The Jerusalem Court for Administrative Affairs **Adm Pet. 725/03**
Before the Honorable Justice Y. Adiel

Re:

1. **_____Rajoub, ID No. _____**
2. **_____Rajoub, ID No. _____**
3. **_____ Rajoub, ID No. _____ (minor aged 17)**
4. **_____ Rajoub, ID No. _____ (minor aged 16)**
5. **_____ Rajoub, ID No. _____ (minor aged 15)**
6. **_____ Rajoub, ID No. _____ (minor aged 14)**
7. **_____ Rajoub, ID No. _____ (minor aged 9)**
8. **_____ Rajoub, ID No. _____ (minor aged 6)**
9. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger - Registered Association**
   Represented by attorneys Yotam Ben Hillel (lic. No. 35418) and/or Yossi Wolfson (lic. no. 26174) and/or Hava Matras-Iron (lic. no 35174) and/or Sigi Ben-Ari (lic. no. 37566) and/or Abir Joubran (lic. No. 44346) and/or Ido Blum (lic. no. 44538)
   Of HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger
   4 Abu Obeidiah Street, Jerusalem, 97200
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The Petitioners

– Versus –

1. **Minister of the Interior**
2. **Director of the Population Administration**
3. **Director of the East Jerusalem Population Administration**

Represented by the Jerusalem State Attorneys
7 Mahal Street, Jerusalem
Tel: 02- 5419555; Fax: 02-5419581

The Respondents

Amended Petition for an Order Nisi

An amended petition for an Order Nisi is hereby filed which is directed at the respondents ordering them to appear and show cause why

Introduction

1. The petition, which is being filed within the framework of the "upgraded process" for family unifications, is concerned with an application to upgrade the status of petitioner 2 (hereinafter: the "**petitioner**"), the spouse of an Israeli resident.

2. The application by petitioner 1 for a family unification with the petitioner was already filed as way back as 1995, but was only approved towards the end of 1999. The petitioner began taking part in the upgrading process, in terms of which he was liable to receive the status of a temporary resident (class A/5 permit) as early as February, 2002. Owing to obstacles placed by the respondents, which shall be detailed below, the petitioner's status was not upgraded.

3. On 12 May, 2002 the Government of Israel passed Decision No. 1813 (hereinafter: the "**Government Decision**"). The decision established, *inter alia*, that the status of those participating in the upgrading arrangement would not be upgraded. The Ministry of the Interior jumped for joy at this decision, treating it as if they had just discovered great spoils, and decided not to upgrade all of the pending petitions that were then before it. All this took

place even though the upgrading was to take effect – in accordance with the times set by the upgrading arrangement – even before the Government decision. All this applies equally to the petitioner's affairs.

4. As a consequence of the respondent's decision not to upgrade the petitioner's status the titled petition was filed (hereinafter: the "**first petition**"). In a judgment passed on 27 May, 2007 the honorable court dismissed the first petition. An appeal against this judgment was subsequently filed with the Supreme Court (AdmA 5534/07).

5. On 16 July, 2008 the appeal was heard before the court, at the end of which the judgment was passed, which established the following:

> Pursuant to the court's recommendation and by general consent the file shall be returned to the Court for Administrative Affairs, in order that it be reexamined in light of the policy (that was formulated after the original judgment) which finds expression in the approach that states "one may upgrade the status of an applicant even if his status was not upgraded before the deadline, provided that the non-upgrading was the result of an error or because of an unjustified delay that was caused by the respondent" (from the judgment in AdmA 8849/03 Dofesh v. The Director of the Population Administration (unreported, given 2 June, 2008). The court shall investigate whether this case falls under the above criteria. We have paid particular attention to the petitioners' claims that, firstly, because they live on the opposite side of the separation barrier, and because the petitioner does not have an A/5 status but relies exclusively on DCO permits, he experiences severe traffic problems whenever commuting to Jerusalem; and secondly that petitioner 2's health has been suffering as a result of an accident. We have also paid particular attention to the time that has elapsed and to the history of the handling of this issue, which began as far back as 1995 (the administrative petition was filed in 2003), as well as the circumstances surrounding the 2002 timetable,

> something that one would expect would be taken into account by the respondents – and obviously we are not establishing any hard and fast rules –when they present their position before the Court for Administrative Affairs. Finally, we earnestly request that the court set a trial date for the very near future, in light of the aforesaid. The appeal is thus upheld by consent, pursuant thereto.

The judgment of the Supreme Court is attached, marked **p/1.**

6. The Supreme Court has therefore instructed that the matter be heard before the honorable court, in order to examine whether the case falls under the new criteria established by the respondents, while paying attention to the petitioners' claims, as was claimed within the framework of the appeal.

7. Pursuant thereto, on 20 July, 2008 the petitioners filed a petition with the honorable court to rehear the case. On 12 August, 2008 the honorable court held that the petitioners should file an amended petition up to 21 August, 2008.

