

UNITED STATES DEPARTMENT OF JUSTICE
 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
 IMMIGRATION COURT
 SAN PEDRO, CALIFORNIA

MARC VAN DER HOUT, ESQ.
 VAN DER HOUT AND BRIGAGLIANO
 180 SUTTER STREET, FIFTH FLOOR
 SAN FRANCISCO, CA 94104

A93 240 763

In the matter of:

HAMDAN, ABDEL JABBAR

Date: November 22, 2004

XX Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to:

Board of Immigration Appeals
 Office of the Clerk
 P.O. Box 8530
 Falls Church, VA 22041

Attached is a copy of the decision of the Immigration Judge as the result of your failure to appear at your scheduled deportation hearing.

This decision is final unless a motion to reopen is filed in accordance with Section 242B(c) of the Immigration and Nationality Act, 8, U.S.C. Section 1252B(c)(3). If you file a motion to reopen, your motion must be filed with this court:

Immigration Court
 2001 Seaside Avenue, Room 136
 San Pedro, CA 90731

XX Other: Attached please find a copy of the Decision and Order of the Immigration Judge in bond proceedings dated November 21, 2004, in the above referenced matter.

Susan Greenbaum

Immigration Court Clerk
 2001 Seaside Ave., Rm. 136
 San Pedro, CA 90731

cc: USDHS/ICE/Office of Chief Counsel
 Richard Vinet, A.C.C.
 2001 Seaside Avenue
 San Pedro, CA 90731

cc: USDHS/ICE/Office of Chief Counsel
 Robert Bryant, D.C.C.
 606 S. Olive Street, 8th Floor
 Los Angeles, CA 90014.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
SAN PEDRO IMMIGRATION COURT

File No.: A93 240 763)
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)
In the Matter of)
Abdel Jabbar HAMDAN)
Respondent.)

IN BOND REDETERMINATION
PROCEEDINGS

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EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
SAN PEDRO IMMIGRATION COURT

APPLICATION: Bond Redetermination.

ON BEHALF OF THE RESPONDENTS:

Marc Van Der Hout, Esq.
Stacy Tolchin, Esq.
Ahilan T. Arulanantham, Esq.
Ranjana Natarajan, Esq.

ON BEHALF OF THE SERVICE:

Richard Vinet, A.C.C.
Edward Lepkowitz, A.C.C.
Robert Bryant, D.C.C.
Megan Turkat-Schirn, A.C.C.

DECISION AND ORDER OF THE IMMIGRATION JUDGE

Procedural History

The respondent is allegedly a native and citizens of Jordan. On or about July 28, 2004, the respondent was detained by the Department of Homeland Security ("DHS"). On August 5, 2004, this Court granted a bond redetermination hearing which was conducted over several hearing settings. DHS has charged the respondent as a non-immigrant overstay who failed to maintain his student status. DHS has also argued they have reason to believe respondent is a national security risk and an individual engaged in terrorist activity. Respondent argues he has resided in the United States for 25 years and is a peaceful man. He was granted work authorization based upon filing a 245A application, however, he was subsequently placed in exclusion proceedings. His appeal was sustained in 1999. A copy of the BIA decision is in the record. Respondent acknowledges, however, he was subsequently denied 245A by DHS. This Court continued the

bond hearing to afford both parties an opportunity to present evidence.

Findings of Fact

Testimony

RESPONDENT'S WITNESSES

David Warren Eaton

Mr. David Eaton testified he was born in Boston, Massachusetts. He currently is employed as the vice president and chief financial officer for Ecologics Training Institute and Environmental Services located in Santa Ana, California. He conducts environmental training, consulting work and construction. Mr. Eaton has worked for this company for 10 yrs.

Mr. Eaton testified respondent went to Ecologics in November 2002 on behalf of his Mosque in Orange County. Mr. Eaton testified respondents mosque was having problems getting a permit from Orange County for a construction project. Mr. Eaton and his company helped respondent obtain the permit and helped to complete the construction of the mosque and school by April 2003. During the permit and construction phase respondent went to Mr. Eaton's office approximately 10 or 12 times. Respondent was the chairman of the board of the Islamic Society. Ecologics met with respondent about the program and budget for the construction project. Respondent made the decisions for the mosque construction and always paid on time. Mr. Eaton testified respondent was a gentleman and a highly educated man. Respondent was also well versed and respected by his organization. Mr. Eaton testified in his opinion respondent was not a violent nor a rash man. He is a very quiet, well reasoned and a very kind person. Respondent does not pose a danger to the community.

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On cross-examination, Mr. Eaton acknowledge he never saw respondent outside of the office nor has he seen him socially. Mr. Eaton had no idea respondent was employed by the Holy Land Foundation until he read about it in the newspaper recently. Mr. Eaton was not ware that the Holy Land Foundation was designated as a terrorism organization.

The Respondent, Abel Jabbar Hamdan

Respondent testified he was born in Jordan on the West Bank. In 1979, before moving to the United States, respondent lived in the United Kingdom for a short time. Respondent has lived in the Los Angeles area for over 20 years since 1983. He married Entsar Hamdan in 1983. He has not been away from his family since 1979, except for a brief time period in Jordan, when his father was ill. Respondent has six United States citizen children and it is very difficult for him to be separated from his family. His family visits him every time there is a visitation at San Pedro Service Processing Center and he misses his family. He also calls his family everyday. Mr. Hamdan handled all of the finances, support, and maintenance for his household. He would never leave his family. Respondent has some health problems including diabetes and high blood pressure. He has a sleep disorder that was being treated prior to his detention. He also has a disc problem in his back and was to receive medical treatment, however, it was curtailed by his arrest.

Mr. Hamdan testified he has never been convicted of a crime in the United States nor in Jordan. Respondent attended University of Southern California (USC) and graduated as a civil environmental engineer. He was self employed for a few years as an engineer and changed careers. Mr. Hamdan belongs to a mosque called the West Coast Islamic Society or Alanasar located in Anaheim, California. Respondent has been affiliated with Alanasar for approximately 7

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or 8 years since its inception. Respondent is the chairman of the board of directors and has held that position since the inception of the mosque. He conducts marriages, coordinates between several committees, and leads the prays 5 times daily as Imam. There are 600 members of the mosque. Respondent also maintains the mosque and coordinates building projects throughout the construction. Some of these projects were with Mr. Eaton. The mosque has a daycare in addition to a school for grades one through eight. Respondent is also involved in interfaith organizations located in Anaheim which includes Moslems¹, Christians, Jews and other organization.

Respondent was financially involved placing an article in the Los Angeles Times about 2 months ago. (Respondent's Exhibit #17 subsection D). The purpose was to denounce terrorism of any kind. West Coast Islamic Society of Anaheim is listed as one of the petition endorsers of this article. Respondent has participated in other community work including giving speeches to establish schools and mosques. For 10 or 12 years, respondent has been involved in this volunteer work. A few weeks ago, he completed a fund raisers for the Mosques of Corona, Sacramento, and in Reseda California. He also volunteered in Tucson, Arizona for a school and various mosques in other locations.

The respondent admits his participation or affiliation with the Holy Land Foundation (HLF). He worked for the Holy Land Foundation from the early 1990's until it was closed down. In the early 1990's respondent was giving a speeches and Friday prayers in Los Angeles, when Mr. Baker from the Holy Land Foundation hired him. Mr. Baker was the executor and one of the founders of the Holy Land Foundation. He also met with Mr. Baker at conventions and social

¹ The term Moslem will also be spelled as Muslim within the context of this decision.

gatherings in the United States and after 1993 respondent considered Mr. Baker a friend. Respondent testified he initially worked voluntarily for the Holy Land Foundation in the 1990's. By the late 1990's, he worked for HLF full time as an employee, and in December of 2001 HLF was shut down by the United States Government. Respondent testified his salary was \$58,000a year; not \$70,000 as argued by DHS. (See Exhibit # 11). Mr. Hamdan does not know the salaries of others within the Foundation. Mr. Hamdan acknowledges asking for salary increases. He also had access to a credit card from the Holy Land Foundation issued to him.

