ATTACHMENT 3

DEFENDANTS' MOTION TO PREVENT PLAINTIFFS' ACCESS TO THE SEALED CLASSIFIED DOCUMENT

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Detroit, Michigan

File Nos.: A 79 546 461
A 79 690 509/510/511/512

November 22, 2002

In the Matter of: §
§
RABIH SAMI HADDAD (LEAD) §
SALMA AL RASHAID (WIFE) §
SANA RABIH HADDAD (DAUGHTER) § IN REMOVAL PROCEEDINGS
SAMI RABIH HADDAD (SON) §
OUSSAMA RABIH HADDAD (SON) §
§
Respondents. §

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act, as amended - after admission as non-immigrant remained longer than permitted.

APPLICATIONS: Asylum, Withholding of Removal, and Voluntary Departure

ON BEHALF OF APPLICANT:
Ashraf W. Nubani, Esquire
Noel J. Saleh, Esquire

ON BEHALF OF SERVICE:
Marsha K. Nettles,
District Counsel
Kathleen Alcorn,
Assistant District Counsel

DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. BACKGROUND

A. Lead Respondent's Case

Lead respondent[1] is a detained 42 year old male. He is a native and citizen of Lebanon who last entered the United States

[1] Sometimes lead respondent will be merely called the "respondent."

on September 2, 1998 as a non-immigrant visitor with authorization to remain not later than August 31, 1999. Respondent has remained longer than permitted.

On December 14, 2001 respondent was taken into custody and detained without possibility of bond by the Immigration and Naturalization Service (hereafter, Service) and issued a Notice to Appear (hereafter, NTA). See Exhibit 1. This NTA alleged removability under the above-mentioned section of the Immigration and Nationality Act (hereafter, Act or INA).

After bond redetermination proceedings[2] before Immigration Judge Elizabeth A. Hacker on December 19, 2001 and January 2, 2002, respondent's custody remained unchanged based on a flight risk finding.

On August 13, 2002 the Government moved for the entry of a protective order, to protect matters including the declaration of Special Agent Brent E. Potter of the Federal Bureau of Investigation (hereafter, FBI). This affidavit is known as the "Potter Declaration." After respondent's counsel initially agreed to the protective order, it was issued by Judge Hacker on August 27, 2002. Respondent and counsel were then given copies

[2] Based on a directive issued by Chief Immigration Judge Creppy of the Executive Office for Immigration Review, all hearings before Judge Hacker were initially closed to the public.

of the Potter Declaration.[3]

On September 17, 2002 Judge Nancy G. Edmunds of the United States District Court, Eastern District of Michigan, ordered respondent be given a new open court bond hearing, to be held within ten days, before a new Immigration Judge. See Haddad v. Ashcroft, Case No. 02-70605, (E.D.Mich) (hereafter, Haddad v. Ashcroft). On September 25, 2002 the undersigned was appointed to handle the bond matter as well as the instant removal proceedings.

In the interim, on September 24, 2002, respondent filed a motion to clarify and vacate the protective order. His motion claimed the protective order was too broad. The Government responded on September 30, 2002 by moving to narrow the scope of the order. On October 1, 2002 the Court amended the order to protect only certain portions of the matter originally covered by the August 27, 2002 protective order. In amending the protective order, this Court made the following specific finding: "The Court has studied all three versions [of the Potter Declaration] and determined the matter the Service seeks to protect presents a substantial likelihood of causing harm to national security or law enforcement interests of the United States, if those matter

[3] Respondent's counsel violated the protective order by giving the Potter Declaration to unauthorized persons. See Order to Remedy Protective Order Violations, dated October 17, 2002. See also Part V of this decision, *infra*.

[sic] are disclosed. 8 C.F.R. § 3.46(a)."

In compliance with the District Court's order, bond redetermination proceedings were re-commenced on October 1, 2002.[4] With the respondent's agreement the proceeding was completed following a second hearing on October 22, 2002.[5] On October 24, 2002 this Court upheld respondent's continued detention without bond as respondent posed a threat to national security and was a flight risk. See Bond Redetermination Decision of the Immigration Judge.

As respondent had conceded he was removable,[6] on October 23, 2002 respondent and the Service presented evidence on respondent's applications for relief from removal.[7] After that

---

[4] A portion of this hearing was closed. On October 7, 2002 Judge Edmunds held this "closure . . . was necessary for the Government to introduce evidence [Potter Declaration] which, if disclosed, could harm the national security or law enforcement interests of the United States . . . ." Haddad v. Ashcroft, slip op. at 4.

[5] This hearing was also closed at one point to present testimony on the Potter Declaration. Again this Court ruled: "The Court has studied all three versions [of the Potter Declaration] and determined the matter the Service seeks to protect presents a substantial likelihood of causing harm to national security or law enforcement interests of the United States, if those matters are disclosed." Specifically, closure was needed to protect sources and methods of gathering information and intelligence.

[6] As lead respondent declined to designate a country of removal, Lebanon has been directed pursuant to INA § 241(b).

[7] Respondent's applications for relief are listed at Part I, subpart C, of this decision. The merits of those applications

hearing the record was kept open for the limited purpose of giving respondent's counsel more time to remedy violations of the above-mentioned protective order. See footnote 3, *supra*.

B. Wife's and Children's Cases

Remaining respondents are lead respondent's wife and three non-United States citizen children. His wife is a native and citizen of Kuwait. Their daughter Sana and their son Sami are a natives of Kuwait and citizens of Lebanon. Their son Oussama is a native and citizen of Lebanon. They were placed into removal proceedings on January 15, 2002 with the publication of their respective NTA's (Exhibits 1, 1A, 1B, and 1C).

