UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
NEWARK, NEW JERSEY

Files Nos.: **A 76-133-969 Lead, A 76-123-694,**
A 76-123-695, A 76-123-696,
A 76-123-697

In the Matters of:	
Mohammad Mahdi Ahmad QATANANI, **Sumaia M. ABUHNOUD,** **Omar M.QATANANI,** **Ahmad M. QATANANI,** **Isra M. QATANANI**	In Consolidated Removal Proceedings
Respondents.	

Charge: INA § 237(a)(1)(B) – Nonimmigrant who remained in the US for a time longer than permitted

Application: INA § 245 – Adjustment of Status

ON BEHALF OF RESPONDENTS

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WRITTEN DECISION OF THE IMMIGRATION JUDGE

The respondent Mohammad Mahdi Ahmad Qatanani ("Mr. Qatanani") is a 44-year-old male who is married to respondent Sumaia M. Abuhnoud, a 43-year-old female.

Together, they have six children, three of whom are respondents in this case: Ahmad M. Qatanani is an 18 year-old male; Isra M. Qatanani is a 17 year-old female; and Omar M. Qatanani is a 14-year-old male. The other three children, two of whom are twins, were born in the United States and are not respondents in this case. The five respondents' cases have been consolidated with Mr. Qatanani named as the lead respondent. All of the respondents, when discussed collectively, will be referred to as "Respondents" in this decision.

I. Procedural History

Respondents were admitted to the United States on November 19, 1996 on a nonimmigrant H-1B religious worker visa issued to Mr. Qatanani which allowed him to work as the Imam at the Islamic Center of Passaic County ("ICPC"). (DHS Ex 1). Respondents' nonimmigrant status was set to expire on April 1, 1999[1]. On the visas' expiration date, Mr. Qatanani filed an Application to Register Permanent Residence or to Adjust Status ("I-485") with the Immigration and Naturalization Service ("INS") [now the U.S. Department of Homeland Security ("DHS")]. (DHS Ex 3). On October 18, 1998, INS had previously approved Mr. Qatanani's Petition for Amerasian, Widow or Special Immigrant ("I-360"), in which he self-petitioned for an immigrant visa as a Special Immigrant Religious Worker. (DHS Exs 4, 20).

[1] Respondents' visa originally was valid only until October 26, 1997, but an extension was given until April 1, 1999.

Mr. Qatanani's I-485 remained under scrutiny until 2006. During the interim period, Mr. Qatanani was never interviewed by agents or officers of INS or its successor, DHS. Eventually, on May 16, 2006, Mr. Qatanani was interviewed by a U.S. Citizenship and Immigration Services ("USCIS") officers and on July 10, 2006, USCIS, a component of DHS, denied Mr. Qatanani's I-485. (DHS Ex 6). USCIS articulated two reasons for its denial. First, USCIS found that Mr. Qatanani was inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act ("INA") for willfully making a material misrepresentation while seeking to procure the benefit of adjustment of status; specifically, that his "actions and material misrepresentations [tended] to shut off a line of inquiry which [was] relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.'" (DHS Ex 6, p.4). Second, USCIS denied Mr. Qatanani's I-485 as a matter of discretion after it determined that the positive equities were outweighed by Mr. Qatanani's pattern of deception in dealing with the federal government. (DHS Ex 6, p.5-6).

On July 10, 2006, USCIS served on Respondents by regular mail, Notices to Appear ("NTA's") which charged that they were removable under INA § 237(a)(1)(B) as being non-immigrants who remained in the United States for a time longer than permitted. (DHS Exs 1-1D). In a master calendar hearing on February 8, 2007, Respondents admitted the factual allegations[2] contained in the NTA's and conceded some of the charges of

[2]DHS filed Additional Charges of Inadmissibility/Deportability ("I-261") on March 26, 2008 to correct the original NTA to reflect that Respondents had received an extension of their nonimmigrant status until April 1, 1999. (DHS Exs 1.1-1.1D). Respondents admitted these allegations to be true.

removability. Respondents thereafter renewed their I-485 before this Court and now argue that despite being removable, they are eligible to adjust status under INA § 245(a) inasmuch as USCIS has approved Mr. Qatanani's I-360, there is an immigrant visa immediately available for Mr. Qatanani, and all Respondents are ***otherwise eligible*** and admissible under the provisions of the INA. DHS contests Respondents' claim to relief and argues that Mr. Qatanani is inadmissible under two provisions of the INA: (1) INA § 212(a)(6)(C)(i) for seeking to procure a visa by fraud or willfully misrepresenting a material fact; and (2) INA § 212(a)(3)(B)(i)(I) for having engaged in terrorist activity.

After several pretrial conferences, proceedings on the merits were held on May 8, 9, 12, and June 2, 2008, during which both parties presented the testimonies of various witnesses. The evidentiary portion of the case was closed by the Court on the last day; however, permission was granted to the parties to submit memoranda in support of their respective legal positions by July 31, 2008. Both parties timely filed memoranda with the Court; however, DHS attached a copy of a report by one of its witnesses. This report, which originally had been denied to exist, has been objected to by opposing party. The report, however, raises other issues. Since the Court is interested in providing the most objective analysis, the report will be accepted into evidence as an exhibit for identification and commented upon later in this opinion. The Court feels that this is a better approach in the event this decision is further reviewed by a higher court.

II. Statement of the Facts

The great majority of these background facts are obtained solely through the

testimony of Mr. Qatanani. Pinpoint citation to the transcript of his testimony is provided for reference.

Mr. Qatanani was born in Nablus in the West Bank in 1962. (Hr'g Tr., Mr. Qatanani, p.721:5-6). His family was originally from a village near Jarta, which was destroyed in 1948, forcing families to abandon their homes and relocate to a refugee camp in Askar near Nablus. (Hr'g Tr., Mr. Qatanani, p.721:5-6, 722:9-15). In 1982, after finishing high school, Mr. Qatanani began studies at the University of Jordan working toward his bachelor degree, after which he went on to obtain his masters and, subsequently, he achieved a Ph.D. (Hr'g Tr., Mr. Qatanani, p.726:17-24). In 1989, Mr. Qatanani began working as an Imam in Jordan. (Hr'g Tr., Mr. Qatanani, p.729:5-6).

Between 1985 and 1991, while attending the University of Jordan, Mr. Qatanani was elected to be a member of, and participated in, a student organization called the Muslim Brotherhood. (Hr'g Tr., Mr. Qatanani, p.732:11-16, 733:23-25). As a member of the Muslim Brotherhood, Mr. Qatanani's tasks included planning lectures and trips for other students' participation. (Hr'g Tr., Mr. Qatanani, p.732:20-25, 733:14-21). He ended his participation in 1991 due to the time consumed between taking care of his family, working as an Imam and working towards earning his Ph.D. (Hr'g Tr., Mr. Qatanani, p.734:1-16).

Mr. Qatanani lived in Jordan from 1982 until he arrived in the United States in 1996. (Hr'g Tr., Mr. Qatanani, p.727:13-18). After leaving the West Bank, Mr. Qatanani only returned for visits. (Hr'g Tr., Mr. Qatanani, p.727:17-20). He returned for visits once a year

from 1982 to 1987. (Hr'g Tr., Mr. Qatanani, p.727:20-728:1). From 1987 to 1993, Mr. Qatanani did not travel to the West Bank due to the events surrounding the Intifada (See infra). (Hr'g Tr., Mr. Qatanani, p.728:1-4). However, in 1993, in order to renew his travel permit which would soon expire after the sixth year, Mr. Qatanani returned to the West Bank. (Hr'g Tr., Mr. Qatanani, p.728:4-8, 756:18-757:12); (Resp't Ex. 24).

In 1993, Mr. Qatanani traveled with his wife and three children back to the West Bank to re-register his residency. (Hr'g Tr., Mr. Qatanani, p.755:6-19). As he crossed the bridge that led to the border between Jordan and the West Bank, Mr. Qatanani and his family were stopped and questioned by soldiers of the Israel Defense Forces ("IDF"). (Hr'g Tr., Mr. Qatanani, p.755:10-14). The soldiers informed Mr. Qatanani that he would need to return to the military station for further inspections in a week and handed Mr. Qatanani a document indicating this. (Hr'g Tr., Mr. Qatanani, p.755:10-14).

Mr. Qatanani led his wife and children to his parent's home and later returned to the military station as ordered sometime around late October of 1993. (Hr'g Tr., Mr. Qatanani, p.759:1-10, 772:14-773:1). What occurred at the military station is only known by what Mr. Qatanani stated in his testimony. Mr. Qatanani testified that, without telling him why, the IDF soldiers put handcuffs on him and led him to an interrogation room. (Hr'g Tr., Mr. Qatanani, p.759:12-19). After Mr. Qatanani met with an interrogator, the IDF soldiers put Mr. Qatanani in a small cell where he claimed they subjected him to tortuous conditions, e.g., they put a smelly hood over his head, they handcuffed him to a small, unstable children's chair for extended hours in various positions, they made him stand in an

awkward position in a very small closet not allowing him to move for hours, they subjected him to extremely cold temperatures, deprived him of sleep and always played very loud music. (Hr'g Tr., Mr. Qatanani, p.759:16-760:21, 765:7-13, 768:9-772:1, 773-21-774:1, 774:14-775:11); (Resp't Ex. 23). Mr. Qatanani testified that for thirty or so days he was periodically led from his cell, where he felt he was being tortured, and taken in front of an interrogator, and thereafter led back to the cell where he was again subjected to conditions in which he felt he was being tortured. (Hr'g Tr., Mr. Qatanani, p.760:1-761:2, 772:7-13, 775:20-21). The likelihood that these conditions actually took place was not denied by DHS' expert, Professor Guiora during his cross examination. The only caveat being that he indicated that he did not consider these techniques to be torture.

Mr. Qatanani testified that the interrogators would ask him questions such as "Who are your Teachers? Who are your [sic]? What is Moslem Brotherhood? What is the relationship between HAMAS and Brotherhood? What do you know about those people?" (Hr'g Tr., Mr. Qatanani, p.762:4-18). Mr. Qatanani additionally testified that he was requested by the IDF soldiers to spy for them and they threatened his family's lives. (Hr'g Tr., Mr. Qatanani, p.762:16-20, 764:16-765:1).

Mr. Qatanani testified that the IDF soldiers sought an extension of his imprisonment after 18 days. (Hr'g Tr., Mr. Qatanani, p.782:1-4). Before the extension, Mr. Qatanani's family retained a lawyer; he met with him through the window in the room where he was being kept. (Hr'g Tr., Mr. Qatanani, p.777:25-778:8, 779:1-6, 782:3-4). The name of this lawyer was Mohammad Alhalby. (Hr'g Tr., Mr. Qatanani, p.778:9-19).

Mr. Qatanani testified that he met with a second lawyer, Naem Abu Yauoub, who had attended the University of Jordan with him, for around 20 minutes at a table in a room surrounded by soldiers a few days later. (Hr'g Tr., Mr. Qatanani, p.779:7-12, p.786:9-15). Mr. Qatanani testified that Mr. Yauoub told him that "...I can't do anything for you and they will not release you until finishing the finishing paper. . . When you finish, it will be over and I understand that they have nothing against you and your family is good..." (Hr'g Tr., Mr. Qatanani, p.779:14-20, p.783:17).

Mr. Qatanani identified that the first jail in which he was kept was in Nablus, the second jail in which he was kept was in Farer and the third one was in Majeto. (Hr'g Tr., Mr. Qatanani, p.782:12-15). While at Majeto, Mr. Qatanani testified that he was taken to a "waiting room" where others were led to a courtroom and returned crying. (Hr'g Tr., Mr. Qatanani, p.782:16-18). Mr. Qatanani testified that he waited in that room the entire day, but was never taken to see a judge or prosecutor. (Hr'g Tr., Mr. Qatanani, p.782:19-21). It was at this time that Mr. Qatanani met his lawyer Mr. Yauoub through a small window while he was in the waiting room. (Hr'g Tr., Mr. Qatanani, p.778:19-21, 782:3-4, 783:5-6). Mr. Yauoub told Mr. Qatanani "...They have nothing against you. You are very clean and I hope that it will be so today. I will make anything for you to be released and if any way I hope with the three months or less you will be . . . no problems against you. You are clean. . . ." (Hr'g Tr., Mr. Qatanani, p.783:20-25). Mr. Qatanani testified that Mr. Yauoub told him that he could go within 60 days, and so he assumed that his lawyer was telling him that if they have nothing on a detainee, they must let him go after three months. (Hr'g Tr., Mr.