Before coming to the United States, respondent admitted he was a member of the Moslem Brotherhood and has been a member of the independent organization called the Moslem Society in the United States. Mr. Hamdan acknowledged he attended social camps along with Mr. Baker associated with the Moslem Brotherhood.

Respondents testified his sole position was as a fund raiser for HLF and he also raised money for the Foundation for Palestine. Mr. Hamdan presented projects for Palestine and different countries, and then encouraged people to donate to complete the projects. At these presentations, respondent stated most of the speeches were religious. Respondent testified as a Moslem, 5 % of ones income or *zakat* should be given to charities. Donation voluntarily given *Adaga* over the amount of *zakat* proves your faith. The religious based speeches were the basis of individualized donations. Many of the events were special dinners for the fund-raising and others were providing speeches during these events. Mr. Hamdan raised most of his money from Moslems which were the community targeted, however, there were others that donated as well.

The mission of Holy Land Foundation was to help those in need including in the United States. Mr. Hamdan was a successful fund raiser. The Holy Land Foundation provided food and

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shelter, ambulances, water and aid for humanitarian causes and provided blood donations.

Respondent testified the aid was not just for Moslems but also for others in need.

Mr. Hamdan decided to work for the HLF because he was born in a refugee camp. As a child, he was denied light and toys. The refugees barely had medical supplies except for those provided by the United Nations. When he grew up he had the chance, with the help from the UN, to come to the United States to secure an education. Respondent did not want other children to go through the same things he went through and working for his HLF was a way to do this.

Respondent testified if he thought that the fund raising was not for humanitarian purposes he never would have worked for HLF. He stopped working for the Holy Land Foundation because it was shut down for having ties to the terrorist group Hamas. Hamas has political and military wings and are tied to Palatine. Respondent, however, testified when he was with the HLF they provided charity and food for people from the funds raised not for terrorist activities. He did not think the money was going to Hamas because of the nature of HLF organization. Respondent testified he did not think that the funds were being used for any other purpose because he received video tapes back from the various recipients thanking HLF for the funding. He would not have continued to work there if he new the money was collected for Hamas.

Respondent testified he traveled for HLF's home office in Dallas, Texas, and he traveled all the over the United States on behalf of the organization. He also made phone contact with the home office daily. The home office would have him report and they told him what the list of projects were or his agenda. He was paid for his work as an independent contractor and then with a W-2 in 2000. He was never a director nor executor at the Holy Land Foundation. Mr. Hamdan was not involved in the finances of the HLF. At one point they wanted him to move to Dallas and

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he said, no. There were HLF staff meetings that discussed how the money was disbursed and also in a newsletter. Once the money was collected, respondent simply turned it over to the corporate office.

Respondent testified while he was working for HLF there were news reports that the organization was associated to Hamas. After hearing this, respondent called the corporate office and he was assured it was all propaganda. Mr. Hamdan asked this question on 2 separate occasions. Mr. Hamdan admitted speaking to the FBI, Treasury and INS. They asked questions about the Holy Land Foundation. He was asked approximately 4 to 6 questions and he answered all of their questions truthfully. Recently he has spoken with the FBI agents about the Holy Land Foundation and the relationship with Hamas. He also answered questions about those who were indicted and cooperated fully.

Respondent has attended meetings for an organization called Islamic Association of Palestine (IAP). The first time he attended a conference convention of the IAP on behalf of the HLF, however, he continued to attend conferences after he worked for the Holy Land Foundation. He represented the Holy Land Foundation for more than one IAP conference. His role was to provide a platform for fund raising. He would take the podium to raise funds and there were many speakers at the podium that preceded him. Respondent admitted on cross-examination, there may have been some speakers who's subject matter was to praise the leaders of Hamas. Mr. Hamdan also acknowledged he attended conventions for the Moslem Arab Youth Organization where Hamas was mentioned. Just prior to his detention by DHS, Mr. Hamdan was employed by Life for Relief and Development. It provides humanitarian aid for people in Sierra Leon, Iraq and Afghanistan. Respondent has worked for this foundation for 2 years as a charitable work

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consultant. Currently, this is his primary source of income for his family.

Respondent remembers the name of political spokesman for Hamas, Abumousa Marzouk, being mentioned at some of the meetings he attended. Respondent met Mr. Marzouk at a convention many years ago. Respondent is aware that the spiritual leader of Hamas is Sheik Ahmed Yassin. Respondent testified, however, he did not even know Hamas existed in the 1980's.

On Cross-examination the respondent denied raising money for both HLF and Hamas at meetings. He met thousands of people at the conventions he attended and he did not agree with all of them nor their ideas. He denied praising Hamas leaders Mosusa Abu Marzouk and Sheik Ahmed Yassin in 1996 at a meeting in Chicago. Respondent did not attend an Oklahoma conference. Respondent admitted attending a meeting where Mohammed Siam, who was expelled from Palestine spoke. Respondent does not consider suicide bombers martyrs. Respondent only knows Jamil Hamami as a scholar and respondent met him once. Respondent knew Mohammad Salah was arrested in Israel and respondent was only introduced to him one time. Respondent knows Abdel Hakeem Ashquar, however, he is not a friend..

On October 6, 2004, respondent's testified in rebuttal. Respondent believed open source materials like Dallas Morning News were biased in their views when these sources criticized and connected HLF and Hamas. Respondent, along with other Palestinians, doubted these American sources, and gave little credence to this media. Respondent testified he had not personally read the articles relating to HLF and Hamas. Once he became aware of the allegations, however, respondent called his superiors in Dallas and asked them about the allegations. He was assured the allegations were not true. On one occasion, his superiors told him they were contacting the

Government to find out about the charges and open discussion to see if there was any evidence between the Holy Land Foundation and Hamas.

Respondent received materials that supported the charitable donations he was asking for. He received videos and letters of thanks and from others for supporting the organization. Respondent testified the HLF did not discriminate against donors. Anyone in need was supported. All of the tapes showed the money went to specified projects for orphans, widows and other organizations. Respondent testified if he saw a video tape of an ambulance, he thought the money raised was used to purchase that ambulance, hospitals or medical supplies.

Mr. Hamdan spoke at many events and he met people like Mr. Marzouk and Mr. Jamanik but was unsure of meeting with Mr. Ashcar. He met 100's of people at these events as well and he would shake hands with them. During an event respondent was very busy preparing for his own speech. Usually he had stage fright, no matter many times he would speak, so he would focus on what he had to say. Respondent spoke at multiple events and many people would come from different denominations and religious convictions. They usually expressed their views and sometimes respondent agreed with their views and sometimes he did not. Respondent acknowledged in court, sometimes these individuals have extreme views and some of them had no views at all. Some people agreed with the peace process and others disagreed with the peace process in the Middle East. This is the way it was when respondent grew up in the refugee camps and different people had different views. Respondent does not have to agree or disagree. Respondent believes he might disagree with those radicals that are wrong, however, his conviction is to have a balance of those views.

Mr. Marzouk was invited to an event and Mr. Hamdan understood that Mr. Marzouk was a

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good speaker. Mr. Marzouk was suppose to be able to explain what the needs of the people were including what was going on in the field on the West Bank and Israel. After he left, respondent found out that the Israeli Government made allegations that Mr. Marzouk was a member of Hamas. Respondent testified he called the FBI and he spoke with his superiors including Mr. Baker about this because Mr. Marzouk was allegedly arrested as a member of Hamas. Respondent wanted to know why HLF brought such a person from an organization that is being designated as a terrorist organization by the United States Government. Respondent testified he felt Mr. Marzouk should not be here. Respondent testified that Mr. Baker and other superiors agreed with him and they said they were not going to bring Mr. Marzouk back to the United States.