8. We should note that within the framework of the first petition (and after that – within the framework of the appeal) the petitioners raised a number of claims, which we shall restate in a nutshell, below. Nonetheless, the Supreme Court's decision at the appeal (see appendix p/1 above) does not, for the most part, deal with the same claims. Instead, the Supreme Court held that the honorable court should rehear the case pursuant to the respondents' new policy in terms of which "it is possible to upgrade the status of the applicant even if was not upgraded by the deadline, if the reason for not upgrading was the result of an error or an unjustified delay that may be attributed to the respondent".

9. It should be noted, that within the framework of the appeal, the respondents claimed that the appeal should be dismissed since the petitioners' case did not fall within the definition of an "error or an unjustified delay that may be attributed to the respondent". The Supreme Court did not accept this claim and held that this case would now be examined by the honorable court.

10. However the Supreme Court did not stop there and held that the honorable court had to take account of the other variables that made this case unique: traffic difficulties caused to the petitioner, because he only possessed a permit of stay and not a Class A/5 certificate; the petitioner's health, the time that elapsed from the day of filing the application (1995) until today; and the manner in which respondents handled the petitioners' case.

11. The petitioners reemphasize that they stand by their other claims – both specific and general – which were cited at length within the framework of the first petition and within the framework of the appeal. Nonetheless, and in light of the Supreme Court's judgment, and in light of the fact that the petitioners' case so classically falls within the category of an "error or an unjustified delay that may be attributed to the respondent" – the petitioners shall confine their claims exclusively to those issues which were noted by the Supreme Court in its judgment.

    The petitioners shall claim that even within the framework of the new criteria that the respondents themselves established, it is incumbent upon the respondents to upgrade the petitioner's status. The validity of the petitioners' claim may be reinforced if we take into account the other variables noted by the Supreme Court, as aforementioned.

Parties to the petition

12. Petitioner 1 is a permanent resident of the State of Israel, who has lived in Jerusalem from the day she was born. The petitioner currently lives in the Shuafat refugee camp with her spouse and seven children (the youngest daughter, Danya was born in December, 2006 and is thus not a petitioner in this petition).

13. The petitioner, the holder of a Palestinian identity document, is the spouse of petitioner 1 and the father of her seven children. Petitioner 1's application for a family unification with the petitioner was approved in November, 1999 and since then the petitioner has participated in the family unification proceeding.

14. Petitioners 3-8 (hereinafter: the "**petitioner's children"** or the "**children**") are

the petitioners' children. All of them are registered as permanent residents in the Israel Population Registry.

15. Petitioner 9 (hereinafter also: "**HaMoked: The Center for the Defence of the Individual**" or "**HaMoked**") has set for itself the aim of assisting people who have fallen victim to abuse or to discrimination by the state authorities, and its work includes defending their rights before the courts, both in its own name as a public petitioner or as the representative of persons whose rights have been infringed.

16. Respondent 1 is the minister authorized by the Entry into Israel Law, 5712-1952 to handle any issue that derives from this Law, including applications for family unification and the resolution of the children's status, which are filed by the permanent residents of the State who reside in East Jerusalem.

17. Respondent 2 is the director of the Israel Population Administration. Pursuant to the Entry into Israel Regulations, 5734-1974, respondent 1 delegated to respondents 2 and 3 his powers with respect to the handling and approval of applications for family unifications, and for the resolution of the status of children, which are filed by the permanent resident of the state who live in East Jerusalem. Likewise, respondent 2 participates in the proceedings, which establish policy with respect to applications to receive Israeli status, by virtue of the Entry into Israel Law, and the regulations that were published as a consequence thereof.

18. Respondent 3 (hereinafter: the "**respondent**") administers the district office of the East Jerusalem Population Administration. Pursuant to the Entry into Israel Regulations, 5734-1974, respondent 1 delegated to respondents 2 and 3 his powers with respect to the handling and approval of applications for family unifications, and for the resolution of the status of children, which are filed by the permanent resident of the state who live in East Jerusalem.

The petitioners' case

19. Petitioner 1 and the petitioner married each other in 1990. From the day of their marriage right up until today, the petitioners and their seven children live

in the Shuafat refugee camp in Jerusalem.