Qatanani, p.785:3-16). Mr. Qatanani testified that he did not see his lawyer again after that. Mr. Qatanani could not state how many days had passed by that time, although he guessed around 50 to 60 days. (Hr'g Tr., Mr. Qatanani, p.784:2-15).

Mr. Qatanani testified that he was never told by any of his lawyers that charges had been made against him or that he was pleading guilty to something and no papers were given to him. (Hr'g Tr., Mr. Qatanani, p.786:22-787:6). Mr. Qatanani testified that he witnessed others who were imprisoned with him being called to go to court. (Hr'g Tr., Mr. Qatanani, p.788:2-6). Mr. Qatanani was expecting the same to happen to him, but it never did and instead, he was called out by one of the IDF soldiers and was released. (Hr'g Tr., Mr. Qatanani, p.788:6-11). Mr. Qatanani testified that it was around January 21, 1994 when he was released. (Hr'g Tr., Mr. Qatanani, p.790:8-13).

Mr. Qatanani testified that at the end of the thirty-day interrogation, the IDF soldiers had him sign something called a "finishing paper." (Hr'g Tr., Mr. Qatanani, p.777:11-17). Mr. Qatanani testified that the "finishing paper" was not read back to him and it was written in Hebrew, which he does not speak, and no copy of this paper was given to him. (Hr'g Tr., Mr. Qatanani, p.780:10-781:20).

Mr. Qatanani was reunited with his family after his release and stayed in the West Bank for one or two weeks before returning to Jordan. (Hr'g Tr., Mr. Qatanani, p.793:23-

24). The first night of his return he stayed at his brother-in-law's home.[3] (Hr'g Tr., Mr. Qatanani, p.737:2-7). Mr. Qatanani re-registered his residency before he returned to Jordan. (Hr'g Tr., Mr. Qatanani, p.796:17-25).

In 1996, the Islamic Center for Passaic County in Patterson, New Jersey contacted Mr. Qatanani in Jordan to offer him a position as the Imam for their mosque. (Hr'g Tr., Mr. Qatanani p.737:20-738:11). Mr. Qatanani accepted and arrangements were made in 1996 for Mr. Qatanani and his wife and children to receive a religious worker's nonimmigrant visa. (Hr'g Tr., Mr. Qatanani p.720:3-6, 737:15-19). Mr. Qatanani's visa was temporary and would expire on October 26, 1997, although he did manage to get it extended until April 1, 1999. During this time Mr. Qatanani had work authorization. On the day that his visa expired, Mr. Qatanani sought to apply for an immigrant visa as a Special Worker after INS had approved Mr. Qatanani's I-360 self petition. (DHS Ex. 3, 4). Respondent initially applied for and was granted work authorization; however, USCIS did not respond to his attempts to apply for an extension of his employment authorization after 2000, while his I-485 was pending. (Hr'g Tr., Mr. Qatanani, p.803:15-24). This had the effect of prohibiting Mr. Qatanani from renewing his driver's license and Mr. Qatanani sought advice from friends on how to obtain an international driver's license. (Hr'g Tr., Mr. Qatanani, p.805:9-23).

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[3]His brother-in-law, Mahmud al-Suli, was later assassinated for being one of the leaders of Harakat Al-Mukawama Al-Islamia ("HAMAS"). (DHS Ex. 5.2).

For six years (April 1, 1999-February 7, 2005), Mr. Qatanani's application for adjustment of status remained pending with USCIS. Eventually, Mr. Qatanani contacted the FBI. (Hr'g Tr., Mr. Qatanani, p.808:5-25). Special Agent Angel Alicea ("SA Alicea") and ICE Agent Heather Philpott ("SA Philpott") agreed to meet with Mr. Qatanani and his attorney, Sohail Mohammed, along with another attorney, Ronald Fava, and an interpreter, Nabil Abasi, in regards to questions Mr. Qatanani had about his pending I-485. (Hr'g Tr., Mr. Qatanani, p.810:8-10). The meeting was held at attorney Mohammed's office on February 7, 2005. (DHS Ex. 16).

At the February 7, 2005 meeting, Mr. Qatanani related to the FBI the incident at the border of the West Bank in 1993 when he was taken into custody by IDF. The details of what was said in this interview are disputed by the parties and will be further explored later in the decision. Suffice it to say, Mr. Qatanani denies he ever told the federal agents that he was "arrested" in Nablus in 1993; but rather, he claims that he said only that he was "detained." The federal agents have testified otherwise. (Hr'g Tr., Mr. Qatanani, p.812:10-12); (DHS Ex. 16) and testimony by FBI SA Alicea and ICE Officer Philpott-Infra)

After this meeting, the agents who attended the meeting informed USCIS that Mr. Qatanani was arrested in the West Bank and possibly convicted. Arrangements were made to contact Israel to obtain records of Mr. Qatanani's arrest and conviction. (DHS Ex. 16).

Before Israel responded to the FBI's request, USCIS scheduled an interview with Mr. Qatanani in regards to his I-485 application for May 16, 2006. (DHS Ex. 20). Mr.

Qatanani attended this interview with his current attorney, Ms. Claudia Slovinsky. (DHS Ex 13). Mr. Qatanani submitted an amended I-485 at this interview to reflect a traffic violation that occurred in November of 2005, for which Mr. Qatanani was pulled over for speeding.[4] (Resp't Ex. 1).

At this second interview, Mr. Qatanani was asked why he left certain information off of his application. First, the interviewer questioned Mr. Qatanani why he answered "various religious organizations" on Question C, Part 3-entitled processing information. Mr.Qatanani explained his background and then detailed all of the organizations to which he belonged. (DHS Ex. 13, CIS Tr. p. 14-60).

The interviewer showed Mr. Qatanani his I-485 application and pointed out that he answered "no" to Question 1a of part three, which asks "have you ever been arrested...?" (DHS Ex. 13). Mr. Qatanani explained that he answered correctly because he was not "arrested" by the IDF in Nablus in 1993, but rather he was "detained." The interviewer then shared with Mr. Qatanani an affidavit drafted and signed by SA Alicea on January 31, 2006, in which SA Alicea claimed that Mr. Qatanani had stated that he was "arrested" while crossing into the West Bank; Mr. Qatanani was given the opportunity to review the affidavit

[4]The details surrounding this arrest, briefly, are that after being pulled over and being asked for his driver's license, Mr. Qatanani handed the officer the international driver's license which had the name Moho M. A. Hasan. (DHS Ex. 6, 20). The officer believed this to be a fraudulent license. Ultimately, Mr. Qatanani was charged with speeding, driving on a suspended license and obstruction of the administration of law, the last of which was dismissed. (Resp't Ex. 18).

in order to later answer additional questions. He pointed out, however, remembering discussing with SA Alicea the difference between being "detained" and being "arrested." (DHS Ex. 13, 16). Mr. Qatanani requested time to read SA Alicea's affidavit at the behest of his attorney, but this request was denied by the interviewer and the interview was abruptly terminated. (DHS Exhibit 13, CIS Tr. p. 207). This inquiry was never pursued further prior to a final decision by USCIS and Mr. Qatanani was not called back nor was he given a deadline in which to submit his explanations and/or objections.

On July 10, 2006, approximately two months after this interview, USCIS issued its decision to deny Mr. Qatanani's I-485 application to adjust status. (DHS Ex. 6). Specifically, USCIS found that the information Mr. Qatanani entered on his I-485 amounted to misrepresentation of material facts in that he (1) answered "no" to whether he had been arrested; (2) answered "various religious organizations" to what organizations to which he has belonged; and (3) USCIS also found that he did not merit its discretion to grant his application for adjustment of status because he had a history of giving the government misleading information such as the name on his international driver's license, which was different than any other document he had submitted on any other forms filed with USCIS. NTA's were issued against Mr. Qatanani and his family and these proceedings commenced.

III. Evidence Presented

A list of the documentary exhibits submitted on behalf of DHS and admitted into evidence is attached to this decision as Appendix A. A list of the documentary exhibits

submitted on behalf of Respondents and admitted into evidence is attached to this decision as Appendix B. A 962-page transcript of the court proceedings, including testimony presented by all parties, is also contained in the record. The transcript was authorized in advance at the request of this Court. The Court felt it was needed because of the copious amount of documents and the extended testimony of Mr. Qatanani and several witnesses over a period of four full days of hearings. The expert witnesses presented by the Respondents are as follows: Lisa Hajjar; Jonathan Kuttab; and Eric Daniel Goldstein. Respondents also presented an array of character witnesses: Rabbi Senter, Sheriff McGuire, Reverend Potter, Sheriff Spezziale, Assistant U.S. Attorney Charles McKenna, Father Latronico, Huma Hassan, and Muhammad Hatim Muhoud. These witnesses all testified before the Court during the four days of testimony. Also, the Respondents presented hundreds of declarations in their support as well. All of these submissions were marked as part of the record.

DHS presented as its expert witness Professor Amos N. Guiora. DHS also presented the testimonies of Special Agent Angel L. Alicea of the Federal Bureau of Investigations (FBI), and Special Agent Heather Philpott of the U.S. Immigrations Custom Enforcement (ICE).

IV. Burden of Proof

An alien applying for relief from removal has the burden of proof to establish the eligibility requirements are satisfied and that the alien merits a favorable exercise of discretion. INA § 240(c)(4)(A).

V. Historical Context of the Occupied Territories in 1993

Among the myriad of issues this case presents, there are two overriding questions that the Court must ultimately decide. The first issue is, whether the Court can rely on the documents that DHS has presented to the Court purporting to be the "protocol" and the "verdict"–comprising Mr. Qatanani's criminal record in the Israeli National Police files–to find that Mr. Qatanani "engaged in a terrorist activity" for supporting HAMAS, an acronym for *Harakat Al-Mukawama Al-Islamia* or the Islamic Resistance Movement. The second issue is, whether Mr. Qatanani's own statements made in his applications for relief, to federal agents, to immigration officers and to an immigration judge, demonstrated that he willfully misrepresented a material fact in seeking his request to adjust status. In addition to answering these two queries, the Court faces the challenging task of comprehending the historical context surrounding the Occupied Territories[5] during 1993.[6]

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[5]The Occupied Territories, historically, relate to the land of Israel occupied as a result of the 1967 Six Days War. The Occupied Territories at that time consisted of the West Bank, the Gaza Strip, the eastern sector of Jerusalem, and the Golan Heights. (DHS Ex. 11, the 1993 USDOS Human Rights Report on Israel and The Occupied Territories).

[6]In reaching this determination, the Court finds the conclusions by ICE Officer Gurka unproven by

1. Brief Description of Israel in 1993

Israel was founded in 1948 and has been in a formal state of war with many of its Arab neighbors. (DHS Ex. 11, 1993 DOS Report). Throughout its existence as a state, Israel has experienced numerous terrorist incidents, within and outside its borders. (DHS Ex. 11, 1993 DOS Report). In order to defend itself from these terrorist attacks, Israel has relied heavily on its military and security services and has retained many security-related emergency regulations. (DHS Ex. 11, 1993 DOS Report). In 1993, internal security was the responsibility of the General Security Service ("GSS"); the Israel Defense Forces ("IDF"), under the authority of a civilian Minister of Defense, also played a strong role. (DHS Ex. 11, 1993 DOS Report).

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the record. Her decision was predicated on her firm belief that the record presented by the Israeli military tribunal was an authentic one and that Mr. Qatanani willfully misrepresented a material fact. She uttered very little interest in allowing Mr. Qatanani to expound his answers and, in fact, she did not allow one single remark regarding the allegation of mistreatment undergone by Mr. Qatanani during the first 30 days of his detention in 1993, allegedly because the interview did not involve an asylum application. Such a conclusion appears simplistic to this Court and reflects a lack of understanding about the historical events surrounding this case as they took place in 1993.Furthermore, ICE Officer Gurka placed inordinate importance on Special Agent Alicea's affidavit without allowing Mr. Qatanani to submit any additional explanation, setting a deadline to do so or reconvening the interview to a future date, before rendering her decision. However, this record is not controlling on the court, which reviews in a de novo manner.

This case centers about the town of Nablus–a.k.a. Shechem–located in the West Bank, historically known as Judea and Samaria in the land of Israel. Nablus was captured from the Hashemite Kingdom of Jordan by IDF in the 1967 Six Days War and was under Israeli military occupation from 1967 to 1999. (DHS Ex.22, Library of Congress Report, p.2). After its occupation, Israel established military courts there under the Security Provisions Order No. 378 ("SPO"). (DHS Ex. 22, Library of Congress Report, p.2).