The definition of martyr used by FLM is the one respondent would use. Respondent testified it is the same definition in the Quran and that of Mohammad. Martyr is any kind of struggle or suffering which makes an individual a *shaheed*. Mohamad said, "Who ever defends his honor is a *shaheed* whether they are a female or a male". Respondent testified he is not well versed in English so he would assume it is something similar to *one who bears witness* and as one who tells God there is too much suffering in the world, therefore, they do not need to receive additional suffering in the thereafter. Respondent testified anyone who dies or demonstrating peacefully or a woman dies suffering is a martyr. This individuals heard the martyr and he has heard the word since he was young. Any person who dies in Palestine is a martyr. Respondent does not believe in suicide bombers nor does he believe that suicide bombers means martyrs. Respondent maintained that even if suicide bombing *occurred* on the dates of the documents he still believes HLF did not mean martyr to equate with a suicide bomber. His definition comes only from the Quran and HLF used the same main stream definition. *The blessed cause* was mentioned by

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respondent at a function and he defines this from main stream Moslems and the Quran. When respondent refers to a cause, this means for this land to be at peace. Once this land is at peace, there will not be a great deal of suffering in the world.

Respondent testified he never had a role in sending money to other organizations from HLF. In fact respondent did not know who signed the checks and he never suspected directly or indirectly that the money he raised was used to fund terrorist activity. If he had known he would have quit because this is against his convictions.

On cross-examination respondent was not sure of when he became aware of HLF connection with Hamas. It came up after the Dallas newspaper articles at a staff meeting that occurred one or 2 times a year. Mr. Baker said those allegations were not true. Respondent did contact Mr. Baker and his other superiors by phone around the time of the *Dallas Morning* news article. Mr Baker said the allegations were baseless although respondent heard that there was some connection between HLF and Hamas. Respondent also knew people from the Dallas community were demonstrating..

Respondent testified he was familiar with the video tape #15 and he recalls fund-raising there for the IAP. Respondent testified in order to understand the songs and speeches of the IAP one had to understand the culture; however, he did not agree with some of the songs or speeches in Exhibit #15 and he did agree with others. Respondent testified the IAP is an advocacy group for human rights. The individuals are speak or sing asking for human rights. He is not suspicious that they had ties to Hamas.

Respondent was the master of ceremony in Exhibit #16 and only started and finished the conference. Dr. Rantisi, Ahamad Yasim , Respondent admitted Dr. Moussa Abu Marzouk , both

Hamas leaders were on this tape. Respondent also admitted he knew Mr. Mufid Abdel Qadder had sent a greeting from these elders of Hamas for the conference. Respondent testified the IAP is still open and allows individuals to speak their mind. Respondent admitted he saw Mr. Qadder many times but just as an acquaintance. Respondent was aware that in October of 2001 the *Orange County Register* announced him to be the number one fund raiser. And in the article it states that the HILF was being investigated or associations with suicide bombers and terrorist groups. (See Government Exhibit #4, 4th Submission page 1 of tab 1). Respondent also heard about a civil lawsuit filed by a Mr. Bowen and respondent was not surprised by the lawsuits when the Israeli Government shoots Palestinians in the streets of Palestine, he cannot support these actions. Respondent has not been in Palestine since he was a young child.

Yaman Hamdan

Respondent's eldest daughter, Yaman Hamdan, testified she was born in Los Angeles in 1984, and is now 20 years old. She still considers herself a Palestinian and she believes herself to be a Palestinian-American. She lives with her parents and goes to Chapman University. She is an honor student as a pre-law and business major. She has 4 brothers and a sister all born in California. Respondent has a loving relationship with his wife and they are a close family. Mr. Hamadan has always been very committed to the family. She is close to her father and they confide in each other and he has always been there for her. Her siblings all still attend schools and her father takes all of them to school. Her father's detention has effected entire family emotionally, physically and financially. It has been harder to manage the family without him.

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Respondent has lived in the Los Angeles area for 24 years. The Hamdan family could not move to another location because they are all Americans and her father has been Americanized too. This country is where their life is and their home is in this country.

Ms. Hamdan testified respondent is a role model to their community. He has a high position in the Alansar mosque in Anaheim which is also called the West Coast Islamic Society. The mosque is well known to a lot of people and respondent is the chairman. Members of the mosque confide in respondent on many topics and he gives sermons. Respondent knows a lot about the religion and spirituality. Ms. Hamdan nor her father would advocate for violence nor an uprising between the Palestinians and the Jews. Respondent would not take sides.

For 3 years respondent has worked for Life for Relief and Development, a charity organization. They raise money for widows and orphans. Prior to this respondent worked for the Holy Land Foundation, as a fund raiser for orphans, schools and ambulances. He stopped working there about 3 years ago because HLF was shut down by the Federal Government after September 11th. Ms. Hamdan has seen her father speak at fund-raisers through the years. He would speak about the humanitarian needs of children and the people also knew where the money was going. Ms. Hamdan also worked and sponsored children as well. She saw the cards and pictures sent back from the children. Donators knew how to contact the children and locate buildings that were built.

In addition to the testimony presented, respondent submitted Exhibit # 17. This exhibit includes various declarations from individuals involved in the law suit *Holy Land Foundation for Relief and Development v. Ashcroft*, 333 F.3d 156 (C.A.D.C. 2003), while the case was pending before the United States District Court of the District of Columbia. The declarations of Mohammed Abumoharram, Dalell D. Mohamed, Shurkri Abu Baker all worked for HLF and

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disclaim any affiliation with Hamas. Each only described their involvement for charitable, religious and humanitarian reasons. Each denies violence towards Israel or Israelis. Also included within this exhibits are statements from children and widows HLF helped or was attempt to help, a newspaper article involving the seizure case and a petition signed by many individuals to release the respondent from custody.

GOVERNMENT WITNESSES

Donna Christian Chabot

Ms. Chabot is a special agent for the Department of Homeland Security Immigration and Customs Enforcement (DHS former INS) in Dallas, Texas. She has worked for the INS over 20 years and has held positions as an Immigration Inspector, District Adjudicator, an Asylum Officer, Deputy Port Director, Senior Intelligence Officer, Deputy Assistant Regional Director for Investigations and Senior Special Agent. She has 18 years in law enforcement. She currently is assigned to a FBI joint terrorism task force in Dallas which includes DHS, including ICE, Secret Service, IRS, local police departments for the State of Texas and the Texas Department of Public Safety (DPS). The task force is overseen by the FBI in addition to acting as a liaison with various intelligence communities. Agent Chabot's responsibility are to participate in any and all investigations including criminal, civil or intelligence. Her mission is to focus on potential ICE violations, however, she assists in other areas of investigations where needed.

Agent Chabot attended 12 to 24 training courses in Near East Terrorism, Islam and how the problems with the different religions have derived to where they are today. She received

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training on the problems between the Sunni and Shi'a . These Moslem groups work against and amongst each other, then for each other and they provided local support in the Middle East for indoctrination education and financial support. She has received training on how these organizations receive funding for terrorism as well. Many of the courses she attended were conducted by DHS including former INS personnel , the FBI and the CIA. She has used this education in her work and she has participated in giving training to others at national conferences for DHS and the CIA. She is familiar with the HLF for the past 5 years. She has assisted in the hearings and deportation of those involved in HLF . Agent Chabot is also familiar with the Islamic Association for Palistine(IA or IAP) (also known as the American Eastern League for Palestine. Agent Chabot has been asked questions on her expertise from the CIA and the Department of Defense.

Special Agent Chabot identified respondent in court and testified she investigated respondent's involvement through his former employer the Holy Land Foundation(HLF) also known as Holy Land Foundation for Relief and Development for 5 years.

Respondent's position at HLF was as a top and successful fund-raiser. He was also running the HLF office in Anaheim, California. She found out how much respondent had fund-raised based upon income tax returns of the HLF . Special Agent Chabot also interviewed the executive officer Shukri Abu Baker. Mr. Baker decided to close the California Office because respondent travel so frequently. Respondent is listed on the income tax returns as one of the 5 highest paid fund-raisers on the income tax form the HLF. Respondent was with the HLF from 1996 until 1999. There was a job description as part of his responsibilities which required him to host and collected funds from individuals at meetings. (See Exhibit 10- is a description of the job

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respondent had with the HLF in 1999).

