HAMOKED Center for the Defence of the Individual
هموكيد ـ مركز الدفاع عن الفرد

Date: July 18, 2012

In response please refer to: 7421

By fax and registered mail

To:
Ms. Liat Melamed
Head of Family Unification Department
Ministry of Interior
Wadi Joz 49
Jerusalem

Dear Ms. Melamd

Re: **Application for A/5 visa as part of the graduated procedure**
Family unification application No. 2408/94
Made by N. J. Jabarin, ID No._____
For her spouse, A. Jabarin, ID No._____

On behalf of my clients, N. Jabarin (hereinafter: Ms. Jabarin) and A. Jabarin (hereinafter: Mr. Jabarin or my client), I hereby contact you in the following matter:

1. As stated in the subject heading, Mr. Jabarin is requesting to have his status upgraded to the status of temporary resident (A/5 visa). This request is made in view of recent legal developments pertaining to the entitlement of persons whose status should have been be upgraded to A/5 prior to the government resolution, but was not due to delays in processing the application. We shall present our position.

My clients' matter

2. We hereinafter present the chain of events relevant to my client's status upgrade application, namely, the events that occurred before Government Resolution 1813.

3. Ms. Jabarin's application for family unification with Mr. Jabarin, her husband, originally a resident of the Occupied Palestinian Territories was filed on July 12, 1994.

4. On March 14, 1995, after Ms. Jabarin contacted HaMoked: Center for the Defence of the Individual (HaMoked), a letter was sent from HaMoked, acting as counsel, to your office requesting an update on the processing of and/or decision in the family unification application.

   The letter of HaMoked dated March 14, 1995 is attached hereto and marked **A**.

5. On February 19, 1996, an additional letter was sent, enclosing the above mentioned letter dated March 14, 1995. The letter was intended to ensure that all handling of the case would be carried out via HaMoked. The letter also enclosed notices of birth for my clients' twin daughters, and your office was asked to add them to the family unification application.

   The letter of HaMoked dated February 19, 1996 is attached hereto and marked **B**.

6. On February 28, 1996, we received a letter from your office, dated February 26, 1996 confirming receipt of HaMoked's letter dated February 19, 1996. The letter also notified that your office would notify us of the status of the application promptly.

   The letter from your office dated February 26, 1996 is attached hereto and marked **C**.

7. On August 27, 1996, we received a letter from your office, dated August 20, 1996, indicating that in order to establish center-of-life in Israel, Ms. Jabarin must produce further documents: a lease agreement from the date of the marriage, house bills from the date of marriage, confirmations with respect to medical services received by Ms. Jabarin and her children, confirmations from my clients' work places.

   The letter from your office dated August 20, 1996 is attached hereto and marked **D**.

8. On December 15, 1996, a letter was sent enclosing center-of-life documents as requested.

   The letter dated December 15, 1996 is attached hereto and marked **E**.

9. On July 23, 1998, HaMoked contacted your office requesting information on the status of the family unification application.

   The letter of HaMoked is attached hereto and marked **F**.

10. On September 1, 1998, a reminder was sent.

    The reminder is attached hereto and marked **G**.

11. On September 13, 1998, we received a letter from your office dated September 9, 1998, according to which, "**The aforesaid application was rejected on September 11, 1997 on the grounds that center-of-life had not been established**". It is noted that no letter of rejection in this matter was received at our office, despite the fact that your office had been notified several times that HaMoked was acting as counsel.

    The letter from your office dated September 9, 1998 is attached hereto and marked **H**.

12. On the day this letter was received, HaMoked sent a letter detailing the correspondence between HaMoked and your office and arguing that in view of the fact that the documents you requested had been provided, the presumption was that the application was being reviewed. We concluded the letter with a demand to continue processing of the family unification application.

    The letter of HaMoked dated September 13, 1998 is attached hereto and marked **I**.

13. On November 1, 1998, a reminder was sent.

    The reminder is attached hereto and marked **J**.

14. On November 6, 1998, a letter from your office dated October 29, 1998 was received, summoning Ms. Jabarin to an "inquiry".

