



RPD File No. / N° de dossier de la SPR : TB2-08247
TB2-08248

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXX XXXX XXXX (a.k.a.XXXX XXXX XXXX XXXX) XXXX XXXX XXXX (a.k.a.XXXX XXXX XXXX)	Demandeur(e)s d'asile
Date(s) of Hearing	May 15, 2013 July 31, 2013	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	October 23, 2013	Date de la décision
Panel	Edward C. Robinson	Tribunal
Counsel for the Claimant(s)	Leigh Salsberg Barrister and Solicitor	Conseil(s) du (de la/des) demandeur(e)s d'asile
Tribunal Officer	N/A	Agent(e) du tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

REASONS AND DECISION

[1] XXXX XXXX XXXX XXXX XXXX XXXX (hereafter the claimant) and her mother, XXXX XXXX XXXX XXXX XXXX XXXX, are citizens of Palestine and claim refugee protection pursuant to ss.96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.¹

[2] The panel considered the *Chairperson's Guidelines* on gender-related violence.² The Chairperson's guidelines help to assess the key evidentiary elements in determining to what extent, women making a gender-related claim of fear of persecution, successfully rely on any Convention ground, and under what circumstances does gender violence constitute persecution. The *Chairperson's Guidelines* also highlight, that women refugee claimants may face special problems in demonstrating that their claims are credible and trustworthy. Factors that may affect their ability to provide evidence include difficulty in providing testimony on sensitive matters, cross-cultural misunderstandings as well as social, religious and economic differences. The *Chairperson's Guidelines*, was used to help assess the circumstances of this claim and to understand and apply the added sensitivities necessary to properly assess, whether any credibility issues are the result of such difficulties, or an attempt to fabricate evidence.

ALLEGATIONS

[3] The claim is based on the narrative of the claimant's Personal Information Form³ (PIF), which was heard at two sittings on May 15, 2013 and July 31, 2013 respectively.

[4] The claimant alleges as follows in the narrative:

[5] That she is a stateless Palestinian from XXXX Village located outside XXXX in Palestine. She alleged that their house was destroyed by Israeli bombing in 2002. Her brother, XXXX who was 16 years old at the time was badly injured. In 2005 he was arrested by the Israeli, tortured and

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended, sections 96, 97(1) (a) and 97(1)(b)

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines* Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

³ Exhibit 2.

released in 2006 but arrested again and released in 2007. Arrested again in 2008 and expelled in 2009 to Jordan. He was never heard from again.

[6] Her other brother XXXX was also arrested several times. His most recent arrest was in 2012. She alleged that her family lives in constant harassment and worry about her brothers.

[7] The claimant alleged that she married her cousin, XXXX XXXX XXXX XXXX in XXXX 2007. The marriage was arranged by her uncle who is her father's older brother and her husband's father. She alleged that her husband was arrested in XXXX 2008 and imprisoned. Since she has been in Canada he was released and resides with his father. However, while her husband was in prison she lived at her in-laws' home. She was raped by her husband's brother, XXXX and mistreated in general in the home including physical abuse and threats. She was not allowed to use the phone or to leave the house. She alleged that XXXX spent 12 years imprisoned in Israel for raping an Israeli woman.

[8] The claimant alleged that she developed a skin condition in XXXX 2011 and she was never allowed to see a doctor. On XXXX XXXX XXXX 2012 she was able to escape from her in-laws' home and her mother joined her to flee to Jordan. However, her in-laws found out that she was in Jordan. While in Jordan they met a man who assisted them to come to Canada – selling their jewellery to pay him. They arrived in Canada on XXXX XXXX, 2012 and filed for refugee status the following day.

DETERMINATION

[9] The panel finds that the claimants are neither Convention refugees nor persons in need of protection for lack of credibility in their claims.

ANALYSIS

[10] The panel accepts the claimants' identity as citizens of Palestine on the basis of photo copies of their passports⁴ provided by Citizenship and Immigration Canada (CIC).

[11] The determinative issue in the claims is their lack of credibility.

⁴ Exhibit 1, CIC Port of Entry notes.

Credibility

[12] With regard to credibility, the panel is guided by the Federal Court of Appeal, which has ruled that testimony given under oath is presumed to be true, unless there is a valid reason to doubt its truthfulness.⁵ The assessment the panel must use to test the truth of a story of a witness is that it be in harmony with the preponderance of probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions.⁶ Furthermore, the panel cannot be satisfied that, “the evidence is credible or trustworthy unless satisfied that it is probably so, not just possibly so.”⁷

[13] The panel, in considering the credibility of the claimant, made an assessment of all the evidence, both oral and documentary.⁸ The evidence was also assessed as a whole, so it could be treated in a consistent manner.⁹ However, not every piece of evidence will be referred to, but those the panel finds relevant to its decision.¹⁰ Even if a piece of evidence is not referred to, the panel carefully considered it as part of the evidence.¹¹ The panel is entitled to make reasonable findings based on implausibility, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole.