The HLF was designated a terrorist group and it was shut down by the United States Government Department of Treasury. The Department of Treasury designated the HLF a domestic terrorist organization and seized the assets of the HLF. After the designation the OFAC or Office of Foreign Assets Control seized everything from the HLF. In 2002 a search warrant was obtained and executed on the HLF in Dallas and seized items. The task-force had interests in the investigation including the items in Exhibit #10, page 2-3, which is one of the HLF documents. Respondent and his attorney were questioned at the Los Angeles Immigration Office in August of 2000 by Special Agent Chabot. She had them describe the employment responsibilities of Mr. Hamdan which is consistent with Exhibit #11. Exhibit #11 was also part of the HLF's seized documents. Exhibit #11 showed respondent's salary was \$70,000 on the list. Mr. Hamdan was the highest paid employee over the vice executive director, Haitham Maghawri, who only earned \$60,000. The document is addressed to Wafa Yish the financial officer for the HLF.

Special Agent Chabot testified respondent was paid bonuses on top of his salary and the HLF paid for his air travel, cell phone and hotels. Exhibit # 12 was seized from HFL in Dallas in 2000 and shows the amount respondent raised in one day in Riverside, California, and respondent admitted raising \$23,000 in one day during and the interview with the FBI in Dallas. Special Agent Chabot testified respondent raised this money and other funds for the HLF at meetings. He also raised funds for the Islamic Organization for Palestine which is also affiliated with Hamas. Exhibit #13 is a document which was also obtained over the years of the task force investigation. It was translated by the Islamic Resistance Movement of Al Zaytouna magazine, which means, *The Olive* in Arabic. Al Zaytouna is published in Dallas. Special Agent Chabot downloaded this

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publication from a Hamas website. She also came across the term martyr, which means *shiaid shaheed*, in Arabic and refers to the fight between the Israelis and the Palestinians.

Agent Chabot acknowledge that respondent was not a member of the executive committee and she did not know if he was responsible for any of the funding made by HLF. Agent Chabot cannot recall if the HLF appeared on any Hamas web sites; however, HLF has been referenced on the internet and sending support. Mr. Marzouk gave money to HLF and the IAP, which currently is not a designated organization. Agent Chabot testified the deportations and the deportees mentioned by the HLF and IAP both publicized these individuals circumstances. The deportees were from Israel deported to Lebanon. Exhibits #32, #34 and #19 (sub 1 page 360 of the Human Rights Watch Report [Government Exhibit]). The term martyr can have a wide variety of meanings. Currently, there is no proof that HLF specifically gave money to suicide bombers, however, in a 1993 meeting of Hamas in Philadelphia the United States Government has classified recordings from that meeting which cannot be revealed because of their national security classification. Five senior officials of Hamas and 3 senior members of HLF were at that meeting. The District Court decision on the HLF in Exhibit # 4 Subsection 3, page 17, mentions the Philadelphia meeting that was recorded. HLF has funded Hamas and Agent Chabot relied on the District Court decision which was affirmed up to the United States Supreme Court. Respondent was aware that HLF was contesting this media connection between Hamas and HLF when he was interviewed. Ms. Chabot testified that respondent publicly praised the speeches of others on the tape submitted into evidence as Exhibit #15 and it was clear these speeches on both Exhibit #15 and #16 were about Hamas.

Agent Chabot testified respondent acknowledgment of Hanmas was mentioned in the Philadelphia meeting in 1993 as well. In 2001 the HLF was designated a terrorist organization. One of the purposes in the Government making the HLF designation, was to inform individuals of their possible support of a terrorist organization. (See As part of Exh 18 sub tab 10 page 5 of that document). Even after this 2001 designation, on December 4, 2001, respondent still continued to deny knowing how the money was used by the HFL during his interview even though his superiors many of which made less money from HLF were already indicted.

Respondent's Rebuttal Witnesses

Ahmad Dallal

Professor Dallal testified his curriculum vitae is Exhibit #47 of the record. He is currently an associate professor of Islamic Studies at Georgetown University in Washington, D.C. He was the chair of the Arabic Language, Literature and Linguistic Department from 2000-2003. Dr. Dallal taught at Stanford University in the Department of History from 1994 until 2000. Prior to this he taught at Yale University in the Middle Eastern Department. Before this, from 1990 until 1994 he taught at Smith College in Western, Massachusetts in the Religious Studies Department. He received his PHD in Islamic Studies in 1990.

Dr. Dallal currently serves on the Advisory Board of the Middle East Studies Association of North America. This is a professional forum for American academics who teach Islam in the

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United States. The focus of his studies is mediaeval and modern Islamic intellectual history. This area includes contemporary Islamic thought, society and religion. Professor Dallal studies ideology of religion and politics which includes the occupied territories including Palestinian. He frequently meets with Palestinians and Americans who teach in the area and study the subject. He teaches the subject in his courses. Professor Dallal received a research grant from the Rockefeller Foundation on various issues in the Middle East.

As part of his training, Dr. Dallal reads media coverage on the occupied area from the arabic papers such as the *Sharq Awsat* (means middle) and the *Hayat* (means life). Both of these publications are printed and published in London and both are independent newspapers. He also reads articles from Israeli newspapers such as , *Haarez* and *Marris*, and watches Arabic television.

Professor Dallal has studied roles of charitable foundations in Islam and the organizations associated with them in the Middle East. Dr. Dallal wrote a book review on charitable foundations and endowments, however, the book did not focus on the occupied territories and Israel. He also has not studied the charitable application processed or adjudicated process. He is not aware of what benefits the individuals received nor the amounts given as charity. Dr. Dallal has never visited the occupied territories. He has never met respondent, does not know his name, nor has he spoken with him . Dr. Dallal has never testified in immigration court, although he was paid for his services for this case.

Dr. Dallal testified people in the Middle East and from the the Middle East view American media with cynicism and scepticism. Dr. Dallal is familiar with Steve Emmerson and the statements he has made about Jihad in America. Dr. Dallal does not believe Mr. Emmerson has credibility in the Islamic community. Emmerson has made broad statements about large numbers of

Moslems making threats against the United States. In Dr. Dallal's opinion, Emerson is not an academic. A Palestinian-Americans who worked for charitable organizations for 20 years, very likely would not believe what Emmerson said. Often Palestinians in the United States, and else where, would be offended and outraged by Emmerson's comments .

Dr. Dallal testified the word, *martyr or shahid* has a wide meaning in the Quran. The broad meaning is *to bear witnesses to Mohammed*. Dr. Dallal testified one who dies in a political conflict, and the person dies unjustly, are considered a martyr. If there is a civil death by bombing, there are rituals that are followed when a person is not washed if they are a *shahid*. A natural death is not a martyr and that person is washed prior to burial.

There is not a central authority to determine who is a *shahid*. This term varies for group to opinion. *Suicide bombers are shahids* even though it is against the law, it is allowed under certain conditions. From 1989 to 1990, suicide bombings were not prevalent. The term martyr probably did not refer to suicide bombings during this time because they were not that common.

Theoretically, however, one bomber might be referred as a martyr. Suicide bombers amongst Palestinians is relatively new occurrence beginning in the 1990's. It became a major tool of politics after the 1993 Accords. Hamas was not popular in the early 1990's and did not become popular until after the Oswald Accords. The Beirut, Lebanon bombing was also publicized as the Israeli discourses with the Moslems evolved with suicide bombers.

The term *orphan or wateem* was discussed next by Dr. Dallal. He testified one can be called an orphan who has not lost their parents. Hamas does, however, see that money is paid to orphans and widows of a martyrs. Hamas refers to its suicide bombers as martyrs. Recruits for Hamas for the bombings call themselves bombers. *Jihad* means to exert oneself for a righteous

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cause. *Major and lesser Jihad* is a struggle either civil or military where there is disobedience occurring in the Middle East. This would be considered Jihad and associated with the first *Intifada*. *Islamist or Islamiyyun* is the politically active Moslem or a Moslem committed to some project. This spectrum may include a wide range of different agendas for different reasons.

