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At the Supreme Court in Jerusalem

HCI 1917/12

In the matter of:

1. **B. Shanaytah, ID No. _____**
2. **V. Shanaytah, ID No. _____**
3. **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Adv. Adi Lustigman et. al
27 Shmuel Hanagid St., Jerusalem, 94269
Tel: 02-6222808; Fax: 03-5214947

The Petitioners

v.

State of Israel – Minister of the Interior
represented by the State Attorney's Office
29 Salah-a-Din St., Jerusalem 91010
Tel: 02-6466590; Fax: 02-6467011

The Respondent

Preliminary Response to the Petition

According to the decision of this honorable court, the respondent hereby respectfully submits his preliminary response to the petition.

1. This petition concerns the application of petitioner 1 (hereinafter: **petitioner 1**) for the arrangement of his status in Israel as a "temporary resident".
2. As is known, pursuant to section 2 of the Citizenship and Entry into Israel Law (Temporary Order). 5763-2003 (hereinafter: the **Temporary Order Law**), the Minister of the Interior will not grant a resident of the Area a license to reside in Israel in accordance with the Entry into Israel Law, and the Area commander shall not grant a resident of the region a permit to stay in Israel for as long as said law is in force.

3. The rule established in section 2 of the Temporary Order Law has some exceptions. The exception relevant to petitioner 1's matter is set forth in section 3A1 of the Temporary Order Law, as follows:

"Notwithstanding the provisions of section 2, the Minister of the Interior, for special humanitarian reasons, and upon the recommendation of a professional committee appointed for this purpose (in this section – the “committee”) may –

- (1) grant temporary residence in Israel to a resident of the Area or to a citizen or to a resident of a country listed in the schedule, whose family member lawfully resides in Israel;
- (2) approve the application to grant a permit to stay in Israel by the Area commander to a minor resident of the Area who is over the age of 14 for the purpose of preventing his separation from his custodial parent who lawfully resides in Israel. Said permit, however, will not be extended if the minor does not reside in Israel on a permanent basis."

4. And indeed, as specified in the petition, on June 12, 2011, petitioner 1 applied to the advisory professional committee for the grant of status in Israel for humanitarian reasons, which was established pursuant to the above section 3A1 (hereinafter: the **committee**).
5. As informed by the professional committee, until the date of this response the committee has not yet given its recommendation in petitioner 1's matter. Petitioner 1's application is scheduled to be discussed by the committee in June 2012.
6. Indeed, pursuant to section 3A1(d) of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, the Minister of the Interior should render his decision in applications such as petitioner 1's application, within six months. Due to the heavy work load of the professional committee, on many occasions the professional committee fails to transfer its recommendation in a manner which enables the Minister to make his decision on the date prescribed by law, as occurred in the case at hand.
7. In any event, under these circumstances, in which the competent administrative body has not yet discussed petitioner 1's matter, the respondents are of the opinion that the petition is premature and that it should be summarily denied or deleted. Obviously, after the Minister's decision in the appeal is made, following the recommendation of the professional committee, the petitioners will be able to petition again to the Honorable Court, if they have a cause to do so. Accordingly, for instance, the Honorable Court has held in H CJ 8568/09 **Abu Anza v. Minister of the Interior**, Pad-or 787-35-09 (2009):

The petition should be summarily denied. As indicated by respondents' response to the petition, the professional committee has not yet discussed petitioners' application and therefore has not yet given its recommendation in their matter. The petition before us is therefore premature, and there is no room to hear it at this time (see: H CJ 11028/07 **Harush v, Minister of the**

Interior (not reported yet, March 11, 2008); HCJ 6444/08 '**Aish v. Minister of the Interior**' (not reported yet, September 15, 2008).

And see also HCJ 10995/08 **Garam v. Minister of the Interior**, Pad-or 021-16—09 (2009); HCJ 610/09 **Fakhuri v. Minister of the Interior**, Pad-or 379-14-09 (2009).

8. The respondent is therefore of the opinion that this petition should be summarily denied, and that an order for costs should be issued against the petitioner.
9. Advocate Adi Lustigman, petitioner's counsel, gave notice of her request to respond to this response, according to the time schedule which will be determined by the Honorable Court.

Today, Wednesday 2 Sivan 5772 (May 23, 2012)

(signed)

Itzhak Bert

Deputy in the State Attorney's Office