Date: May 14, 2009
In your response please indicate: 53806
By electronic mail

Mr. Moti Levy, Advocate
Commissioner of Foreign Nationals' Appeals
Ministry of the Interior
Jerusalem

Dear Mr. Levy,

Re: **Appeal for failure to respond to an application for the registration of children**
Application No. 1103/08
made by Mr. _____ Attoun, ID No. _____
for his children:
_____, born on August 18, 2002, _____, born on April 27, 2004 and
_____, born on June 20, 2007

1. On July 2, 2008 an application for the registration of the children of Mr. Attoun was submitted in the Population Administration Bureau in East Jerusalem (hereinafter: the **bureau**).

2. Since then no decision has been rendered in said application.

3. An appeal is hereby submitted due to the failure of the Ministry of the Interior (hereinafter: the **Ministry of Interior**) to make a decision in the application for the registration of the children of Mr. Attoun in the Israeli population registry which was submitted by my client, and to accept same. Also attached to the appeal an application for an interim order which would direct the Ministry of Interior to refrain from deporting the children of my client from Israel, until the proceedings of the appeal in his matter are concluded.

My clients' matter

4. On November 6, 2005 Mr. Attoun submitted an application for the registration of his children _____ and _____ (the son _____ has not yet been born at that time). A confirmation concerning the submission of the application is attached hereto, marked **A**.

5. Only on July 18, 2007 – almost two years after the application was submitted, during which my client made many inquiries *vis-à-vis* the Ministry of Interior – the answer of the Ministry of Interior had been sent and received by the spouses a few days later, according to which the application for the registration of the children was denied due lack of center of life, based on the claim that "you live in your father's house located in Wadi Hummus which is outside the jurisdiction of the State of Israel." The denial letter is attached and marked **B**.

6. On July 2, 2008, Mr. Attoun sent, for the second time an application for the registration of his children by registered mail (application number **1103/08**). The application also included Mr. Attoun's young son, _____. A confirmation concerning the posting of the application is marked **C**.

7. On July 16, 2008, a letter was sent by the bureau which stated that the application was still under review. The letter is attached, marked **D**.

8. On October 7, 2008, a reminder concerning the application for the registration of the children was sent by our office. The reminder is attached, marked **E**.

9. Since no response has been received from the bureau of the Ministry of Interior, additional reminders were sent by our office on November 9, 2008, December 11, 2008 and January 13, 2009. The reminders are attached, marked **F 1-4**.

10. Since then and until the date hereof, no response whatsoever has been received by our office concerning the application. Hence, this appeal is hereby submitted.

My clients' arguments

11. As specified above, the handling of the application by the Ministry of Interior has been unreasonably delayed. To date, there is a **ten month** delay in approval of the application. It should be noted that the application for the registration of the children, who were all born in Jerusalem, should have been approved pursuant to Regulation 12 of the **Entry into Israel Regulations** (hereinafter: **Regulation 12**). According to the Regulation, upon the approval of the application, the children should have received a permanent status in Israel. We shall discuss these issues below.

Prolonged failure to respond by the Minister of Interior

12. The Ministry of Interior is obligated to handle the matter of my clients, like any other application submitted to it, fairly, reasonably and expeditiously. The obligation to act efficiently and within a reasonable time frame is one of the basic principles of good governance.

    On this issue see: HCJ 6300/93 **Institute for the Training of Women Rabbinical Advocates v. Minister of Religious Affairs**, IsrSC 48(4) 441, 451 (1994); CA 4809/91 **Local Planning and Building Committee, Jerusalem v. Kahati et al**., IsrSC 48(2) 190, 219

13. In his book **The Administrative Authority** (Volume B), Prof. I. Zamir states in pages 674-675 as follows:

> The primary obligation of the authority is to exercise its powers in a manner that the service to the citizen, and to the public at large, will be rendered promptly, without an excessive burden, at a high quality and low costs, to the extent possible. This is the obligation to act efficiently. The obligation to act efficiently, like the obligation to act fairly, also stems from the position of the administrative authority as the trustee of the public. The obligation to act fairly constitutes a secondary obligation of the obligation to act efficiently, i.e., the obligation imposed on the authority to provide the service to the public efficiently is subject to the obligation to provide the service fairly.