Dr. Dallal testified if someone wanted to give money to Islamist, he would consider the individual would be giving money to Hamas because they are the largest group even though there are other varieties of groups that are involved in a Jihad. Hamas has the popularity amongst Palestinians.

Charity in Islam is one of the 5 religious requirements is *zakat*. *Zakat* is an obligation but it is not regulated. It can be used for widows and orphans. *Zakat* committees are a modern attempt to regulate charity because historically it was done voluntarily and individually. Now committees collect the funds for specific projects in many countries. The Palestinian Authority would have a position on each *zakat* committee. *Zakat* committees are smaller local committees and local interests who invest in projects that reflect the make up of the communities from which these funds derive. They may have people from Hamas on some committees and not in other committees, depending upon their activities. There are more studies on Hamas than other political groups. Many local Palestinian groups who are in bad shape and need the money to live, live through the charitable organizations' money. Dr. Dallal believes they do not rely significantly on military operations with the money. Dr. Dallal acknowledged, however, he did not focus his research on this topic and imagines that Palestinians have various opinions even within the radical groups within the same family as to how the funds are to be spent.

Awqaf means charitable endowment. It is the ministry of religious affairs and the *zakat*

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who would oversee the charities and have a involvement in the money. Dr. Dallal testified he believes there are charitable organizations, employees, supporters and active members who are in the Middle East that are controlled by Hamas and are support by Hamas. Dr.Dalla testified, however, all of the people that were expelled from Israel were not Hamas members. Those deported were not allowed to into Lebanon because if they went in they would not be allowed back into Israel. Israel should have tried them and proven why they were being deported.

LIST OF EXHIBITS

1. Notice to Appear;
2. Lodge Charge;
3. Respondent's Exhibits 1-12;
4. Background Information;
5. DHS's Exhibits;
6. HLF Tax Returns;
7. Respondent's Job Description with HLF;
8. HLF Tax Returns;
9. 1099 Relating to Respondent;
10. HLF Job Description of the Position Held by the Respondent;
11. Executive Memorandum from HLF Provided Employee Salaries Showing Respondent; Received One of the Highest Paid Salary of HLF Signed by Haitham Maghawri, Executive Director;
12. HLF List of Contributor When Respondent Handled the Fund Raising Event Sept. 25, 1998 and Respondent Raised \$12,924.00;

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13. Charter of the Islamic Resistance Movement (Hamas) of Palestine;
14. Internet Site Information on Hamas and Other Articles on Hamas;
15. Video Tape;
- 15A. Tape Synopsis;
- 15B. Tape Translation;
16. Video Tape;
- 16A. Tape Synopsis;
- 16B. Tape Translation;
17. Respondent's Exhibits including a Newspaper Article, Declarations Individuals Involved in HLF and Documentation Evidencing Charity Work of the HLF;
18. Government's Second Submission Regarding Terrorism and Background Information including Information Presented to the U.S. Senate and Newspaper Articles on HLF;
19. Government's Third Submission Regarding Terrorist Activities of Hamas and Suicide Bombings Background Information;
20. Two Copies of Litigations Involving the HLF. The First is as Copy of the Indictment in the Criminal Case in Dallas, Texas of Certain HLF Defendants and the Second Copy is the Proceedings of a Civil Law Suit in Which the HLF is One of the Defendants—The Complaint Parents of an American Shot and Killed by Hamas in Israel;
21. Communique No. 36;
22. Communique No. 37;
23. Communique No. 42;
24. Communique No. 48;

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25. **Communique No. 50;**
26. **Computer Internet Statement of IAP Sent this Out on Their Website as a Message.
Repeating a Newsletter to Attack the United States Around the World. It was Posted on the
Web Site 2 Weeks Before 9/11 and Still on the Web Site After 9/11;**
27. **Newspaper Article from Hamas Glorifying a Member, Dr. Adullah Azzam as a *Martyr*;**
28. **Respondent's Supplemental Exhibits;**
29. **Newspaper Article from Ila Falastene [To Palestine] Issued by the Islamic Association for
Palestinian in North America Dated February 1990 Blessing the Mujahideen and Hamas for
the Sake of Palestine and Blessing Sheikh Ahmad Yassin Relating to His Martyrdom and
Intifada and Jihad;**
30. **Newspaper Article December 1989 from the Ila Falastene which Talks About Recruited
Funds Being Sent to the Precursor of FLM and it's Move to Dallas, Texas, and Provide the
Name of Occupied Land Fund in Los Angles and Asked Individuals to Send Money and
Support to Aid Palestinians;**
31. **Federal Bureau of Investigation Report Written by Special Agent Donna Chabot regarding
Respondent;**
32. **Holy Land Foundation (HLF) Pledge Form and Sponsorship Acceptance Form**
33. **Letter from Abdel Rahman Abdel Karim Odeh HLF, the Director of the Eastern Division of
HLF, to the Texas HFL Headquarters-Ibrahim Elsamneh. The letter in part States a Check
Included for the Yahya Ayyash Family who's Husband was Killed and Known as a Bomb
Expert or Maker and Martyr With a Copy of the Letter Sent to Mr. Shurki;**
34. **Letter for HLF Easter Office to Texas HLF Headquarters for the Sponsorship of Orphans
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and Family of a Martyr;

35. Letter dated April 12, 1997, from Abdel Rahman Abdel Karim Odeh, the Director of the Eastern Division of HLF to the Texas HFL Headquarters-Ibrahim Elsamneh, with Copies Sent to Mr. Shurki. This was and a Sponsorship Letter and it States it is a Letter of Sponsorship for the Daughter of a Martyr;
36. Booklet from the Holy Land Foundation for Relief and Development Programs and Objectives;
37. FBI document FD-302 dated May 22, 2002;
38. Respondent's Airline Tickets and Milage while with HLF ; Respondent used the HLF Corporate Card is from January 4, 1999 until July 29, 2000;
39. Action Items: Change Wording that Describes the Bases for the Reason for Death this Includes Printouts from Computers Databases that Were Seized at HLF from Hazim Elshai's Computers and Appears to be Tasking for Individuals ;
40. Document Seized by the Task Force - An Envelope Soliciting Money for HLF Showing 2 Children and 2 HLF Letters Soliciting Money for Food and the Needy Orphans;
41. Organizational Chart of HLF and the FBI Research Specialist;
42. HLF Religious Employment Based Petitioned Filed by Respondent which was Denied;
43. DHS's Background Information Tabs 1-26;
44. Respondent's Newspaper Article from *Dallas Morning News* Archives;
45. Respondent's Supplemental Exhibits on October 6, 2006, which Includes a List of IAP; Articles F-K and the Other Background Articles including Articles relating to Steven Emmerson;

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46. Respondent's Supplemental Exhibits of October 5, 2004, Specifically Subsections G, I, J and K;
47. Curriculum Vitae of Dr. Ahmad S. Dallal;
48. Government's Fifth Submission in Bond;
49. Respondent's Supplemental Exhibits of October 13, 2004;
50. Declaration From Stacey Tolchin Regarding Unavailability of Witnesses;
51. Declaration of Dr. Muzammil H. Siddiqi; and
52. Government Exhibit - Newspaper Article from the *World Net Daily*, Relating to Dr. Siddiqi.

Legal Analysis and Conclusions

Bond determinations primarily involve future considerations, such as whether the alien will appear at his hearing and whether he will pose a threat if released. See *Carlson v. Landon*, 342 U.S. 524 (1952); *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994); *Matter of Ellis*, 20 I&N Dec. 641 (BIA 1993). Respondent does not have any convictions that would make him a mandatory detainee under §236(c). Although DHS argues that the respondent is a national security risk, the Government, however, has not charged the respondent on the Notice to Appear ("NTA") as a terrorist or national security risk,

Hence, respondents case falls under §236(a) of the Act. During the course of a hearing under §236(a) of the Act, it is respondent's burden of proof to establish that he is not a danger to property or persons nor a national security risk. See *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Moreover, he is required to comply with the requirements of *Matter of Patel*, 15 I&N Dec.

