibility concerns raised throughout the claimant's case, the panel is not convinced on a balance of probabilities that the claimant's family

[49] Exhibit 12, second package, pp. 13-21.

home was ransacked in XXXX 2017 as alleged, between the first and the second hearing dates. The panel gives little or no weight to the photographs.

Inconsistent evidence as to who may have vandalized the home

[92] The panel asked the claimant if his home had been vandalised in a similar manner previously. He said that it had happened in XXXX 2014, and six or seven times otherwise. He said that it was done by the Israeli settlers, who never came to his family home by themselves because they were too scared, but were accompanied by the Israeli army.

[93] However, in the BOC in question 2(a),[50] the claimant indicated that "Since 2009 there have been numerous assaults on me and my family by Jewish settlers in Hebron. The settlers forced themselves into our home in the middle of the night putting us out in the street in our underwear for 2 to 3 hours at a time. They ransacked our home, destroyed furniture, and falsely accused us of writing graffiti against them on the walls in town."

[94] The claimant was asked to explain why his BOC response made no mention of involvement by Israeli soldiers. He replied, "When my lawyer wrote the narrative I referred to everybody as Jews but gradually I'm starting to understand the difference." The panel did not understand the omission from his answer, specifically given that the soldiers would wear uniforms, and asked the claimant if he had any further explanation. He replied, "Now I realize I should state the difference."

[95] The panel finds that this is an important inconsistency in his evidence, and draws a further adverse inference. His evidence was not consistent in this area of testimony as to the specific agents of persecution who caused problems for him at his home.

[96] The claimant was asked if he had any other serious problems in the West Bank. He replied, "Now they're happy I'm not there. They will fabricate something against me to deport me from the area." The claimant made reference to being hit in XXXX 2014 on his leg with a plastic bullet, when the Israeli army were allegedly shooting at nearby youths. Although the panel did not question the claimant further on this point, the original BOC in Exhibit 2 did not mention such an

[50] Exhibits 2 and 6.

incident, and the revised BOC in Exhibit 6 specified that the event was on XXXX XXXX, 2014, not XXXX. In any event, the panel gives little weight to that incident as it appears to have been accidental in nature when the claimant was not personally targeted.

Inconsistent evidence as to where his son was attacked

[97] The claimant alleged that his son had been attacked by the sons of settlers in 2014; they had terrified him and he now suffered from severe psychological problems. The claimant thought that this was in XXXX 2014 when 30 people were walking together and 10 attacked his son. In oral evidence, he stated this occurred as the son was returning from school.

[98] However, the panel referred the claimant to the content of his BOC[51] which stated, "In 2014 while my son *was sitting outside our house*, a group of settlers began shouting profanities at him and began to slap, punch, and kick him.…" The claimant was asked to explain why the location of the attack differed between the oral and written evidence. He said, "We are living a time under stress, so all Jews are settlers." The panel had to repeat the question, noting that the oral version had his son walking home from school while the written version had the boy sitting outside the family home. Then the claimant tried to explain, and stated "I said they attacked him close to the house, while he was approaching."

[99] The panel rejects the claimant's explanation as lacking credibility. His evidence evolved in an untrustworthy manner.

Inconsistent evidence as to when his business was forced to close

[100] The claimant alleged that he had been a car mechanic in Hebron with his own shop, but had closed that because the situation had become too tense in 2014. Subsequently he testified it had been closed in XXXX that year because of lack of business, which had resulted from attacks upon his clients and their cars by the Israeli settlers.

[101] However, the panel referred the claimant to the *Schedule A, Background/Declaration*[52] in which he indicated that he was employed at the auto repair shop *until XXXX 2015*. The claimant

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[51] Exhibit 2, Exhibit 6. Question 2(a), p.2 of 10.
[52] Exhibit 1, *Schedule A, Background/Declaration* , p.3

said that perhaps the interpreter had made a mistake, and he had been working here and there for friends.

[102] The panel noted that in his BOC, the claimant mentioned that "They close down businesses owned by Palestinians. My father's repair business was forced out."[53] The claimant said that was in 2007, which the panel notes was before the claimant reavailed from the USA previously.

[103] However, the claimant's BOC did not clearly indicate the closure of his own business because of actions by the Israeli settlers against his clients. Instead, he stated that his clients could not afford to pay him.[54] He was asked to explain the differing evidence. He said, "I closed the business because of harassment by settlers. Later, they (Palestinians) couldn't pay me."

[104] Again, the claimant failed to give clear, consistent and credible evidence in an important matter regarding his claim.

