At the Jerusalem District Court Sitting as a Court for Administrative Affairs
Before the Honorable Judge Igal Marzel

AP 13072-02-12
Scheuled for May 8, 2013, 09:00

In the matter of:

1. _____ Salaeimeh
2. _____ Salaeimeh
3. _____ Salaeimeh

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

The Petitioners

v.

Minister of the Interior

represented by the Jerusalem District Attorney's Office (Civil)
7 Mahal Street, Jerusalem
Tel: 02-5419555; Fax: 02-5419582

The Respondent

Response

According to the decision of the honorable court dated February 14, 2013, the respondent hereby respectfully submits his response as follows:

Preface

1. This petition concerns petitioners' application for the grant of permanent status to petitioner 1 under the family unification procedure.

2. As will be specified below, petitioners' matter was considered by the respondent time and again and was even resolved by the appellate committee for foreigners, which held that respondent's decision in their matter was lawfully made in the absence of center of life in Israel and in view of the presentment of false evidence in support of their application.

3. The respondent will claim that no material flaw has affected the administrative proceeding which justifies intervention with his discretion.

4. The respondent will claim that the misrepresentations which were made to the respondent in an attempt to create a factual basis which would entitle petitioner 1 to obtain status, establish, in and of themselves, cause for the denial of their application.

5. The state will request to regard a previous response which was submitted in petitioners' matter, in the decision of the appellate committee in their matter and in the decisions of the competent authorities in the Ministry of the Interior, as an integral part of this response.

6. In addition to the above, their application should be denied on its merits, for this and other reasons, all as will be specified in detail below.

Factual Background

7. Petitioner 3, _____ Salaimeh, who was born in 1953, is permanent resident. Petitioner 2, _____ Salaimeh, who was born in 1962, is a permanent resident.

8. Petitioners 2-3 married on September 19, 1981 and they have six children, five of whom are registered as permanent residents in Israel: _____ who was born in 1982, _____ who was born in 1985, _____ who was born in 1987, _____ who was born in 1989 and _____ who was born in 1995. They were all born in Jerusalem.

9. Petitioner 1, _____ Salaimeh, who was born on August 13, 1991 in Al-Bireh which is located in the Area, is also the son of petitioners 2-3.

Application 2109/95

10. On October 23, 1995 petitioner 3 came to respondent's bureau and submitted a family unification application for petitioner 1, that is application 2109/95. On the space designated for applicant's address, petitioner 3 specified, in his application form, the address 21 Aqbat Darwish.

    *** The application is attached hereto as Exhibit "A".

11. On December 24, 1996, a letter was sent to petitioner 3, in which he was requested to provide additional documents in support of his application. The letter was sent to 21 Aqbat Darwish in the Old City. This letter was returned by the postal service as "unclaimed".

    *** The letter which was sent to petitioner 3 on December 24, 1996 is attached hereto as Exhibit "B".

12. On January 30, 1997 petitioners' family unification application was denied on the grounds that a center of life in Israel has not been proved. The letter was sent to the above address which was given by petitioner 3 and this letter was also returned as "unknown". At a later stage, when petitioner 3 contacted respondent's bureau, the denial letter was sent to him for the second time.

    *** The letter dated January 30, 1997 is attached hereto as Exhibit "C".

Application No. 1409/06 and respondent's response dated September 16, 2008

13. On August 6, 2006, **about nine years after the denial of the previous application** (when the petitioner was about 15 years old), petitioner 3 came to respondent's bureau and submitted another family unification application No. 1409/06. In this application too, respondent 3 stated that he was residing in 21 Aqbat Darwish. On the date the application was submitted, respondent 3 was requested to provide additional documents to support his application.

*** The application which was submitted on August 6, 2006 is attached hereto as Exhibit "D".

14. On June 11, 2007, a letter was sent to petitioner 3 in which he was requested to provide documents to support his application, and again on December 4, 2007.

*** The letter dated June 11, 2007 is attached hereto as Exhibit "E".

15. On March 9, 2008 documents were received from petitioners' attorney at that time, but these documents were only partial. A few days later, on March 17, 2008, a letter was sent to petitioners' attorney at that time, in which the petitioners were requested to substantiate their application with additional documents.

*** The letter dated March 17, 2008 is attached hereto as Exhibit "F".

16. On March 17, 2008, queries were sent to the National Insurance Institute (NII) for the receipt of the full investigations concerning petitioners' family. The respondent received, among other things, the investigation which was conducted in the matter of petitioner 3's brother and which was concluded on April 11, 2006. The investigation indicated that petitioner 3's brother, _____ Salaimeh, and his son _____ Salaimeh, stated in their interrogations that _____ was living in the apartment in which the petitioners claimed to have been living, namely, in 21 Aqbat Darwish Street. The inspection of the property by NII investigators indicated that the property was not used for residence on a continuous basis, contrary to what was claimed.