20. It should be noted that up until 1994 the respondent imposed a discriminatory policy in terms of which female residents of Israel were barred from filing a family unification application to be with their spouses. In 1995, a full **thirteen years ago,** in the wake of the revocation of this policy, the petitioners filed their family unification application (hereinafter: the "**application**"). The application was approved only in **November 1999**, in other words, **more than eight years ago (almost five years after it was filed).**

21. Already at this point it should be mentioned that the respondent's series of failures to handle the petitioners' case already began during the initial proceeding related to the approval of the application. It should also be noted that the petitioners' application to register their children in the Population Registry was already approved in April. 1997, after the respondent was convinced that the family's center of life was in Israel. For some reason, six months later the respondent announced that the petitioners' family unification application was denied, on the basis that "the center of life in Israel had not been proved". Petitioner 9 appealed this decision, and indeed the application was eventually approved, and on 21 November, 1999 the petitioner received a referral from the respondent to receive a permit from the DCO. However this approval was also only received after a whole series of ongoing –and in practice superfluous - correspondence which lasted for two years. Therefore the great delay in approving the approval was entirely the fault of the respondent.

For a detailed account of this aspect the honorable court is referred to paragraphs 13-23 of the first petition, and the appendices attached thereto.

22. On 9 November, 2000 petitioner 9 filed an application to reapprove the petitioner's stay in Israel. Petitioner 9 attached documents to the application, which attested to the petitioner's center of life being in Israel.

23. On 27 December, 2000 the respondent sent a letter stating that "other factors aside from the center of life are being taken into account in handling this application". The respondent added that when an answer with respect to these

factors is received they would inform them of their final answer.

24. The position of the security personnel, stating that there was no opposition to approving the application, had already been received over the course of **January 2001** (so it emerges from paragraph 10 of the letter of reply to the first petition). Therefore, **already then there was no impediment to approving the petitioners' application.** However the respondent did not approve it then, and for almost a year thereafter it remained abandoned in the office of the respondent.

25. The petitioners did not rest on their laurels over the course of that year. During this period petitioner 9 sent no less than **five letters of reminder** to the respondent. In addition representatives from petitioner 9 conducted telephone conversations with Mrs. Hagit Weiss from the office of the respondent, and also met with the office director, Mr. Avi Lekah. All of this was to no avail.

And it should be emphasized: throughout those long months the application remained in the office like a deadweight with no one bothering to pick it up, and all this despite the fact that **all the respondent had to do was to look at the [security] personnel's reply in order to discover that there is no impediment to approving the application.**

For a detailed account of this aspect the honorable court is referred to paragraphs 32-38 of the petition, and the appendices attached thereto.

26. The respondent did not deny its grave failure in handling the application. As has been detailed in the first petition, on 3 January, 2002 Miss Filmus from petitioner 9 telephoned the office of the respondent, and spoke to Mrs. Siman Tov Porat (hereinafter: "**Mrs. Porat"),** the office documentation coordinator about the petitioners' application. **According to Mrs. Porat, the petitioners' file was "buried" in the office and therefore, no decision had been reached until that day. Mrs. Porat added that since the reason for the not being approved up until then was due to the failure of the Ministry of the Interior, the year of delay would be counted within the framework of the upgrading arrangement, and following a reexamination of the updated documentation and a response by the various factors, the petitioner would**

receive a class A/5 temporary resident permit. According to Ms. Porat a class A/5 permit would be approved for the petitioner by February, 2002.

Petitioner 9's letter is attached, marked appendix **p/2.**

27. As a consequence of that telephone conversation with Mrs. Filmus the respondent eventually agreed on 3 January, 2002 to forward the petitioners' application for examination by the security personnel. As emerges from the respondent's reply to the first petition, which was received on 31 January, 2002 the police's position was that there was no objection to allowing the application.

28. In addition, and as stated in paragraph 15 to the respondent's reply:

> On 22 April, 2002 after the file was investigated, **it was recommended to approve the application** subject to receiving the updated position of the security personnel. (Emphasis not in the original – Y. B)

29. Therefore, already by 22 April, 2002 – about three weeks before the Government Decision – the respondent approved, on principle, to the upgrading of the petitioner's status and all that was required was receiving an affirmative answer from the ISA (as aforementioned, the police's reply had already been given before then).

30. And indeed, according to paragraph 17 of the letter of reply, on 27 June, 2002 the ISA's position was delivered stating that there were no objections concerning the application. However contrary to Mrs. Porat's assurances and contrary to the respondent's decision to approve the application subject to the absence of any opposition by the security personnel – the respondent decided to rely on the Government Decision, which ordered that there be no upgrading of status. Pursuant thereto on 4 July, 2002 the petitioner again received a referral to the DCO.

The Government Decision, which was passed merely a month and a half before the ISA's position was received, served as an excuse for absolving

itself of its obligation to the petitioners, for renouncing its decision in principle to approve the application, and for abandoning its function as an Administrative Authority, which obligates it to conform to the basic rules of fairness.

31. In light of the respondent's failure. The first petition was filed on 24 April, 2003.

The hearing on the first petition

32. On 15 June, 2003 the respondent's initial reply was filed. In its reply, the respondent claimed that in light of the Government Decision it was not possible to upgrade the petitioner's status; however it agreed that the validity of the DCO would be extended for a year.