CREDIBILITY SUMMARY

[105] As noted above, the panel has to assess the objectivity of country documentation. For this simple reason, little or no weight is given to the various documents provided by the claimant from sources of dubious repute and/or questionable objectivity, including the Iranian government source Press TV, the Qatari government source Al Jazeera, MAAN news, Palestinian News Network (PNN), or the open source online document from Wikipedia

[106] It is uncontested by the panel that life can be difficult in the West Bank; the National Documentation Package for Palestine supports the claimant's allegations of discriminatory treatment for Palestinians in the West Bank. The U.K. Home Office Report,[55] for example, details many such concerns including as follows:

> 3.9.17. Palestinians face systematic discrimination due to their race, ethnicity and national origin, which deprives them of electricity, water, schools and access to roads, and limited access to hospitals. Jewish settlers living close by are able to enjoy all of these amenities. Building permits for houses, schools, clinics and infrastructure are denied, and homes and

[53] Exhibit 2, Exhibit 6. BOC, page "2C".
[54] Ibid., q. 2(f).
[55] Exhibit 4, NDP, tab 1.12 at paras. 3.9.17 et seq.

entire communities are regularly demolished. Human Rights Watch reported that the number of settler attacks between January and 31 October 2011 was 42 per cent higher than in the same period in 2010 (which saw 266 settler attacks)… .

3.9.18. In November 2011, Human Rights Watch called on the Israeli authorities to end the military's "hand-off approach" to settler attacks against Palestinian property. The UN Committee on Economic, Social and Cultural Rights observed in December 2011, that Palestinians in the West Bank faced serious obstacles to the enjoyment of the right to work. … Approximately 540 internal checkpoints, roadblocks and other physical obstacles impede Palestinian movement within the West Bank; these obstacles exist primarily to protect settlers and facilitate their movement, including to and from Israel.

3.9.19. The Israeli forces reportedly used live fire and other excessive force against Palestinian demonstrators in the West Bank….

3.9.20 Conclusion. … the general economic and humanitarian situation in the West Bank and in Gaza in particular is serious and may, in some cases, reach the minimum level of severity for persecution or serious harm, depending on the individual circumstances of the applicant.

[107] The most recent United States Department of State Human Rights Report indicates that:[56]

The most significant human rights abuses were Palestinian terror attacks against Israeli civilians and security forces, which killed eight Israelis in East Jerusalem and the West Bank. Significant human rights abuses also included excessive use of force or deadly force by Israeli Security Forces (ISF) in a number of their interactions with Palestinian civilians; arbitrary arrest and associated alleged torture and abuse, often with impunity by multiple actors in the region; restrictions on civil liberties, particularly by Hamas in Gaza; and Israeli demolition of Palestinian homes and related displacement. Palestinian residents of the occupied territories had limited ability to hold governing authorities accountable for abuses.

Human rights problems in the parts of the West Bank under PA control included abuse and mistreatment of detainees, overcrowded detention facilities, prolonged detention, and infringements on privacy rights. Restrictions on freedom of speech, press, and assembly continued. There were limits on freedom of association and movement. Corruption--especially nepotism--violence against women, and societal discrimination were serious problems. At times the PA or PA-affiliated media and social media failed to condemn terror and embraced as "martyrs" individuals who died while carrying out attacks on Israeli civilians. Abuse of children and discrimination against persons with disabilities also were serious problems. Discrimination based on sexual orientation and HIV/AIDS status persisted. There were some limits on worker rights, and there was forced labor. Child labor, including forced labor, remained a serious problem.

[56] Ibid, tab 2.1, pp.1-2

Human rights abuses under Hamas included security forces killing, torturing, arbitrarily detaining, and harassing opponents, including Fatah members and other Palestinians with impunity. Terrorist organizations and militant factions in the Gaza Strip launched rocket and mortar attacks against civilian targets in Israel, and they did so at or near civilian locations in Gaza. Human rights organizations reported authorities held prisoners in poor conditions in detention facilities in the Gaza Strip, and Hamas publicly unlawfully executed persons without trial or after proceedings that did not meet "fair trial" standards. Hamas also infringed on privacy rights. Hamas restricted the freedoms of speech, press, assembly, association, religion, and movement of Gaza Strip residents. Discrimination against women and domestic violence were serious problems. Abuse of children and discrimination against persons with disabilities were problems. Hamas frequently promoted anti-Semitism. Discrimination based on sexual orientation and HIV/AIDS status persisted. Restrictions on worker rights continued. Forced labor, including by children, occurred.