17. On that occasion, _____ Salaimeh (petitioner 3's nephew) was interrogated and, among other things, he said in his interrogation the following:

> **"Q: How many apartments are there in this house?**
>
> **A: We have this new building which has three apartments as I told you. The first of ____, above him _____, and above him my apartment. <u>My father's apartment is on the opposite side</u> and consists of a big room, a small room, a kitchen and toilettes, in which my father, my mother, my single brother _____, and my kid sister _____, who goes to school in Beit Hanina. I think the school is called alhayat and there is another apartment below my father's apartment which consists of three rooms, but it is empty and nobody uses it. I have another married brother whose name is _____ who lives in his own house in Silwan behind the Alshech buildings.**
>
> **Q: In whose names are the electric bills for this house?**
>
> **A: We have two meters for this house, one in my name and _____ and the other in the name of my grandmother. The meter which is in my name and the name of _____ is for these three apartments and my parents who take from us and the other meter which is registered in my grandmother's name actually belongs to the lower empty apartment. It is furnished by nobody lives there right now, and it is ready for the groom until my brother gets married…"**

***** A copy of the interrogation documents is attached hereto as Exhibit "G".**

18. On June 2, 2008 additional documents were sent to respondent's bureau by petitioners' attorney at that time.

19. Until that point the respondent has received from the petitioners documents which mainly concerned the following: school certificates and approvals attesting to the fact that until 2005 the brothers – petitioner 1, _____, and _____ - went to school in Shu'fat; Arnona bills in the name of petitioner 3 regarding the apartment in 21 Aqbat Darwish for the years 2001-2007; Water and electricity bills in the name of the brother of petitioner 3 and his nephews regarding the apartment in 21 Aqbat Darwish for the years 2003-2007; Membership of a health fund *(Kupat Cholim)* for the family members who have permanent residence; and documents according to which the young daughter of petitioners 2-3 goes to school in Kafr 'Aqab.

20. On September 9, 2008 a hearing was held for the petitioners in respondent's bureau. In the hearing inconsistencies arose concerning their place of residence and center of life in the area (the Old City).

    The following are relevant quotes from the hearing which was held to petitioner 2:

    Q: Draw for me the *hush* (courtyard) in which you live.

    A: …on the other side is the house of my brother in law _____ which consists of three stories in each story an apartment for his three children _____, _____ and _____.

    ….

    Q: Where do your brothers in law live?

    A: _____ in Ras el Amud, _____ near us

    Q: Who owns the property in Qalandiya?

    A: Nobody has property in Qalandiya.

    Q: Where did your children study?

    A: _____ studied in Shu'fat until the ninth grade and then he moved to Kaf 'Aqab. Alaa from the first grade in Kafe 'Aqab.

    Q: Why does _____ go to school in the post neighborhood?

    A: My husband looked for a school for him, the school in the post neighborhood agreed to admit him but he did not study there.

    Q: Why didn't your children go to schools which are closer to the Old City?

    A: The schools in Shu'fat are close to us and are good schools. _____ moved to Kafr 'Aqab from Shu'fat because he is not like his brothers, he is not a good student. Alaa goes to school in Kafr 'Aqab because it's a new school of the Sachnin chain.

    Q: You said that _____ and _____ were born in Al Bireh, why is Amjad registered in your appendix and Amir isn't?

    A: My husband submitted an application a long time ago and came a few times but you did not register him.

Q: Why isn't _____ registered in your appendix?

A: He (her husband) takes care of these matters.

….

Q: Why does the Arnona say that the size of the house is 9 square meters?

A: Previously the Arnona was registered in the name of mother in law, after she passed away the Arnona was registered in the name of my husband and in the name of my brother in law. My mother in law had a room and later another part was built up. The part of my mother in law, the small part was registered in the name of my husband and the large part in the name of my brother in law. But we live there. There are no problems between my husband and brother in law, good relationships.

Q: In whose name is the electricity in your house?

A: In the names of the sons of my brother in law _____ (should be _____ A.E.) **and _____.**

Q: In whose name is the Water?

A: In the name of my brother in law _____.

Q: _____, IN March 2006 the NII investigators visited the *hush* and the son of your brother in law _____ described the hush exactly as you have described it, but _____ told the investigators that his father, your brother in law, _____, was living in the apartment that you claim to be living in. The NII invstigators found that the apartment was empty, here, read what the son of your brother in law, _____, told the investigators. Why did he say that his father was living in the apartment and not you, and why is the apartment empty?