[14] The panel believes the claimants are Palestinians and her brothers and husband may have been arrested by the Israeli authorities and imprisoned. For example, the panel notes that “the Israeli occupation authority (IOA) transferred Palestinian prisoner XXXX XXXX, who suffers from a serious disease from XXXX prison to Jordan for medical treatment and refused to let him return home”.¹² The panel also notes documents purporting the arrest of XXXX XXXX, XXXX

⁵ *Maldonado, Pedro Enrique Juarez v. M.C.I.* (F.C.A., no. A-450-79), Heald, Ryan, MacKay, November 19, 1979. **Reported:** *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.); 31 N.R. 34 (F.C.A.).

⁶ *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.), at 357, per O’Halloran, J.A.

⁷ *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.

⁸ *Owusu, Kweku v. M.E.I.* (F.C.A., no. A-1146-87), Heald, Hugessen, Desjardins, January 31, 1989.

⁹ *Bosiakali, Mbokolo v. M.C.I.* (F.C.T.D., no. IMM-4948-00), Nadon, December 14, 2001 FCT 1381.

¹⁰ *Cepeda-Gutierrez, Carlos Arturo v. M.C.I.* (F.C.T.D., no. IMM-596-98), Evans, October 16, 1998.

¹¹ *Hassan, Jamila Mahdi v. M.E.I.* (1992), 147 N.R. 317 (F.C.A.).

¹² Exhibit 10, Personal Documents, pg. 43, para. 1.

XXXX & XXXX XXXX.¹³ Panel has no way of verifying that these individuals mentioned in the documents are one and the same persons the claimant claimed she is related to especially as in some cases the surnames have different spellings. The panel is however willing to find, on a balance of probabilities, that these individuals are who the claimant say they are.

[15] The panel believes that the claimant and her family lived in the West Bank territory of Palestine. The panel does not believe that the claimant was persecuted in her country either by the Israelis or her father-in-law, brother-in-law and her husband and finds on a balance of probabilities that she concocted her story to bolster her claim for refugee status. For example, the panel notes discrepancies between her PIF narrative and oral testimony, as well as the CIC interview notes.

[16] The claimant testified that she made a report once to the Israeli authorities in XXXX 2008 with respect to their solders coming to their home in XXXX, XXXX which is located over on the Israeli side of the border but the Israeli authorities did nothing to help. According to her testimony the Israeli solders came to their home “frequently... often at nights, searched the house with dogs, destroyed things in the house”.¹⁴ Seeing that she wrote that the solders would come to her house ‘frequently’ she was asked how many times the solders came to her house and she said three times.

[17] It was pointed out to her that she said in her written testimony “frequently” but in oral testimony she now says “three times”. She was asked if she considered three times to mean ‘frequently’ and she said that the solders used to come many times “But I remember three times when I was at home”. The panel finds her explanation unreasonable. If as she said the Israeli solders came to her house many times to the extent she referred to their visits as “frequently” in her PIF narrative on a balance of probabilities she would not have changed it to say three times in oral testimony. Why would she say frequently in her written testimony but in oral testimony say 3 times? The panel therefore finds on a balance of probabilities that she made up the story that the Israeli solders went to her house frequently which undermines her credibility.

[18] In oral testimony she also said that the Israeli solders used to come very early in the morning, disturbing them and taking them out of their home in the cold of winter, but she didn’t say anything about them destroying things in their home and the “damage they had done to our

¹³ Exhibit 10, Personal Documents, pg. 10 – 18.

¹⁴ Exhibit 2, Personal Information Form (PIF) narrative, para. 8.

house” as stated in her PIF narrative.¹⁵ The claimant was asked why she hadn’t spoken in oral testimony about the damage the Israeli soldiers did to her house as she had stated in her PIF narrative. She replied that she was nervous when she started speaking. The panel finds her explanation unreasonable. She was able to state other things that were allegedly done by the Israeli soldiers but an important piece of information like them damaging their house was not mentioned. The panel therefore finds on a balance of probabilities that her house was not damaged by Israeli soldiers – she made up the story.

[19] In addition, the claimant having testified that despite her complaint to the Israeli authorities about their soldiers’ actions against them and their properties, they did nothing. The panel finds on a balance of probabilities this was not true. For example, when the claimant was asked if she followed up her complaint with the Israeli authorities she specifically said that the Israeli authorities informed her family that they would follow up with the Civil Directorship in XXXX. Asked if they had followed up with the Civil Directorship in Jenin and the claimant replied “Many times”. Asked how many is many times and she said she didn’t remember how many times but said that she was told that they didn’t have anything as yet. The panel believes that this information is important as it goes to the core of her claim of a lack of state protection but nothing about her follow-up activities with the Civil Directorship was mentioned in her PIF narrative. She was asked to explain the omission and she again stated that she was nervous and she wanted to tell her story quickly. The panel finds her explanation unreasonable. If indeed she had made a report to the authorities and followed up many times as she said she did on a balance of probabilities she would have stated that in her PIF narrative.