Respondents have submitted background materials and produced expert testimony in order to demonstrate that it was a regular practice for GSS and IDF to detain and question Palestinians, generally male Palestinians, when they cross over the border, specifically between Jordan and the West Bank, and enter the Occupied Territories. The Respondents' experts testified to the enormous amounts of Palestinians that were detained in this time period and to abuses that resulted from their detention. The evidence portrays the system as operating under very trying circumstances and the common finding was one of irregular proceedings resulting in abuses and excesses.[7]

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[7]The Court does not pass judgment on the Israeli authorities. It would be simplistic for this Court to analyze these facts as an outsider from Newark, New Jersey, without understanding the fears and apprehensions that acts of terrorism were causing the citizenry of Israel. Perhaps the hysteria and paranoia caused by these types of events is equal to what this country has gone through since September 11, 2001. As we speak, federal courts are analyzing the prolonged detention of individuals in Guantanamo and other prisons in the world, having designated the detainees enemy combatants and/or terrorists. This court is an administrative quasi judicial tribunal attached to the executive branch; however, its analysis is independent and requires the appropriate balance of the risks and rights the Respondents before it present and deserve.

2. Brief History of HAMAS

HAMAS (supra) was founded in 1988 in the Gaza Strip espoused with the mission of establishing an Islamic Palestinian State in Israel and the Occupied Territories through "Jihad" or Holy War. (DHS Ex. 5.5). HAMAS was an off shoot of an organization called the Muslim Brotherhood. (DHS Ex. 5.5). HAMAS differed significantly from the Muslim Brotherhood in that HAMAS opted to play a more direct role in the popular uprising; known as the Intifada (Intifada is an Arabic word which simply means "shaking off.") However, as used and referred to in the context of this opinion, it refers to the "rebellion" period between 1987-1993 and September 29, 2000, historically known as the First and Second Intifada- (See Professor Hajjar's book-Resp't Ex 8). (DHS Ex. 5.5). The group has launched attacks both in the Palestinian territories of the West Bank and Gaza Strip, and inside the pre-1967 boundaries of Israel. (DHS Ex. 12). Israel declared HAMAS an illegal organization in 1989. (DHS Ex. 5.5).

VI. Adjustment of Status under INA § 245(a)

The Court is not bound by the findings of the USCIS officers and will evaluate all of the evidence, documentary as well as testimonial, on a *de novo* basis. Albeit this case deals strictly with an application for adjustment of status and DHS has charged that Respondents are removable exclusively for overstaying their visa, DHS has asserted additionally that Respondents are inadmissible and cannot adjust status under INA §

245(a). Thus, the Court must examine these additional grounds as well, since the Respondents, must be "...otherwise admissible..."

An Immigration Judge may adjust the status of a respondent to LPR if the respondent (1) was inspected and admitted into the United States, (2) makes an application for such adjustment, (3) is eligible to receive an immigrant visa **and is otherwise admissible (emphasis supplied)** to the United States for permanent residence, and (4) an immigration visa is immediately available to the respondent at the time his/her application is filed. INA § 245(a). Respondents have the burden of establishing that they are eligible for adjustment of status and that it should be granted in the exercise of discretion. 8 C.F.R. § 1240.8(d) (2008). If the evidence shows that grounds for mandatory denial of the application may apply, Respondents have the burden of proving by a preponderance of the evidence that such grounds do not apply. Id.

The evidence presented establishes that Respondents were inspected and admitted into the United States on November 19, 1996. The evidence further establishes that Mr. Qatanani filed an application for adjustment of status ("I-485") on April 1, 1999 and an amended I-485 on January 22, 2008. (DHS Exhibit 3); (Resp't Exhibit 1). USCIS approved Mr. Qatanani's self-petition ("I-360") on October 13, 1998 determining that he is eligible to receive an immigrant visa. (DHS Exhibit 4). The remaining Respondents are eligible for immigrant visas as derivative family members of Mr. Qatanani. INA § 203(d). All Respondents have an immigrant visa immediately available to them inasmuch as their

priority date of June 10, 1998 is current as of the September 2008 visa bulletin. See Visa Bulletin for September 2008, http://travel.state.gov/visa/frvi/bulletin/bulletin_4310.html.

DHS claims that Mr. Qatanani cannot satisfy the admissibility requirement to adjust status under INA § 245(a) and, therefore, his dependents' applications must also be denied since they possess no independent or separate avenue of relief with the exception of voluntary departure. Specifically, DHS claims Mr. Qatanani is inadmissible for permanent resident status under 212(a)(3)(B)(i)(I)[8] and INA §§ 212(a)(6)(C)(i)[9] . DHS further argues that Mr. Qatanani is unable to adjust his status pursuant to INA § 245(c) in that he is deportable under INA § 237(a)(4)(B)[10] and because he has worked in the United States while out of status. Finally, DHS requests the Court to deny Respondents' applications for relief as a matter of discretion alleging that the grant of adjustment of status to the respondents is not in the best interest of the United States.

1. Inadmissibility Pursuant to INA § 212(a)(3)(B)(i)(I)

An alien is inadmissible pursuant to INA § 212(a)(3)(B)(i)(I) if he has "engaged in a terrorist activity." The term "engage in terrorist activity" includes, in substantial part:

> "...committing an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation,

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[8]This section finds inadmissible any alien who has engaged in a terrorist activity.

[9]This section finds inadmissible any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure a visa or admission into the United States.

communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons, explosives, or training . . . (dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization. . . "

INA § 212(a)(3)(B)(iv)(VII).

DHS alleges that Mr. Qatanani has knowingly afforded material support to HAMAS, a "terrorist organization." HAMAS was not designated as a "terrorist organization" until 1995, when President Clinton included it among organizations that threaten the Middle East peace process; therefore, HAMAS could not have been a "terrorist organization" in 1993 pursuant to subsections (I) or (II) of INA § 212(a)(3)(B)(vi). See Exec. Order No. 12,947, 60 Fed. Reg. 5079 (January 23, 1995). However, Respondents have not opposed DHS's allegations that HAMAS was a "terrorist organization" in 1993 and the evidence of record supports DHS's contention that HAMAS was a "terrorist organization" under subsection (III) of INA § 212(a)(3)(B)(vi) inasmuch as it falls within the definition as being "...a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, [terrorist activities described in the subparagraphs of § 212(a)(3)(B)(iv)]..." (DHS Exhibits 12, 21).

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[10]This section finds deportable any alien who is described in INA § 212(a)(3)(B).

Respondents have not offered evidence that Mr. Qatanani "did not know, and should not reasonably have known, that [HAMAS] was a terrorist organization." Therefore, the only issue remaining is, whether, based on the evidence of record and the testimonies offered at the merits hearings, Mr. Qatanani has "afforded material support" to HAMAS. In support of its argument, DHS offered evidence of the following: (1) Mr. Qatanani's arrest and conviction by the Israeli National Police in Nablus in 1993 finding Mr. Qatanani joined HAMAS in 1989 and provided services for HAMAS to further its recruitment and organizational efforts; (2) associations Mr. Qatanani has with known or alleged members or leaders of HAMAS; and (3) investigations of federal agents that detected that Mr. Qatanani has sent undisclosed cash funds to the West Bank in support of these organizations.

A. Evidence of the Arrest and Conviction

The only details available to the Court concerning Mr. Qatanani's detention come from Mr. Qatanani's testimony taken during the proceedings, the contents of purported Israeli military court records and his declarations to federal officers.

i. Mr. Qatanani's Testimony

Mr. Qatanani does not believe that he was arrested. (CIS Transcript. p.65 ¶24-25). He admits that he was detained in Israel in 1993 for three months. (CIS Transcript. p.66 ¶7-8). Mr. Qatanani stated that he did not believe that he was ever in "any court." (CIS Transcript. p.68 ¶20-23). Mr. Qatanani said that the military questioned him about the relationship between "The Brotherhood and Hamas." (CIS Transcript. p.75 ¶7-9). Mr.

Qatanani was confronted by what SA Alicea claimed he said–that he was "arrested by Israeli authorities"–Respondent said "this is not true." (CIS Transcript. p.78 ¶3-4). Qatanani said he told the Israeli military at the border that he was a member of the Muslim Brotherhood. (CIS Transcript. p.89 ¶24-25). Mr. Qatanani claimed he never pled guilty or confessed to doing anything illegal. (CIS Transcript. p.101 ¶15-18). Mr. Qatanani denied ever telling SA Alicea at the February 7, 2005 interview that he had been arrested, and instead testified that he told SA Alicea he was detained. (Hr'g Tr., Mr. Qatanani p.812:3-10). Mr. Qatanani testified that at the February 7, 2005 interview there was a discussion about the difference between the meaning of "arrest" and the meaning of "detention." (Hr'g Tr., Mr. Qatanani p.812:11-16). Mr. Qatanani denied ever having told SA Alicea that he had been in a court or had seen a judge or had signed a confession. (Hr'g Tr., Mr. Qatanani p.812:17-813:9).

ii. Records of Conviction from the Israeli Military Courts

The first substantial allegation of inadmissibility against Mr. Qatanani arises out of a conviction allegedly entered on December 21, 1993 in an Israeli military court in Nablus. (DHS Ex. 10). The conviction is based on an alleged violation of regulation 85(a) of the Defense (Emergency) Regulations, 1945 which provides that "...any person who was convicted of membership or provision of a service to 'an unlawful association' is subject to imprisonment or a fine..." (DHS Ex. 10; 22, Library of Congress Report, p.4). The conviction states that the defendant described plead guilty to two charges contained in the

indictment: (1) Membership in an Unlawful Association[11], and (2) Performing a Service for an Unlawful Association. (DHS Ex. 10). There are three sets of documents contained in the file that must be examined. The first is the "indictment" (i.e., the two-page charging document); the second is the "protocol" (the three-page document entitled "Log" in the English translation); and the third is what has been interpreted into English to be the "Suspect's Pedigree Information."[12] (DHS Ex. 10).

The indictment charges the defendant, named Muhammad Ahmad Hassan Qatanani, with two counts of violating Regulation 85(1) of the Defense (Emergency) Regulations, 1945. (DHS Ex. 10). The first count was for membership in an unlawful association. This count alleges the defendant enlisted in HAMAS in 1989 and met with various HAMAS leaders who mentored him. It further alleges that as part of his membership in HAMAS, he was a member of a committee on behalf of the Muslim Brotherhood whose purpose was to assist Palestinian students studying in Jordan. It finally alleges that his membership in HAMAS was discontinued in 1991. The second count was for performing a service for an unlawful association. This count alleges that the defendant, while in Jordan around 1990 referred HAMAS activists arriving in Jordan to a

[11]The Israeli Government declared in 1989 that HAMAS was an unlawful association as contemplated in these Defense (Emergency) Regulations. (DHS 22, Library of Congress Report, p.4).

[12]Professor Guiora and Attorney Kuttab both identified these documents. (Hr'g Tr. p.46:13-51:24).

HAMAS leader. As part of this duty, the activist would greet the defendant with a code phrase, and the defendant would lead the activist to the HAMAS leader.

The protocol notes that the defendant's attorney agreed to enter into a plea bargain with the military prosecutor and admitted to both charges contained in the indictment. (DHS Ex. 10). The judge signed the protocol under the sentence that states "...I hereby convict the defendant pursuant to his own confession..." The protocol also notes that the military prosecutor requested a particular sentence which the judge accepted. It finally notes that the defendant was sentenced to three months active imprisonment to be served from the date of his arrest, twelve months suspended sentence, for three years, on the condition that he not commit the offenses of which he was convicted in the indictment, and a monetary fine of NIS 5,000.

Finally, the Suspect's Pedigree Information states demographic information about the defendant, his name, where he is from, his date of birth, his occupation, his marital status, etc. (DHS Ex. 10). It also states that a conviction was handed down on December 12, 1993 and repeats the sentence that was issued in the protocol. It concludes on the fourth page with a rap sheet which shows that this was the only offense for which this defendant had been arrested.

Due to Respondents' strong opposition, the Court must make a complete review of the documents. After reviewing all documents submitted and having considered each

side's argument, the Court determines that the evidentiary value of these documents is highly questionable, fail to clarify the identity of the respondent and border on being, flatly stated, unreliable. Nonetheless, the Court will not exclude them from the record as they have not been proven to be completely unhelpful to the Court's analysis. The Court recognizes the documents' flaws, as stated below, and will accord the documents very low evidentiary weight, but will keep them on the record to facilitate any further review by a higher court.

DHS has argued that these records are reliable. DHS argues that the records have been properly authenticated pursuant to 8 C.F.R. § 1287.6(b) and contain otherwise reliable information, mostly because many of the file numbers correspond with Mr. Qatanani's Israel Departure Card admitted into evidence as exhibit 24. Despite DHS's claims, the Court has identified at least five reasons for which it questions the reliability of the documents: a questionable chain of custody, probable misidentification errors, missing attached documents, potential inconsistencies with the facts, and the military court that generated these documents is the subject of much debate for its impropriety in handling cases of arrested Palestinians circa 1993.