A: The NII investigators did not ask him about us and therefore he did not mention us, but we are living there.

Q: _____ gave the same description of the *hush* that you gave but said that his father was living there and not you – when the apartment was at all empty.

A: He moved to Sheikh Jarrah, we live there and he didn't say that we were living there because he was not asked about us.

The following are relevant quotes from the hearing which was held for petitioner 3:

(petitioner 3 was asked why, throughout the years, no attempt was made to register _____ while he was a child, as a resident, if he was living in Israel all these years)

Q: If you were there and they know you why ____ wasn't registered? How did he get medical treatments and vaccinations? How did you enroll him in school?

A: In school they only wanted the parents' ID cards and myself and my wife have ID cards and vaccinations he received. Here is _____'s vaccination card (presented a new vaccination card with one vaccination only from 2005).

Q: This is a totally new card which has only one vaccination from 2005. _____ is 16 years old. Why does he have a new card and only one vaccination from 2005?

A: This is _____'s. Here, his name is registered here.

Q: Where was _____ vaccinated?

A: Here this is his card.

…

Q: In March 2006 NII investigators were in the *hush* and _____, your nephew told them that your father was living in the apartment in which you claim to be living. He did not mention at all that you were living there. Here, read what the son of your brother said.

A: That's correct… I forgot to tell you that on the roof of my house my father has a room. It's correct what he is saying.

Q: But he says that in the apartment in which you claim to be living his father lives, and in any event the NII investigators found that the apartment was empty.

A: He was not asked about me. I was born in this house. My father and my grandfather and my father's grandfather lived in this house. All my life I have been living in this house and I do not have another house.

***** The transcript of the hearing is attached hereto as Exhibit "H".**

21. On September 16, 2008 petitioners' family unification application was denied on the grounds that center of life in Israel was not proved in view of the documents which were gathered and the hearing which was held, and also on the grounds of the presentation of false information before respondent's representatives and NII representatives regarding maintenance of center of life in Israel.

    *****The denial letter is attached hereto as Exhibit "I"**.

22. Against respondent's last decision an administrative petition was filed with the district court sitting as court for administrative affairs, AP 8936/08.

23. In respondent's response to the petition, the court was requested to summarily dismiss the petition, in view of respondent's reasonable decision which was given according to the law, due to petitioners' failure to maintain a center of life in Israel in general, and certainly not during the two years which preceded the submission of the application, and thereafter. The application was also denied due to the presentation of false evidence regarding the maintenance of a center of life as aforesaid.

24. Along the detailed reasons for the denial, it was noted that petitioners' 1-2 *[sic]* considerable delayed submission of the status application for the petitioner, 15 years after his birth(!), worked to petitioners' detriment and indicated that they were not living in Israel all these years, and therefore, did not find it necessary to submit a status application in Israel for petitioner 3 *[sic]*; It was further noted that discrepancies existed between the versions which were presented by the petitioners before NII investigators and respondent's representatives; Reference was also made to the fact that respondent's letters were not claimed from the post office, a fact which reconciled with the reasonable assumption that on the application submission date in 1995, the petitioners did not maintain a center of life in Israel.

25. **On February 17, 2009 the petition was deleted following petitioners' withdrawal of the petition at their own initiative.**

Application No. 160/09 and respondent's decision dated February 18, 2010

26. On March 2, 2009 a third family unification application was submitted in petitioners' matter, which is application No. 160/09. The application stated as follows: "My clients will claim that they have always been living in the Old City in Aqbat Darwish, but without admitting to anything, they are willing to limit their claim concerning residence in said address and claim that they have been living there since October 2006."

*****Application forms 160/09 are attached hereto as Exhibit "J".**

27. On the application submission date, March 2, 2009, the petitioners were requested to provide additional documents to support their application (the date which was mistakenly noted – March 3, 2009).

28. On April 7, 2009, following respondent's repeated requests, partial documents were received from the petitioners in respondent's bureau, including, *inter alia*, a copy of an Arnona bill for the apartment in which they allegedly reside, according to which the size of the apartment is only 9 square meters! On April 20, 2009 additional documents were received, including, *inter alia*, school certificates of appellants' children from the school in Kafr 'Aqab; On April 6, 2009, the request of appellants' attorney at that time was received, in which he noted that his clients intended to submit a new family unification application. It was further argued that a center of life was maintained in Israel at least from October 2006; In addition, later on, at respondent's request, data were transferred to him concerning electricity consumption in appellant's name during the years 2006-2009 for the Qalandiya property.

29. On January 11, 2010 a summons for a hearing which was scheduled for January 18, 2000 was sent to the petitioners. At the request of petitioners' attorney, the date of the hearing was postponed to January 26, 2010; On the date of the hearing, the petitioners were requested to present a print-out of electricity consumption for the residential apartment in Qalandiya from 2000.