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666 (BIA 1976). Under *Matter of Patel supra*, an immigration judge must determine whether or not the respondent has a stable employment history, fixed residence, significant family ties in the United States or a history of criminal or immigration law violations and not a risk to the national security of the United States. See also *Matter of Spiliopoulos*, 16 I&N Dec. 561 (BIA 1976).

Neither §236(a) of the Act, nor the applicable regulations, confer upon an alien the right to be release on bond. See generally, *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). The purpose of requiring a bond is not to punish the detained respondent, but to assure his or her appearance at future hearings. See *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994). In determining the necessity for, and the amount of, bond, such factors as a stable employment history, the length of residence in the community, the existence of family ties, a record of nonappearance at court proceedings, and previous criminal or immigration law violations may properly be considered. See *Matter of San Martin*, 15 I&N Dec. 167 (BIA 1974); See also *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988).

At the outset, however, this Court must address §412 of the USA Patriot Act of 2001, Intercept and Obstruct Terrorist of 2001 ("Patriot Act"), Pub. L. No. 107-56 (Oct. 26, 2001), which the BIA held this section adds certification as another means to address the detention by the Attorney General of suspected terrorist. See *Matter of U-H-*, 23 I&N Dec. 355 (BIA 2002); See also *Singh-Kaur v. Ashcroft*, ___ F.3d ___, NO. 03-1766 (3rd Cir. Sept. 23, 2004). The Patriot Act also expanded § 212(a)(3)(B)(iv) of the Act defines the term "engage in terrorist activity" as follows:

As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization-

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(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for-

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity;

(V) to solicit any individual-

(aa) to engage in conduct otherwise described in this clause;

(bb) for membership in terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documents or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training-

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in clause (vi)(I) or (vi)(II); or

(dd) to a terrorist organization described in clause (vi)(III), unless the actor can demonstrate that he did not know and should not reasonably have known, that the act would further the organization's

terrorist activity.

This clause shall not apply to any material support th alien afforded to an organization or individual that has committed terrorist activity, if the Secretary of State , after consultation with the Attorney General or the Attorney General, after consultation with the Secretary of State, concludes in is sole unreviewable discretion. that this clause should not apply.

Terrorist activities are defined under§212(a)(3)(B)(iii) of the Act as:

Any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

- (I) The hijacking or sabotage of any conveyance(including an aircraft, vessel, or vehicle).
- (II)The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.
- (III)A violent attack upon an international protected person (as defined in §116(b)(4) of Title 18 United States Coade) or upon the liberty of such a person.
- (IV) An assassination.
- (V) The use of any-
 - (a) biological agent, chemical agent, or nuclear weapon or device, or
 - (b) explosive or firearm (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety or one or more individuals or to cause substantial damage to property.
- (VI)A threat, attempt, or conspiracy to do any of the foregoing.

The Government argues the threshold issue is what constitutes a “reasonable ground to believe” an alien is involved in terrorist activities and a danger to the community. DHS’ sites the

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Circuit Court of Appeal for the District of Columbia, in *Holy Land Foundation for Relief and Development v. Ashcroft*, 333 Fr.3d 156 (CADC 2003), who affirmed the District Courts decision finding the HLF was a member or associate organization designated by this Government as a terrorist organization once the following was established: 1)where the HLF had financial connections to Hamas a terrorist organization; 2)the HLF leaders had been actively involved in meetings with terrorist organizational leaders; and 3)foundation funds and financial support was used to support orphans and families of terrorist martyrs and prisoners. *Holy Land Foundation for Relief and Development v. Ashcroft*, *supra*; *Singh-Kaur v. Ashcroft*, *supra*. The District of Columbia Circuit Court of Appeals held there was a rational basis for the Treasury Department to find a strong link between Hamas and the Holy Land Foundation (HLF). It further found that HLF had financial connections to Hamas-controlled charitable organizations and that HLF leaders. *Holy Land Foundation for Relief and Development v. Ashcroft*, *supra*. According to the Ninth Circuit, *Cheema v. Ashcroft*, ___ F.3d ___, No. 02-71311 (9th Cir. September 8, 2004, *Second Amendment*) is distinguishable because it was based on prior law. *Bellout v. Ashcroft*, 363 F.3d 975 (9th Cir. 2004). Joining or previous membership in an organization that has been designated by the Secretary of State or Department of Treasury as a terrorist organization is reasonable grounds to believe the alien is a danger to the security of the United States. *Bellout v. Ashcroft*, *supra*; *Holy Land Foundation for Relief and Development v. Ashcroft*, *supra*; see also *Singh-Kaur v. Ashcroft*, *supra*. Providing food and shelter for people engaged in terrorist activities is providing substantial evidence of support to militant's and their terrorist activities. *Singh-Kaur v. Ashcroft*, *supra*.

In *Holy Land Foundation for Relief and Development v. Ashcroft*, *supra*, there has already
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been a finding by the District Court and Court of Appeals for the District of Columbia, that the Treasury Department knows or has reasonable grounds to believe that HFL a terrorist organization based upon the evidence seized. This court held it was appropriate to rely on this information which predated designation of HFL as a terrorist organization and affiliation with Hamas pursuant to Executive Order. The same individuals involved in the District of Columbia case have also presented their declaration on behalf of the respondent and are included in the record. The Court of Appeals held that the evidence of funding from HFL to Hamas was established and incontrovertible.

The bond hearing before this Court has the same irrefutable affiliations and nexus between the Dallas headquarters of HFL and Hamas decided by the District Court and Courts of Appeal in *Holy Land Foundation for Relief and Development v. Ashcroft, supra*. The only one not released in the criminal case on bond pending the criminal trial according to the newspaper article provided by respondent as Exhibit # 17 was an alien defendant. In the criminal case, the U.S. District Court for the Northern District of Texas in Dallas, noted the Government failed to meet its burden on flight risk and failed to prove dangerousness or crimes of violence. (See Exhibit #6).

Based on the foregoing, this Court finds that the DHS's evidence present during this hearing mitigates against a release on bond. See *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988)(sequence of events may be used as probative evidence); See also *Matter of Luis-Rodriguez*, Int. Dec. 3395 (BIA 1999)(the Court may rely on circumstantial evidence.)

I have taken both Exhibits # 15 and #16 and paraphrased between the transcriptions #15B, #16B and #49, (Translation of the tape--there many differences in the translations, however both parties agree the songs' translations are the same). Tape #15 is paraphrased in more detail because of the number of speakers and songs. Tape #15 begins with an opening frame showing a banner

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with the caption, "The Islamic Association for Palestine, Chicago, Office" which is followed by the IAP logo and Palestinian flag. The first unknown speaker and master of ceremonies welcomes the individuals to the Fourth Annual Islamic Association for Palestine Charity Dinner. He states during his speech that Palestine is an Islamic land which will be cleansed one day from the abomination of the sons of monkeys and pig. Their contributions for Palestine are a reminder of the sanctity of this cause. Mohammad Khair speaks. Then the same unidentified man or master of ceremonies describes the struggle with Jews and states one is only fit for that struggle if they understand their struggles with Jews and their enemies. The Jewish struggle is one between good and evil and as long as evil has unsheathed its sword the struggle will continue. He considers their children part of an Islamic renaissance to complete the task.

Dr. Rafiq Jaber discusses the peace accords between Palestine and Jerusalem. He discusses the enemies of Islam and Muslims whether outside the country or inside this country. Dr. Rafiq Jaber refers to Dr. Mousa Abou Marzouk, who was allegedly jailed unjustly by aggression without merit. Dr. Jaber argues that Dr. Marzouk is innocent of all criminal charges alleged by the Israeli enemy. The Islamic and Muslim cause is a just cause as are the goals of the Islamic Association for Palestine. The IAP seeks to implement social activism and it is a very important issue for the members to work on. The charitable organizations and work to save their children from this critical problem. He states the IAP is a legal organization and registered under the laws of the United States and is not a secret or an underground organization. They have a firm belief that the Islamic cause is a just cause and Muslims' rights are before anyone else's. One of the goals of the IAP is to publish Al Zaytouna newspaper and the Muslim World Monitor is helping out in social activism and protecting Muslims in the United States. Mr. Jaber states that their children are on the brink of

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going astray and their work is to save their children from this critical problem.