33. On 18 June, 2003 the petitioners filed their response to the respondent's initial reply. Within the framework of this reply, the petitioners claimed that the respondent had in the past made exceptions to their rules, and had approved the upgrading of an applicant after the Government Decision had already passed. This was in cases, where, for example, the applicant's status had not been upgraded as a result of deficient handling by the respondent. The petitioners attached the affidavit of Mr. Shabtai Mizrachi, an official from the respondent's office, which the respondent filed within the framework of Adm.Pet 434/03, to their own reply. Mr. Mizrachi referred in his affidavit to another petition (Adm.Pet 813/02 Anbawi et al v. Director of the East Jerusalem Population Administration Office), in which there was a decision to approve an application for a status upgrade, after the Government Decision was passed, because the security personnel's reply had been delayed for so long.

The petitioners' reply is attached, marked **p/3.**

34. On 4 September, 2003 a hearing was conducted on the first petition. During the hearing, counsel for the respondent, Adv, Rosenthal, argued that even in cases in which the applicant was meant to have been upgraded before the Government Decision, the effect of the Decision is that it is currently not

possible to provide an upgrade even in such cases. In his counterargument, counsel for the petitioners, Adv. Lustigman argued that the Citizenship and Entry into Israel Law (Temporary Order) does not establish that one may not upgrade a person who had already entered upgrade proceedings when the Government Decision was passed. The petitioners argued further that the respondent's interpretation of the Law ascribes to the Government Decision retroactive application, in contravention of the language of the Law, and of court rulings.

35. At the close of the hearing the respondent was requested to inform the court, in light of the fact that the whole issue of the Temporary Order was at that time pending before the Supreme Court, whether it wants to leave the hearing on the petition in the hands of the Court for Administrative Affairs, or if it would like to transfer it to the Supreme Court. The respondent requested that the hearing on the petition be postponed until there is a decision by the Supreme Court. The petitioners agreed to this proposal, and on 16 December, 2003 Justice M. Shidlovsky-Ohr held that "the parties shall approach the court after the passing of a Supreme Court judgment on matters relating to the issue heard in this case"

36. Following the judgment in HCJ 7052/03 Adalah et al. v. Minister of Interior et al, which dealt with the constitutionality of the Temporary Order, the petitioners, on 4 October, 2006, filed an application to resume the hearing in the petition. On 31 October, 2006 the respondent's reply to the application was filed, which stated that it had no objections to resuming the proceedings. On 29 January, 2007 the honorable court ordered that the proceedings on the petition be resumed.

37. On 1 March, 2007 a letter of reply to the petition was filed, and on 2 May, 2007 the petitioners filed their heads of arguments.

38. On 6 May, 2007 a hearing on the petition was conducted, and on 27 May, 2007 a judgment was given dismissing the petition.

The hearing on the appeal

39. On 24 June, 2007 the petitioners filed an appeal on the judgment of the honorable court. Within the framework of the appeal, the petitioners argued that the respondent was unlawfully applying the Government decision and the Temporary Order to the petitioners' case. The petitioners also argued that the respondent had already approved, in principle the upgrading of the petitioner's status before the passing of the Government Decision, and they were given governmental assurances by the respondent, as early as 3 January, 2002 that in February 2002 the petitioner would be issued with a Class A/5 permit. Another argument of the petitioners was that under the court's decision there were no ramifications for the many failures of the respondent, in this case and the respondent, and subsequently the honorable court did not give adequate consideration to the humanitarian aspects that are raised by the petitioners' case.

The Notice of Appeal is attached, marked **p/4.**

The petitioners repeated these claims in their heads of argument, which were filed in 25 December, 2007. These arguments by the petitioners shall be discussed later on.

The appellants' (the petitioners in this case) arguments are attached, marked **p/5.**

40. On 6 July, 2008 the respondents filed their summations. In these summations, the respondents rejected the petitioners' arguments. Nonetheless, the respondents noted that that they would be prepared to upgrade the status of any applicant who falls under the category of the "**mistake exception**" i.e. where the delay in his case was unjustified and attributable to the respondent. According to their claims, the petitioners' case did not fall within the category of this exception, and therefore it was not possible to upgrade his status.

The respondents' summations are attached, and marked **p/6.**

41. On 10 July, 2008 the petitioners filed a summary of their reply.

The summary of the reply is attached and marked **p/7.**

42. On 16 July, 2008 a hearing was conducted on the appeal. Within the framework of the hearing the Supreme Court chose to accept the primary arguments raised by the petitioners and to focus on the question, which was referred to counsel for the respondent, why the petitioners' case did not fall under the category of the "mistake exception". The judges emphasized at the hearing that the general picture that emerges from this case is one of inappropriate handling of the petitioners' applications. Nonetheless the judges decided to follow in the footsteps of the court in Adm.Pet 8849/03 Dofesh et al v Director of the Population Administration and in 8676/06 Saadah et al v. Director of the Population Administration (cases whose issues were similar and which were discussed together) and held that the case must be returned to the honorable court so that it establishes whether "the non upgrading was the result of an error or because of an unjustified delay which may be attributed the respondent."