QUESTIONABLE PROOF OF OFFICIAL RECORDS

The first concern the Court has with the reliability of the records DHS submitted as evidence of Mr. Qatanani's alleged arrest and conviction in Nablus is the confusing and questionable genesis of these documents. Ultimately, the Court has two questions on this

topic: (1) what document, if any, was submitted in each correspondence, to and from the United States and the Israeli authorities and from which Israeli authority were these documents requested, and (2) through whose possession have these documents arrived to get to the Court's hands?

The first correspondence that appears to have been received was from **Osnat Hershler**, a Superintendent Liaison Officer with the Israel Police Intelligence Department dated May 3, 2005 and addressed to the **FBI**. (DHS Ex. 8). The correspondence identifies "Mohamed Qatanani" with the ID no. 995600459 as an individual who was convicted in 1993 and sentenced to three months imprisonment, 12 months imprisonment suspended for three years. (DHS Ex. 8). It also states that the person described returned to Israel on May 1, 2005 and, in an apparent state of confusion as to why the FBI would be inquiring about Mr. Qatanani, asked if he had been deported from the United States. It does not appear that any documents were sent with this correspondence. **Thomas Rhodes**, an Assistant Regional Security Officer for the U.S. Embassy in Tel Aviv, certified to ICE on February 15, 2007 that **Osnat Hershler's** letter was authentic. (DHS Ex. 7).

The next correspondence in chronological order was from Chief Inspector **Liat Lev-Ary** of INP who sent to an undisclosed recipient an Attestation of Authenticity of Official Records on September 17, 2005. (DHS Ex. 10). This printout is very difficult to read. She gave a description of the documents she had attached, which is nearly illegible and the Court can only make out the word "verdict," although there are certainly other words

written. The date she sent this attestation may have been September 7, 2005, but it is also difficult to read. DHS claims in the written brief that **Ms. Lev-Ary** sent the "verdict" and "criminal record." The Court assumes that DHS means the protocol and the Suspect's Pedigree Information. **Ms. Lev-Ary** stated that the documents she sent came from records on file with the Israel National Police ("INP"). (DHS Ex. 10).

Next, it appears that **Moris Hirsh**, Deputy Prosecutor of the Judea and Samaria Region, sent three things to **Abigail Amseli Dahan**, Staff Sergeant Major from INP, on September 19, 2006: an indictment, a verdict and a sentence. The documents related to a Muhammad Qatanani with ID no. 995600459. (DHS Ex. 10). The correspondence does not detail what these three documents are exactly, although the Court assumes them to be the indictment and protocol with the protocol containing both the "verdict" and the "sentence" to which **Moris Hirsh** refers. On September 26, 2006, **Abigail Amseli Dahan** sent the documents to "**The Competent Authority USA**." (DHS Ex. 10). There is no clue as to who received this from **Abigail Amseli Dahan**. Again, whoever received it, the Court assumes that it contained the same indictment and the protocol sent by **Moris Hirsh**. **Abigail Amseli Dahan** stated in her correspondence that the Muhammad Qatanani associated with these documents was never arrested by the INP so there are no fingerprints, nor photo, nor criminal record; however, that he was arrested once by the IDF in 1993. (DHS Ex. 10).

Finally, **Anat Agami**, whose title is Legal Assistance to Foreign Countries and works for the Israel Directorate of Courts, sent on October 5, 2006 to **Thomas Snow**, Deputy Director of the Office of International Affairs within the U.S. Department of Justice, some unidentified "documents." (DHS Ex. 9). This correspondence does not state what was sent or to whom the documents related; however, on April 16, 2008, **Yitzchak Blum**, the Deputy Director of the Office of the State Attorney in Israel, attested that **Anat Agami's** submission had attached to it "court military records, relevant to on-going immigration removal proceedings in the United States in connection with Mohd Mahdi Ahmad Qatanani." (DHS Ex. 14). **Tom Rhodes,** of the U.S. Embassy Tel Aviv, certified **Mr. Blum's** correspondence on April 17, 2008. (DHS Ex. 14). **Anat Agami's** superior, **Judge Alon Gillon**, the Deputy Director of Courts in Israel, also wrote a declaration dated April 16, 2008 verifying that the signature of **Anat Agami** was authentic. (DHS Ex. 14).

After reviewing these details, it is still a bit unclear who sent the documents that DHS ultimately submitted to the Court. What is certain is this: DHS filed with the Court on June 12, 2007 as one submission six correspondences from the above name Israeli government authorities purportedly either verifying, attesting to or authenticating 10 pages of documents in Hebrew that have been translated into English. It appears that five of the documents in Hebrew have duplicates, so there are in actuality 15 documents in Hebrew. At least, from the Court's own review, that appears to be the case. Then, on April 17, 2008, DHS resubmitted these documents along with three other letters of attestation.

Isolating the first packet of documents DHS filed with the Court, it appears that they came from a cumulative of three sources: **Liat Lev-Ary**, **Moris Hirsh** by way of **Abigail Amseli-Dahan**, and **Anat Agami**. **Ms. Lev-Ary** claims she got the files from INP, **Mr. Hirsh** works with the military courts, so it can be assumed his files came from there, and **Ms. Agami's** files were never verified as how they came into her control.[13]

The Court is unclear as to who particularly provided each set of documents that are now in the record of proceeding. Additionally, there is no letter of attestation from the Military Court in Nablus. While it is impressive the number of authorities that have attested to the authenticity of these documents, the Court remains confused what particular documents they are attesting as authentic. As such, the Court is not comfortable in making a finding that DHS has proved that the documents are official under 8 C.F.R. § 1287.6(b) (2008).

DHS also presented expert testimony from FBI Special Agent Alicea who explained that the records were obtained by having the United States Attorney's office submit a request under the Mutual Legal Assistance Treaty ("MLAT") to Israel pursuant to normal procedures. If this is true, the Court does not understand why DHS did not provide the MLAT, or at least a copy of it, to the Court for review, so it would understand exactly to which agency of the Israeli government the request was made.

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[13] **Yitzchak Blum** only testified that she had attached military court records, but never said how she came into possession of them. (DHS Ex. 14).

EVIDENCE OF MISIDENTIFICATION

While the myriad submissions of documents from Israel have left the Court somewhat confused, the Court has a serious concern with the probability that the records may actually relate to an individual other than Mr. Qatanani. The following is a list of red flags that has led the Court to question whether some or all of the documents identify someone other than Mr. Qatanani, the respondent in these proceedings:

1. Respondents presented evidence that Mohammad Qatanani is a common name in Jordan (See also testimony by Professor Guiora in this respect), Syria and the occupied territories. (Hr'g Tr. Mr. Qatanani p.719:7-25). Given this common characteristic, the need to identify Mr. Qatanani as the subject to whom the Israeli records pertain is paramount. For this reason, the Court is surprised that the "right forefinger fingerprint" that appears at the bottom of the first page of the Suspect's Pedigree Information has never been checked against Mr. Qatanani's own fingerprint. (DHS Ex. 10).

2. There is no indication that the proffered verdict and protocol relate to the same defendant. The indictment has Mr. Qatanani's name and the same identification number as his Israeli Departure Card, and it also states that he is from the Askar Refugee Camp as Mr. Qatanani testified at the hearing. (DHS Ex. 10); (Resp't Ex. 24); (Hr'g Tr., Mr. Qatanani, p.721:5-6, 722:9-15). However, the protocol does not have any of this information to identify that it relates to Mr. Qatanani–e.g., there is no name or file number. (DHS Ex. 10).

Where Mr. Qatanani's name would be, has been cut off, according to the translation. (DHS Ex. 10). There is also no indication that the identification on the verdict was meant to be incorporated into the protocol. (DHS Ex. 10). The only identifying characteristic that the protocol has that would relate it to the indictment is the sentence portion in which it contains a consistent allegation as the indictment, but it has much less content and is worded very generally. (DHS Ex. 10).

3. Discrepancies also exist in the Suspect's Pedigree Information. Mr. Qatanani was born on April 29, 1964 and the Suspect's Pedigree Information states that the individual identified was born on June 29, 1964. (DHS Ex. 3, 10). On the last page of the Suspects' Pedigree Information under the Results for Query of Israel Police Records, it is noted that the name Qatanani was misspelled as "Qatanin." (DHS Ex. 10).

4. Turning to the protocol, Mr. Qatanani's name is absent from the field available to write the defendant's name, and the translation states that a word is partially cut off that could possibly be "identified." The protocol also names as the defense attorney "Navah Abu Shkeib." (DHS Ex. 10). Mr. Qatanani testified that he had two attorneys representing him, Mohammad Alhalby and Naem Abu Yauoub and has never heard of an attorney named "Navah Abu Shkeib." (Hr'g Tr., Mr. Qatanani, p.778:9-19).

5. On one of the FBI's earliest contacts with the INP, Osnat Hershler stated that according to the border control listings, the individual named in the conviction

returned to Israel on May 1, 2005. (DHS Ex. 8). Mr. Qatanani has testified that he has never left the United States since arriving in 1996. (Hr'g Tr., Mr. Qatanani, p.798:23-24). It appears that INP is confusing Mr. Qatanani with someone by that same or similar name. This is an enormous cause of concern for the Court. This is the same location from where Ms. Lev-Ary obtained the "verdict" that is purportedly now being used by DHS to prove that Mr. Qatanani was the individual convicted of being a member in HAMAS in Nablus in 1993. Furthering the Court's bewilderment, Abigail Amseli-Dahan of the INP, who passed on the "Quatanani file" as she received it from Moris Hirsch, stated in her letter that INP does not have any fingerprints or criminal record of the individual who was arrested by the IDF in 1993. (DHS Ex. 10). How can this be true if Liat Lev-Ary sent a "criminal record" as DHS claimed in their final trial brief? (DHS Ex. 10). And if this "criminal record" is the same Suspect's Pedigree Information that is now being examined by the Court, how is it explained that there is a fingerprint on its first page? (DHS Ex. 10). The Court finds it further suspicious since Professor Guiora testified that the Suspect's Pedigree Information originates with the Israeli police documents and are passed to the military prosecutor once the confession is taken. (Hr'g Tr. p.52:24-54:20). So why did Abigail Amseli-Dahan from INP not have this document? Or, if she did, why did she state what she did not in her correspondence?

6. The Court can only conclude one of two things from the above evidence. Either there has been a record-keeping error or the INP and military prosecutor's office have confused Mr. Qatanani with a separate individual by the same or similar name. Either possibility is a cause of serious concern for the Court and demands further evidence to establish the truth. DHS has not offered such evidence. Under these circumstances, the Court is not persuaded to allow these records to be a substantial basis on which to find that Mr. Qatanani has engaged in terrorist activity.

MISSING DOCUMENTS

The third concern the Court has with these documents is certainly not its least concern. This concern is that the documents are patently incomplete. Both the indictment and the protocol state that the conviction was based on Mr. Qatanani's confession. (DHS Ex. 10). Both Respondents and DHS have provided expert testimony through Mr. Kuttab and Professor Guiora that this confession is generally written and signed by the defendant before being produced to the military court judge for his determination. (Hr'g Tr. p.52:24-54:20). However, there is no written confession attached to the criminal records at issue. If this confession was at some time part of the record of conviction but is now missing, it is a substantial factor that the Court heavily weighs in deciding whether to rely on the indictment in its adjudication of Respondents' adjustment of status application, especially in light of the fact that these records may have passed through the custody of the military prosecution whose job is to secure convictions.

The indictment also alleges that the charges are based on the log of the extension of remand. As DHS's expert witness Professor Guiora testified, this is generally included with the files that the police deliver to the military prosecutor after interrogation is complete. (Hr'g Tr. p.64:8-67:2). However, this is also missing from the military court and INP records.

The fact that there is a certainty that the conviction records are incomplete is yet another concern the Court has in using them to not find that Mr. Qatanani is inadmissible for having engaged in terrorist activities.

POTENTIAL INCONSISTENCIES

There are at least two apparent inconsistencies to the Court. First, after being released from the custody of IDF in Nablus, Mr. Qatanani was able to renew his residency permit with no restriction on his movement. (Hr'g Tr., Mr. Qatanani, p.796:15-24, 798:18-22); (Resp't Ex. 24"). Second, the defendant identified in the Israeli documents was given a three-month sentence to prison and twelve-month sentence suspended for three years in addition to a fine. (DHS Ex. 10). One of Respondents' experts indicated that a person convicted of the offense alleged against Mr. Qatanani would be given a year sentence; however the more common sentence would be two years in prison. (Hr'g Tr. p.565). This statement appears to be contradicted by Ruth Levush's report, which specifies that the maximum amount of time one convicted of the charges allegedly brought against Mr.