14. The obligation of the Ministry of Interior to act in petitioners' matter expeditiously, is also entrenched in section 11 of the Interpretation Law, 5741-1981, which provides as follows:

> The grant of any authorization or the imposition of any duty to do something shall mean, where no time for doing it is prescribed, that it shall or may be done in a timely manner and be done again from time to time as may be required by the circumstances.

15. It should be noted that the procedures of the Ministry of Interior obligate it to respond to such applications within **six months**. It is obvious that at this present time, when the Ministry of Interior procrastinates for **about ten months the processing of the application for the registration of the children**, without any apparent reason and although it has been provided with all the documents which were required by it – the delay exceeds reasonableness.

16. The courts criticized the conduct of the Ministry of Interior, and even imposed on it the obligation to bear costs when the examination of the applications which were submitted to it exceeded reasonableness, even when the delay was caused by external reasons. (On these issues see recent judgments: AP 8506/08 **Nofel et al. v. The Ministry of the Interior**, judgment rendered on December 9, 2008; AP 8567/08 **al-Jalad et al. v. State of Israel – The Ministry of the Interior**, judgment rendered on September 16, 2008; AP 1172/07 **Kaladun et al. The Ministry of the Interior**, judgment rendered on March 16, 2008).

The center of life of the family is in Jerusalem

17. The children of my client were born in Israel. Therefore, and since the center of life of my client and his children is in Israel, the children should be registered pursuant to Regulation 12. We shall herein discuss my clients' center of life.

18. The entire family of my client resides in a compound located 250 meters outside the municipal border of Jerusalem, yet on the west side of the separation fence (the "Jerusalemite" side of the fence). As detailed below, the family's center of life is entirely within Jerusalem.

19. The family home of my client is located in the south-eastern neighborhood of the Sur Bahir village (hereinafter: the **Wadi Hummus neighborhood** or the **neighborhood**). It shall be noted, that at the time the father of my client built his home, in the mid-80's, the fact that it was outside the municipal jurisdiction (and it should be noted: only a few hundred meters outside the jurisdiction are concerned) was meaningless. The house is built on the lands of the village of Sur Bahir and the entire Wadi Hummus neighborhood constitutes an integral part of the village. The neighborhood's residents' center of life has been and still is, for all intents and purposes, the village of Sur Bahir - and Jerusalem in general. The line which marks the municipal jurisdiction was, in those days, a virtual line with no substantive significance.

20. The above described situation was about to be altered with the building of the separation fence. The fence in this area was to cut off the neighborhood from the rest of the village and leave it on the eastern side of the fence. Following a petition to the High Court of Justice (HCJ 9156/03 **Da'ud Jabur et 32 al. v. Seamline Administration et al.**), the route of the fence was changed such that the neighborhood, including my clients' home, remained on the western side of the fence. The State's consent to change the route of the fence in this area stemmed primarily from its recognition of the severe injury which would have been caused to the lives of the residents, had the fence been built on the planned route. This is indicated in a document provided to the petitioners in HCJ

940/04 **Abu Tir et 10 al. v. Military Commander of the Judea and Samaria Area et al**. In Section 32(a) of that document, the assistant legal advisor to the West Bank notes:

> The harm to the residents of the village of Sur Bahir – According to the route currently planned for the barrier in the relevant area, some 750 residents of Sur Bahir will find themselves separated from the village. **These are Israeli residents. The harm described is particularly severe as this is a single organic community, where the residents who are expected to reside east of the barrier will be separated from their families and from the public institutions which provide them with services**. (emphasis added, Y.B.).