After remaining respondents conceded their removability,[8] their cases were consolidated with the lead respondent's case. Thereafter, they relied upon lead respondent's asylum application.

C. The Requested Relief

On July 9, 2002 before Judge Hacker the lead respondent

---

are addressed after this listing.

[8] Pursuant to respondents' requests, Kuwait was designated as the country of removal. At the Service request Lebanon was designated in the alternative. These designations were made pursuant to INA § 241(b).

filed, and signed under oath, an asylum application[9] which, concomitantly, requested withholding of removal to Lebanon pursuant to INA § 241(b)(3).[10] This application is Exhibit 3, Tab A. Accompanying the application was supporting documentation, denominated as Exhibit 3, Tabs B through Z. The application was later supplemented with more sub-exhibits. See Exhibit 3, Tab AA (filed on September 23, 2002); and Exhibit 3, Tab BB (filed on October 23, 2002).

Each respondent has also applied, pursuant to INA § 240B(b), for voluntary departure in lieu of an order of removal.

D. Position of the Parties on the Applications for Relief

1. The Service Position

The Government's position is that none of the respondents should be granted any relief.

---

[9] This application included lead respondent's family members as a spouse and children of an applicant who has been granted asylum may, if not otherwise eligible, be granted same status as principal alien. INA § 208(b)(3).

[10] While originally respondent claimed he would apply for withholding of removal under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (hereafter, Torture Convention) pursuant to 8 C.F.R. § 208.16, respondent's application did not rely upon the Torture Convention. See Exhibit 3, Tab A at pages 1 and 5. During closing arguments, Mr. Saleh confirmed respondent had not intended to apply for relief under the Torture Convention.

Concerning respondent's asylum application, the Government claims that as respondent has not filed his application "within 1 year of [his] arrival in the United States", his application is untimely and should not be adjudicated. See INA § 208(a)(2)(B); See also 8 C.F.R. § 208.4(a)(2). Moreover, the Government claims lead respondent had, before his last entry into the United States "firmly resettled" in Pakistan and Kuwait. Therefore, the Government asserts respondent is barred by statute and regulation from applying for asylum. See INA § 208(b)(2)(A)(vi); see also 8 C.F.R. § 208.13(c)(2)(i)(B) and 8 C.F.R. § 208.15.

It is also the Government's position respondent is statutorily ineligible for asylum "as there are reasonable grounds for regarding the alien as a danger to the security of the United States". See INA § 208(b)(2)(A)(iv); see also 8 C.F.R. § 208.13(c)(2)(i)(C). Similarly, the Government asserts he is statutorily ineligible for withholding "as there are reasonable grounds to believe the alien is a danger to the security of the United States." See INA § 241(b)(3)(B)(iv); see also 8 C.F.R. § 208.16(d)(2).

Concerning discretionary relief, *i.e.* asylum and voluntary departure, the Service maintains, citing 8 C.F.R. § 3.46(i),[11] these applications must be denied as respondent, through counsel,

---

[11] 67 Fed. Reg. 36,799 (2002).

has violated the protective order.

On both asylum and withholding the Government asserts even if the applications could be entertained, respondent cannot prevail as he has not met his burden of proof.

Lastly, the Government claims that, assuming respondents meet the basic statutory and regulatory requirements for voluntary departure, the Court should not grant this relief as a matter of discretion due to lead respondent's lack of candor with the Court. See INA § 240B(b); see also 8 C.F.R. § 240.26.

2. The Respondent's Position

Lead respondent claims none of his applications should be barred for the reasons asserted by the Service. Plus, he also maintains he has established that he has a well founded fear of future persecution and, therefore, should be granted asylum. He also asserts that even if the Court would not grant his asylum application, he has established that it is more likely than not he would be persecuted in Lebanon; hence, his removal to Lebanon should be withheld. Alternatively, respondents request they be granted voluntary departure.

3. The Court's Bottom Line

As developed below, respondents have no relief from removal.

II. IS THE ASYLUM APPLICATION TIMELY?

It is undisputed lead respondent did not file his asylum application within one year of his last arrival in the United States. The real question is, should his tardiness be excused?

Under INA § 208(a)(2)(D) there are two exceptions to the one year requirement, *i.e.* "changed circumstances which materially affect the applicant's eligibility for asylum" and "extraordinary circumstances relating to the delay in filing". Pursuant to INA § 208(a)(2)(D) and INA § 208(d)(5)(B), the Attorney General has detailed two series of examples to these statutory exceptions. See 8 C.F.R. § 208.4(a)(4) for the "changed circumstance" exception and 8 C.F.R. § 208.4(a)(5) for "extraordinary circumstance" exceptions.

In the case at bar the parties cannot agree on which general exception might apply to the facts of the case at bar.

Respondent relies on "changed circumstances." Specifically, respondent testified that but for four major events he would not be applying for asylum. These events are: First, the terrorist attack of September 11, 2001; Second, respondent's arrest three months and three days after these tragic murders; Third, respondent's speaking out, both before and after his detention, against the September 11 attack; and, Fourth, respondent's hearings, some held behind closed doors and some held in public, drawing the world's attention to respondent's predicament.

The Government agrees, in part, with respondent's factual analysis. However, the Government claims: there is a paucity of credible evidence that respondent condemned, prior to being detained, the September 11 terrorist attacks; the respondent's public denunciation of these attacks, during his removal hearing, was not sincere; and, most importantly, virtually all the publicity was generated by respondent when he took the Government to court to open the hearings. Lastly, the Government maintains respondent raises the "extraordinary circumstances" exception, not the "changed circumstance" exception.