Qatanani, is one year of incarceration. (DHS Ex. 22, Library of Congress Report p.4). Nonetheless, Lisa Hajjar testified that in this era, military prosecutors were instructed to seek the highest maximum penalty for those convicted of activities involving HAMAS, which did not happen in this case. (Hr'g Tr. p.428:15-429:12).

Notwithstanding these clarifications, the Court continues to be perplexed by the fact that Israel, a country under continual terrorist threat, would allow a convicted member of HAMAS to walk free and even enable him to do so by granting him authorization to travel without major restrictions prior to his departure from Israeli territory and provided his newly extended departure card. It is even more remarkable that Mr. Qatanani who, while being held in custody by IDF, had refused to cooperate with the Israeli military and act as a spy, was allowed to do all of the above. The Court will also point out that although the comments by Ms. Levush analyze only the objective and clinical statutory requirements and procedural safeguards created by those provisions and regulations, the Supreme Court of Israel has clearly expressed its opinion with regard to the abuses and irregularities these sections of the law have been subjected to. (Resp't Ex. 9).

GENERATED FROM AN UNRELIABLE COURT

Finally, the evidence supports Respondents' argument that the Israeli military courts operating in the Occupied Territories were not a disinterested tribunal in the trials of suspected terrorists during the same time period Mr. Qatanani was being detained in Nablus. It is undeniable that the military courts detained suspected terrorists at or near the

borders of the Occupied Territories with the purpose of gathering intelligence, as testified by Lisa Hajjar. (Hr'g Tr. 454:7-20).

The U.S. Supreme Court recently cautioned us against the reliability of such courts of law in its decision of Boumediene v. Bush, 553 U.S. ___, 128 S. Ct. 2229, 2268-69 (2008), as it referenced the United States' military commissions at Guantanamo Bay[14]:

> "...It can be assumed that in the usual course, a court of record provides defendants with a fair, adversary proceeding. . . A criminal conviction in the usual course occurs after a judicial hearing before a tribunal disinterested in the outcome and committed to procedures designed to ensure its own independence. These dynamics are not inherent in executive detention orders or executive review procedures..."

The Court notes that the Israeli military courts that operate in the Occupied Territories have been internationally stigmatized, to an extent, for failing to meet adequate standards for a fair trial. (Resp't Ex. 13); (Resp't Ex. 20) (DHS Ex. 12). Even its own Supreme Court found that during the time which these documents now before the Court were created, GSS surpassed its authority in using abusive treatment to coerce confessions from suspected terrorists. See Judgment on the Interrogation Methods Applied by the GSS (Sept. 6, 1999). If this abusive treatment amounted to torture, it

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[14]Respondents' expert witness, Lisa Ajar, likened the military prisons operating in the Occupied Territories to Guantanamo. (Hr'g Tr. p.453:15-454:6).

certainly should not be welcomed in a United States immigration removal proceeding. See, e.g., U.S. v. Abu Ali, 395 F. Supp. 2d 338, 380 (E.D. Va. 2005) (finding "torture and evidence obtained thereby have no place in the American system of justice"); U.S. v. Marzook, 435 F. Supp. 2d 708, 744 (N.D. Ill. 2006) (same). The Court does not decide whether the abusive treatment Mr. Qatanani testified he experienced at the hands of IDF in 1993 in Nablus was torture, but it does find that such testimony is further evidence of a judicial system that failed to operate in a manner "disinterested in the outcome and committed to procedures designed to ensure its own independence." Boumediene, 553 U.S. at ___, 128 S. Ct. at 2268-69.

In making this finding, the Court has given due consideration to the report by Ruth Levush and Professor Guiora's expert testimony, both presented by DHS, which describe the military courts established in the Occupied Territories in 1993 in a manner of a tribunal operating under what appears to offer sufficient due process to those being prosecuted. However, Respondents have submitted sufficient evidence to persuade the Court to find that such regulations were not implemented regularly or were even completely ignored in some cases. For instance, Jonathan Kuttab and Lisa Hajjar testified that the right of a defendant to speak to his attorney is generally avoided by the soldiers simply by claiming the defendant is a threat to security and must be held incommunicado until the interrogation is over. (Hr'g Tr. p.441:11-442:9, 539:18-541:1). Also, Lisa Hajjar testified that the interrogation is compartmentalized, meaning that the interrogator who utilizes coercive methods and ill-treatment to elicit a confession from the suspect and the one who

takes down the defendant's confession, are not the same soldier. Perhaps these unconscionable techniques used to make coerced testimonies appear innocent, but Professor Guiora admitted that through the thousands of cases with which he was involved in a military court in the Occupied Territories, he only saw one confession suppressed as a prosecutor, and two confessions suppressed as a judge. (Hr'g Tr. p.41:18-42:4). Mr. Qatanani also testified that he never went before a judge, that he was never in a courtroom and never fully understood that he had even been criminally charged despite the fact that DHS's witness, Professor Guiora, testified that the defendant's presence "is absolutely required" at a hearing. (Hr'g Tr. p.39:2-9, 812:1-25). In fact, as Respondents have pointed out, in the face of these regulations, the International Commission of Jurists has declared that the "[Israeli] Military court trials do not meet international standards for fair trial[.]" (Resp't Ex. 13).

CONCLUSION

Considering these concerns in the totality, the picture that is painted for the Court's review is one showing that the records from Israel are inconsistent as to whom they identify, they are missing material documents that should otherwise be attached, they are not revealing as to who has had custody of which document, and they were generated from a tribunal whose primary interest, during the time period in question, was intelligence-gathering and at a point when their procedures were criticized as being unfair not only by its own Supreme Court, but by international voices as well. Accordingly, the Court finds

that such documents are too unreliable to prove that Mr. Qatanani is inadmissible under INA § 212(a)(6) for engaging in terrorist activities.

iii. Testimony of Federal Agents

FBI SPECIAL AGENT ANGEL ALICEA

HEARING TRANSCRIPT PAGES 132-244

The Court is surprised by some of the answers given by two of the DHS's witnesses. In this respect, Special Federal Bureau of Investigation (FBI) SA Angel Alicea's testimony has been found not credible. SA Alicea testified that his only interest in talking to Mr. Qatanani was because he had been designated as a person of interest due to his activities with ICPC. (See SA Alicea's testimony at page 214), SA Alicea was provided a copy of Mr. Qatanani's I-485 application, that included an Interagency Border Inspection System hit- hence referred to as IBIS- as of July 26, 2002. (Hr'g Tr., Officer Philpott p. 343). SA Alicea tried to convince the Court of his ignorance about what an application for adjustment of status was or what an "IBIS hit" signifies. Specifically, from pages 186-240 of the hearing transcript, SA Alicea engages in a series of evasive answers claiming ignorance most of the time and provided unresponsive answers. However, his intentional attempts to avoid admitting important facts were derailed. When confronted with whether he knew in advance of any information about Mr. Qatanani, SA Alicea first indicated no prior knowledge. (See testimony at page 148). However, he later admitted that he knew of Mr.

Qatanani as a "subject of interest" regarding the ICPC activities. More importantly he clarified that this interest was propelled because Mr. Qatanani was the successor Imam at the ICPC. Mr. Qatanani came to work at the ICPC in 1996 and continued to share duties with his predecessor until late 1999. The respondent testified how major differences developed between him and his predecessor to the point that he contemplated resigning. Mr. Qatanani explained during his testimony how he attempted to relocate his position to another Islamic Center in Chicago, Illinois. SA Alicea pointed out, that he has been engaged in the Joint Terrorism Task Force since September 11, 2001. This date is crucial, as Mr. Qatanani has been the sole director at the ICPC since sometime in late 1999. Assuming these facts to be accurate, his explanation that he was unaware of what an IBIS hit was is unacceptable. Officer Philpott clearly testified that as soon as she was informed of Mr. Qatanani's IBIS' hit in 2002, she notified the FBI, since it is that agency that must pursue this type of inquiry. Albeit she testified that she did not communicate personally with SA Alicea, he was already involved in the investigation of the ICPC and had determined Mr. Qatanani to be a subject of interest, at least, the Court must assume, since 2001. This conclusion is inescapable since SA Alicea claimed complete ignorance regarding Mr. Qatanani's detention in 1993. The only possibility then had to relate to the investigation of Mr. Qatanani and the ICPC, due to the allegations that the ICPC was a source of material support to terrorist organizations. Although SA Alicea refused to provide information whether Mr. Qatanani is the object of such investigation, is or not linked to his predecessor's criminal activities or has himself being involved in these types of transactions, it is clear to the Court, that the only way SA Alicea can possess information

about Mr. Qatanani's alleged criminal activities must relate to either prior information in the investigation of the ICPC at least since 1996 and/or from his classification as an IBIS terrorist related hit in 2002. SA Alicea has refused to clarify these issues alleging he cannot disclose the results of this criminal investigation. (See SA Alicea's testimony at page 183) What is not plausible is his claim, that as of 2005, when he conducted Mr. Qatanani's interview, he was not aware of the 2002 hit and what it related it. Officer Philpott clearly established that she communicated that information immediately after July 26, 2002 to the FBI. (See IBIS' hit dated July 26, 2002 on Respondent's I-485).

In addition, these activities must also relate to Mr. Qatanani's domestic activities, since no other information has been linked to this hit according to Agent Philpott. Under these circumstances, it is impossible to believe that when SA Alicea joined the Joint Terrorism Task Force on September 11, 2001, he was not apprised of the reasons Mr. Qatanani was being investigated and that the additional information developed after the 2002 IBIS hit had already been communicated to the FBI. Frankly speaking, these assertions are unbelievable. The fact that he utilized the same I-485 application as the basis for his questions during the February 7, 2005 interview completely belies his assertions. During his cross examination he admitted to not having prepared in advance of the interrogation, did not bring his file on the subject, did not examine the whole administrative file, and did not know what an IBIS hit is. The interrogation, given this background, surprisingly, was not recorded and the subject of interest was not even sworn in!

In connection with this line of questioning, SA Alicea also indicated that he took notes while conducting the interview. He admitted to preparing an affidavit dated January 31, 2006. This affidavit, the Court assumes, was prepared after consulting his own notes which he claimed to still possess but did not present to this Court either. He also indicated shortly after the interview, some 30 days afterwards, that he presented a request for a MLAT (supra) to the U.S.Attorney's office to obtain Mr. Qatanani's records from Israel. However, he forgot to mention that he also prepared a report concerning the interview. This report, the Court has now been advised, is not available for disclosure yet. It appears, from Officer Philpott's testimony that this report, however, was consulted and reviewed not only by Officer Philpott but by SA Alicea as well, for their presentation and testimony before this Court on May 8 and 9, 2008 respectively.

This was not, however, the only occasion Special Agent Alicea's testimony resulted in efforts to withhold testimony. His attempt to testify to Mr. Qatanani's transactions of funds out of the United States was stopped by this Court for two reasons. First and foremost, SA Alicea stated that the evidence was the object of a criminal investigation and could not be revealed to this Court. Secondly, allowing this evidence to be discussed without any documentary proof could affect Mr. Qatanani's presumption of innocence in the criminal investigation.[15] Whether the FBI has an ongoing criminal investigation regarding

[15]It was apparent during the testimony of Assistant U.S.Attorney (AUSA) Charles McKenna that nothing was to be mentioned or revealed during these proceedings concerning this potential criminal investigation by the untimely objection of AUSA O'Malley, who was present at AUSA McKenna's testimony as a supervisory attorney. The objection, however, was presented one day too late.

these transactions is not important at this moment. However, this Court would not allow a witness to testify to such unfounded but extremely serious accusations without a documentary foundation to support them. The Court has no idea how long these investigations have been going on. Assuming that SA Alicea has been working on them since at least 2001, it is obvious to the Court that no criminal violations have been found to exist so far. If criminal violations were discovered earlier, these proceedings would be completely unnecessary, since a criminal indictment and conviction for supporting a terrorist organization would render Mr. Qatanani removable and without any relief under the amended provisions of the INA.

Special Agent Alicea's unfair presentation was also clearly established when he tried to cast doubts about Mr. Qatanani's intent, when discussing the delivery of $5000 to a person or persons in the Occupied Territories. If the Court had not inquired as to the disposition of the intercepted funds (See transcript), Special Agent Alicea would not have clarified that no improprieties had been found. In fact, he then admitted, that the source of the money was clarified, the funds were returned to the courier, who was allowed to depart from the United States without any other problems. His unsuccessful attempt to imply that the Respondent's sending of monies by personal courier was done with a criminal intent is speculative at best. Under these circumstances, Special Agent Alicea's testimony has been found by this Court to be not credible and will be disregarded as unreliable.