21. As specified above, following the petition, the route of the fence was moved, so that the houses of the residents of the neighborhood, including that of my clients, remained on the western side of the fence. However, the troubles of the Wadi Hummus neighborhood residents did not end thereby. Over the course of 2004, the National Insurance Institute (hereinafter: **the NII**) began to send neighborhood residents notices regarding the cancellation of their status as residents under the National Insurance Law. Accordingly, these residents began to receive notices from the health service providers of which they were members regarding the cancellation of their health insurance. In response, those residents – including my client and his family members - filed a suit with the Jerusalem District Labor Court (NI 10177/05 **The Sur Bahir Village Committee on National Insurance et 52 al. v. The National Insurance Institute et al.**) In this suit, the residents requested the court to issue a declarative judgment stating that they were residents of Israel under the National Insurance Law; this, in light of the fact that their center of life had been and remained in Israel.

22. Following the filing of the suit, a judgment was rendered on April 11, 2005, which held as follows:

> In view of agreements between the parties, and the notice, **and considering the fact that this is a single homogenous village**, and according to the instruction given by the Attorney General to the defendant, indeed, for as long as the legal and political situation remains as it is today, and for as long as the separation fence exists as planned, the defendant shall regard anyone who satisfies all of the following as being subject to the National Insurance Law and National Health Law with respect to both the rights and the duties imposed there-under, namely:
>
> A. He holds a permit for permanent residency under the Entry into Israel Law 5712-1952.
>
> B. **He is a resident of the Sur Bahir village, including village territory between the separation fence and the municipal territory of Jerusalem, and he resides in the village permanently and not temporarily.**
>
> In view of the aforesaid, the notices sent to the plaintiffs are null and void. (emphases added).

23. Thus, in the framework of this proceeding too, the State acknowledged that in the current state of affairs, the residents of the Wadi Hummus neighborhood should be viewed as residents of Israel for purposes of the National Insurance Law and the Health Insurance Law. Given the fact that this is a part of a single homogenous village, and given the fact that the separation fence encircles the neighborhood and brings it into the boundaries of Jerusalem and in so doing creates an impassable partition between the neighborhood and the Occupied Palestinian Territories [OPT], the center of life of the residents of the neighborhood is in Israel. Denying the rights of the neighborhood's residents based on a virtual municipal line which has no basis in reality is arbitrary and will severely injure the lives of the residents of the neighborhood and their rights.

24. As for my clients, it should be emphasized that the village of Sur Bahir and the city of Jerusalem constitute their – and the rest of the family members' – center of life for all intents and purposes. As stated above, the home of the family is located on village lands. My clients receive electricity from Jerusalem and are connected to a "Bezeq" telephone line. My client's children, were born in Makassed hospital in Jerusalem which belongs to the municipality of Jerusalem. My clients have relatives who reside both in Wadi Hummus and in the main part of the village, which is located within the municipal borders of Jerusalem. My clients and their relatives visit each other continuously and regularly and participate in family events. My clients also do their shopping in the village and in central Jerusalem. Additionally, my clients receive healthcare services in Jerusalem. And it should be emphasized: the Ministry of Interior does not dispute any of the above.

25. As known, the acceptable test for defining a "center of life" is the test of "most ties" (see for instance: AP (Jerusalem) 817/07 **Khatib v. Ministry of the Interior**, TakDC 2008(1), 2177, page 2182; AP (Jerusalem) 355/05 **Shewibi et al. v. The Minister of the Interior et al**., TakDC 2005(3), 1010; AP (Jerusalem) 379/04 **Mansour v. Ministry of the Interior – Jerusalem Population Administration**, TakDC 2005(2), 4711; AP (Jerusalem) 1226/06 **Suna et al. v. Ministry of the Interior**, TakDC 2007(4), 14381; AP (Jerusalem) 168/06 **Abu al-Hawa et al. v. The Minister of the Interior**, TakDC 2006(3), 8038). This test examines the applicant's substantive bond with each one of the possible places of residence.