30. **The petitioners did not show-up for the hearings, not even on the alternative date which was arranged for them at the request of their attorney at that time**. On January 27, 2010 the petitioners were requested to notify, within 14 days, whether they wanted that their application be further handled and that an alternative date for the hearing be coordinated, otherwise, the application would be denied; On February 7, 2010, the hearing was scheduled for February 7, 2010. On February 7, 2010 a hearing was scheduled for February 16, 2010.

***** Respondent's summons are attached hereto as Exhibit "K". (scrawled on the summons documents – an update concerning the postponement by the petitioners).**

31. On February 16, 2010, a hearing was held to the petitioners within the framework of which they were confronted with respondent's findings concerning their center of life. During the hearing, an application in writing was submitted on behalf of the petitioners for the grant of temporary status to petitioner 1, until their application was accepted, although he did not meet the threshold conditions regarding a center of life in Israel.

32. In the hearing, the petitioners presented conflicting versions concerning the existence of a property in their ownership in Qalandiya – **initially they have denied its existence, then they**

claimed that the electricity bill was registered in the name of the son _____, and <u>eventually they admitted that they owned the property</u>.

33. Indeed, petitioners 1-2 did not present a convincing enough explanation for their peculiar failure to exercise their potential entitlement, being permanent residents, for the receipt of allowances from the NII.

34. And it should be clarified that a claim concerning alleged debts to the NII – as a reason for not submitting applications to the NII – is patently not enough.

***** The transcript of the hearing in application 160/09 is attached hereto as Exhibit "L"**.

35. On February 18, 2010 respondent's decision to deny their third application was sent to the petitioners. The application was denied in view of the contradictions which arose in the hearing, the deceptive and tendentious presentation of their messages and, obviously, since they have failed to prove a center of life in Israel.

*** **The denial letter is attached hereto as Exhibit "M"**.

36. On August 16, 2010, a request for extension for the submission of an appeal was received from petitioners' attorney. On August 17, 2010, a response was sent on respondent's behalf, which stated that the request could not be considered more than six months from the date of the decision. This response was returned by the postal service as an "unclaimed" article.

*** **Respondent's letter is attached hereto as Exhibit "N"**.

37. On February 24, 2011, a request for the reconsideration of respondent's refusal to arrange the status of petitioner 1, was submitted by petitioners' attorney.

*** **The letter of petitioners' attorney is attached hereto as Exhibit "O"**.

38. On March 3, 2011 respondent's response to petitioners' last letter was sent, which letter was also returned by the postal service as an "unclaimed" article.

*** **Respondent's letter which was returned by the postal authority is attached hereto as Exhibit "P"**.

39. On April 10, 2011, May 16, 2011 and June 6, 2011 additional requests on petitioners' behalf were received in respondent's bureau. On June 19, 2011 a second response on respondent's behalf was sent, which explained again that their application was lawfully denied on February 18, 2010 for failure to maintain a center of life in Israel. It was also noted that the petitioners deviated from the schedule prescribed for the submission of an appeal on such a decision.

***** Respondent's response dated June 19, 2011 is attached hereto as Exhibit "Q"**.

40. On July 20, 2011 an appeal was submitted on petitioners' behalf to the appellate committee for foreigners – Jerusalem district, and on August 7, 2011 a response to the appeal was submitted on respondent's behalf.

***** The statement of response is attached hereto as Exhibit "R"**.

41. On September 22, 2011 the petitioners submitted new documents on which they wanted to rely in their arguments against the reasonableness of respondent's decision, including NII's interrogations.

42. On December 22, 2011 the decision of the chair of the appellate committee was rendered which denied the appeal. The decision stated, *inter alia*, as follows: **"As it was determined that the burden to prove a center of life in Israel lies on the applicant, the appellants in this case, then, the submission of an application which consists of material contradictions in their arguments, leads to an inevitable conclusion that the appellants exceeded the realm of innocent mistake or confusion…"**

    ***** The decision of the appellate committee is attached hereto as Exhibit "S".**

43. On February 7, 2012 a petition against the decision of the appellate committee was filed, which is the petition before us, AP 13072-02-12, in which arguments concerning the ostensible unreasonableness of respondent's decisions in petitioner 1's matter, throughout the years, were raised.

44. However, after the filing of this petition, on May 1, 2012, it was agreed between the parties that in view of petitioners' arguments concerning the existence of additional evidence, petitioners' matter would be considered, for the fourth time, in respondent's bureau.