    The summons is attached hereto and marked **K**.

15. On November 11, 1998, an application for the registration of Ms. Jabarin's children was filed, enclosing center-of-life documents.

    The application for child registration is attached hereto and marked **L**.

16. In a conversation held on November 17, 1998, between Ms. Poritzki, from HaMoked and Ms. Weiss from your office, it was stated that Ms. Jabarin must attend the office in person for the "inquiry" and that your questions could not be answered in writing.

17. On November 20, 1998, we received a letter from your office, dated November 19, 1998, requesting further documents in relation to the child registration application.

    The letter of your office is attached hereto and marked **M**.

18. On December 13, 1998, the additional documents requested for the child registration application were sent.

    The letter to which the documents were enclosed is attached hereto and marked **N**.

19. On December 23, 1998, HaMoked sent a letter to your office, indicating that HaMoked saw no reason or need to inconvenience Ms. Jabarin by requiring her to attend the office in person as all center-of-life documents for the family had been produced. The letter enclosed center-of-life documents dating back to 1996 and stated that inasmuch as following receipt of these documents your office still found it required an in-person interview with Ms. Jabarin, HaMoked would direct her to attend the office in order to clarify the necessary details.

    The letter of HaMoked dated December 23, 1998 is attached hereto and marked **O**.

20. On January 21, 1999, we received the response of your office dated January 13, 1999 indicating as follows: "**In view of the documents that have been produced for Ms. Jabarin's application to register her children, it has been decided to reconsider the decision rendered on September 11, 1997 with regards to denying the aforesaid application. We shall inform you of our decision when processing is completed**".

    The response of your office is attached hereto and marked **P**.

21. On October 14, 1999, **nine months after the letter in which you indicated the family unification application would be reconsidered**, we received a letter from your office dated October 12, 1999, indicating that HaMoked's letter of **November 1, 1998** had been received and that the protocol for processing such applications "**requires inquiries vis-à-vis security agencies in addition to examining center-of-life**".

    Your response is attached hereto and marked **Q**.

22. On **June 8, 2000, six years after its submission**, the family unification application was approved.

    The letter of approval is attached hereto and marked **R**.

23. On July 2, 2000, Mr. Jabarin received a referral to obtain a DCO permit.

    The referral is attached hereto and marked **S**.

24. Mr. Jabarin has resided in Israel ever since with permits.

Legal developments on status upgrades

25. Recently, there have been legal developments with respect to entitlement by individuals whose status should have been upgraded prior to the government resolution of May 2002, but was not as a result of delays.

26. In the judgment rendered in AAA 8849/03 **Dufish v. Director of the Population Registry** (unreported, rendered on June 2, 2008) (hereinafter: **Dufish**) – a judgment in two appeals filed with the Supreme Court in the matter of individuals whose status should have been upgraded prior to the government resolution, the Court held:

> **Following our remarks in a previous hearing, the Respondent has agreed that the status of an applicant may be upgraded even if it was not upgraded prior to the cut-off date, if the fact that it was not upgrade was the result of unjustified delays caused by the Respondent.** The question whether the Appellants meet the aforesaid criterion must be examined by the Court for Administrative Affairs based on the facts of each case. Each of the litigants will have an opportunity to present additional evidence such that the Court is able to make a ruling on the matter.
>
> (Emphasis added, N.D.)

27. In addition, in a judgment that addressed the very same issue, AAA 5534/07 **Rajoub v. Minister of the Interior** (unreported, July 16, 2008) (hereinafter: **Rajoub**), the Court held:

> On the recommendation of the Court and on consent, the case will be remanded to the Court for Administrative Affairs to be reexamined in light of the policy (formulated after the lower court issued its judgment), expressed in the approach that, "the status of an applicant may be upgraded even if it was not upgraded prior to the cut-off date, if the fact that it was not upgrade was the result of unjustified delays caused by the Respondent" (from the judgment in AAA 8849/03 **Dufish v. Director of the Population Registry** (unreported, rendered on June 2, 2008)). The Court shall examine whether the case at bar meets the aforementioned criteria. We draw attention to Petitioners' argument that they live on the other side of the separation fence and therefore, as holders of DCO permits only rather than A/5 status experience difficulties, and, secondly, that Petitioner 2 is in poor health as a result of an accident. **We also draw attention to the time that has elapsed and the processing history of this case which began in 1995 (the administrative petition was filed in 2003), as well as to the circumstances of the timetables in 2002, which will, presumably, be taken into account by** the Respondents in formulating their position in the Court for Administrative Affairs, and we clearly make no conclusive findings. Finally, we urge the Court to schedule a hearing in the very near future in light of all the aforesaid. The petition is therefore accepted on consent according thereto.
>
> (Emphasis added, N.D.)

We note that the three cases mentioned above were remanded to the District Court which found that the status of the Appellants should be upgraded to A/5 status.

Implementation of the Dufish rule

28. As demonstrated by the factual outline, In May 2002, just before the government resolution entered into effect, my client was four months away from eligibility to apply for an A/5 visa under the graduated procedure. The Court addressed an identical time gap:

> In addition, it appears inappropriate to fault the Petitioners for the missing four months and deny the Petitioner a status upgrade, considering the fact that the respondent significantly delayed approval of the initial family unification application – a delay of more than four years. On this issue, in a judgment given in AAA 8849/03 **Dufish v. Director of the Population Registry in East Jerusalem**, the Supreme Court recently ruled that:

> "**Following our remarks in a previous hearing, the Respondent has agreed that the status of an applicant may be upgraded even if it was not upgraded prior to the cut-off date, if the fact that it was not upgrade was the result of unjustified delays caused by the Respondent**".
>
> (First emphasis was added, second emphasis in original, N.D.)

It was further stated:

> In view of all the above, I have reached the conclusion that considering the overall circumstances, it is not justified to insist on the four-month period in which the Petitioner had no DCO permit (a time during which she met the material requirements of the procedure), while the Respondent took almost four and-a-half years to approve the application, a delay that directly impacted the Petitioner's ability to meet the requirements of the procedure and have her status upgraded, and while the Respondent contravened his own protocols by granting the Petitioner permits for shorter durations rather than the full term.
>
> (Emphasis added, N.D.)

29. **In this case, the elapsed time was even more substantial; six years from the time the application was filed until its approval!**

30. Thus, the significant legal developments on the issue of status upgrades for applicants under the graduated procedure justify a review of my client's case. As we demonstrate below, a review conducted in accordance with the legal situation currently in effect will reveal that my client is entitled to have his status upgraded and to receive an A/5 visa.

From the general to the particular: My client's entitlement to an A/5 visa

31. The processing of Ms. Jabarin's application for family unification with Mr. Jabarin was slow and complicated without any justification. We hereinafter detail the unjustified delays in processing on your part.

Delays in processing the family unification application

32. **More than two years** passed from the day the family unification application was filed, on July 12, 1994, until your letter demanding additional documents was sent on August 20, 1996.

33. As aforesaid, on December 15, 1996, the additional documents were sent. In retrospect, it came to light (in your letter dated September 9, 1998) that the application was denied on September 11, 1997, some **nine months** after the additional documents were sent, "on the grounds that no center-of-life had been established". As stated above, **no letter rejecting the application has ever been receive and if, indeed, there was such a rejection letter, it was not attached to your letter of September 9, 1998**. In addition, the cause of the rejection is puzzling on its face, as additional center-of-life documents were sent to your office, as per your demand, in December 1996. Inasmuch as these documents were insufficient – why was no letter on this issue sent out?

34. Following a communication from HaMoked on September 13, 1998, Ms. Jabarin was summoned to an "inquiry". You alleged that this matter could not be clarified in writing. Despite this, after additional center-of-life documents were provided to your office, **you informed, on January 13, 1999 that, in view of these documents, it had been decided to reconsider the application**.

35. **Nine whole months thereafter**, on October 12, 1999, you notified that according to your protocols, processing of the application necessitated inquiries with additional security officials.

36. **Eight more months went by** until the family unification application was approved.