Israeli forces killed 91 Palestinians, some of whom were attempting or allegedly attempting to attack Israelis. In a number of these incidents, there were reports of human rights abuses including allegations of unlawful killings related to actions by Israeli authorities. Additionally, there were reports of abuse of Palestinian detainees, including children, particularly during arrest and interrogation; austere and overcrowded detention facilities; improper security detention procedures; demolition and confiscation of Palestinian property; limitations on freedom of expression, assembly, and association; and severe restrictions on Palestinians' internal and external freedom of movement. Violence by Israeli settlers against Palestinians continued to be a problem, although at reduced levels compared with 2015. Israeli authorities' investigations of settler violence rarely led to indictments. Harassment and attacks against Palestinians in Jerusalem by Jewish extremist groups reportedly were common, and these incidents rarely led to investigations or indictments. The IDF and the Egyptian government maintained severe restrictions on movement into and out of the Gaza Strip, and Israeli authorities increased limits on the travel of Palestinians out of Gaza, including for humanitarian cases, business travelers, medical patients, foreign government sponsored public diplomacy and exchange programs, and local staff of foreign governments.

The PA and Israeli authorities took steps to address impunity or reduce abuses, but there were criticisms they did not adequately pursue investigations and disciplinary actions related to violations. Impunity was a major problem under Hamas.

[108] Excerpts from the most recent Amnesty International report note[57]:

> Israeli forces unlawfully killed Palestinian civilians, including children, in both Israel and the Occupied Palestinian Territories (OPT), and detained thousands of Palestinians from the OPT who opposed Israel's continuing military occupation, holding hundreds in administrative detention. Torture and other ill-treatment of detainees remained rife and was committed with impunity. The authorities continued to promote illegal settlements in the West Bank, including by attempting to retroactively "legalize" settlements built on private Palestinian land, and severely restricted Palestinians' freedom of movement, closing some areas after attacks by Palestinians on Israelis.
> …
> The year saw stabbing, car-ramming, shooting and other attacks by Palestinians on Israelis in the West Bank and in Israel. The attacks, mostly carried out by Palestinians unaffiliated to armed groups, killed 16 Israelis and one foreign national, mostly civilians. Israeli forces killed 110 Palestinians and two foreign nationals during the year. Some were killed unlawfully while posing no threat to life.

[109] The present claim must be assessed by the panel with reference to the country condition information, but also with regard to the claimant's evidence. The panel does not believe that it is simply enough to prove that one is a Palestinian from the West Bank in order to be determined a Convention refugee.

[110] Furthermore, the claimant's evidence was not credible when he asserted that innocent Palestinian children were being killed extra judicially, and then Israeli settlers and soldiers would plant a knife upon them, and claim that they had tried to stab the Israelis, when the Palestinians had never done anything wrong. The country documentation, noted above, clearly indicates there have been numerous instances where Palestinians attacked Israelis with knives, vehicles, and guns.

[111] The panel accepts, on a balance of probabilities, the claimant's identity as a Palestinian from the West Bank. The panel accepts that the claimant may have suffered from discrimination in his life.

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[57] Ibid, tab 2.2

[112] However, aside from that the panel did not find the claimant to be a credible witness in general terms. In *Sheikh*, MacGuigan, J.A., writing for the court, stated, in part: "In other words a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant information emanating from his testimony".[58]

CONCLUSION

[113] For the foregoing reasons, and having considered all the evidence, including the documentary evidence, the panel finds that the claimant is not a Convention refugee as he has not established that there is a reasonable chance or serious possibility that he would be persecuted for a Convention ground, or there would be a risk to his life or he would be subjected to cruel and unusual treatment or punishment should he be required to return to the Occupied Palestinian Territory (OPT) in a forward looking analysis. On substantial grounds, the panel finds that there is no danger of torture should the claimant return to the OPT. The panel rejects the claim pursuant to both sections 96 and 97(1) of the IRPA.

[114] The panel therefore concludes that the claimant, XXXX XXXX XXXX XXXX XXXX XXXX is neither a Convention refugee nor a person in need of protection, and the Division rejects his claim.

(signed) **"John Kivlichan"**

John Kivlichan

March 21, 2018

Date

[58] *Sheikh, Abdulhakim Ali* v. *M.E.I.* (F.C.A., no. A-521-89), MacGuigan, Iacobucci, Desjardins, July 4, 1990. Reported: *Sheikh* v. *Canada (Minister of Employment and Immigration*), [1990] 3 F.C. 238 (C.A.); 11 Imm. L.R. (2d) 81 (F.C.A.).