Respondent's decision dated January 15, 2013

45. Respondent's decision, being the subject matter of this petition, is based on a failure to maintain a center of life in Israel, according to the evidence provided by the petitioners in support of their application, for which they had difficulties to provide satisfactory explanation. Thus, for instance, with respect of the data on the consumption of electricity in the family's apartment in a building registered under the father's name in Qalandiya, which pointed at an increase in the consumption, which was not denied by the petitioners. In a hearing which was held to the petitioner before respondent's representatives, it was first argued that the data concerning high consumption stemmed from the fact that their neighbors in the Qalandiya building 'drew' electricity from their apartment. During the hearing, **petitioner 2 admitted that petitioner 3 told her not to divulge the fact that the family resided in Qalandiya, so as not to jeopardize the family unification application of their son**.

46. ***** Transcript of the hearing dated February 10, 2012 is attached hereto as Exhibit "T"**.

47. On January 15, 2013 respondent's decision to deny the application was rendered, and a detailed notice was sent to the petitioners.

    ***** Respondent's decision dated January 15, 2013 is attached hereto as Exhibit "U"**.

Normative Background

Respondent's Authority - General

48. Section 1(b) of the Entry into Israel Law, 5712-1952 (hereinafter: the **Entry into Israel Law**) provides that any person other than an Israeli citizen or a person having an *oleh* certificate, does not have an inherent right to reside in Israel, and that his residence in Israel shall be by permit of residence, which would be granted to him.

49. According to section 2 of the Entry into Israel Law, the authority to grant visas and permits of residence in Israel, including visas and permits of permanent or temporary residence is vested with the Minister of the Interior, or anyone authorized by him. The Minister is authorized to prescribe conditions for the grant and validity of such visas and permits (section 6 of the Entry into Israel Law). In addition the Minister has the authority to promulgate regulations for the

implementation of the Entry into Israel Law (Section 14 of the Law, first part). And indeed, pursuant to this section, the Entry into Israel Regulations, 5734-1974 were promulgated (hereinafter: the **Entry into Israel Regulations**).

50. According to the rule which was established in a number of judgments, the Minister of the Interior has broad discretion in the exercise of his powers under the Entry into Israel Law. [See HCJ 758/88 **Kandel v. Minister of the Interior**, IsrSC 46(4) 505, 520, HCJ 3648/97 **Stamka v. the Minister of the Interior** IsrSC 53(2) 728, 753, HCJ 4156/01 **Dimitrov v. Ministry of the Interior**, IsrSC 56(6) 293, 289, AAA 9993/03 **Hamdan v. Government of Israel**, IsrSC 59(4), 134, AAA 4614/05 **State of Israel v. Oren** (reported in Nevo, rendered on March 16, 2006).

51. This broad discretion is vested with the Minister according to the acceptable sovereignty principle, according to which the state may decide who will reside in and enter into its territory. [see HCJ 482/71 **Clark v. Minister,** IsrSC 27(1) 113, 117, HCJ 1031/93 **Pasaro (Goldstein) v. Minister of the Interior**, ISRsc 49(4), 661, 705, HCJ 4370/01 **Lapka v. Minister of the Interior**, IsrSC 57(4) 920,930].

52. A person who is not an Israeli citizen, does not have a legal right to enter Israel or reside therein without a visa under the law, and it was so held in AP 1764/05 **Ahlam 'Abdel v. Ministry of the Interior et al**., TakDC 2005(2).

53. Hence, this is not an inherent right under the law. Status and entry into Israel applications are considered within the broad discretion vested in the Minister of the Interior, who was defined as the "gate keeper" of the state (HCJ 8093/03 **Artmiev v. Minister of the Interior**, IsrSC 59(4) 577). The discretion of the Minister of the Interior is subject to judicial scrutiny, but in view of the above, the scrutiny is restrained. [see HCJ **Kandel v. Minister of the Interior**, IsrSC 46(4), 505, 528, HCJ 3403/97 **Ankin v. Ministry of the Interior**, IsrSC 51(4) 522, 525, HCJ 3403/00 **Kovalsky v. Minister of the Interior**, IsrSC 57(2) 21, 28].

54. The applicable policy is therefore premised on the state's sovereignty and its exclusive authority to decide who can reside in its territory as aforesaid, and is therefore a restrictive policy. For this end, strict criteria were established, and in general, only the application of a person who complies with such criteria would be considered. The grant of status in Israel, which grants rights and establishes status, is not a simple matter.

Inapplicability of Regulation 12 of the Regulations and Family Unification Applications

55. Regulation 12 of the Entry into Israel Regulations, 5734-1974 (hereinafter: **Regulation 12**) applies, as drafted and by its nature, to a child who was born in Israel. Regulation 12 provides:

> "A child who was born in Israel, and section 4 of the Law of Return, 5710-1950 does not apply thereto, will have in Israel the same status that his parents have; If his parents do not have the same status, the child will have the status of his father or guardian, unless the other parent has objected thereto in writing; Had the other parent objected thereto, the child will receive the status of one of his parents, as shall be determined by the Minister".