26. In our case, although their home is located a few hundred meters outside the municipal border of Jerusalem, the examination of the gamut of my clients' ties, as specified above, leads to the conclusion that they maintain a center of life in Jerusalem, for all intents and purposes. Considering these ties and the special circumstances created in the area following the erection of the separation fence, indeed, the exact location of their home must be given negligible weight. The recognition that, in practice, they live in Jerusalem, is far more important. The fact that the municipal jurisdiction boundary was merely virtual until the erection of the fence must also be ascribed significance. The family members, who moved to live on village lands located close to the line, but on its eastern side, had no reason to assume that their home was "outside Jerusalem" and obviously, they did not fathom that by residing there they were risking their civil rights and those of their children.

27. Hence, there is no dispute that my clients proved that they maintained a center of life in Jerusalem. Therefore, and since the children were born in Jerusalem, they should be registered in Israel as permanent resident, pursuant to Regulation 12.

28. It should be noted that my client's father submitted in 2000 an application for the registration of two of his children, who were born in Israel, in the Israeli population registry (his other children, including my client, have already long been registered as permanent residents of Israel). The father's application was denied in 2008, following which a petition was filed with the Court of Administrative Affairs in Jerusalem. The petition was rejected. The court held in its judgment (the

honorable judge N. Solberg) that the petitioners did not maintain a center of life in Israel (see AP (Jerusalem) 8350/08 **Attoun et al. v. The Minister of the Interior et al**., TakDC 2009(1), 3639). The court based its decision only on the geographic location of the house and ignored the "most of the ties" test in their matter. It should be noted that the court's judgment in AP 8350/08 was appealed, which appeal is currently pending before the Supreme Court.

29. On the very same day the judgment was rendered in the father's matter, which is the subject matter of the appeal, another judgment was rendered by the Court of Administrative Affairs in Jerusalem, which concerned the exact same issue. This is the judgment in AP 8568/08 **Hamadah v. The Minister of the Interior**, TakDC 2009(1), 3553 (hereinafter: **Hamadah**).

That case concerned an application for family unification submitted by a resident of Israel for his wife, a Jordanian citizen. As in AP 8350/08, so in **Hamadah**, the family has lived in the Wadi Hummus neighborhood for many years. In **Hamadah** too, the Ministry of Interior decided to deny the application based on the claim that the spouses did not maintain a center of life in Israel. In Section 14 of the judgment, Vice President, the Honorable Judge Y. Tsur refers to the Attorney General's decision in the framework of the proceedings before the Labor Court (see above) "to regard anyone permanently residing in the village of Sur Bahir, including the territory between the Jerusalem municipal border and the separation fence (which includes the Wadi Hummus neighborhood) – as residing within the territory of Israel":

> **This decision of the Attorney General was given in view of the special circumstances that characterize the area in question, which lies between the official borders of Jerusalem and Israel, and the separation fence which is located beyond that border. The separation fence created a concrete and special reality. It in fact constitutes an impassable physical barrier which prevents a resident who resides on the "Israeli" side of the fence from maintaining a center of life in the territories of the West Bank. Therefore, the residents of this area are caught in the middle and cannot in fact maintain a center of life anywhere other than in Israel. In addition, it should be remembered that the area in question constitutes a natural extension of the village of Sur Bahir (namely of Jerusalem), and there is no material borderline (such as a fence or any other kind of marking) which separates the territory of Israel from this area, and thus, this is a single homogenous village. It seems that the village of Sur Bahir developed naturally also towards the east, such that its residents built their homes beyond the village territory which is also the territory of Jerusalem and the State of Israel. Needless to mention that it was precisely for that reason that the State has initially decided to set the route of the separation fence not on the official border line, but rather on a different route, and thus the village of Sur Bahir remained a single homogenous unit (see the notice filed on behalf of petitioners and the respondents in HCJ 9156/03 Da'ud v. Seam Area Administration). In view of all the aforesaid, the Attorney General saw fit to consider the**

> **Israeli permanent residents of this area as residents of Israel for the purpose of the National Insurance Law**. (emphasis added).