The reason the Government seeks to pigeonhole respondent's exception as an extraordinary circumstance is, if the situation was intentionally created by respondent, he cannot prevail by definition. 8 C.F.R. § 208.4(a)(5) ("The burden of proof is on the applicant to establish . . . that the circumstances were not intentionally created by his own action or inaction . . . .")

The Court finds that respondent's position is more akin to the true facts, *i.e.* but for the terrorist attacks and respondent's subsequent detention, he would not have the asylum claim he has today.[12] Certainly these are changed circumstances.

---

[12] Under another set of circumstances his application for asylum might have been undoubtedly untimely. For example, if there was no terrorist attack and the issue of national security had not surfaced, he might have applied for asylum on completely different grounds.

While respondent, by seeking to open up his hearings to the public, intentionally generated publicity to give some heft to his application and to pressure the Government, respondent also did so because he believed he was entitled to a public forum.

While the ultimate resolution of respondent's claim that he is entitled to a public hearing may not be known in the near future, both Judge Edmunds and the Court of Appeals for the Sixth Circuit[13] agreed with the respondent. Hence, even if respondent's position is ultimately held to be wrong, his position is not frivolous. Accordingly, his request to open the hearings to the public is not the type of "intentionally created" milestone that would morph changed circumstances into extraordinary circumstances.

Even though the facts of this case raise the "changed circumstances" exception, respondent still must prove he filed his "application within a reasonable period given 'those changed circumstances.'" 8 C.F.R. § 208.4(a)(4)(ii). While the Attorney General has not defined "reasonable period," it must be viewed against the statutory backdrop giving aliens one year from their arrival to apply.

Respondent's first appearance before Judge Hacker in the removal proceeding was on January 9, 2002. It was at this

---

[13] Detroit Free Press v. Ashcroft, 303 F.3d 681 (6th Cir. 2002).

hearing respondent indicated that an asylum application would be forthcoming. Respondent filed his application on July 9, 2002.

As the asylum application was filed about ten months after the terrorist attacks, slightly less than seven months after his detention, and a mere six months after his first removal hearing, the Court finds respondent's application was filed within a reasonable time after the events that caused his application to be filed.

Respondent's application is timely.

III. HAS LEAD RESPONDENT FIRMLY RESETTLED?

Respondent cannot apply for asylum if he "was firmly resettled in another country prior to arriving in the United States." INA § 208(b)(2)(A)(vi). Respondent would be firmly resettled if, prior to arrival in the United States, he entered another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement. 8 C.F.R. § 208.15; Ali v. Reno, 237 F.3d 591 (6th Cir. 2001). Once the issue of firm resettlement has been raised, respondent has the burden of demonstrating he has not been firmly resettled. See, e.g., Abdalla v. INS, 43 F.3d 1397, 1400 (10th Cir 1994); see also 8 C.F.R. § 240.8(d). To do this respondent may counter by establishing: (a) he entered that country as a necessary consequence of "his flight from

persecution" and two other factors not relevant here; or (b) the conditions of his residence in "the country of refuge" were so restricted by authorities "that [applicant] was not in fact resettled." 8 C.F.R. §§ 208.15(a) and 208.15(b).

The concept of firm resettlement presupposes respondent was in "flight from persecution" or seeking "refuge" prior to entering the United States. *Id.* As respondent was not fleeing persecution when he and his family came to the United States in 1998, the Service position crumbles under its own weight.

Nevertheless, assuming the issue of "firm resettlement" has been raised in this case, the evidence *in toto* shows respondent never firmly resettled despite remaining in Pakistan and Kuwait for extended periods before returning to the United States in 1998.[14] Despite such extended stays, it is clear respondent never received an offer of permanent resident status, citizenship, or other type of permanent resettlement in any country prior to his arrival.

The closest respondent came to being resettled was in Kuwait, the home country of his wife. However, while respondent

---

[14] According to his testimony and asylum application, respondent resided in the United States from 1980 to 1988. See Exhibit 3, Tab A at 4. He then moved with his wife to Pakistan, and briefly Kuwait, from 1988 to 1992. They then returned to the United States before again moving to Kuwait for approximately one year from 1996 to 1997. From 1997 to 1998 they lived in Lebanon before their final "permanent" return to the United States.

had a special residency visa in Kuwait which he renewed monthly, it offered him no permanency. Even his two children who were born in Kuwait were not Kuwaiti citizens. See the children's NTA's at Exhibits 1B and 1C.

As respondent had not become "firmly resettled" prior to his latest entry into the Unites States, this statutory and regulatory bar does not preclude respondent from seeking asylum.

IV. IS LEAD RESPONDENT A SECURITY DANGER?

Once the evidence raises the issue of respondent being a "danger to the security of the United States" respondent shoulders the burden to show, by a preponderance of evidence, he is not disqualified from applying. 8 C.F.R. § 240.8(d).

As to whether respondent presents a danger to national security, the Potter Declaration speaks for itself. See Exhibit 3, Tab G (sealed). A discussion of this protected evidence is found in the sealed appendix to this decision.

Additionally, a plethora of public evidence circumstantially links respondent to terrorist elements. Succinctly stated, when taken altogether the evidence demonstrates respondent presents a substantial risk to the national security of the United States. The Court will now detail the four major evidentiary bases for this conclusion.

First, respondent has direct and nascent ties to the Global

Relief Foundation (hereafter, GRF), an organization designated a terrorist entity on October 18, 2002 by the United States.[15] See Exhibit 7. In his own words, lead respondent "laid the foundation for" GRF. He also served, *inter alia*, as its Chairman of the Board and Chief Executive Officer (hereafter, CEO) from 1993 to 1998. See Exhibit 4, Tab H.