37. Let us ignore, for a moment, your failure to send an official letter of rejection in September 1997, **a year and five months** passed from the date on which you notified that my clients' application would be reconsidered, until it was approved. This is clearly and undisputedly an unjustified delay.

38. According to the protocols of your office, the time required for reviewing an application to extend a permit is two months. This can be deduced, *inter alia*, from the referral letters issued at the time, which indicated that the application must be made at the office two months prior to the expiry of the permit. Remarks made by Honorable Justice Sobel in AP (Jerusalem) 8436/08 **Sabah 'Aweisat v. Minister of the Interior** (reported in Nevo, hereinafter: **'Aweisat**) are relevant to this matter.

> Recalling that the Minister of Interior estimated the duration of processing applications to extend DCO permits at two months in its protocols, and thus noted in the letter dated September 16, 1999 that the Petitioners must file the application for an extension "**Two months prior to the period end**". This means that **processing the permit extension application for close to ten months exceeds the reasonable and normal duration**.
>
> (*Ibid.*, emphases added, N.D.)

39. Indeed, the case at hand does not concern the extension of a permit, but rather the approval of a family unification application, however, the duration of processing, **one year and five months**, is **eight** times the time it took, at the relevant time, to extend a DCO permit. It is impossible not to consider **17 months** an "unjustified delay" according to your own procedures.

40. The reason provided by your office for this delay of several months, namely that the response was delayed due to inquiries vis-à-vis security agencies cannot be accepted. According to case law, delays caused as a result of waiting for the position of the security agencies cannot justify failure to upgrade status. So for example, in **'Aweisat** the Court noted;

> … **Citing delays by security officials in providing their position on an application cannot justify the failure to upgrade status from the point of view of the applicant. In any event, the Ministry of Interior cannot justify a delay based on the date on which it received the positions of security officials, when its own conduct, irrespective of security officials, failed to move the processing of the application forward with the required speed**.
>
> (Emphasis added, N.D.)

41. In another case, AP (Jerusalem) 413/03 **Sa'adeh v. Director of the Population Administration in East Jerusalem** ([reported in Nevo], November 23, 2008), the Ministry of Interior argued that the delay in processing the application resulted from an ISA demand to hold processing of the application for six months and from the Petitioner's summoning for questioning at the ISA. Without the final position of security officials, the Ministry was unable to approve the status upgrade application. The Court held that:

> **On this issue, I am of the opinion that an unjustified delay, in this context, also includes unjustified delays that occurred, if occurred, in the ISA's examination.** As stated above, the ISA provided the Respondent with its position on the Petitioner only on November 21, 2002,

> approximately a year after it was requested to provide an opinion on the application. A delay such as this, of more than a year, is certainly an unjustified delay. However, seeing as the preclusion for approving the application dates back to May 12, 2002 (the decisive date according to the law), **the question is whether the ISA's delay up to that date (May 12, 2002) was also unjustified.** Presuming the ISA received the communication from the Ministry of Interior shortly after it was sent, **it is a delay of close to six months. Even assuming the Petitioners' case necessitated special inquiries, for the purpose of which he was summoned for questioning on March 4, 2002, this is, *prima facie*, an excessive period of time which does meet the definition of "unjustified delay" in its sense in this context.** Note well: I do not preclude the possibility of factors and circumstances that might justify a delay of this sort. However, on this issue, I have received no explanation for the delay of approximately six months in producing the response of the ISA… Moreover, in the response that was ultimately provided, the ISA notified that it had no comments on the application… under these circumstances, the cause for the delay of the ISA's response is unclear.
>
> (Emphasis added, N.D.)

42. On this issue we shall once again recall the remarks made by the Court in **Majdi**, which are relevant also to the case at bar: "it appears inappropriate to fault the Petitioners for the missing four months and deny the Petitioner a status upgrade, considering the fact that the respondent significantly delayed approval of the initial family unification application – a delay of more than four years."

Conclusion

43. In light of all the above, we request to upgrade my client's and issue him a temporary resident identity card (A/5).

44. We look forward to the prompt approval of the application.

Respectfully,

Noa Diamond, Adv.

Attached:
Appendices.