ICE AGENT HEATHER PHILPOTT

Hearing transcript pages 340-394-May 9, 2008

The DHS's other witness, Officer Philpott, had originally been found to be sincere and honest with the Court. It is precisely DHS's late submission of her report that now casts doubts about her sincerity, as well. In her oral testimony on May 12, 2008, Officer Philpott said that she did not take any notes during the interview of Mr. Qatanani conducted on February 7, 2005, did not participate in the interview and that in preparation for her testimony before this Court, had reviewed only SA Alicea's notes and formal report. She denied preparing any kind of written report originally. This struck this Court as extremely odd since the interview was not recorded as a deposition, although the subject had been identified as a person of interest and his application for adjustment had identified an "IBIS hit" which was designated, by Officer Philpott, as terrorist related. Frankly speaking, with this background, and assuming the Court actually believes that the information about Mr. Qatanani's conviction in Israel was actually discovered at that interview, the Court cannot comprehend why the officers did not memorialize it.

The late submission of Officer Philpott's report after the February 7, 2005 interview dated March 9, 2005, marked by this Court as Government Exhibit 25 for identification, presents a dual problem. The introductory letter suggests that another report is available but that the FBI has not authorized its release for this Court's perusal. The Court is assuming this is the formal report prepared by Special Agent Alicea after the February 7, 2005 interview. No specifics have been submitted to explain why this report cannot be

released. However, the Court has to be curious as to why Officer Philpott, who originally indicated not taking notes, not preparing a report and reviewing only SA Alicea's notes, his affidavit dated January 31, 2006 and his formal undisclosed report, now admits to have prepared an almost contemporaneous written report on March 9, 2005. Her assurance that the documents she consulted are accurate is not sufficient for this Court. Assuming these facts are accurate, why did she have to say that she had reviewed only SA Alicea's documents in preparation for her testimony before this Court? It is more probable now to conclude, that Officer Philpott not only examined Agent Alicea's notes, his affidavit and his undisclosed report in addition to her own report as well. This fact leaves the Court and Respondents without access to those documents in order to ascertain the accuracy of the statements testified to. These doubts could have been avoided by either recording the interview or submitting all of the necessary and available records prior to these proceedings.

A more detailed reading of Officer Philpott's answers during her direct and cross examination on May 9, 2008 reveals other major areas of concern for the Court. One of the issues discussed with her, was that as an ICE officer, she was one of the first individuals to be notified that an "IBIS'" hit had been entered on the Respondent's case, as of 2002. Her answers as to what she did with that information, especially when she realized that the "IBIS'" hit was related to terrorist activities, are paramount. Officer Philpott clarified for the Court her efforts in communicating this information to the FBI, the agency responsible for these types of inquiries. Surprisingly, Officer Philpott also told the Court that between 2002

and 2005 she never received any feedback from the FBI regarding this inquiry. She also pointed out that although her information originally had not been given to SA Alicea, he was aware of this information prior to the February 7, 2005 interview. This directly contradicts SA Alicea's testimony the day before.

The follow-up steps as to how the conviction record was then requested by the officers are also surrounded by some contradictory statements by these two witnesses. However, the Court is willing to accept that the request finally was perfected, as Officer Philpott testified, through the liaison contacts at the AUSA office. The exact date that request was done has never been ascertained. Nonetheless, it is obvious that the Court has to place that request after the interview of February 7, 2005. In fact, Officer Philpott indicated trying to make an inquiry within one week of the interview, which more or less would place it around February 14, 2005. Upon being notified of her inability to do this directly, Officer Philpott indicated notifying SA Alicea and jointly going to the US Attorney's Office to make the necessary arrangements to get this information. Albeit the Court has never been provided with exact information on when the MLAT request was made, the Court has evidence that the Israeli authorities submitted some kind of reply by May 3, 2005 (See appropriate section above). As of this date, when the Court is in the process of preparing a full decision, no agency involved in this case has clarified for the Court what the 2002 IBIS' hit relates to. This issue is extremely odd, since the DHS has never raised it as an impediment to the respondents' applications for adjustment.

CONCLUSION

It turns out now that, although the Court appears to have two federal officials testifying that Mr. Qatanani, at the February 7, 2005 interview, admitted that he knew he was arrested for his relationship with HAMAS, their testimony is tainted by the lack of an accurate record and their inconsistent and contradictory testimony. The Court will therefore consider both not credible for the reasons expressed above. Whether Special Agent Alicea and Officer Philpott have additional evidence is irrelevant. Whether there is a criminal investigation still in progress is also immaterial to these proceedings. What is not permissible is to testify under oath in the manner they did. In fact, Mr. Qatanani is the only one of the three that has been consistent in his testimony with regard to his apprehension of being detained as opposed to being arrested and convicted. This aspect seems to be corroborated by at least one of his attorneys also present at the time of the February 7, 2005 interview.[16] Since this Court has already cast a doubt about the conviction in question, the attempts by the government witnesses to withhold evidence from this Court may be a tactical prosecutorial decision. This Court, however, should not be in a position to fill blanks for the government at this stage of the proceedings.

B. Mr. Qatanani's Associations with HAMAS

DHS requests the Court to consider the possible associations Mr. Qatanani has with individuals who are involved with HAMAS as further evidence to impute on Mr.

[16]This attorney's affidavit was admitted into evidence without testimony because it was presented, in the opinion of the Court, too late to allow the DHS to prepare cross-examination. The affidavit was presented within the terms of the ten-day rule still in effect for this Court as of May 8, 2008.

Qatanani his own support for HAMAS. First, DHS pointed out that when Mr. Qatanani began working as the Imam for ICPC, there was a second Imam by the name of Mohamed El-Mezain already working there. (Hr'g Tr., Mr. Qatanani p. 740:6-14, 744:2-5). Mr. Qatanani testified that he was unaware of the presence of a second Imam at ICPC when he accepted the position, that he did not get along with this other Imam, and although they lived in the same building, it was in effect two separate apartments with separate entrances. (Hr'g Tr., Mr. Qatanani p. 741:10-17, 744:2-746:8). Mr. El-Mezain retired at the end of 1999. (Hr'g Tr., Mr. Qatanani p.745:11-16). Mr. Qatanani testified that he knew about Mr. El-Mezain's activities with the Holy Land Foundation but did not have any part in those activities himself. (Hr'g Tr., Mr. Qatanani p.746:9-15).

Mr. Qatanani testified that he has been affiliated with various Muslim organizations since arriving in the United States, none of which alarmed the Court in any fashion, and, in fact, DHS has not out-right alleged that association with these organizations may in fact impute any impropriety on Mr. Qatanani's part. (Hr'g Tr., Mr. Qatanani, p.800:1-803:11).

Finally, DHS claims Mr. Qatanani has ties to HAMAS because his brother-in-law, Mahmud al-Suli, was a leader of the organization. (DHS Ex. 5.2). The Court would have to make the assumption that his brother-in-law's activities, which ultimately led to his arrest, sentence, escape and eventual assassination by the Israeli Forces is somehow linked to

Mr. Qatanani. The Court refuses to make such an impermissible inference on the evidence presented so far.

All of Respondent's witnesses testified with fervor and admiration on his behalf. Sheriff Spezziale impressed the Court the most. Sheriff Spezziale has jurisdiction over the geographical area where the Islamic Center is located. He deals with a police force amounting to more than 800 officers and is a retired New York City Police Department officer. His police force includes a total of 36 officers that are fluent in Arabic. During his cross-examination, this Court inquired Sheriff Spezziale whether, after realizing the publicity and allegations about Mr. Qatanani, he had done his own investigation, e.g., contacted any of the investigative and interested federal agencies. He indicated that he had not. However, he clarified that one of his officers serves as a liaison officer with the joint task terrorism unit. He expounded further that he inquired of this officer whether at any of the meetings Mr. Qatanani's name had been mentioned as a person of interest. His answer was that he was told by his officer that no such thing had ever happened. Assuming the inter agency task force was being honest and open about the investigations, this answer has to be taken as controlling. To conclude otherwise would mean that the interested federal agencies are withholding evidence from a local police department with direct jurisdiction over the geographical territory where Mr. Qatanani has resided since 1996.

Assuming the character of Mr. Qatanani to be what the numerous witnesses have declared about him, it would make Mr. Qatanani the perfect sleeper cell leader. This investigation has gone on for several years, but more importantly it has overlapped the incidents of September 11, 2001. Mr. Qatanani was interviewed by the FBI and ICE agents on February 7, 2005 and his I-485 interview was conducted May 16, 2006. One would expect better evidence, assuming it actually exists, taking into account that the alleged conviction took place in 1993 and a reasonable search would have uncovered it prior to Respondents' entry into the United States in 1996.

C. Undisclosed Cash Funds Sent to the West Bank

The DHS has attempted to assert two main allegations regarding this issue. The first claim was stopped by this Court (see above) since it appeared to relate to an active criminal investigation concerning Mr. Qatanani's transfers of monies from the United States to foreign territories. Special Agent Alicea, ICE Officer Heather Philpott, and Assistant U.S. Attorney Charles McKenna, all provided incomplete evidence regarding this issue. SA Alicea and ICE Officer Philpott both indicated the unavailability of this evidence for the perusal of the Court. No records, documents or any other type of probative evidence was presented. AUSA McKenna indicated he had no knowledge about any actual criminal investigation, albeit he is in charge of the criminal division in the U.S. Attorney's Office for the District of Newark, against Mr. Qatanani. The Court realizes that if the investigation has not been completed, as it was implied by both Officers Alicea and Philpott, the US Attorney's Office would not know about these facts, since the allegations could have not

been presented to a grand jury yet. However, AUSA O'Malley's objection to this line of questions by the Court clearly indicates that the US attorney's office is aware of some information. Under these circumstances the Court properly stopped this inquiry on May 8, 2008 when SA Alicea tried to introduce this testimony.

DHS' second attempt, also through the voice of SA Alicea, regarding the sending of $5000 to the Occupied Territory, also fell short of establishing incriminating facts in a probative manner. The source of the monies was not established to be illegal, the transferring of the monies by personal courier was not proven to be unlawful and through questions by this Court, SA Alicea finally admitted that the courier was allowed to depart from the United States without any charges being presented and with all of the funds. Finally, no evidence was presented to ascertain the recipient of these funds and whether the monies were used for any illegal purpose.

The DHS' attempts to relate Mr. Qatanani to acquaintances, his predecessor at the Islamic Center, their residence in the same building, his appearances at conferences, his alleged statements regarding his opinions about the occupation of the territories by Israel, to possible terrorist activity, clearly fall short of establishing a nexus to any material support of a designated terrorist group.

D. Conclusion

DHS, acting in concert with the FBI, allegedly did not discover this conviction until

after the February 7, 2005 interview. This fact alone is extremely suspect. However, the Court does not rely on it to conclude that Mr. Qatanani is inadmissible for having engaged in terrorist activity. The document itself is not certified by the military court and the attempts by both the Israeli and the United States' officers to establish some chain of authenticity is unacceptable. See Ezeagwuna v. Ashcroft 325 F.3d 396 (3d Cir 2003). The testimonies of SA Alicea and ICE Agent Philpott do not persuade the Court to discount Mr. Qatanani's credible testimony for the reasons stated above. Finally, the associations with HAMAS members as alleged by DHS are too tenuous for the Court to give them serious consideration.

The trial attorneys for DHS are not to be blamed for their efforts. In fact, this Court has nothing but appreciation, admiration, respect and understanding for their professional endeavors. Attorneys Alan Wolf, Tom Callahan and Christopher Brundage are outstanding Assistants Chief Counsel. This Court has been in their shoes as a prosecutor in the past. They have been hindered by the lack of openness and cooperation by the Israeli authorities and by our own investigatory agencies, which have provided them with partial information with regard to any present investigations on Mr. Qatanani. Whether the investigation is inconclusive or incomplete is not of this Court's concern. Nonetheless, this Court cannot render conclusions based on, what appears to be, an incomplete record, which the government, for whatever reasons, has refused to clarify.