30. These statements are clear, unequivocal and relevant to our case and properly implement the test of most ties. The Honorable Judge Tsur did not ignore the fact that the home of the petitioners in that case was outside the territory of Israel. However, she ruled that in these special circumstances, when the petitioners "**cannot in fact maintain a center of life anywhere other than in Israel**" – it must be held that their center of life is inside Israel for the purpose of the Entry into Israel Law.

    It should be noted that this judgment has already been appealed, by the State, which appeal will be heard together with the appeal on the judgment in AP 8350/08.

Violation of the right to family life and the principle of the child's best interest

31. Leaving the children of my client without legal status in Israel violates the constitutional right of my clients to family life and disregards the child's best interest. Both of these rights are corner stones of international human rights law, the importance of which have been stressed many times by the courts in Israel.

32. In its judgment in AP 8350/08 the court also quoted the judgment which was rendered in AAA 5569/05 **Ministry of the Interior v. Dalal 'Aweisat** (rendered on August 10, 2008. Not reported) (hereinafter: **'Awiesat**). In Section 20 of the judgment, the Supreme Court addressed the question: how should the discretion of the Ministry of the Interior be exercised when handling an application which was filed under Regulation 12? The Supreme Court held as follows:

> **It should be emphasized that when the Minister of the Interior considers an application submitted under Regulation 12, he must give significant and considerable weight to the best interest of the child and to the integrity of his family unit,** for two main reasons. Firstly, one must consider that the secondary legislator chose to promulgate a special regulation concerning the status of children who were born in Israel. As we have already noted, the provisions of the Entry into Israel Law or the regulations promulgated there-under generally did not establish criteria for the grant of a permanent residency permit in Israel. **Therefore, the mere fact that a special regulation pertaining to the arrangement of the status in Israel of children born therein was promulgated, indicates that the secondary legislator sought to establish that special and considerable weight should be given to the consideration of the integrity of the family unit in the matter of such minors.** Secondly, one must take into account the special character of Regulation 12 as a regulation designed to promote human rights on two central aspects. The first is the aspect relating to the right of the parent who has status in Israel to raise his child, that is, the parent's constitutional right to family life. The second aspect relates to the independent and autonomous rights of the minor to lead his life with his parent…These two aspects – the one, which

> focuses on the rights of the parent who has status in Israel to live with his child in Israel, and the other, which focuses on the minor, whose independent right not to be separated from his parents despite not having status in Israel must be considered – are the underlying principles of Regulation 12. Against this backdrop, the Minister of the Interior is required to exercise his authority in a manner that gives significant weight to these considerations and fulfills the special purpose of the regulation. **Indeed, recognizing the family unit which was expanded with the birth of the minor and recognizing the minor's independent rights to maintain continuous relations with his parents and his emotional development, require that in the examination of an application submitted under Regulation 12, considerable weight should be given to the fact that the child's center of life is in Israel, by his mother, father, or both of them.** (emphasis added).

33. As stated above, it does not suffice that "the children grow up with their parents, live a full family life with them, and the family unit is united" (see the remarks of the court in AP 8350/08, section 10 of the judgment). In order to have the value of the integrity of the family unit respected, the status of the minor must be equalized to the status of his resident parent.

34. Equalizing the status of a child to the status of his parent who is a resident of the country serves a wider principle which is recognized in Israeli and international law – the child's best interest. According to this principle, in all actions concerning children, whether undertaken by courts, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration. For as long as the child is a minor and for as long as his parent functions properly, his best interest requires that he should be allowed to grow up in a family unit which supports him. On this issue, see for instance: CA 2266/93 **John Doe v. John Doe**, IsrSC 49(1) 221; HCJ 5227/97 **Michal David v. the Great Rabbinical Court**, TakSC, 98(3), 443; The Convention on the Rights of the Child (preamble and Articles 3(1) and 9(1) of the Convention).

35. The refusal to register a child who lives with his resident parent as a resident of Israel means – possible injury to the child's development and interference with the family unit against his best interest. So it is in our case. The failure to register Mr. Attoun's children in the population registry, means that the children will be forced to continue to live with their father, imprisoned in a few dunams located between the separation fence and the virtual municipal boundary. There is no dispute that this action goes against the best interest of the child.