[20] Still not understanding why she would mention that they went once [panel’s emphasis] to the government office in XXXX¹⁶ but not mention they went to follow-up with the Civil Directorship in XXXX “many times” in relation to that first report, she was asked to explain. She replied that she was speaking fast and she was nervous. The panel finds her explanation unreasonable. If indeed they had made “many” follow-ups to the Civil Directorship as she claims on a balance of probabilities she would have written about it in her PIF narrative just as she wrote that they went once to the government office in XXXX. Thus the panel finds that she was making

¹⁵ Exhibit 2, PIF narrative, para. 9.

¹⁶ Exhibit 2, PIF narrative, para. 9.

up the story as she went along to bolster her claim for refugee status, which undermines her credibility.

[21] The panel also does not believe that her explanation for leaving out important details in her PIF narrative can be reasonably excused for her being ‘nervous and speaking fast’ when she was able to include other details in her 44 paragraphs, 5 ½ page narrative. Additionally, the claimant has had ample time to make amendments to her original PIF narrative¹⁷ but she did not include the information in her original narrative or made amendments to include them. The panel notes that she is represented by counsel.

[22] She was asked if she had any document to support her allegation that they went to the Israeli authorities to complain about the actions of the Israeli soldiers, and she replied “No” and added that the Israeli authorities didn’t provide them with any documents. The panel finds that it is the claimant’s responsibility to prove her case.

[23] The claimant testified that her husband was arrested by the Israeli authorities in XXXX 2008 and after his arrest her husband’s family with whom she was now living began mistreating her. She wrote that they treated her like a slave, forcing her to do all the housework, and if she didn’t comply, she was physically assaulted with a broomstick and beaten with cable wires.

[24] Asked if she reported the assaults to the authorities and she said no. Asked if that kind of abuse was legal in her country and she said no. Being mindful that she claimed that they went many times to the Civil Directorship in XXXX to complain/follow-up when she and her family were allegedly being harassed by the Israeli soldiers, she was asked why she didn’t report the abuse of her husband’s family to the authorities. She replied that her husband’s family never allowed her to leave the house. The panel finds her answer instructive. For up to this point the reason why she couldn’t make a report to the authorities, as she said, was because she wasn’t allowed to leave the house.

[25] So she was asked if she had been allowed to leave the house if she would have reported the abuse. The panel notes that the claimant became evasive, instead of answering the question directly she replied that she wasn’t able to submit a report or complain because if someone gives

¹⁷ Exhibit 7, PIF amendment.

them [authorities] money they will not follow-up. As the panel notes, her explanation was no longer about how she couldn't leave the house; it was now about the corruption of the authorities that hindered her going to make a report or complain.

[26] First, the panel finds her evasiveness to undermine her credibility. The question was straightforward and there is nothing to suggest that she misunderstood the question. The question was again asked that if she had been able to leave her husband's family house, even if the authorities could be bribed, if she would be able to make a report and this time she said 'Yes'.

[27] She was asked to whom she would have made the report. She replied, "The police". Then she quickly added "But I can say they [panel's emphasis] will kill me and the police will not protect me". Asked who are "they" and she replied "The family of my husband". This was another thing that she was now adding to her first answer.

[28] For example, the claimant first said that she couldn't make a report because she wasn't allowed out of the house. On further questioning she added to that by saying even if she was allowed out of the house and made a report to the police they wouldn't have done anything because they are susceptible to bribes. Still on further questioning she added yet another layer when she said that if she made a report to the police they [in-laws] would kill her and the police wouldn't protect her. The panel finds on a balance of probabilities that she was making up the story as she went along. This is consistent with the way her story has evolved. For example, she said she was a victim of attempted rape in her CIC interview notes but when she completed her PIF narrative, the attempted rape graduated to actual rape.

[29] The panel finds on a balance of probabilities that the claimant was making up her answers as she went along which undermines her credibility. While there is evidence that the police do not always help female victims of male perpetrated abuse the panel also notes that the police are not always seen in a negative light and are seen as necessary to help women, "I do not object to reporting to the police; police services are necessary to document cases of abuse against women, so that this can constitute evidence to restore their rights in court, for instance" as well, "If a woman has no other option available to her, for sure she will have to go to the police as a last option".¹⁸ Based on the evidence before this panel, if the claimant was really and truly physically

¹⁸ Exhibit 8, documentation package, pg. 32.

and sexually abused as she claimed, on a balance of probabilities, she would have reported it to the police. She admits that if she were to make a report, it would have been to the police.

[30] The claimant also testified that her husband's brother raped her several times and threatened that if she said anything he would claim that she was asking for it. As a result she didn't tell anyone about the sexual assault. But the panel notes that in her PIF narrative she mentioned that she escaped and told [panel's emphasis] her family about her mistreatment and the sexual harassment at the hands of her husband's brother.