Second, GRF was in contact with Wadih el Hage, an individual convicted in 2001 for the bombing of United States embassies in Kenya and Tanzania. See Exhibit 8 (Public Potter Declaration). El Hage was closely linked to Usama bin Laden and Muhammad Atef, bin Laden's military commander. *Id.* at 13-14. Most disturbing are El Hage's contacts with the GRF offices in Illinois and Belgium during 1996 and 1997. *Id.* at 14.

Respondent testified he had communications with the director of the Belgium office during 1997. He stated he received reports from Belgium and thought the director of the Belgium office was "admirable." However, respondent stated he knew nothing about any contacts with terrorists. In an attempt to distance himself from the Belgium office, respondent claimed the office was its own entity with its own articles of incorporation. Respondent's attempt to minimize his role and knowledge is not credible,

---

[15] Both before and after this designation GRF submitted written objections to this designation. See Exhibit 6. The Court has independently considered the GRF submissions before arriving at the same conclusion.

especially given his position within GRF and his acknowledgment that projects originating in Belgium were approved at GRF headquarters in the United States.

Third, respondent claimed GRF was strictly a humanitarian organization and did not support military action. However, GRF distributed newsletters seeking funds for military purposes. In a circulated GRF newsletter which explains "zakat"[16] guidelines, the author states that zakat is in part "for God's cause (the Jihad), they (the Zakat funds) are disbursed for equipping the raiders, for the purchase of ammunition and food . . . ." See Exhibits 5 and 8 at 16-17 (emphasis supplied). This newsletter then urges its readers to "pay your obligatory Zakat" to GRF so they may "disburse it as specified." See Exhibit 8 at 17. Respondent stated that as the definition of zakat inherently refers to "arming the raiders," GRF was merely correctly defining the term; but, GRF had no intention of using the funds for military purposes. Even so, GRF damns itself by adding it will disburse the funds "as specified."

Respondent's assertion that the organization he helped found was merely a humanitarian organization is torpedoed by GRF's own fund-raising literature.

Fourth, several dubious items were also found in a trash

---

[16] Zakat is described as a financial charity or obligatory duty and one of the five pillars of Islam. See Exhibit 5.

dumpster located behind GRF's headquarters on November 26, 1997 by the FBI. *Id.* at 18-19. These items included several photographs and negatives depicting several matters which are not typically associated with relief work.[17]

The most damning photographs are of sophisticated communication equipment, including approximately 200 handheld Yaesu FT-23R radio transceivers. *Id.* The Potter Declaration states, "this model radio was also used in the Gamaat Al Islamiya terrorist group assassination attempt on Egyptian President Hosnia Mubarak in Addis Ababa, Ethiopia on June 25, 1995." *Id.* at 19. It goes on to add, "this model radio was specifically noted in detailed handwritten notes and sketches which were in the possession of Fazul Abdullah Mohammed, an Al Qaeda subject under investigation in connection with the August 7, 1998 terrorist bombings of United States embassies in Kenya and Tanzania." *Id.*

Respondent testified GRF usually follows up on GRF projects with photographs, although he was not aware of the communication equipment in question. This is incredible considering the size

[17] This includes photos of Arabic literature authored by, among others, Abdallah Azzam, a man linked to Usama bin Laden and the origins of Al-Qaeda (See Exhibit 8 at 7, 10-11, and 17-18); bunkers; and two photos of deceased men labeled "Hizbul Mujahideen" - a known terrorist organization. Some of these photographs were developed from negatives. The record is not complete as to which ones were. Nevertheless, the presence of negatives tends to indicate they originated with GRF.

of the shipment and the fact that he was a GRF founder and CEO.

Succinctly stated, the sealed and public evidence demonstrates respondent is a danger to the security of the United States. Hence, his asylum and withholding applications must be denied.

V. DO PROTECTIVE ORDER BREACHES PRECLUDE DISCRETIONARY RELIEF?

Immigration judges have the express authority to issue protective orders and seal law enforcement or national security information. 8 C.F.R. § 3.46. As outline in Part I, subpart A, of this opinion, on August 27, 2002 Judge Hacker issued such an order to protect the Potter Declaration.

Respondent and his attorneys were given the complete declaration under safeguards. Judge Hacker specifically ordered that respondent and his attorneys not divulge any of the protected information without prior authorization. See August 27, 2002 Protective Order; see also 8 C.F.R. § 3.46(f)(2)(i).

As mentioned above, on October 1, 2002 the undersigned amended the order to protect only certain portions of the Potter Declaration.

Sometime after the initial protective order and before its amendment, respondent's counsel Mr. Nubani gave a complete copy

of the Potter Declaration to Barnett Rubin and Sherman Jackson.[18] It is uncontested attorney Nubani never even attempted to secure the required approval - - despite the direct and unequivocal order of Judge Hacker.

Respondent's counsel were also clearly on notice of the harsh consequences of unauthorized disclosures. As stated by the regulation, "[i]f the Service establishes that a respondent, or the respondent's attorney . . . , has disclosed information subject to a protective order, the Immigration Judge shall deny all forms of discretionary relief, except bond . . . ." 8 C.F.R. § 3.46(i)(emphasis supplied).

Given the unauthorized disclosures, this Court must deny the discretionary relief of asylum and voluntary departure unless respondent can demonstrate he is entitled to the regulation's narrowly drawn exception.