56. Accordingly, **Regulation 12 does not apply to a minor who was born outside Israel**. Hence, he may obtain status only through a family unification application (AP 8315/08 **Muhammad Jaber v. Minister of the Interior**; AP (Jerusalem) 505/03 **Khatib v. Director of the Regional**

Population Administration Office, not reported, July 10, 2003; AP 979/03 **Baraqah v. Population Administration – East Jerusalem**, not reported, March 15, 2004).

Definition of a Resident of the Area

57. On May 12, 2002, Government Resolution No. 1813 was adopted regarding the family unification policy concerning residents of the Palestinian Authority and foreigners of a Palestinian origin, including their children, which 'froze' the situation that existed immediately prior to the adoption of the resolution. Namely, a resident of the Area who received in the past a residence permit in Israel, will continue to reside in Israel based on the permit which was held by him prior to the adoption of the Government Resolution (subject to the compliance with the terms of the procedure and in the absence of preclusion), but will not be entitled to update his status; A person whose application was denied prior to the Government Resolution and did not possess residence permits in Israel upon its adoption, will not be able to submit a new application.

58. On August 6, 2003, a Temporary Order was published and entered into effect, which provides as follows (section 2):

> "For as long as this Law is in force, notwithstanding the provisions of any law including section 7 of the Citizenship Law, the Minister of the Interior shall not grant citizenship to a Resident of the Area pursuant to the Citizenship Law and will not grant him a residence permit in Israel pursuant to the Entry into Israel Law, and the commander of the Area shall not grant a Resident of the Area a residence permit in Israel pursuant to security legislation in the Area."

59. The constitutionality of the provisions of the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003, was upheld by a majority opinion (on May 14, 2006) in HCJ 7052/**03 Adalah – The Legal Center for Arab Minority Rights in Israel et al. v. Minister of the Interior et al**. In view of this judgment, the Temporary Order entered into force on the date the Government Resolution was adopted, on May 12, 2002, provided that the provisions of the Temporary Order Law were not amended by the amendment to the Temporary Order.

60. The provisions of the Temporary Order Law were amended by the **Citizenship and Entry into Israel Law (**Temporary Order)(Amendment), 5765-2005, on August 1, 2005. Within the framework of the amendment several changes were made, including:

    a. The definition "Resident of the Area" in section 1 was clarified –

    > "Resident of the Area" - someone who has been registered in the population registry of the Area, as well as someone who resides in the Area notwithstanding the fact that he has not been registered in the population registry of the region, but excluding a resident of an Israeli settlement in the Area.

    b. The exceptions under which residence permit or license in Israel may be granted to a "Resident of the Area" were extended. Section 3A of the Temporary Order Law (instead of the original section 3(1)), provides as follows:

"Notwithstanding the provisions of section 2, the Minister of the Interior, at his discretion, may –

(1) grant a minor Resident of the Area who is under the age of 14, a permit to reside in Israel for the purpose of preventing his separation from his custodial parent who lawfully resides in Israel;

(2) approve an application for the grant of a residence permit 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, provided that such permit shall not be extended if the minor does not permanently reside in Israel."

61. It should be clarified, that according to the amendment to the Temporary Order Law of August 2005, children up to the age of 14 may be granted, by the Minister of the Interior, at his discretion, a residence permit in Israel, whereas, with respect to children over the age of 14 he may approve an application for the grant of a residence permit in Israel, while the authority to make a decision in such applications is vested with the military commander of the Area. (AP (Jerusalem) 168/06 **Muhammad Abu al-Hawa et al. v. Minister of the Interior**, TakDC 2006(3) 8038; AAA (Administrative) 1621/08 **State of Israel – Ministry of the Interior v. Zaid Khatib**, TakSC 2011(1) 991, 999 (2011), paragraphs 9, 10 and 11).

62. **A minor Resident of the Area** over the age of 14, may receive, subject to the satisfaction of certain conditions, a residence permit in Israel from the Area commander.

Maintaining a center of life in Israel

63. In a family unification application the applicant is required to prove a center of life in Israel during a period of two years prior to the submission of the application, in order to prove that the petitioner is not a resident of the Area. This requirement was upheld by the courts in cases which concerned applications for the registration of children, let alone in family unification applications (AP (Jerusalem) 742/06 **Aida Abu Qweidar v. Minister of the Interior,** TakDC 2007(2), 985).