[31] For example, in her PIF narrative she said she told her family about what happened to her in her in-laws' house but in oral testimony she said that she didn't say what happened to her to anyone. She was asked to explain the contradiction. She said that when she said that she hadn't said anything to anyone about the rape, etcetera, she meant the authorities – the police. The panel finds her explanation unreasonable. If indeed she only meant that she didn't make a complaint to the authorities on a balance of probabilities she would not have said she didn't "say it" to anyone. She would simply have said that she didn't report it to the authorities. For example, she was specifically asked if she said anything to anybody and she said, "No".

[32] The panel however believes the claimant when she said that she didn't tell anyone about the alleged rape and or her other alleged incidents of assaults to anyone. The panel finds on a balance of probabilities that she didn't say anything to anyone because none of these alleged incidents had actually occurred. And, because these incidents had not occurred at the hands of her in-laws, she didn't have anything to say to anyone including the police; there wasn't any complaint to be made. Thus, she simply made up the story of personal persecution to bolster her claim for refugee status which undermines her credibility. For example, there is no mention of her being raped by her brother-in-law in her CIC interview.

[33] When she was asked to explain she said that at first she didn't want to tell her personal story to anyone. She added that she had traveled and was tired, afraid and nervous. It was pointed out to her that in the CIC interview she actually said that her brother-in-law tried to rape her. She replied that she was told to speak fast and briefly. The panel finds her explanation unreasonable and further finds on a balance of probabilities that if indeed she was raped on a balance of probabilities she would have been consistent in her story. For example, in her PIF narrative she

said she told her family about the rape, in oral testimony she said she didn't say anything to anyone, and in her CIC notes she didn't say she was raped but he tried to rape her.

[34] The panel in noting that the claimant said that she escaped from her in-laws' house, went to her family's house and told them about her ordeal, but even though she explained what was happening to her in her in-laws' home, according to the claimant her father told her that she "had to go back" because she is married. In other word, her father told her to go back to the place that she, his daughter, was being mistreated and repeatedly raped. Bear in mind he was not sending her back to her husband because, according to the evidence, he was in an Israeli prison. Counsel in her submissions indicates that the claimant's father "believed it was 'safer' for her to be raped than killed".¹⁹ This was certainly not the only alternative available – raped or be killed. There are the authorities - police.

[35] The claimant herself testified that the Palestinian authority is controlled by the Israelis. And according to her "In Israel they protect women; they care about women and children". In fact, the claimant testified that her sexual abuser was arrested by the Israelis' for raping a 17 year old Israeli girl and sentenced to 12 years imprisonment. That means he had a criminal record for rape. Her complaint to the police, in the panel's view, would have been seen as credible given his past as a sexual offender. As such, the panel does not believe the claimant's allegation that she was sexually assaulted and her father sent her back into the abusive situation with this sexual predator. But the panel does not believe the claimant for other reasons as well. For example, she presented two different stories to explain her father's reason for sending her back to the home of her alleged abusers.

[36] Firstly, she attributes this to their 'culture' wherein her father as the younger brother, as well as everyone else in the family having to submit to her father-in-law's wishes as the head of the tribe. No one dare oppose him and the claimant has to do as he wishes because she is married to his son. She testified that he is the head of the tribe and no one does anything without his consent. He has the power of life and death in that family. The claimant even wrote "I know that even my husband will have to do what his father dictates when he gets out of jail".²⁰ In fact, the claimant related a story in which a family member – a female cousin – only 13 years old in 1999

¹⁹ Exhibit PH-1, Counsel's written submissions, pg. 11, para. 1.

²⁰ Exhibit 2, PIF narrative, para. 38.

was killed by her (the 13 year old girl) own father (claimant's father-in-law), and thrown her in a well, because she stayed out late. She said that her in-laws' simply told the police that she fell in the well and that was the end of it.

[37] The panel is aware of honour killing in her country. For example, according to documentary evidence, honour killings remain a problem in the Palestinian territories, and that "Violence against women reflects the broader violence and lack of rule of law in the Palestinian territories, and it has become more common over the last five years."²¹ Furthermore;

Palestinian women currently face two major types of obstacles to their rights: those arising from within their own culture and society, and those imposed as the result of occupation, war, and civil unrest. On the domestic front, women are subjected to restrictive personal status laws, which retain discriminatory provisions related to marriage, divorce, and child custody. Domestic abuse remains a significant problem, and violence against women has increased in recent years. Discriminatory laws and traditions also affect women's inheritance, alimony, and employment opportunities, thereby reducing their economic autonomy and making them more vulnerable to poverty than men. Furthermore, some segments of society seem to be growing more conservative and returning to traditional values.²²

[38] However, the panel notes that there is a difference in how women are treated in two Palestinian territories. For example, " Hamas maintained control of the Gaza Strip and enforced a conservative interpretation of Islam on the Gaza Strip's Muslim populations, which particularly discriminated against women. [...] The new, more conservative social order imposed by Hamas has led to greater restrictions on women's rights in Gaza."²³ However, "Women in the West Bank, by contrast, have continued to enjoy a more liberal environment"²⁴ According to the evidence before this panel the claimant resided in the West Bank. She testified that that they rented a house in XXXX in the West Bank and her in-laws lived about 4 km from them. The panel therefore finds on a balance of probabilities that the claimant, a resident of the West Bank, if she was being threatened with honour killing, especially as she believed that the Israelis controlled the Palestinian authorities on a balance of probabilities would have sought help.