To qualify for the exception respondent must "fully cooperate . . . in any investigation relating to the noncompliance" and then demonstrate "by clear and convincing

---

[18] Respondent submitted an unsworn statement of Mr. Rubin on September 30, 2002 which acknowledged he had reviewed the Potter Declaration. Mr. Rubin was permitted to testify to the contents of the Potter Declaration during the respondent's bond proceeding. On November 13, 2002 the Court received an affidavit of Mr. Rubin which indicates Mr. Nubani faxed him a copy of the Potter Declaration. On November 12, 2002 the Court received an affidavit of Mr. Jackson indicating he too received a copy from Mr. Nubani.

evidence either that extraordinary and extremely unusual circumstances exist or that failure to comply . . . was beyond the control of the respondent and his or her attorney . . . ." *Id.*

Turning to the facts at hand, in response to the confessed violation this Court issued an order on October 1, 2002. This order provided that respondent and his counsel produce a declaration that identifies every person to whom they have divulged the contents of the Potter Declaration. Respondent, personally, ultimately complied by providing an affidavit. In this affidavit respondent revealed he did not disclose the contents of the Potter Declaration. He also, as required, returned his copy of the originally protected Potter Declaration. Similarly counsel Noel J. Saleh complied. Mr. Nubani initially replied with an unsworn and non-specific declaration before completely fulfilling the Court's order on November 13, 2002.[19] While the Court is unaware of other investigations into this matter, arguably respondent and counsel have ultimately complied with the Court's "investigation."

This cooperation is not enough to save respondent as he has not shown "by clear and convincing evidence either extraordinary

[19] The Court issued a similar remedial order on October 17, 2002 in response to the initial failure to comply. Then, upon a motion to enlarge time, the Court granted Mr. Nubani until November 13, 2002 to comply.

and extremely unusual circumstances exist or that failure to comply was beyond the control of respondent and his or her attorney . . . ."

The disclosure here was within the control of respondent's freely chosen counsel. Counsel deliberately disclosed without even a façade of attempted compliance.

No evidence of "extraordinary and extremely unusual circumstances" has been proffered. In fact, neither respondent nor his attorneys have offered any explanation as to why they failed to seek approval as required. The Court can only guess that, perhaps, they felt the permission to disclose the information would not be granted.

As respondent has not even suggested any extraordinary and extremely unusual circumstances, he *ipso facto* has not proven he should be granted any discretionary relief. Accordingly, the Court will deny lead respondent's applications for asylum and voluntary departure.

VI. SHOULD RESPONDENTS BE GIVEN VOLUNTARY DEPARTURE?

As noted in Part V of this decision, respondent is estopped from all discretionary relief due an intentional violation of the protective order. Nevertheless, when addressing voluntary departure, the Court will assume the protective order violation is no bar.

To be granted voluntary departure under INA § 240B(b)(1) an alien must demonstrate, *inter alia*, he has been a person of good moral character for at least the 5 years immediately preceeding his application and that he has established by clear and convincing evidence he has the means and the intent to depart the United States.

Lead respondent's family members failed to produce one iota of evidence, during the removal hearing, concerning their good moral character. Hence, their applications must be denied.

While lead respondent did testify concerning his good moral character, his proof is unconvincing for two major reasons. First, he testified he had never committed a crime. Yet, his asylum application reveals "I may have, unknowingly, possessed a hunting rifle illegally." See Exhibit 3, Tab A at 8. A review of his application to purchase this weapon belies his contention it was unknowing as respondent lied about the duration of his Michigan residency. See Exhibit 4, Tab M. Specifically, when he purchased the weapon, he certified he had been a Michigan resident for 3 months prior to his September 19, 1998 purchase. This was an obvious lie given that he had been in the United States less than 3 weeks. Second, respondent testified he had no terrorist ties. Yet, as noted above in Part IV of this decision, "the evidence demonstrates respondent presents a substantial risk to the national security of the United States." Hence, as

respondent has not shown good moral character for the required period, his application for voluntary departure must also be denied.

Even if respondents had demonstrated the requisite good moral character, their applications also fail because they have not shown a means and intent to depart the United States.

"[T]he clear and convincing evidence of the means to depart shall include in all cases presentation by the alien of a passport or other suitable travel document sufficient to assure lawful entry into the country to which the alien is departing." 8 C.F.R. § 240.26(c)(2). The only evidence on the means and intent to depart the United States is lead respondent's testimony he would comply with any order of the Court after exhausting all appeals. However, none of the respondents had a currently valid passport, none of the respondents offered to renew their expired passports, none told the Court where they would go if they were granted voluntary departure, and lead respondent said he would not return to Lebanon. Hence, none of the respondents have shown they have the means and intent to depart the United States. Accordingly, their applications must be denied for this reason as well.

As respondents have not demonstrated the above-discussed statutory and regulatory prerequisites for voluntary departure, the Service contention that these applications should be denied

as a matter of discretion is irrelevant.

The applications for voluntary departure will be denied.

VII. THE MERITS OF THE ASYLUM AND WITHHOLDING APPLICATIONS

A. Asylum and Withholding, Evidentiary Standards

While the Court has found lead respondent ineligible for asylum and concomitant withholding, the Court will assume, *arguendo*, he is eligible for this relief and will, accordingly, address the merits of this requested relief.

An applicant for asylum or withholding of removal bears the evidentiary burdens of proof and persuasion. 8 C.F.R. § 208.13(a); Matter of Acosta, 19 I&N Dec. 211 (BIA 1985), *modified on other grounds*, Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987).

An applicant for asylum must demonstrate he is a refugee within the meaning of section 101(a)(42) of the Act. This requires respondent to establish he is unwilling or unable to return to his country of nationality because of past persecution, coupled with either a showing of a likelihood of present or future persecution, or for humanitarian reasons as a matter of discretion, or because he has a well-founded fear of future persecution on account of his race, religion, nationality, membership in a particular social group, or political opinion. This requires respondent establish his fears are subjectively

genuine and objectively reasonable through credible, direct, and specific evidence which demonstrates he possesses a belief or a characteristic a persecutor seeks to overcome in others by means of punishment of some sort; the persecutor is aware, or could become aware, he possesses this belief or this characteristic; the persecutor has the capability of punishing him; and, the persecutor has the inclination to do so. 8 C.F.R. § 208.13; Mogharrabi, *supra*.