The legal argumentation

43. Within the framework of the first petition (and after that – also within the framework of the appeal) the petitioners made a number of claims:

a. The petitioners argued that already on 3 January, 2002 the respondents gave assurances that in February 2002 the petitioner would be issued with a Class A/5 permit. The petitioners argued that this assurance, which was given by an official of respondent 3, may be classified as a **governmental assurance,** with all the consequences thereof, especially as it relates to the respondent's ability to retract its assurance.

b. The petitioners argued, that **already by 22 April, 2002, before Government Decision 1813 was passed, the respondent approved the upgrading of the petitioner's status.** This was in effect an approval in principle, subject to one condition – the absence of any objections on the part of the ISA. Since this condition was already realized on 27 June, 2002 at which time the ISA's position was forwarded to the respondent, stating that it had no objections with

respect to the application, the respondent should have approved the upgrading of the petitioner's status.

c. The petitioners argued further that the fact that the petitioner's status was not upgraded is the **direct result of the respondent's failures.** The respondent did not deny these failures and on that basis gave its assurances to the petitioner that his status would be upgraded. Despite this, the status was not upgraded. The petitioners argued that the respondent's conduct deviated from the basic rules of administrative fairness and reasonableness, and that that conduct severely and daily harms the petitioner and his family members.

d. As a matter of principle, the petitioners argued that the **refusal of the respondent to upgrade the petitioner's status qualifies as a retroactive application of the Government Decision and of the Citizenship and Entry into Israel Law (Temporary Order) to the petitioners' case.** This contravenes the rule which states that a Law or policy shall not be applied retroactively, in the absence of an explicit provision or circumstances that justifies such an application. The petitioners argued that the honorable court erred when it held that the section of the Law, which applied to the petitioners' case, was section 4 (2). The petitioners argue that the relevant provision to our case was section 4 (1). This section, which deals with applications where family unification proceedings have already been instituted, establishes a clear provision with respect to its prospective application – it only applies from the day the Law was passed and onwards. This section does not give retroactive validity to the Government Decision of May 2002, and does not block the upgrading of those permits in the intervening period between the Government Decision and the publication of the Temporary Order.

e. Finally, the petitioners argued that the **respondent's decision ignored the humanitarian aspects which the petitioners' case raises.** These aspects shall be discussed later on.

44. The Supreme Court's decision on appeal (see appendix p/1 above) does not deal with a large part of the claims, which were raised by the petitioners on appeal. Instead, the Supreme Court held that the honorable court rehear the petitioners' case pursuant to the respondents' new policies in terms of which "it shall be possible to upgrade the status of the applicant even if his status was not upgraded before the deadline, provided that the non upgrading was the result of an error or an unjustified delay that may be attributed to the respondent."

45. It should be noted that within the framework of the appeal, the respondents argued that the appeal should be dismissed since the petitioners' case does not fall under the category of "an error or an unjustified delay that originated with the respondent." The Supreme Court did not accept this argument and held that this case should be sent to the honorable court for its examination.

46. However the Supreme Court did not stop there and held that the honorable court must also apply their minds to the other variables which make the petitioners' case unique:

A The traffic difficulties experienced by the petitioner, in light of the fact that he only possesses holder of a permit of stay and not a Class A/5 certificate;

B The petitioner's medical condition;

C The times that has elapsed from filing the application (1995) up until today;

D The manner in which the respondents handled the petitioners' case.

47. The petitioners reemphasize that they stand by their other claims – both specific and general – which were cited at length within the framework of the first petition and within the framework of the appeal. Nonetheless, in light of the Supreme Court's judgment, and in light of the honorable court's decision dated 23 July, 2008 the petitioners shall confine their claims exclusively to those issues which were noted by the Supreme Court in its judgment.

The petitioners shall argue that even within the framework of the new criteria established by the respondents (hereinafter: the **mistake exception)** it is incumbent upon the respondents to update the petitioner's status. This claim by the petitioners gains extra force when one takes into account the other variables which were noted by the Supreme Court, as aforesaid.

Below the petitioners shall elaborate upon their claims.

"**The mistake exception"**

48. In paragraph 20 of its summations, the respondents note that they would be prepared to upgrade the status of anyone who falls under the category of the "**mistake exception**" i.e. someone, whose status was not upgraded as the result of an error by the respondents or because of an unjustified delay attributable to the respondents. Pursuant to this policy of the respondents, the Supreme Court returned the case to the honorable court in order to determine whether the petitioners' case falls under the category of the "mistake exception".