36. This situation exposes the children to detainments by security forces on the street and at checkpoints. In addition, the fact that the children are not registered thwarts their possibility to receive social rights, primarily their right to national health insurance. These rights are not awarded to persons who are not registered in the population registry. One cannot ignore the emotional aspect which is involved in the matter. The fact that the children's status in Israel has not been arranged for a long time creates tension, instability and insecurity in the life of the family – elements which are so important for the normal development of the children.

37. In addition, the conduct of the Ministry of Interior thwarts another purpose of Regulation 12 – to enable my client, a resident of Israel, to provide his children with their basic needs, as he is required to do by law. The parent's duty toward his children and the prohibition on neglect are

duties which are well rooted in Israeli legislation (see on this issue: **Section 15 of the Legal Capacity and Guardianship Law 5722-1962; Sections 323 and 373 of the Penal Code 5737-1977**).

38. Thus, leaving the children of my client without legal status in Israel is not only inconsistent with the purpose of Regulation 12, but it actually undermines it. This conduct goes against the best interests of my client's children (who are denied, for instance, health insurance, social rights, basic freedom of movement), violates the rights of my clients to family life (see Section 28 of President Barak's opinion in HCJ 7052/03 **Adalah v. Minister of the Interior**, judgment dated May 14, 2006), and even infringes on my client's ability to provide his children with their basic needs, as he is obligated to do by law.

39. The commissioner is therefore requested to order the Ministry of Interior to make a decision in my client's application for the registration of his three children forthwith. The commissioner is requested to order the Ministry of Interior to register the children _____, _____ and _____ under a permanent status forthwith, based on the reasons specified above.

Sincerely,

Yotam Ben Hillel, Advocate

Attached:

Mr. Attoun's affidavit
Exhibits A – F
Request for Interim Order

Request for Interim Order

The commissioner is hereby requested to issue an interim order, directing the Ministry of the Interior, to refrain from deporting the children of my client, Mr. _____ Attoun, ID No. _____ (hereinafter: the **applicant**) from Israel until the proceedings in the appeal, which was submitted together with this request, are exhausted.

The grounds for the request are as follows:

1. The applicant is the spouse of Mrs. Attoun, and the father of the children _____, _____ and _____ (hereinafter: the **children**). The spouses married in 2001 and since then have been maintaining their center of life in Jerusalem.

2. The Ministry of the Interior refrains from allowing the registration of the children under a permanent status. Consequently, the children are exposed to detentions, arrests and the risk of deportation. The interim order is required for the removal of such risks, which hover above the heads of the children and their parents, until their material rights are examined.

3. It should be mentioned, that the reason for the long delay in the approval of the application by the Ministry of the Interior is unclear (for further detail on this issue see the appeal). No security preclusion has ever been attributed to the applicant. The requested interim order therefore, does not infringe on the proper operations of the administration or the public, since the application of my clients has already been pending for a long time in the bureau of the Ministry of the Interior and it seems that there is no special importance or urgency in the deportation of the children from Israel.

4. The uncertainty concerning the status of the children and the risk of deportation which hovers above the family's head, severely injures the ability of the family to conduct its life in an orderly manner. It should be noted, that this family has three children who maintain their center of life in Jerusalem, and the deportation of the children from Israel will therefore injure the entire family.

5. Taking the measure of deportation, before the commissioner resolves the appeal on its merits, may cause irreversible severe health, mental and economic damage to the applicant and his family members.

6. For the additional grounds for the request, the commissioner is referred to the appeal.

7. For the legal tests concerning an interim order, as established by the High Court of Justice, the commissioner is particularly referred to HCJ 3330/97 **Or Yehuda Municipality v. State of Israel** et al., IsrSC 51(3) 472.

Therefore, the commissioner is requested to issue an interim order as requested in the beginning of this request.

_____

Yotam Ben Hillel, Advocate

Counsel for the applicants