²¹ Exhibit 13, National Documentation Package (NDP) for Palestine (May 3, 2013), item 5.1, Ireland: Refugee Documentation Centre, *Palestine: Information on the Treatment of Women in Palestine, Specifically Gaza, Including Honour Based Violence. Treatment of Those Outside of a Traditional Muslim Community, for Example, a Single Mother*, May 18, 2012.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

[39] For example, the claimant testified that she read on the internet that a 20 year old Palestinian woman was engaged to be married but left her fiancée when she started attending university. Her fiancée kidnapped, killed her and disposed of her body but the Israeli police did an investigation and found the killer. She emphasized that it was the Israeli that did the investigation not the Palestinians. The claimant testified earlier that she went many times to the Civil Directorship to complain about the actions of Israeli soldiers. As previously mentioned she testified that her rapist brother-in-law spent 12 years in an Israeli prison for raping an Israeli girl. And again she also testified that the Palestinian Authority belongs to the civil management of Israel. Her mother is a published vocal against Israelis' treatment of her son. For example, "His mother appealed to human rights organization to adopt the issue of her son and pressure Israel to allow him to return to his family after he completes his treatment in Spain."²⁵

[40] The panel finds on a balance of probabilities that the claimant and her parents is an unlikely family to put up with the abuse of their in-laws without a fight. Yet, she will have the panel believe that they never went to any authority to report the abuses against her. At any rate, she escaped twice from her in-laws' home it was therefore incumbent on her to seek protection from the authorities. Counsel submitted that the reasons the claimant gave for not approaching the state are plausible. She cited "extreme stigma, fear of retribution, view that the authorities are dominated by men and society norms".²⁶ While the panel notes that the claimant did cite retribution (fear of being killed), she never cited these other reasons for not approaching the police. As such, the panel finds on a balance of probabilities the claimant didn't have any of these compunctions. These compunctions are indicated because they are in the documentary evidence. However, even where there is evidence that an objective basis for the fear exists,²⁷ a lack of evidence going to the subjective element of the claim is in itself sufficient for the claim to fail.²⁸ The panel also notes that it is not sufficient to rely solely on documentary evidence listing certain flaws or weaknesses in the country's justice system.²⁹

²⁵ Exhibit 10, personal documents, pg. 43, para. 6.

²⁶ Exhibit PH-1, Counsel's written submissions, pg. 13, para. 1-2.

²⁷ *Sinora, Frensel v. M.E.I.* (F.C.T.D., 93-A-334), Noel, July 13, 1993.

²⁸ *Kamana, Jimmy v. M.C.I.* (F.C.T.D., no. IMM-5998-98), Tremblay-Lamer, September 24, 1999.

²⁹ *Marquez Alvarez, Guillermo v. M.C.I.* (F.C., no. IMM-2477-09), Boivin, February 23, 2010, 2010 FC 197; *Romero Castaneda, Manuel Alejandro v. M.C.I.* (F.C., no. IMM-4838-09), Boivin, April 13, 2010, 2010 FC 393.

[41] At the same time the panel draws on the *Chairperson's Guidelines* which highlight that women refugee claimants may face special problems in demonstrating that their claims are credible and trustworthy. And that there are certain factors that may affect their ability to provide evidence including difficulty in providing testimony on sensitive matters, cross-cultural misunderstandings as well as social, religious and economic differences. Notwithstanding these considerations the panel finds on a balance of probabilities that the claimant didn't complain to any authorities because none of her allegations of physical and sexual abuse was credible. There was no story to tell, so she has used a set of facts, namely the adverse situation of some Palestinian women in the Palestinian territories with respect to honour killing and concocted a story of personal threats of honour killing and abuse against her, which the panel rejects.

[42] At the same time the panel notes that,

Ongoing political tensions between Fatah and Hamas—coupled with Israeli restrictions and incursions—have seriously affected women's health, employment opportunities, access to education, and political and civil liberties throughout the Palestinian territories. In addition to presenting challenges in women's day-to-day lives, these factors have consistently drawn attention away from calls for gender equality at the societal and political levels. Nonetheless, women's rights activists and organizations are determined to persevere in their efforts to reform discriminatory laws and practices, as they have many times during Palestine's tremulous history.³⁰

[43] The second explanation the claimant gave for her father sending her back to the alleged miseries at her in-laws' home was that her father was sickly, was on dialysis and had problems with his back and was unable to walk on his own so he could not have protected her. She also added that her brothers were not around to protect her.³¹ This explanation was in conflict with the first explanation which suggested that neither her father nor anyone could do anything because her father-in-law was the head of the tribe; what he says, goes. He wanted the claimant to marry his son when she was only 17 years old and even though she didn't want to marry him, no one could do anything to stop it. It was her father-in-law, the head of the tribe's will and so it would be. Now we are hearing that there was room for dissent in the camp but for her father's illness and or her brothers' absence.