An applicant for withholding of removal must demonstrate a clear probability of persecution on account of a statutorily enumerated ground listed above. INS v. Stevic, 467 U.S. 407 (1984). The Supreme Court in Stevic held this clear probability standard requires a showing it is more likely than not he would be persecuted. See also 8 C.F.R. § 208.16.

The Supreme Court has also held, in INS v. Cardoza-Fonseca, 480 U.S. 421 (1987), that the terms well-founded fear and clear probability are significantly different and that the burden of proof required to establish eligibility for asylum is lower than that required for withholding of removal.

B. Summary of Respondent's Asylum Position

Respondent asserts he has a well-founded fear of future persecution based on his religion, political opinion, and membership in a particular social group. Specifically, he

alleges his notoriety as a Moslem, his outspoken stance against the Al-Qaeda terrorist network, and the alleged stigmatization of respondent as a terrorist or terrorist sympathizer would result in persecution at the hands of the Syrian controlled Lebanese government or organizations the Lebanese government cannot control. See Exhibit 3, Tab A.

C. Discussion and Findings of Fact on Asylum and Withholding

Below are the Court's findings, analysis, and summarization of the pertinent evidence. Respondent's brother, Mazen Sami Haddad, was the only witness to testify other than the respondent. For the ease of the reader, Mazen's testimony will be discussed first although he testified last.

1. Testimony of Mazen Sami Haddad (Brother)

The testimony of lead respondent's brother Mazen can best be categorized as patently evasive in an attempt to help his brother.

Mazen testified he lives in Toronto, Canada as a dual citizen of that country and Lebanon. He was raised to follow the Christian faith but does not currently adhere to any religion. As to his brother's conversion to Islam, Mazen insisted he and his family are proud of respondent.

Mazen added he has traveled to Lebanon as recently as mid-

September 2002. The last three visits were to see his ailing father, who has since died of natural causes. Mazen mentioned while he was in Lebanon he read Lebanese newspapers that claimed respondent was an uncharged terrorist. Of course, Mazen did not provide the Court with any of these articles as they were "in Arabic."

In hopes of resolving respondent's detention in the United States, Mazen stated he attempted to speak to a high-ranking Lebanese government minister and his mother tried to enlist the help of the deputy prime minister of Lebanon.[20] Both individuals, however, refused to intervene. In the Court's opinion their claimed refusal, even assuming it happened, does not reveal anything about how respondent would be treated if he returned to Lebanon. In the light most favorable to the respondent, it shows these officials did not want to expend political or diplomatic capital by contacting the United States Government.

Mazen also stated people in Lebanon often disappear. In fact, the witness alleged his cousin and her family disappeared in the mid-1980's. He stated they have not reappeared and the

[20] The witness alleges he previously worked for ministers in the Lebanese government and his cousin is married to the deputy prime minister. He added he has been told the deputy prime minister is a strong financial supporter of President Bush.

Lebanese government does not know where they are. Against this backdrop, Mazen speculated his brother would disappear indefinitely if deported to Lebanon.

Despite Mazen's speculative testimony, the Court observes that in the most recent country reports there were no reports of politically motivated disappearances in Lebanon. See Exhibit 4, Tab A1 at 4 (2001 Country Report on Human Rights Practices in Lebanon [hereafter, 2001 Country Report]); See also Exhibit 3, Tab X at 72 (2002 Amnesty International Report for Lebanon).

Relevant and material country reports are significantly probative of the likelihood of persecution. Matter of Exame, 18 I&N Dec. 303 (BIA 1982). Plus, even if Mazen's cousin disappeared in the 1980's, this fact does not give rise to a well-founded fear today - - especially given the latest country reports and the fact that respondent has returned and resided safely in Lebanon since the cousin supposedly disappeared.

As to any threat to his brother's physical well-being if removed to Lebanon, Mazen was vague and stated he would rather not think about it. When asked to think about it, he stated he can only imagine what is in the movies and "would rather not go there."

On cross-examination Mazen initially stated his family learned of his brother's detention by way of newspaper articles in Lebanon. He stated he did not bring those newspapers because

they were in Arabic. He added they were translations of Associated Press articles found in Lebanese newspapers he could name.

At this juncture Mazen's credibility as a witness started to sink like a rock in water. He added on cross-examination that the Lebanese government did not approach any of his family -- rather the only contact was the two times he and his mother tried to initiate contact as he mentioned on direct.

The Government then confronted Mazen with his sworn affidavit, executed on March 12, 2002, declaring:

> Individuals in my family have already been questioned and interviewed by government agencies in Lebanon because they have received phone calls from my brother. They have not been treated decently (to say the least).

Exhibit 3, Tab C at 2. In response to this revelation, he stated Lebanese intelligence officials called in May 2001 -- which of course was before the respondent's detention, not after.[21] Mazen stated it was his mother and two uncles who were contacted. As to his mother's contact, he stated it was he who received the call, but it was his mother who was questioned. He went on to explain that the call came to a cellular phone that

---

[21] The Court could only speculate why Lebanese officials might be interested in respondent before his detention in the United States. As respondent has not suggested any reason for their interest and as the Court does not believe Mazen's testimony, the Court will not attempt to guess.

was listed in his name but was left in Lebanon for his family's use. The witness then stated he departed Lebanon the following day. He then added his mother was questioned after he departed Lebanon despite intimating she was questioned during the same phone call he received.