49. At the **outset** we should mention that the delay in handling the petitioners' application already began during the first examination of the family unification application. As aforesaid the initial examination of the petitioners' application lasted almost five years. This time period is above and beyond any measure of reasonableness. Over the course of that time period the petitioners' family unification application was denied on the basis of the flimsy excuse that the center of life was not on Israel. As aforesaid, the decision to deny the application was passed six months after the respondent decided to register the petitioners' children in the Israeli Population Registry, after having been convinced that the petitioner's residence was in Jerusalem.

50. Petitioner 9 appealed this decision, and indeed the application was finally approved, so that the petitioner received a referral from the respondent to receive a permit from the DCO. However this approval was also only received after a series of ongoing – and in practice, superfluous – correspondence – which continued for a further two years. As described in the first petition, the respondent decided to return the petitioners' application for

further handling, two months after filing the aforesaid appeal. The problem is that only two years after returning the application for further handling, was the application approved.

51. **Therefore, already during the initial approval of the petitioners' application there was an unjustified delay which was entirely due to the respondent's failure. This delay may be classified as the respondent's "original sin", without which – it is very possible the petitioner's status would have been upgraded long before the passing of the Government Decision.**

52. Secondly, as shall be clarified below, despite the respondent's "original sin" the petitioner's status could still have been upgraded before the passing of the Government Decision (that this is so may be seen from the fact that during the first phase of the upgrading proceeding the petitioner's status remained static). As far as the petitioner was concerned he had "fulfilled all the essential requirements necessary to receive status, before the time limit had expired", as stated by the respondents in paragraph 20 of the summations in the appeal. This is thus the version of the respondents themselves, who decided to approve the application already in Aril 2002 "subject to receiving the position of the ISA". Therefore there remains only one question that ought to be discussed: may one say that in this case there was a "justified delay which was not attributable to the respondents"? May one say that the fact that the ISA's position was only received on 27 June, 2002 it was not the cause of the respondent's recklessness, as claimed by the respondents? We shall deal with this matter presently.

53. We should note that the position of the security personnel, in terms of which there was no security impediment to approving the petitioner's first application to extend his status, was received by the respondent in January 2001. The problem is that for almost a year thereafter the application lay on the desk of the office of the respondent, like a deadweight which is never moved. Over the course of that period the respondent was sent no less than five letters of reminder. In addition, representatives of petitioner 9 spoke by telephone to representatives of the respondent, and even met with the director

of the office himself, Mr. Avi Lekah. All of this was to no avail. Despite all these efforts the respondents now claim that it is a case of a "technical mistake" (see paragraphs 7 and 12 of the summations in the appeal).

54. It appears that the respondent "paid attention" to the petitioners' application only after the fifth letter of reminder – which was sent on 14 November, 2001. Why then was a questionnaire not sent on that day in order to receive the updated position of the security personnel?

In December 2001 after the respondent had been roused to action, petitioner 9 was sent a letter, which included a demand for documents attesting to the fact that the center of life of the family was in Israel. Why did the respondent not use this opportunity to also send a questionnaire to the security personnel?

The respondent only elected to refer the matter to the security personnel on 3 January, 2002, according to their claims. Amazingly this was precisely the same day on which one of the employees of petitioner 9 spoke to Mrs. Siman Tov Porat, during which conversation the latter admitted that the file had, in her own words, been "buried" in the office. She then promised that by February 2002 (according to the way the months were counted under the "upgrading proceeding') – the petitioner's status would be upgraded. Is it possible that it was only in the wake of this conversation that the questionnaire was sent to the security personnel, and without this conversation the referral would have been delayed until months later? Is it possible that were it not for this conversation the security personnel's decision would have been received a long time afterwards?

In light of the above, may one say therefore that here was not a case of a "justified delay which was not attributable to the respondents?

55. Therefore, even under the respondent's position, that states that they would be prepared to consider upgrading a person's status in circumstances in which there is a "mistake exception" - there is no doubt the petitioner's status would have been upgraded.

56. In this context it may be noted further that within the framework of AdmA

9003/06 Ajrab et al v. Minister of the Interior the respondents agreed to upgrade the status of a person in a situation similar to that of the petitioner. The status was upgraded even though on the day of the Government Decision the respondent had yet to receive all the documentation attesting to the center of life This was only produced over the course of the month of August 2002, and only then was it decided to approve the application and to grant that person (as of that day) a permit of stay in Israel. If in that case the decision was in favor of upgrading the person's status, *a fortiori* it should apply to our case, in which the respondents themselves do not dispute the fact that the petitioner "fulfilled all the essential requirements necessary for receiving status, before the deadline had expired".

The original judgment that was given in that case and the agreement of the parties after an appeal was filed at the Supreme Court is attached, marked **p/8** and **p/9** respectively.