64. **In addition, the burden to prove a center of life in Israel lies on the person who submits a family unification application or an application for the arrangement of status of children who were born in Israel, namely, the permanent resident**. [see, *inter alia*, AP 622/07 **Nasrallah v. Minister of the Interior** (reported in Nevo May 11, 2008), AP 8028/08 **Ja'far v. Ministry of the Interior** (reported in Nevo July 27, 2008), AP 8715/08 **Khaldeyeh Musa Shriteh v. Minister of the Interior** (reported in Nevo February 19, 2009)].

Unclean hands – as a threshold argument

65. A family unification application may be denied if the respondent, as an administrative authority, was not convinced of the credibility of applicant's version concerning his place of residence. It was so held in AP (Jerusalem) 160/07 **Kamel Shawish v. Ministry of the Interior**, TakDC 2007(2), 6660 –

> "… The respondent found that petitioners' application was based on false facts and inability to prove a center of life in Israel two years prior to the submission of the application, and under the circumstances of the case this decision is reasonable and there is no justification to interfere therewith. A person who applies to the authority with a request which is based on humanitarian reasons must present true data and it has a special importance. It should be remembered that the authority has neither the means nor the ability to examine each and every detail of the data presented before it by those who apply to it. Therefore, a special obligation is imposed on them to be precise and present before the authority all true and relevant data to their application. A failure to satisfy this demand, undermines the main basis of the application and the basic trust given to the declarations and data presented before the authority."

66. Indeed, as has already been determined in the past by this court, **an application may be denied if it is based on false information**. See on this matter AP (Jerusalem) 981/03 **Samara Mahmud et al. v. Ministry of the Interior**, TakDC 2004(1), 12462:

> "Since it has been proved that petitioner's application to the respondent was based on false documents and affidavits, and as petitioner's counsel himself could not explain why the petitioner needed such lies, if he was indeed living in Israel, the respondent was entitled to make the decision which was made by him. Under these circumstances respondent's decision is reasonable and there is no cause for the intervention of the court with his discretion."

The test of the administrative evidence – *vis-à-vis* petitioners' burden

67. It should be noted that this honorable court must be as doubly as careful when it examines respondent's position and the weight of the administrative evidence on which he has based his decision. The administrative evidence is more flexible than the judicial evidence and the rule is that **an administrative evidence is whatever a reasonable person would have considered as having an evidentiary value and would have relied on**. And see on this issue: HCJ 987/94 **Euronet Golden lines v. Minister of Communications**, IsrSC 48(4) 412, 424-425, HCJ 1712/00 **Uri Urbanevitch v. Ministry of the Interior, Population Administration**, IsrSC 58(2) 951, 957-958, HCJ 2394/95 **Muchnik v. Ministry of the Interior**, IsrSC 49(3) 274, HCJ 442/71 **Lansky v. Minister of the Interior,** IsrSC 26(2) 337, 357; HCJ 6163/92 **Eizenberg v. Minister of Construction and Housing**, IsrSC 47(2) 229, 268.

68. It is clear that in our case, which is specified in length above, the respondents have satisfied the requirements of the administrative evidence, and on the other hand it is clear that the petitioners did not meet the required evidentiary burden.

69. Needless to note, that according to the rule, the honorable court puts the administrative decision under judicial scrutiny and examines its reasonableness. In so doing the honorable court does not replace the discretion of the administrative authority with its own discretion. See LA 1663/98 **Benjamin Ben Nechemia Yair v. Commissioner of Israel Prison Service**, TakSC 98(2) 322; HCJ 4539/94 **Dr. Naksa Nabil v. Dr. Efraim Sneh et al**., IsrSC 48(4) 778; IsrSC 58(3) 542.

Respondent's Position

70. Respondent's decisions in the matter of petitioner 1, and the decision of the appellate committee, are flawless, and they certainly do not consist of any flaw which justifies the intervention of the honorable court.

71. From their initial application in 2006 and until their last application a few months ago, the petitioners constantly change the factual circumstances argued by them. In so doing, the petitioners attempted to satisfy the criterion for the entitlement of status under family unification, by providing false information.