He went on to specify that the alleged Lebanese intelligence officials questioned his mother and two uncles about phone calls that were made to the respondent.[22] The family members were then required to report for questioning where they were basically asked who they were in contact with. The witness stated the questions were humiliating because the officials were implying unknown things to his law abiding family. The family members were not physically harmed. Mazen stated that since those discussions government officials have not questioned or harmed any family members.

Finally, when asked if he had any evidence to support his supposition that his brother would disappear, Mazen cited the recent case of a Canadian Syrian who was deported to Syria and has since disappeared. See Exhibit 3, Tab BB (*Globeandmail.com* articles). However, respondent himself had proffered contrary

[22] In his affidavit he claimed they were questioned because of phone calls received from the respondent, not made to respondent. When told his testimony was inconsistent with his sworn statement, Mazen amazingly replied, "that too." See Exhibit 3, Tab C at 2.

evidence revealing this person was in Syria. *Id.* at 1-2. Mazen completed his testimony by adding Syria has a strong influence in Lebanon and would seek to persecute the respondent.

The Court finds that Mazen was not credible. His testimony was inconsistent with his previously proffered affidavit. Not only did he not present the Arabic newspapers, he produced no evidence verifying he was recently in Lebanon. Plus, on the ultimate issue of respondent's safety in today's Lebanon, his opinion was based on unsubstantiated speculation, not concrete facts.

2. The Remaining Evidence, Including Respondent's Testimony

Initially the Court notes that respondent's credibility is suspect. For example, as detailed in Part VI, respondent lied shortly after his last arrival in the United States so he could purchase a dangerous weapon. Other evidence of his lack of veracity will be addressed below.

Respondent began his case by attempting to add the name "Abu Abdallah" to his application for asylum as a name he has previously used. The Court disallowed the amendment as the application had already been signed under oath. The Court, however, did permit his testimony on this glaring omission.[24] On

[23] Respondent testified the name goes back centuries and literally translates to "father of Abdallah." It was a name he

cross-examination, respondent stated his failure to include the name in his asylum application was an "oversight." See Exhibit 3, Tab A at 1. Respondent's forgetfulness is, at best, dubious.

As to his life in Lebanon, respondent does not claim he had suffered any persecution in the past.[24] Before initially coming to the United States from Lebanon in 1980, respondent managed his father's store, was a tribe leader of the Christian Boy Scouts, and a was member of Ras Beirut United Front Civil Defense.[25] The Court notes there is no mention of the two latter activities in his résumé; however, they are included in his asylum application. See Exhibit 4, Tab H and Exhibit 3, Tab A at 6.

As to his faith, respondent was born a Christian but converted to Islam in 1986 while he was in the United States. He has since become an "Imam", or prayer leader, and has spoken

---

used soon after converting to Islam in 1986. Although he did not have children at the time, he planned on giving the name "Abdallah" to his first born son. A son named Abdallah was allegedly born in 1991 but died shortly thereafter. Respondent proffered no birth record for this child. Similarly, his wife did not testify about this child, respondent's use of the name, or anything else.

[24] Accordingly, he is not entitled to a presumption of a well-founded fear of future persecution (See 8 C.F.R. § 208.13(b)(1)) or a presumption that he would be persecuted if he returned to Lebanon (See 8 C.F.R. § 208.16(b)(1)).

[25] Respondent drove ambulances, administered first aid, and put out low level fires while with Ras Beirut. He stated he was not active militarily.

approximately 150 times at various mosques in support of his charitable efforts for GRF. Morever, he stated he adheres to the pillars of Islam which he practices regularly. He described the term "jihad" as a military or internal struggle against yourself or "satan" and added jihad fits into all pillars of Islam. When questioned if respondent supported any military struggles, respondent stated he never did. However, as described previously, respondent promoted literature calling for such support. Hence, as observed in Part IV above, respondents's credibility was "torpedoed by GRF's own fund-raising literature." See page 16, *supra*.

In his application for asylum, respondent purports he was harassed in the early 1990's at the Beirut International Airport by a Lebanese immigration official. He believes it was based on his conversion to Islam stating his attire and his wife's passport contradicted the information on his Lebanese identity card about his family name and birth place. See Exhibit 3, Tab A at 6. According to the 2001 Country Report, religious affiliations are encoded on Lebanese national identification cards. Exhibit 4, Tab A1 at 16. Therefore, the respondent would naturally be examined with more scrutiny if his visual identity conflicted with his documentary one.

Respondent also alleges there are Christian groups in Lebanon that still desire to exterminate "enemies of

Christianity" and would specifically target him because of the notoriety he has received. *Id.* at Part B Addendum. However, other than his speculative testimony, respondent offers no evidence to indicate he will be specifically targeted by Lebanon or the alleged Christian groups. In fact, the 2001 Country Report states the parliament is equally divided between Christian and Moslem representatives. See Exhibit 4, Tab A1 at 1. Moreover, the Lebanese Constitution provides for freedom of religion which the government generally respects. *Id.* at 15. There are also no reports of religious persecution towards Moslems by groups the government refuses to, or cannot, control. Respondent also acknowledged he lived in Lebanon from June 1997 to September 1998 and was able to practice his Moslem faith without any problems.

Respondent also believes he would be targeted by Al-Qaeda in Lebanon because of his public condemnation of the September 11 attacks at town hall meetings, before church groups, and mosques. Assuming respondent made such statements, many other individuals condemned the Al-Qaeda terrorists. In this regard, respondent has only expressed the majority view of the civilized world.[26] Respondent offers no more than pure speculation that he

[26] Of course, other evidence suggests that respondent, to the extent he made these denunciations, was merely putting up a façade to avoid his own detection.

would be individually targeted by Al-Qaeda in Lebanon.