Other variables

57. As stated, the Supreme Court held that in addition to the determination whether the "non-upgrading was the result of an error or an unjustified delay that is attributable to the respondent", the court must set its mind to the other variables which make the petitioners' case unique. We shall now turn to this matter.

The petitioner's medical condition

58. The petitioner has severe problems in his legs and back as the result of a road accident that took place in 1981. He suffers from approximately 80% disability and finds it very difficult to walk (the petitioner uses a walking stick on a permanent basis and requires the support of another person while walking) and to sit for long periods. In order to ease his suffering, the petitioner has been treated with painkillers which he takes on a daily basis. In addition to all of this, the petitioner also suffers from ongoing urinal infections. The petitioner is required to undergo a series of stomach and kidney tests, and depending on the results, and when required – he is treated with antibiotics.

59. As is well known a Class A/5 status would allow the petitioner to receive social rights and health insurance. At present the money for the tests which the petitioner undergoes once a month comes from his own pocket. In order to reduce the costs, he is treated by a doctor in Hebron, in the West Bank, but at times the treatment the petitioner receives there is inadequate. When the petitioner requires special treatment, when he requires to undergo special tests (for example an ultrasound examination) and even in a case where the petitioner is required to purchase medicine it involves very high financial costs, since he has no health insurance. It should be noted further that in order for the petitioner to conduct a normal lifestyle, as much as that is possible, he must have physiotherapy on his legs. The petitioner avoids doing so, because of the expense of the treatment and because of not having health insurance.

Documents attesting to the petitioner's medical condition are attached, marked **p/10.**

The petitioners' place of residence and restrictions on the petitioner's freedom of movement

60. The petitioner and his family live in the Shuafat refugee camp, which even though is part of Jerusalem, it is located on the eastern side of the separation barrier, and is separated from the rest of the parts of the city by a checkpoint. Like all those who are considered a "resident of the occupied areas" – the petitioner may not cross any checkpoint in Jerusalem or in the surrounding areas. His passage is restricted to a very limited number of checkpoints (which are referred to as "crossings"). The checkpoint which is located at the entrance to Shuafat is not counted as one of those "crossings". This means that so long as the petitioner does not possess Israeli documents (even temporary ones), he is generally speaking prevented from going through that crossing. Of course there have been certain cases in which the soldiers at the checkpoint did allow the petitioner to cross over, because of his medical condition. However when he is prevented from using this crossing he is forced to enter Jerusalem through the Qalandiya checkpoint, which requires him to make a not insignificant detour, which takes up much time and money (since he has to rely on private taxis) and part of the journey may only be crossed on foot. As a

result thereof, and in light of his severe physical restrictions, the petitioner, in many cases has avoided leaving the house at all. Thus for him the refugee camp has become a quasi jail, where leaving it has become a luxury.

For illustrative purpose a map of that area is attached and marked **p/11.**

61. It should be noted further that in his return back from his medical treatments – which the petitioner, as stated, is forced to undergo in Hebron – the petitioner encounters yet another problem. Without Israeli documentation, the petitioner is forced to return to the Jerusalem area via the "Rachel Crossing" (checkpoint 300), which is close to Bethlehem. The crossing at that checkpoint is very difficult for the petitioner. It requires a significant amount of walking in a very narrow area, in which the petitioner cannot be assisted by his assistant. Israeli documentation, in contradistinction would enable the petitioner to pass through the "tunnels checkpoint", which is a much simpler crossing.

62. We would add, in this context, that the fact that the petitioner does not own an identity document, but only a permit of stay, means that once every few months he must go to the DCO, which is also located in Hebron, in order to extend his permit. On many occasions, for bureaucratic reasons, it is not possible to extend the permit at that place, and the petitioner is forced to go back home and rearrange to visit the DCO at a later date. This conduct harms anyone who has a permit of stay in his possession and who is forced to renew it from time to time. For the petitioner whose medical condition is, to put it mildly, not the best, the harm is increased multifold.

The time factor

63. The Rajoub couple has lived in Jerusalem throughout their life together, for 18 years. Petitioner 1, an Israeli permanent resident has for 13 years already tried for her spouse to acquire status in her State, a State in which she lives together with him and their children. The petitioner is a man who has established Israel as his home – it is here that he conducts his life, here he lives with his wife, here his children are growing up, and here they study. Despite all this and despite the fact that the respondent recognizes this, and despite the fact that there is no impediment, criminal, security or otherwise, from granting him at

least temporary status – the respondent refuses to do so.