Songs and chants made by Abdel Rahman and Al Mansrah, refer to justice, returning to Jerusalem and their enemies. There is a call for the banner of Jihad. They promise Abdel Qadder and his grandchildren that his blood will not become water and they vow to administer fire to the enemy that has wasted Palestine. Members should walk in the path of Fouad Higazi and Abdel Qadder because no matter how long they will not forget Palestine and the path of the Jihad.

Another song refers to attacking the aggressor and destroying the aggressor with treason and fear. Saladin will return to liberate this land with their help. If any unjust person's bullets stop him in his path, members will lay wait with theirs. Tell family members the singers will not return without a knife blade and the banners of victory going along with your martyrdom. They love nothing but rifles.

A singing group of 8 bearded men, two of who were identified and Mohamed Mosfaka aka Abu Ratib and Kifah Moustafa, performed. Within the words of the first song they sang, speak to sweet Jerusalem. They will not accept peace which humiliates their nation and the blood of the martyrdom is a certain victory. There is a call within the song for Jihad and again for martyrdom. The second song mentions Abdel Qadder and Faouad Higazi and they would administer fire to the enemy because Qadder's blood will not become water. Their enemies should roam because they wasted Palestine. When they are prisoners in their land they talk about betrayal from years of history. Palestine is their path to Jihad and to return as heroes.

Song 3 speaks of attacking the aggressor with a stone and striking with sling shots. Saladin is returning to liberate this land or homeland which paints a sad smile and sad face. The singers tell the audience to bring their banners and give their blood to the mosque. Unjust persons pass their

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way; let their bullets stop the unjust and write (right) their glory. Song 4 mentions they have not forgotten Palestine, their homeland. They will return no matter how long it takes. This will be done on their promise with the blade of a knife and the banner of victory. Mosa'ad going home is sweet as a martyrdom.

The unknown master of ceremonies returns and states that it is good to sing for Palestine and their hearts dance with love of Al Aqsa which is the joy in the heart of every Muslim whatever his nationality might be. Once again in his speech he makes reference to a rifle.

Abdel Rahman Al Manasrah from Jerusalem speaks next. Mr. Al Manasrah states that he has flown over to be with the group and brings with him the suffering of Jerusalem and the heavy burden of the despised occupation. He comes to them from a land that is the stronghold of the greatness of Islam at the end of times and the beginning of justice to liberated man. A people without a creed will be destroyed and people who come to prays say come to Jihad. The Quran is the shadow of its justice and covers all corners and worlds. Peace spreads and security is on the inside and love on the outside. Mr. Al Manasrah pronounces that a Ben Gurion said that if Israel wanted war, it spoke about peace. Mr. Al Manasrah marveled at Muslims 13 centuries ago when they reached Al Aqsa mosque and their justice spread for security to man. The Palestine accords are the first of the spider's web lines. Mr. Al Manasrah continues to discuss Jews and his disagreement with them, the peace treaties signed. He describes that there are verses of the Quran which espouse animosity to the Jews and the Jews are attempting to remove them from in the Arab and Islamic world so that a general would come that does not harbor animosity to the Jews. This is why a tormented peace happened.

Sheik, Aboul Bara'a aka Aboul Bara'a was the next speaker. He states there is no God but

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Allah and asks their acceptance to the call of the IAP. He state that Palestine lives under occupation, injustice, tyranny, imprisonment, detainment, scourge, home demolitions, ban of movement, ban of prays, ban of travel, and all of that from te prior speaker Mr. Al Manasrah. The people of Palestine no longer know fear because they are right, have endured injustices and live under occupation. There are thousands of prisoners and illiterate students that quit schools to work because of the occupation. He asks everyone's support for this organization to oversee the tasks and goals and the people of Islam and IAP must unite behind the goals of Muslims and Islam.

The same unknown master of ceremonies returns to say many a martyr watered with his chaste blood on the land of beloved Palestine. There have been many parents who had to bid farewell to their children as martyrs and martyrdom. A wife lost her husband in prison or had his body pierced by the bullet of a traitorous Jew. Muslim in any land who are worthy of Islam must hoist the banner and claim the land that lives in ones heart.

Sabri, the Secretary Gerneal of the IAP, comes to the podium and blesses the audience. He asks for donations for the crowd and asks for money to combat the anti terrorism laws. Also to help Dr. Mousa Abou Marzouk and other Muslims who suffer in these corners of the earth.

Respondent, Abdel Jabbar Hamdan, comes to the podium and praises God and states he did not know about the IAP other than it raised the word of God . Respondent reads from the Quran and asks for charity for the IAP of \$5,000 a piece then asked for \$2,500, \$1000.

The second video which is numbered #16, including the transcriptions are #16B and #49 are paraphrased next. Respondent asks who will appear and discusses the need for the conference in order to pursue the righteousness. Respondent also reads from and discusses the Quran. He announces Al Nojourn from the Stars Foundation for Islamic Art and a segment of the conference on

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the IAP. The band Kfah Moustafa, Mohammed Mosfaka, Munzir Taleb and Mufind Abdel Qadder. sing of brotherhood for justice and they do not fear death. They sing about individuals who were killed fighting as soldiers and heroes with the Quran as their guide. They will defeat the cuffs of tyranny and dismiss the intruders. Another song mentions planning with bullets and harvesting water with tears and blood. They sing in reference to casting out those impure ones and restoring Palestine. Abdel Qadder's blood will not become water they will administer fire to the enemy. Enemies are allowed to roam and they have wasted Palestine. Let the people provide the blood of martyrs as sacrifice and pray on the prophet to guide. They will not forget their promise to liberate their homeland, Jerusalem. The Islamic revolution is coming with Klashnikov (AK-47 rifle). Then Jerusalem will remain forever free Islamic people who are absent and need to go back. This is their glory in the name of Jihad.

The songs continue stating that they must return to their homeland because God is great against their enemy if they are expelled for life they will return to the land to water it with blood. Wrapped in the Palestinian flag and given the stones to fight with to receive martyrdom. Their enemies are from Palestine and they have wasted it. They will not forget their path to Jihad.

Poems and monologues by others including Mufid Abdel Qadder flow next on the film. Songs begin again sing about the work and blood of martyrs are a sacrifice. They sing this is the heritage of their homeland. They promise not to forget to liberate Jerusalem because the Islamic revolution is coming with the Klashnikov (AK 47 assault rifle). They mention being wrapped in the Palestinian flag with stones to fight to receive martyrdom or achieve victory. They are not afraid of the Jews and occupation. They are not afraid of the torture during detention. The singers sing they are accused of being called terrorists because they are protecting their family and homeland from evil

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and humiliation. No matter how their enemies try to silence the grandfathers, the singers are the Islamic rock and dominate their entire people.

There is a break and a speech is made by Mufid Abdel Qadder after which the audience chants about and Islamic battles towards Jews.

The sing band resumes after a few speeches. The singers sing they were returning to their country with their children and it will be sweet to stay home. They will not forget to liberate our Jerusalem the Islamic Revolution is coming with Klashnikov (AK-47 assault rifle). Jerusalem will forever remain free Islamic people and those who are absent from Palestine may return. Their blood are roses to plant and make a history of glory and Jihad. God is against their enemies which is a call they will raise high. If they are expelled for life, they will return and water the land with blood. To fight and receive martyrdom or achieve victory they did not get humiliation under the shadows of Jews and occupation. They are not afraid if they are tortured during their detention. They are Islamic rocks for the sacrifice of their precious homeland and good news of their martyrdom.