³⁰ Exhibit 13, NDP for Palestine (May 3, 2013), item 5.3, Freedom House, *Palestine (Palestinian Authority and Israeli Occupied Territories). Women's Rights in the Middle East and North Africa 2010*, March 3, 2010, at pgs. 3-4.

³¹ Exhibit 2, PIF narrative, para. 31.

[44] The panel finds the claimant's explanations unreasonable. If indeed she was mistreated including being raped by her brother-in-law at his home on a balance of probabilities her father and mother would not have sent her back to that home of the abuse; perhaps, if it was in the case of her husband abusing her, but it was her husband's brother who was raping her. The panel notes that the claimant's parents were not blaming her for her ordeal. For example, according to documentary evidence "A girl may be raped and what happens then? She will be forced to stay home and her parents may kill her without any body noticing anything. No body will defend or restore her rights".³² In the claimant's case there is no evidence that her parents were trying to kill her without anyone noticing. In fact, according to the evidence, "Women who are reluctant or unable to file domestic violence or sexual violence complaints on their own have little recourse, since the law allows only close relatives to file such complaints." In other words, the claimant's father or her mother could have filed the complaint.³³

[45] The claimant was asked that since she was able to escape from her in-laws' home why she didn't go to the police and ask for protection. She said that (a) she didn't have enough time to go to the police (b) they [in-laws] will know and kill her (c) and even if she went they [police] will not do anything for her. The panel reiterates that it does not believe the claimant's story. She provided no independent evidence to support her allegations. For example, the claimant was asked if she had any independent evidence that her in-laws abused her and she said no and added that they didn't allow her to go outside the house to make reports. However, when she was reminded that she 'escaped' from her in-laws' house according to her in late XXXX or early XXXX 2011 but she didn't report her ordeal she provided different excuses. Namely, she wouldn't have enough time to go to the police before they [in-laws] would know and her husband's family would kill her "and even if I go they [police] will not do anything for me". The panel finds that the claimant was speculating.

[46] For example, she was asked how she knew that the police would not help her if she had made a complaint to them. She testified that "I lived there I know and I heard about it. They didn't protect other people when similar things happened to them". She didn't provide any corroborative evidence to support her allegations.

³² Exhibit 8, documentation package, pg. 28.

³³ Exhibit 13, NDP for Palestine (May 3, 2013), item 5.3, *supra* at pg. 13.

[47] The panel notes that after the claimant returned to her in-laws' home as she was directed by her father XXXX XXXX XXXX 2011, sometime in XXXX 2012 the claimant 'escaped' again and went back to her father's home. She said she couldn't take the abuse any longer. Bear in mind that the first time her father asked her to go back to her in-laws' home his reasoning was that she was married and he couldn't protect her. This is despite the fact that her husband was not at the home but in jail and had been in jail since XXXX 2008 and his brother who had then been recently (XXXX 2008) released from jail was repeatedly raping her plus she was being treated like a slave in that home. This time however, according to the claimant, her father didn't tell her to return to her in-laws' home. There is no evidence that he had now recovered and was able to protect the claimant. Thus the panel finds on a balance of probabilities that she had not 'escaped' from her in-laws because she was not being kept against her will.

[48] For example, the claimant was asked why the first time when she escaped from her in-laws' home her father had asked her to return to the in-laws' home (the panel finds her answer instructive). She replied, "First he was unable to protect me". Then she added "I didn't have ID documents" (This was the first time that the panel was being made aware of the claimant's not having "ID documents" as a reason she was asked to return to her in-laws' home). She also said that this time (second escape) she told him that she had to 'travel' or she would kill herself. Later when counsel asked the claimant if she had ever tried to commit suicide she said that if they never allowed her to 'travel' she would have killed herself.

[49] Also when counsel asked the claimant's mother (witness) why she is in danger in Palestine she replied because her in-laws abused her daughter she decided to take her out of the country. Counsel asked what she meant and she replied that she decided to take her daughter away from their in-laws. Asked if the in-laws see her daughter's leaving as her (witness) decision, she (witness) replied yes. Counsel then asked the witness how she knew that her in-laws saw her daughter's leaving as her (witness) doing. She replied that when the claimant came to her, she told her that she should prepare the documents and "I am the one taking you". She added that the in-laws came to the home and asked the other girls (other daughters) for them (claimants) and were told that they (claimants) had traveled out of the country. She added that they threatened to kill her

and her daughter. However, in her CIC interview notes the only problems she mentioned that she had in her country were with the Israelis.³⁴

[50] A careful examination of the evidence about “ID documents” reiterates the panel’s finding that the claimants have made up the story of persecution including not being allowed to leave the home of her in-laws. For example, the panel notes that the claimant’s mother’s passport was issued on XXXX XXXX, 2009 with expiry date of XXXX XXXX, 2014. Another piece of ID is dated XXXX XXXX, 2003.³⁵ So the allegations that she told her daughter to prepare the documents were not in reference to her own documents but her daughter’s because she already had her documents.