64. The continuous proceedings in the petitioner's case, and the fact that he has remained for so many years without any status has also caused severe and continuous harm to the family unit and to the constitutional right to a family life vested in petitioner 1 and her children, who are residents of Israel. (See in this regard: HCJ 7052/03 Adalah et al. v. Minister of Interior et al, *Takdin Elyon* 2006(2) 1754). The fact that the petitioner, for all practical purposes, has been imprisoned in his own home deprives him of the opportunity to take part in the various family events, and to leave his home together with his wife and children, like all other families. In this context the hardest thing for the petitioner is his forced absence from various events in his children's lives, which every so often take place in the schools in which they learn, which are located outside the camp. Also the fact that the petitioner has no health insurance and is not entitled to a stipend from the National Insurance does tangible damage to the family, and to the ability of the petitioner and of petitioner 1 to provide the children with all their needs.

The respondent's handling of the petitioner's case

65. The manner in which the respondents handled the petitioners' case – both during the initial examination of their family unification application and during the petitioner's application to extend the permit of stay in his possession and to receive an upgrade – has been covered at length above.

66. The respondent's handling of the issue suffers from a radical display of unreasonableness. In practice, under the respondent's policy, a person who applied during that period to the respondent's office to upgrade his status is dependent on the manner in which the application is handled by the official. A person who filed his application on time, and received fair treatment by the official to the extent that his application was approved even before the Government Decision – was awarded with an upgrade of his status, which in turn acquires for him and his family a certain amount of stability and security. A family in this situation is assured at least a year of calm, over the course of which the applicant holds a one-year Class A/5 permit of stay in Israel, in

which he is entitled to social rights, including the right to health insurance, and freedom of movement.

67. At the same time, another family, which had filed its application at exactly the same time, and sometimes even earlier, but whose application had not been properly handled, was harmed by the manner in which the respondent applies the Government Decision and the Temporary Order. The non-resident spouse in this family would be forced to visit the District Coordination Office a number of times per year in order to receive permits of stay in Israel. If prior to the renewal date there is a curfew in the occupied areas, the applicant's spouse will be unable to receive the permit and the applicant will remain without a lawful permit of stay in Israel, while being in the midst of a family unification proceeding and after his application for another year has been approved. This applicant will not be entitled to health insurance and other social rights, and if he experiences severe health problems, such as those suffered by the petitioner, he will find himself at a loss.

68. In our case the respondent's conduct has led to even harsher consequences. The respondent has in fact already recognized its failure in handing the petitioner's application and in light thereof gave assurances that at the end of the day it passed a decision in principle to approve the application. Its retraction of its decision is not only an unreasonable action, but qualifies as an action which lacks all bona fides.

69. For the State's obligation to act reasonably and fairly see the *dicta* of (then) Justice Barak in HCJ 840/79 Contractors and Builders Central Committee v. Government of Israel and the Builders of Israel, *Piskei Din* 34(3), 729, and especially pages 745-746:

> The State represented by its employees who act on its behalf is a public trust, in whose hands the public interest and the public resources have been placed in order that they be used for the general good…this unique status imposes upon the State the obligation to act reasonably, honestly, with a pure heart and in good faith. It is forbidden for the State to discriminate, to act

> arbitrarily and with mala fides, and to place itself in a position of conflict of interest. In a nutshell, it needs to act fairly.

70. We have witnessed the outrageous administrative unfairness in the respondent's mishandling of the petitioners' application. This unfairness and foot-dragging displayed by the respondent cries out for reform and for relief.

Summary

71. This petition is concerned with the series of failures by the respondent, which began with the very sluggish handling of the family unification application, continued with the inferior handling of the petitioner's application to extend the permit of stay which was given to him and to upgrade his status, and ended with the refusal of the respondent to upgrade the petitioner's status, despite the fact that she herself recognized the failures and approved the upgrade in principle. The refusal was based on the Government Decision and the Temporary Order, which *prima facie* did not allow a status upgrade.

72. However, more than anything else, the petition deals with the lives of people. It deals with spouses who have lived in Jerusalem throughout their joint life together, which is already 18 years. It deals with an Israeli resident who for already 13 years has tried to attain status for her spouse in her State, a State in which she has lived together with him and their joint children. It deals with a man who has established Israel as his home – this is where he conducts his life, this is where he lives with his wife, this is where his children are growing up and this is where they study. Despite all of this, and despite the fact that the respondent is cognizant of this, and despite there not being any impediment, criminal, security or otherwise for granting his at least a temporary status; and despite the fact that the petitioner suffers from severe physical disability, whose lack of status has very much worsened his situation – the respondent refuses to grant him this status.

73. Thus, and in light of the repeated extensions of the "Temporary Order", the petitioner has been sentenced to an unstable life without the possibility of providing for his family; to severe harm to his freedom of movement; and to a life of fearing that his fragile "status" will be annulled and that he will be

deported from Israel.

For all these reasons the honorable court is requested to issue an order nisi as requested at the beginning of this petition, and after receiving the respondent's response, make it absolute. The court likewise is requested to order the respondent to pay the petitioners' costs and attorney fees.

Jerusalem, 21 August, 2008

Adv. Yotam Ben Hillel
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(T.S. 5075)