2. Inadmissibility Pursuant to INA § 212(a) (6) (C) (I)

An alien is inadmissible who, by fraud or willfully misrepresenting a material fact, seeks to procure a visa or admission into the United States. INA § 212(a) (6) (C) (i). There are two aspects to this ground of inadmissibility: scienter and materiality. See Mwongera v. I.N.S., 187 F.3d 323, 330 (3d Cir. 1999). The Board of Immigration Appeals ("BIA") additionally has found that a timely and voluntary recantation of a false statement may prevent a finding that the alien gave false testimony to obtain an immigration benefit. Matter of Namio, 14 I&N Dec. 412, 414 (BIA 1973). Such a recantation requires the respondent to retract the false statement and replace it with the truth. See id.; Matter of M–, 9 I&N Dec. 118 (BIA, 1960).

A. Mr. Qatanani Has Not Made a Recantation

Respondents' position has been through the duration of their pursuit to adjust status, that Mr. Qatanani's statements and conduct have been honest and sincere as opposed to a willful misrepresentation of the true facts. Respondents have never requested to retract any statements. Accordingly, it is not the Court's duty to determine whether Mr. Qatanani's actions amount to a recantation, but whether his actions can be perceived as being a willful misrepresentation of a material fact.

B. Scienter

For the element of scienter, it is not necessary that an alien intended to deceive; instead, "knowledge of the falsity of the representation will suffice." Mwongera v. I.N.S., 187 F.3d 323, 330 (3d Cir. 1999). Considering the historical context during the time period

Mr. Qatanani was imprisoned by the Israeli Military in Nablus, it is not unreasonable that a 30-year old Palestinian male crossing from Jordan into the West Bank would be detained by the military officers for questioning. Once detained, it is not unreasonable that this same Palestinian male would be mistreated through methods devised to coerce information from the detainee as an intelligence-gathering tool. It would not be unreasonable that if the Israeli officers were unable to coerce a damning confessional from this Palestinian male subsequent to an average period of detention, the Palestinian male would be released without prosecution or a conviction. It is furthermore not unreasonable that all of these events not only occurred to Mr. Qatanani, but were the experience of numerous other Palestinian males in the same year Mr. Qatanani was in the custody of the Israeli National Police in 1993.[17]

i. Prior Misrepresentation on H1-B Visa Application

Assuming the existence of Mr.Qatanani's conviction in 1993, the Court has been shocked throughout these proceedings about the explanations provided by the government's agents as to why it was not discovered in 1996, when Respondents applied for and were granted an H1-B visa. As pointed out by one of DHS's witnesses (see Officer Philpott's), the background investigation concerning this type of application is conducted by

[17] In her testimony, Ms. Lisa Hajjar stated that nearly 10,000 Palestinians were detained each year during that period of time. However the respondent's witness, attorney Kuttab indicated the number was closer to5000. The government's witness, Professor Guiora placed it at 20,000. All of the witnesses, however, were in accord that the number of judges tending to this inordinate amount of cases fluctuated between 5 to 50 at the most, circa 1993.

the Department of State. Contrary to Officer Philpott's testimony that the government cannot engage in a fishing expedition concerning an applicant for a non immigrant visa, Mr. Qatanani's check would have been limited to two countries: Jordan, the country where Mr.Qatanani had resided for the last fourteen years (1982-1996) before coming to the United States, and the Occupied Territories administered by Israel, where Mr.Qatanani was born and resided before moving to Jordan. This nonimmigrant application is conspicuously missing and no explanation has been provided to the Court except to state that these records are disposed of after several years. Notwithstanding this possibility, DHS would have this Court infer impropriety on the part of Mr. Qatanani in failing to disclose the conviction when the original application for his H1-B application was submitted. Absent any evidence regarding this application, such a conclusion would be speculative by the Court, especially when the presumption is that government officers discharge their duties diligently. (See Matter of Grijalva 21 I &N 27, 37(BIA 1995)).

More importantly, Mr. Qatanani has consistently stated during these proceedings that he was never aware of his alleged conviction in 1993 in Israel until after 2005. In fact, the only imputation that Mr. Qatanani has admitted to being arrested and convicted while being detained in 1993 comes from Special Agent Alicea's affidavit that was prepared for the adjustment of status interview, and later for these proceedings, regarding his interview with Mr. Qatanani on February 7, 2005, and the belatedly presented report by Officer Philpott. (See DHS' memorandum of law dated July 28, 2008).

ii. Reasonableness

There is just not enough evidence for this Court to confidently find that Mr. Qatanani understood that his experience of being detained in the West Bank in 1993 was an arrest for violating a law. Much of the evidence that is available has been identified by this Court previously in this decision to be unreliable, which offers even more support to the Court's conclusion that Mr. Qatanani's credible testimony and presentation of evidence in support therein, sufficiently persuades the Court to find that he did not knowingly make a misrepresentation as to the circumstances of his detention in the West Bank at the end of 1993.

PRE-TRIAL ARREST VS. ADMINISTRATIVE DETENTION

The SPO–regulations to which the military courts in the West Bank were subjected to in 1993–provides for both the authority to arrest a suspect or to administratively detain an individual. (DHS Ex. 22, Library of Congress Report p.6). Mr. Qatanani claims he was under the belief that he was merely detained without having been arrested or convicted of an offense. The differences between administrative detention and arrest are as follows:

1. An arrest may be made only if there "is a reason to suspect that [the suspect] committed an offense"; whereas an order of administrative detention "is issued without direct nexus to a specific offense," but instead is available if the military commander "has a reasonable basis to assume that for reasons of security of the area or public security it

is necessary to detain a person." (DHS Ex. 22, Library of Congress Report p.6, 7), see also Professor Guiora's at pages 31-33).

2. Those who have been arrested generally are charged with an offense; however, there are no criminal charges brought against an individual who has been administratively detained. (Hr'g Tr., Prof. Guiora 33:8-10).

3. An arrested suspect who is criminally prosecuted in military court has a right to confront his accuser; but an individual ordered administratively detained does not have the right to confront his accuser. (Hr'g Tr., Prof. Guiora 33:4-7).

4. The total period of arrest cannot exceed six months; in contrast, while an order of administrative detention may not exceed six months, "[that period may be periodically extended, each time for six more months." (DHS Ex. 22, Library of Congress Report p.6, 7).

5. The same rules of evidence that apply to Israeli Courts apply in cases of arrested suspects; however, "in hearings regarding administrative detention, a deviation from these rules is permitted." (DHS Ex. 22, Library of Congress Report p. 7).

6) An arrest warrant may be initially issued by an authorized police officer or soldier; alternatively, an order for administrative detention can be issued

solely by the area military commander. (DHS Ex. 22, Library of Congress Report p.7).

7) Some similarities are shared by the administrative detention and arrest authority granted under the SPO:

> Even though an order of administrative detention may lack a nexus to a criminal offense, the actual order itself is subject to judicial review and, in fact, must be brought before a judge within ninety-six hours; thus, a judge would be involved regardless if it was an arrest or administrative detention. (DHS Ex. 22, Library of Congress Report p.7).

Respondents' expert witnesses testified that many administrative detainees are held in custody in the same location as those who have been arrested. Respondents' expert witnesses also testified that the individuals ordered administratively detained are subjected to the same interrogation methods as those who have been arrested.

It is the Court's conclusion that the differences are too technical for a layman unfamiliar with the military court system to recognize whether he has been arrested or administratively detained; and the similarities are so subtle that the same layman would be unable to discriminate between which of the two custodial statuses he was in. It would also be reasonable for the Respondent, a layperson in terms of legal terms, to not understand

whether he was arrested or detained because a detention order "may be issued in the absence of the detained person." (DHS Ex. 22, Library of Congress Report p. 7).

MR. QATANANI'S REASONABLE BELIEF

Both Professor Guiora and Ruth Levush–author of the Library of Congress report that is made a part of DHS Ex. 22–conclude that the military court records at issue in this case appear to be routine and completed properly. However, the Court notes that neither Professor Guiora nor Ruth Levush has personal knowledge surrounding Mr. Qatanani's particular case, and Mr. Qatanani's testimony contradicts their conclusions. Thus, the Court is bound to make a finding of fact. Considering all the evidence placed before it and the testimony presented, the Court finds that Mr. Qatanani had a reasonable belief that he was administratively detained, and not arrested, at the Military Court in Nablus in 1993.

The Court has already found that the records obtained from the INP and/or the military prosecutor's office that contained the indictment, protocol and Suspects Pedigree Information currently at issue, were unreliable to prove Mr. Qatanani had engaged in any terrorist activity. For similar reasons, the Court will not rely on those records to prove that Mr. Qatanani was arrested and not administratively detained.

Assuming the historical facts in 1993 are as established by the experts and by the evidence presented by both sides, it is not only probable but even likely that Mr. Qatanani was incarcerated for a period of 90 days without understanding the reasons why he had

been detained. (Hr'g Tr. p.425:7-426:6). There is sufficient evidence to conclude that, at least during the first 30 days, he was severely mistreated. The evidence also establishes that the procedures practiced in the Israeli military courts in the West Bank during 1993 left a lot to be desired. Even DHS's expert witness described it as an overburdened system. During all of his twenty years as a prosecutor and judge in the Israeli military courts, only three proceedings before him were ever dismissed. During the period in question, the record shows the existence of about 10,000 (However see footnote 11 supra) Palestinian detainees with a maximum of 50 military judges adjudicating them in a situation where the system, because of the Intifada, had lost the normal avenue of information the Israeli government had through its network of informants. The detentions, therefore, were transformed into, in a manner of speaking, a gathering of intelligence scenarios. This clearly led to excesses, documented by the Israel Supreme Court decision in 1999. (See also Professor Hajjar's testimony)

Assuming a detention of 90 days, and 30 of those days under severe mistreatment subjected to interrogation techniques, Mr. Qatanani could have been detained without fully understanding the reasons for his detention. The system appears to allow proceedings to take place without a defendant being present. Mr. Qatanani's release, allegedly without an explanation but with conditions, appears to be both plausible and strange. Assuming the conviction was for admitting to activities with HAMAS, the Court cannot fathom how the Israeli military court could release him in just 90 days and then allow him to stay in the West Bank until at least February 7, 1994, after which date he was given his departure

card, commonly referred to in these proceedings, as his residency card, prior to his departure from Israel. (Resp't Ex. 24).

The apprehensions Mr. Qatanani had then as to what actually happened are reasonable within the circumstances of this case. The Court, therefore, concludes that Mr. Qatanani did not make a willful misrepresentation when he answered question 1a, Part3, in his application for adjustment of status.

C. Materiality

The element of materiality is established if "either (1) the alien is removable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that the alien is removable." Mwongera, 187 F.3d at 330, (quoting Matter of Kai Hing Hui, 15 I&N Dec. 288, 289 (BIA 1975); see also Suite v. I.N.S., 594 F.2d 972, 973 (3d Cir. 1979).

As previously noted in this decision, evidence of Mr. Qatanani's engagement in terrorist activities is insufficient to make him inadmissible under INA § 212(a)(3)(B)(I)(I). Thus, the issue boils down to whether Mr. Qatanani has made a misrepresentation that tended to shut off a line of inquiry which is relevant to his eligibility and which might well have resulted in a proper determination that he is removable.

Mr. Qatanani was not interviewed by USCIS in connection with his I-485 until May

16, 2006. (DHS Ex. 13). This interview was under oath, videotaped and transcribed. Under these circumstances, regardless of Mr. Qatanani's belief that he was detained and not arrested, the Court cannot find any avenue of inquiry that could have been materially curtailed by Mr. Qatanani's answers in his I-485 application prior to his May 16, 2006 interview. In fact, he provided Officers Alicea and Philpott with all of the necessary information at least as of February 7, 2005 and those agents requested the necessary information from the Israeli authorities sometime afterwards.[18] Therefore, DHS cannot impute any material misrepresentation to Mr. Qatanani in this respect.

The Court has to emphasize that the enigma in this regard is not created by Mr. Qatanani, his answers nor his testimony. This ambiguity is created by DHS, the FBI, other Federal Agencies and the Israeli Government whose acts, cumulatively have avoided disclosing to this Court the real and actual facts surrounding Mr. Qatanani's imprisonment in the West Bank in 1993.

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[18] The exact dates for this request are not clear on the record. One of DHS's witnesses' replies makes reference to a prior request but fails to identify with accuracy when and by whom the request was made. This, of course, is assuming the agents did not know about this conviction in advance of 2002 when the IBIS's hit was entered, a fact that has been denied by two of the government's witnesses but that has been found by this Court as highly questionable and engulfed in a cloak of mystery that has not been unveiled by the government. The Court is willing to accept, reluctantly, however, that information about Mr. Qatanani's detention in the West Bank was provided by Mr. Qatanani, for the first time, at the February 7, 2005 interview.