Respondent testified he condemned the September 11 attacks and the attacks were against the edicts of Islam. For example, he stated the terrorists killed innocent people, an act forbidden by the Koran. Moreover, he stated the September 11 attackers violated the Koran by not obeying the terms of their visas. He said their visas were really "contracts" with the United States. He added the Koran dictates that contracts must be obeyed. Nevertheless, on cross-examination respondent rationalized his intentionally overstaying his visa as "beyond my control." Again, respondent is unwilling to tell the truth or accept responsibility.

Respondent also professes the publicity generated by these proceedings threatens his life because he has effectively been branded a terrorist. See Exhibit 3, Tab A at 5 and Tabs R-W (various articles citing these proceedings). As such, countries like Lebanon and Syria would persecute him to please the United States; get money, or other valuable consideration; or enhance their international standing.

In an attempt to buttress his claimed fear of being persecuted in Lebanon because he is perceived to be a terrorist, respondent proffered a series of unrelated articles. Specifically, the documentary evidence cites, *inter alia*: Syria's military presence in Lebanon (*Id.*, Tab D - 2001 Amnesty

International Report); an apparently crushing attack by Syria against a domestic "terrorist" or insurgency group in 1982 (*Id.*, Tabs E, I); Syria's restrictions on the Syrian media (*Id.*, Tab G); the efforts of the United States to seek international support for its fight on terrorism (*Id.*, Tab J); and Syria's willingness to assist the United States (*Id.*, Tab AA). Naturally, respondent also cited the article about the disappearance of the Canadian Syrian (Exhibit 3, Tab BB) which his brother also mentioned in his testimony. See the discussion of brother Mazen's testimony at pages 30-31, *supra*. As noted above, respondent himself proffered contrary evidence revealing this person was in Syria. Concisely put, this journalistic hodgepodge provides little or no circumstantial support for respondent's claimed fear of being persecuted.

Not only is respondent's proof lacking, respondent's own articulation of his fears is also deficient. When asked by his counsel what he feared upon his return to Lebanon, respondent first stated he was unsure of what he feared. Then, recognizing his Freudian slip, he definitively stated torture, prison, or death.

Additionally, other circumstantial evidence suggests he should have no fear of returning. For example, respondent still has his mother and uncles in Lebanon. They have remained

unharmed. Also, no evidence indicates his father was harmed before his recent passing. Nor is there any evidence his family's business in Lebanon, which his mother now runs, has ever been threatened.[27] Moreover, there have been no threats to the respondent or his family in the United States.

3. *Conclusions on Asylum and Withholding*

As discussed above, the lead respondent and his brother were not credible witnesses. Much of their testimony was also based upon unsupported speculation. Plus, even if the facts asserted by respondent were completely true, he has suffered no persecution; hence, he is not entitled to any presumption concerning future persecution.

Also, the documentary evidence fails to prove he faces a risk of persecution as there is no evidence indicating anyone similarly situated has been persecuted or harmed in Lebanon. See 8 C.F.R. § 208.13(b)(2)(iii) and 8 C.F.R. § 208.16(b)(2). While evidence provided by both parties indicates the general human rights record of Lebanon is poor, there is no credible

[27] The reasonableness of the respondent's fear of persecution is reduced when his family has remained in his native country unharmed despite his alleged notoriety in Lebanon. Matter of A-E-M-, 21 I&N Dec. 1157 (BIA 1998).

evidence demonstrating respondent would be at risk.[28]

Finally, even if the respondent could demonstrate he has subjective fear of persecution (and he has not), he has not shown his fear has an objective basis.

The Court holds respondent has not met his burden of demonstrating he should be granted asylum. As respondent has failed to satisfy the lower burden of proof required for asylum, he has also failed to establish it is more likely than not he would be subject to persecution on one of the five statutory grounds. Accordingly, lead respondent's application for asylum and concomitant withholding of removal will be denied.

VIII. CONCLUSION AND ORDERS

As detailed above, respondents have not shown they should be granted any relief from removal. Therefore, the Court enters the following orders:

First, RABIH SAMI HADDAD's application for asylum and concomitant withholding of removal to Lebanon, as this application incorporates the remaining respondents, is DENIED;

---

[28] While the 2001 Country Report indicates there were no reports of the arbitrary or unlawful deprivation of life committed by the government of Lebanon or its agents during the year (See Exhibit 4, Tab A1 at 3), there were credible reports of security forces abusing and, in some instances, torturing detainees (*Id.* at 5). Even so, respondent has failed to show he would be abused or tortured at all. And, he certainly has not demonstrated he would suffer such treatment on account of a protected ground.

Second, all of the applications for voluntary departure are DENIED;

Third, RABIH SAMI HADDAD is removed to Lebanon on the Charge contained in his Notice to Appear;

Fourth, SALMA AL RASHAID is removed to Kuwait, or in the alternative to Lebanon, on the Charge contained in her Notice to Appear;

Fifth, SANA RABIH HADDAD is removed to Kuwait, or in the alternative to Lebanon, on the Charge contained in her Notice to Appear;

Sixth, SAMI RABIH HADDAD is removed to Kuwait, or in the alternative to Lebanon, on the Charge contained in his Notice to Appear; and

Seventh, OUSSAMA RABIH HADDAD is removed to Kuwait, or in the alternative to Lebanon, on the Charge contained in his Notice to Appear.

/s/ Robert D. Newberry

ROBERT D. NEWBERRY
Immigration Judge