[51] The panel however notes that the date of issue for the claimant’s passport is XXXX XXXX, 2010 with expiry date of XXXX XXXX, 2015. Another piece of ID is dated XXXX XXXX XXXX 2012.³⁶ Bear in mind that the claimant testified that her life change completely in XXXX 2008 when her husband was arrested at work. Her key to her in-laws’ home where she was living was confiscated and “I could only go out if they took me with them somewhere. I wasn’t allowed to use the phone”.³⁷ Yet, she was able to obtain an important document like a passport while under house ‘arrest’ and while not being able to leave the house, except for the two times she ‘escaped’ and when she was chaperoned. When coupled with the fact that there is no mention in their CIC port of entry interview notes by either claimants that she was held captive in her in-laws home³⁸ the panel finds on a balance of probabilities that the claimant’s allegations, that she was held against her will in her in-laws’ home or that she had been raped, did not occur. In fact, in the interview notes she stated that she was accused of having an affair which means she would have had to have the freedom to move around to have the affair for which she was being accused.

[52] The claimant was asked to explain the omission and discrepancies in the CIC notes and her oral testimony and PIF narrative. She gave multiple, inconsistent answers. She claimed that she couldn’t remember, then she said she remembered but she tried not to remember. She said that she was having problems with the interpreter, who spoke with a Morocco accent, that she gave them

³⁴ Exhibit 1, CIC Port of Entry notes, pg. 10, box 43.

³⁵ Exhibit 1, CIC Port of Entry notes; Exhibit 6, PIF of XXXXX XXXXX, pg. 6, box 13.

³⁶ Exhibit 1, CIC Port of Entry notes; Exhibit 2, PIF, pg. 6, box 13.

³⁷ Exhibit 2, PIF narrative, para. 21.

³⁸ Exhibit 1, CIC Port of Entry notes, pp. 10, box 43.

(CIC) the information but they didn't write it, she was told to speak fast and be brief, she said that she didn't know, maybe she was nervous, the story is about five years old it is not like one or two days ago, she said she was tired and afraid, she didn't know if she said this or that. She also said that at first she didn't want to tell her personal story. The panel, in finding her explanations unsatisfactory, takes into account the Chairperson's Guidelines. The Court has stated that the *Gender Guidelines*, in and of themselves, are not intended to serve as a cure for all deficiencies in the applicant's claim or evidence. The applicant bears the onus of proving her claim. "The Guidelines cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth".³⁹ Also, the *Guidelines* are an aid for the CRDD panel in the assessment of the evidence of women who allege that they have been victims of gender-based persecution. The *Guidelines* do not create new grounds for finding a person to be a victim of persecution.⁴⁰

[53] The court has stated that, "One of the primary ways that the Board tests a claimant's credibility is by comparing the PIF with the claimant's oral testimony. It is intended that all questions concerning the PIF, directed to the claimant, should be answered fully".⁴¹ The court has also stated that: "Where a refugee claimant fails to mention important facts in his or her PIF, this may legitimately be considered by the Board to be an omission that goes to a lack of credibility".⁴²

[54] The panel finds that the claimant has a serious problem when it comes to telling the truth. Her entire story is built on fabrication. She has tried to use the genuine problems facing some women in her country such as honour killings and, through exaggerations, tied herself to them without any basis in fact. Persons who preside over tribunals are not containers to be filled with any sort of story. They have a right to use their common sense in determining whether a story stands up, is true or is simply improbable.⁴³

[55] Counsel submitted that the claimant is a Vulnerable Person and presented the claimant's psychological state has a basis for her not being able to provide satisfactory explanations in her testimony but in the view of this panel her psychological state was not a basis for the faults in her

³⁹ As Justice Pelletier indicated in *Newton v. M.C.I.* (2002), 182 F.T.R. 294, at paragraph 18.

⁴⁰ As Justice Pelletier indicated in *Newton v. M.C.I.* (2002), 182 F.T.R. 294, at paragraph 17.

⁴¹ *Castroman (Vezzani), Carlos Adrian v. S.S.C.* (1994), 27 Imm. L.R. (2nd) 129 (F.C.T.D.).

⁴² *Grinevich, Vladimir v. M.C.I.* (F.C.T.D., no. IMM-17773-96) Pinard, April 11, 1997.