As for Mr. Qatanani's answer to Part 3, Section C on his I-485 in which he wrote "various religious organizations" to a request to list present and past memberships in political organizations, associations, or similar groups, the Court finds the explanation he gave in his testimony to be understandable and clear of any intent to mislead: "At the time when I applied, my lawyer advised to write various organizations. He said because we don't want in the future to say yes you were in this organization, you were not. It is better to write this and within the first meeting or interview with the Immigration to explain to them this is what happened." (Hr'g Tr., Mr. Qatanani, p.803:6-11). This explanation is extremely reasonable and is an inherent part of the practice of immigration proceedings, since in the majority of the cases, applications for relief are perfected before all of the evidence is obtained. It is a common event to see remarks to questions to reflect "information to be submitted later" or see "addendum" in applications for relief. The main reason to submit an application that may seem incomplete is to beat a filing dateline for jurisdictional purposes.

D. Conclusion

Under these circumstances, the Court finds there is sufficient evidence to establish that Mr. Qatanani and his then attorney in the United States answered truthfully in his I-485 application for adjustment of status when he marked the box indicating that he was never arrested or convicted in any country. As stated before, SA Alicea's credibility has been questioned severely by this court. On top of that, the officers have insisted that they had no prior information about this alleged conviction until Mr. Qatanani's interview on February 7,

2005. Since the same officers have also refused to admit to this Court that the "IBIS hit" of 2002 in fact related to the discovery of this conviction, this Court can only surmise that the information presented during that interview, which was not memorialized and not taken under oath, provided the agents in question the necessary information regarding his detention in the West Bank in 1993. Assuming these facts to be accurate, the agents in question cannot cry foul about being misled.

3. Application of INA § 245(c)(6)

INA § 245(c)(6) prohibits an alien who is deportable for having engaged in terrorist activities as described in INA § 212(a)(3)(B) to adjust status under INA § 245(a). Inasmuch as this Court has determined that Respondents have sufficiently established that they are admissible under INA § 212(a)(3)(B), this section does not apply.

4. Application of INA § 245(c)(8)

Finally, DHS argues that Respondents are unable to adjust status under INA § 245(a) because Mr. Qatanani is a non-LPR alien, who was employed while he was otherwise unauthorized to do so. See INA §§ 245(c)(8), 274A(h)(3). This final argument is totally spurious and has been presented as a last ditch effort on the part of the DHS. Mr. Qatanani has never worked without authority in this country. His original admission as an H1-B inherently, has the right to work in this country. His application for adjustment of status after 1999 also presupposes the granting of authority to work, since the time frame

for the final adjudication is usually uncertain. However, in this case Mr. Qatanani's authority to be employed was not extended after 2000. This arbitrary administrative action was never explained and forced Mr. Qatanani and his family to make unnecessary adjustments. This case was kept pending by the ICE officers from 1999 to 2006. At the end of the adjustment of status interview, Officer Gurka refused to recommend the authorization of Mr. Qatanani's employment request. (See Transcript, Government exhibit 13 at page 210, Lines 14-15). This inordinate delay was caused by the ICE officers. The Court acknowledges the right ICE has to investigate its cases thoroughly. However, this right does not come with a capricious power to punish a respondent or applicant in the hopes that making his life miserable or difficult would lead to abandoning applications for relief. That, in the opinion of this Court, is not fair and violates the basic principles of due process all officers of the United States government are bound, by oath, to protect and respect.

VII. Discretion

The list of witnesses presented by Mr. Qatanani, all attesting to his character, is outstanding. Important among those are the number of law enforcement officers that took time from their respective duties to appear before the Court. Also three respected members of religious organizations–Jewish, Catholic and Episcopalian–attested to his character and dedication to an all inclusive movement and message of tolerance and unity among all denominations and revolutionizing the ICPC to be an all-inclusive mosque not limited to a certain nationality. (Hr'g Tr., Mr. Qatanani p. 743:16-25, 747:6-748:14).

Additionally, Mr. Qatanani and his wife, Ms. Abuhnoud, have three United States citizen children. They have lived here in the United States as a family for over twelve years and have presented evidence that they are all law-abiding members of the community. In particular Mr. Qatanani has demonstrated that he has cooperated with law enforcement evidenced by the two sheriffs and the Assistant United States Attorney who testified on his behalf. (Hr'g Tr., p.751:19-753:18).

The government has argued that the Court should weigh as a negative factor Mr. Qatanani's recent criminal charges. Mr. Qatanani acquired an international driver's license in 2005 after he could not get his driver's license renewed due to the fact that he was out of status and his employment authorization had expired. Mr. Qatanani was charged under N.J. Stat. Ann. § 2C:29-1B for obstruction of the administration of law for producing an invalid international driver license to a police officer after Mr. Qatanani was stopped for speeding. This charge has since been dismissed[19] and is insufficient to outweigh the positive factors. There being no other negative factors to weigh, the Court feels compelled to exercise its discretion on Respondents' behalf and grant their application for adjustment of status.

VIII. Conclusion

The Court finds the record of conviction obtained by DHS from the INP evidence to

[19]The Court found Mr. Qatanani's explanations as to why his name was written the way it was on his international driver license sufficient. (Hr'g Tr. p.718:19-719:6).

be too unreliable to prove that Mr. Qatanani has engaged in terrorist activities. The Court also finds DHS's other evidence is insufficient for the Court to come to this conclusion. The Court also does not find that Mr. Qatanani willfully misrepresented a fact material in his application for adjustment of status. The Court does not come to this conclusion easily. Mr. Qatanani is a well-educated man, highly respected for his intelligence that had the assistance of an attorney helping him fill out a commonly-used immigration application. It was unwise for Mr. Qatanani to not be candid on his application about his detention in the West Bank in 1993. Had Mr. Qatanani attached a separate sheet to the application explaining the circumstances surrounding his detention, perhaps this lengthy proceeding could have been avoided. Nonetheless, the Court does not believe that an adjudicator, presented with the evidence in the file currently before the Court, would conclude that Mr. Qatanani has engaged in terrorist acts. Add to this the fact that Mr. Qatanani sought out the FBI to divulge his detention in Israel, the Court is compelled to conclude that Mr. Qatanani's conduct, seen in the totality, did not cut off a line of inquiry relevant to his application for adjustment of status.

The Court makes its decision after considering DHS's allegations with much scrutiny. This is especially true in this case, inasmuch as the DHS' delay in the adjudication of this application is out of the ordinary and the investigations regarding Respondents, especially of Mr. Qatanani, covered an international, interagency effort which still fell short of establishing DHS' burden of proof.

ORDER

IT IS ORDERED that Respondents' application for adjustment of status pursuant to INA § 245(a) be **GRANTED**.

September 4, 2008

Alberto J. Riefkohl
U.S.Immigration Judge20

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20 The court would like to state some expressions of appreciation. First and foremost, the court would like to congratulate the participants in this case for their professional decorum before the court. Messieurs Alan wolf, Christopher P. Brundage and Tom Callahan, for the Department of Homeland Security and Mesdames Claudia Slovinsky and Grace Cheng, representing the respondents, actively and respectfully represented their respective clients with fervor, passion and dedication, highlighting the best characteristics of our adversary court system. The matters involved a level of publicity normally foreign to immigration proceedings. As a direct result, the normal daily operations at the Rodino Federal Building were affected. The General Services Administration, the Immigration Court personnel and the Federal Protection Officers, handled superbly the logistical challenges in order to accommodate the needs of this court throughout the four days of testimony. Mainly, they were able to handle properly the inordinate amount of visitors this case attracted. Finally, the court would like to extend eternal appreciation to its two Attorney's Advisors; Ellen Buckwalter and Jeffrey Widdison. A special note to Mr. Widdison for his arduous dedication to this matter and for his long hours assisting in the research and preparation of this court's decision.

The Department of Homeland Security's Exhibits

Exhibit #	Document
1; 1A; 1B; 1C; 1D	NTA for each respondent
1.1; 1.1A; 1.1B; 1.1C; 1.1D	I-261 for each respondent
2	Medicals
3	I-485 (for each Respondent) dated 4/1/99
4	Approved I-360 dated 6/5/98
5.1	US DOS "Patterns of Global Terrorism" 2000
5.2	Memorial Institute for the Prevention of Terrorism (MIPT) Terrorism Database - profile of Mahmud al-Suli (R's bro-in-law)
5.3	Court-TV news article "Muslim charity leader at rally where speaker exhorted crowd to "kill all" Israelis
5.4	The Record news article "Giving Islam a human face"
5.5	Univ of Cambrige working paper "Follow the Money: the modus operandi and mindset of Hamas fundraising in the USA..."
6	I-485 Denial
7	Verification letter from Tom Rhodes from the US Embassy in Tel Aviv dated 2/15/2007
8	Letter from the Israel Police Intelligence Deprtment Special Operations Division from Osnat Hersher dated 5/3/2005
9	Letter from the State of Israel Directorate of Courts dated 10/5/2006
10	Correspondence from the Israel Police Intelligence Department Legal Assistance Unit Special Operations Division dated 9/26/2006; documents from the Military Prosecution for Judea and Samaria dated 9/19/2006 which include an indictment, verdict and sentence issued by the Shechem Military Court (and accompanying translation of the Hebrew documents)
11	Report from Law Library of Congress regarding Jurisdiction and Procedures of the Military Court in Nablus in 1993; Memo that Ruth Levush (with Library of Congress) is available to testify by video conferencing
12	1993 U.S. Department of State Report on Human Rights Practices; Case involving the Holy Land Foundation for Relief and Development; 2004 DOJ Press Release; 2001 DOT Press Release; Materials related to Hamas
13	Transcript of Dr. Qatanani's interview with CIS on 5/16/06 and VHS recording
14	Resubmission of Police Documents including further authenticating documentss
15	Alan Wolf's letter dated January 31, 2008
16	Declaration of FBI Agent Angel L. Alicea (dated 1/31/06)
17	Articles re: the Counsel on American-Islamic Relations (CAIR)
18	Affidavit from US Embassy in Tel Aviv authenticating records provided by Israeli National Police (dated 10/12/07)
19	Affidavit by Amos Guiora
20	Administrative Record
21	Congressional Research Service Issue Brief: "Hamas: The organizations, Goals and Tactics..."; Israel Ministry of Foreign Affairs, "Hamas--The Islamic Resistance Movement"
22	Amended version of Library of Congress Report re: Jurisdiction, etc. of Israeli Military Court; FrontPageMag.org news article dated 2/26/08 entiteled "The Muslim Way of Life" mentioning Dr. Qatanani and ICPC.
23	Newspaper Article: "Backers Helping Fight Passaic Imam's Expulsion"
24	Flier taken from ICPC entitled "Know Your Rights!"

A 76-133-969, A 76-123-694,
A 76-123-695, A 76-123-696,
A 76-123-697

The Respondents' Exhibits

Exhibit #	Document
1	I-485 dated 3/25/99 (for each Respondent); amended I-485 (for each Respondent); copy of H-1B visa and I-94
2	Documents showing Dr. Qatanani's work developing interfaith relations
3	Documents showing Dr. Qatanani's work in condemning terrorist attacks
4	Documents describing Dr. Qatanani's work with government officials
5	Documents describing Dr. Qatanani's involvement in community
6	Dr. Qatanani's affidavit
7	Article - "Torture and Ill-Treatment: Israel's Interrogation of Palestinians from Occupied Territories"
8	Article from Lisa Hajjar - "Courting Conflict: The Israeli Military Court System in the West Bank and Gaza"
9	Israeli High Court of Justice case denouncing interrogation methods applied by the GSS
10	Article by Amos Guiora - "The unholy Trinity: Intelligence, Interrogation and Torture"
11	US DOS Country Reports on Human Rights Practices for 1993: Israel and Occupied Territories"
12	Respondents' witness proffer
13	Report of the International Commission Of Jurists on Israel's Judicial System
14	Statistic on Administrative Detention from the Israeli Information Center for Human Rights in the Occupied Territories.
15	Status Inquiry from Sohail Mohammed to CIS dated 11/22/02
16	David Horowitz Freedom Center Year End Report
17	Subpoenas
18	Disposition of Dr. Qatanani's NJ Traffic Violation
19	Petitions signed by R's supporters
20	Books by (1) the Human Rights Watch: "Torture and Ill-Treatment: Israel's Interrogation of Palestinians from Occupied Territories," and (2) Lisa Hajjar: ""Courting Conflict: The Israeli Military Court System in the West Bank and Gaza"
21	Letter issued by the Islamic Center of Passaic County condemning the 9/11/01 terrorist attacks; letters from supporters
22	Affidavit of Ronald Fava
23	Illustration blow-ups taken from the Human Rights Watch book from Exhibit 20.
24	Dr. Qatanani's Israeli Departure Card (and translation)
25	Translation of Dr. Qatanani's Jordanian driver license (and translation)