After a few more songs Mufid Abdel Qadder reads a statement about imprisoned Sheik Ahmad Yasin. The audience once again chants about Khaibar (Islamic battle) to Jews. The Army of Mohamed will return. Additional speeches are made and additional similar songs by the same band.

ANALYSIS

As previously mentioned, Respondent has argued he is not a terrorist, flight risk, nor danger to the community. He has filed several exhibits to support his position including back ground information and petition drive signed by 340 people. (See Exhibit #6 Tab A). Respondent has also based his right to bond upon the release of his former employer Abu Baker and others in the criminal Decision and Order

case associated with their activities in the HLF and Hamas. (See Exhibit #6 Tab A). The United States District Court held in the criminal bond case that the Government failed to meet its burden of proof in that case on the issues of dangerousness. The Government also failed to prove risk of flight by a preponderance of the evidence. (See Exhibit 6 Tab A) Nor did the Government in that case, assert that the acts of the defendants constituted crimes of violence. Therefore, the nature of the offenses alleged weighed in the favor of the defendants in the criminal case and they were released.(See Exhibit #6 Tab A).The Federal indictment in this case is Exhibit #20.

Respondent presented his job description beginning February 5, 1999.(See Exhibit #6 Tab F and Exhibit #10 [same documents]). Part of his duties was to provide religious counseling and speaking. He was also required to motivate audiences and raise money. He was to report to the chief of finances on financial issues. He was to keep detailed account records of expenses, donations, names and contact numbers of pledge or gift makers. Respondent was the highest paid fund raiser and second highest paid employee at HLF. (See Exhibit #11). Exhibit #12,33,35 and 36 is a record of the HLF showing the funds raised by respondent on one night in the amount of \$12,924 on September 25, 1998. He regularly attended HLF staff meetings in Dallas.

Among respondent's exhibits, he included Exhibits #17 and Exhibit #28 which are newspaper articles relating to HLF, declarations made on behalf of HLF in the United States District Court Case from the District of Columbia including the statement of Mr. Baker and the decision is referenced previously in this decision and documentation to support HLF's charitable work.

In addition to the testimony and video tapes, the Government submitted Exhibits# 13, #14, #18, #19, #43 and #52 among others. which includes background information on terrorism linked to Hamas, Hamas attacks and suicide bombing attacks in Israel, coving 1989 to 2004. Exhibits #21,

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#22 and #23 are publications of the IAP calling for a Jihad against Jews and Israel. Exhibits #24 and #25 is an article from the Islamic Resistance Movement Communique professing a Palestinian Muslim Intifada and Jihad against Jews the tyrant Zionist. It makes references to Hamas and blood of martyrs. Exhibits #26, #27, #29 and #30 are similar anti-Semitic articles or statements. Exhibit #32 was presented by the DHS to show that HLF was also sponsoring prisoners, martyrs and deportees from Israel.

Exhibit #32 is an FBI report of investigation relating to respondent and Agent Chabot was a participant in the investigation. Within the respondent admitted his HLF activities but denied knowing the organizations connections to Hamas. Respondent admitted attending a series of meetings in Philadelphia during 1993 where Hamas was mentioned, but does not remember for what purpose and he has never support Hamas. Respondent denied ever attending any conference or events that mentioned killing Jews.

After reviewing all of this evidence and including the District and Circuit Courts decisions in both the forfeiture and crime bond case, this Court finds that HLF has been found to be a terrorist organization located in the United States that funded Hamas. Respondent aided and abetted in that funding process. The criminal bond case only went to the issue of flight risk for bond purposes, dangerousness and violence were not adequately address by the Government so they failed to prove in that case. The criminal case is distinguishable from this Immigration case because has DHS established respondent's membership or affiliation with 2 organizations in the United States who have the propensity for violence and affiliation or association with terrorist organizations prior to HLF's designation by the Department of Tresuary and pre- IAP's designagtion in the future. DHS also presented substantial evidence to support their position.

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Respondent testified he did not give credence to the American source or media materials about the HLF and Hamas. Yet, he admitted calling to inquire to see if the information was true and getting upset with his superiors or leadership at the HLF when Mr. Marzouk of Hamas was brought in to speak at HLF function(s). He claims ignorance yet he ran the HLF west coast office in Anaheim until it was too disruptive with fund-raising. He attended staff meetings during this same time period in Dallas. Respondent claims that he did not agree with some of the radical speakers at some of the conferences he attended, yet he did nothing to disassociate himself or the HLF from fund-raising at those same functions to the same audiences Respondent was clearly the highest paid fund raiser for a HLF, a terrorist organization in this country that supported Hamas. *Bellout v. Ashcroft, supra; Holy Land Foundation for Relief and Development v. Ashcroft, supra; see also Singh-Kaur v. Ashcroft, supra Bellout v. Ashcroft, supra; Holy Land Foundation for Relief and Development v. Ashcroft, supra; see also Singh-Kaur v. Ashcroft, supra.* Respondent attempts to claims blind awareness and cultural skepticism when these articles were in the newspapers were published and also on web sites. Yet he did admitted that he made phone calls about the allegations and charges against HLF. He discussed these issues at staff meetings of the HLF. In addition, in the FBI report submitted, respondent admitted asking Mr. Baker multiple times about HLF's association to Hamas. Respondent's claim of lack of knowledge fails when he also told the FBI he did not attend any conferences or events where killing Jews was discussed. It is clear from Exhibit's #15, #16, #15B, #16B and #49 he participated in IAP conferences that did just that. Some of the same speakers attended the HLF functions as well based upon the evidence presented in court. In fact the songs alone speak to a desire to participate in terrorist activity in Palestine until their home land is free. They are not simply folk songs as respondent would suggest, particularly when AK-47's,

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knives and blood are mentioned as a means of fulfilling these goals.

Respondent's own expert, Dr. Dallal admitted that funds raised by Middle Eastern groups went primarily to Hamas because they were the largest group and best known. Dr. Dallal acknowledged Hamas is a terrorist group. He also admitted that some of the funds raised and given to Hamas would in turn go to orphans, widows and martyrs. HLF's solicitation flyer targets these same groups including prisoners and deportees. Dr. Dallal stated that deportees were those Palestinians deported from Israel to Lebanon.

Martyr apparently has multiple meanings within this case. What is clear, is that a martyr or martyrs have died for what they believe to be a just cause even if it is a suicide bomber. The songs on the videos make it very clear that the martyrs are dying for the cause of liberating Palestine from the Israelis for as long as it takes in a violent fashion. The respondent's counsel argues that the songs are just old folk songs of the Palestinians. The respondent's contention is absurd and the songs speak for themselves when both parties agree on their content. This is particularly true when the videos are reviewed with the IAP website articles presented by the Government. They support this same view as the videos.

Based upon the totality of the evidence presented, this court would have to agree with the District Court that respondent is not a flight risk and has significant family, social, religious and business ties in this country. This, however, must be viewed in light of his involvement with the HFL and the IAP. He clearly participated and aided in the fund raising for two terrorist organizations in the United States that promoted terrorism abroad in Israel or by whatever means necessary according to songs transcribed. Respondent was the highest paid fund raiser for the HLF which was found by the Circuit Court to be a national terrorist organization and petition was denied by the

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Supreme Court. The IAP tapes clearly show respondent on tape #15 soliciting funds just after a request is made for the furtherance of IAP Palestinian causes and after multiple speeches and songs were presented inciting bodily harm to their enemies and Jews were specifically mentioned. On tape #16 there is an acknowledgment by the singers that they have been called terrorists for they have espoused violence, weapons, bloodshed and terrorism towards their enemies, the Jews in Israel.

This Court, therefore, finds that respondent was a member or affiliated with one if not two national terrorist organization, HLF and the IAP, he is a danger to the community and a risk to national security. There is reason to believe respondent is a danger to the community and a national security risk.

Accordingly, the following order will be entered:

ORDER

IT IS ORDERED that the respondents should be held without bond. Their request for Bond Redetermination is hereby **DENIED**.

DATE: 11/21/04

D. D. Sitgraves
D.D. SITGRAVES
U.S. IMMIGRATION JUDGE

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