⁴³ *Goulongana v Canada (Minister of Citizenship and Immigration)*, 2008 FC 421, IMM-3649-07, April 2, 2008..

testimony. Even though the claimant “became distraught during both sittings of her hearing” and “During the second sitting, she began to cry before the break...” and her mother “testified about her daughter’s mental health”⁴⁴, she came across as bright, articulate and intelligent. The problems in her testimony, in the panel’s view, were not with her mental or emotional state but about her story that lacked credibility. For example, she wrote in her PIF narrative that “I was happy in my marriage. My husband worked XXXX XXXX XXXX XXXX. I stayed at home,”⁴⁵ but in oral testimony she painted a picture of a painful marriage.

[56] For example, she testified that she was in pain and cried. She said that she was not happy. She was asked to explain the contradiction. She replied “Yes, I was telling my husband that I was happy, but I was in pain, it was only when he was treating me nice.” The panel finds her explanation unreasonable. This is another example of the evolution of her testimony. Bear in mind she is represented by counsel and has made previous amendments to her original PIF narrative. For example, she was happily married in her PIF narrative, but in order to bring in allegations of forced marriage, which is neither mentioned in her original PIF narrative or the amended PIF narrative, she now introduced in oral testimony the notion that she was forced to get married against her will at 17 years of age and was unhappy.

[57] The panel however finds on a balance of probabilities that she was not forced against her will to get married. For example, the age of legal capacity for marriage in the West Bank is 15 for girls and 16 for boys.⁴⁶ That is not to say because the age of legal marriage is 15 years old that she couldn’t have been forced to get married against her will at age 17. But based on the totality of the evidence before the panel, it finds on a balance of probabilities that she made up the story of being forced into marriage which further undermines her credibility. As well, the claimant was asked why she hadn’t stated in her original story that she didn’t want to get married and she replied “I just wanted to explain to you why I wanted to leave my country”. The panel rejects her explanation as self-serving.

[58] The Federal Court has also found that where a claimant is found to be lacking in credibility, the panel can legitimately find that there is no subjective fear basis for the claim. In

⁴⁴ Counsel’s written submissions, pp. 8-9, para. 5-9.

⁴⁵ Exhibit 7, PIF amendment (narrative), para. 18.

⁴⁶ NDP for Palestine (May 3, 2013), item 5.3, Freedom House, *Palestine (Palestinian Authority and Israeli Occupied Territories). Women’s Rights in the Middle East and North Africa 2010*, March 3, 2010, at pg. 11.

such cases, it is very difficult, if not impossible, to find credible evidence of a claimant's subjective fear, notwithstanding the existing evidence of human rights violations in the claimant's country.⁴⁷ Despite the documentary evidence⁴⁸ the oral testimony and counsel's valiant attempt in her written submissions⁴⁹, this panel finds no basis of a subjective fear in this claim.

[59] With regard to the totality of the credibility of the unsupported oral and documentary evidence that the claimant has submitted, the panel refers to the case of *Dan-Ash* that states:

[...] unless one is prepared to postulate (and accept) unlimited credulity on the part of the Board, there must come a point at which a witness's contradictions will move even the most generous trier of fact to reject his evidence.⁵⁰

[60] The panel has also considered the case of *Sheikh* which states:

[...] even without disbelieving every word [a claimant] has uttered, a...panel may reasonably find him so lacking in credibility that it concludes there is no credible evidence relevant to his claim... In other words, a general finding of a lack of credibility on the part of the [claimant] may conceivably extend to all relevant evidence emanating from his testimony.⁵¹

[61] The panel finds that the claimant was not a credible or trustworthy witness; therefore, it does not believe what the claimant alleges as his reasons for fearing returning to Palestine.

[62] The panel finds that the claimant has not satisfied the burden of establishing a serious possibility of persecution for a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture, or a risk to life, or a risk of cruel and unusual treatment or punishment upon return to her country. Therefore, the panel finds that the claimant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the IRPA. Since the claim of her mother, XXXX XXXX XXXX XXXX XXXX XXXX also rest on the claimant's, her claim fails as well.

[63] Counsel submissions were taken into account before the writing of this decision.

⁴⁷ *Amaniampong, Kofi v M.E.I.* (F.C.A., no. A-1326-87), Heald (dissenting), Hugessen, Mahoney, May 19, 1989.

⁴⁸ Exhibit PH-3, post-hearing evidence; Exhibit 8, documentation package.

⁴⁹ Exhibit PH-1, written submissions.

⁵⁰ *Dan-Ash v. Canada (Minister of Employment and Immigration)*, (1988), 93 N.R. 33 (F.C.A.), at 35, per Justice Hugessen.

⁵¹ *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (C.A.); 11 Imm. L.R. (2d) 81 (F.C.A.), at 244, per MacGuigan, J.A.

CONCLUSION

[64] The panel finds, given the information provided above, that the claimant is not a Convention refugee, and could return to Palestine. The panel denies the applicants claim for refugee protection.

(signed)

“Edward C. Robinson”

Edward C. Robinson

October 23, 2013

Date