72. In their first, second and third applications, the petitioners claimed that they have always lived in the Old City and that they did not own any property in Qalandiya. Later on, during the hearings, they have changed their version and claimed that they moved to the Old City in the beginning of 2006 and have even admitted that they owned the house in Qalandiya. Nevertheless, even after their admission of having owned the property, their versions remained unreliable as specified below:

Respondent's third decision dated February 18, 2010 and the decision of the appellate committee for foreigners dated December 22, 2011

73. The details which were presented before the respondent in a hearing which was held for the petitioners and the documents which were provided by them, consisted of many contradictions concerning their residence in Jerusalem:

    a. Petitioner 2 claimed initially, on the date of the hearing, on February 16, 2010, that the house in Qalandiya was not owned by her. Later on, in the same hearing, petitioner 2 changed her position and admitted that the property was owned by them. She even noted that petitioner 3 told her to provide false information so as not to jeopardize the chances of his family unification application. Petitioners 2-3 declared separately in their hearings, that they have been living all their lives in the house in the Old City.

    b. In the NII investigations from 2006, as presented above, petitioner 3's brother, his wife and son claimed that they were living in the house in the Old City and did not mention the petitioners. Furthermore, notwithstanding the claims of petitioner 3's brother, the NII investigators who visited the house, were under the impression that no one was living in the house in which the petitioners claimed to have been living. An inspection of the house indicated that it was not occupied, contrary to the declarations of the applicants.

    c. When petitioners 1 *[sic]* and 2 were asked in the hearing of the findings of the NII investigation concerning the brother of petitioner 1 *[sic]*, _____ Salaimeh, they tried to avoid the question and did not give a pertinent answer.

    d. The Arnona for said apartment in the Old City is mostly paid by _____ Salaimeh. The water and electricity bills for said apartment in the Old City are paid by the family of Hisham Salaimeh.

    e. Petitioners' children went to school in Shu'fat, and a few of them went to school in **Kafr Aqab near Qalandiya**. The petitioners did not give satisfactory explanation to the question why some of their children, including petitioner 1, went to school far from the Old City although there were many schools in their neighborhood.

f. The petitioners did not receive allowances from the NII for many years, and this is peculiar in view of the fact that both petitioner 1 *[sic]* and petitioner 2 are permanent residents.

74. In view of the above, the petitioners failed to prove a center of life in Israel during the two years which preceded the submission of the application. They provided the respondent with partial information only, which is also inconsistent with the facts on site.

75. And it should be emphasized. Respondent's decision was not premised on the argument of a delay in the submission of the application, but rather noted that petitioners' considerable delay in the registration of petitioner 3 *[sic]* in the population registry, 15 years after his birth, and 11 years after the first application for his registration was submitted, acted against the petitioners and indicated that the petitioners did not reside in Israel during these years and therefore did not find it necessary to handle the registration of petitioner 3 *[sic]* in Israel.

76. In view of the circumstances and reasons specified above, respondent's decision dated February 18, 2010 was lawful, in accordance with the provisions of the law, and was duly and reasonably made. Respondent's position is that there is no cause for the intervention of the honorable court with his decision.

Respondent's decision dated January 15, 2013

77. Even in the last proceeding which was held in petitioners' family unification application, the petitioners did not provide a sufficiently homogeneous and consistent factual version which clearly supported their allegation, according to which they have been living in Jerusalem during the last few years, a version which could have refuted the untrustworthiness created by them in the previous proceedings.

78. Beyond need, it shall be noted that the petitioners have indeed presented NII investigations that have never been presented before. However, there is nothing in the findings of the investigations which can substantiate petitioners' claims. Firstly, because the relevant NII findings are from 2011, and therefore they could not provide proof concerning petitioners' alleged residence in Jerusalem from 2006. They concern references made by the petitioners themselves to renovations and residence from 2008, at the earliest. However, no conclusion may be drawn there-from regarding residence from 2006 which would comply with petitioners' allegations.

79. In view of the experience with the petitioners, who kept changing their version by "updating" the date on which they moved to the Old City, the testimonies included in the NII investigations emphasize the inconsistency between their applications and residence in Jerusalem. Their application dated March 1, 2009, being the subject matter of this petition, is based on residence in Jerusalem during the two years which preceded said date. However, the NII investigation does not include any material evidence to that effect.

80. Secondly, the findings of the NII investigations, as such, should not be accepted as conclusive evidence, in view of the fact that the NII investigations were conducted with no real interest on the part of the NII to thoroughly examine the residence issue, due to the fact that no allowance entitlement was requested by the petitioners.

81. All of the above put in doubt the trustworthiness of the alleged findings of the NII investigations, including the unexplained contradiction of the continued electricity consumption in the Qalandiya apartment and the late decrease. These substantiation difficulties were coupled by what was in the background of the handling of the Salaimeh family's matter, namely, the sequence of misrepresentations which were made until this date.

82. All of the above indicate that the required burden to prove petitioners' residence in Jerusalem was not met.

83. The facts described above indicate that the respondent was willing to examine, time and again, petitioners' entitlement.

Unclean hands in the petition's data

84. The rule is that the provision of false information concerning applicant's residence in order to receive status in Israel constitutes a sufficient cause for the denial of a family unification application. It is clear that while a person's entitlement for status is considered, and in view of the fact that the respondent is the gatekeeper of society, the liability to convince the state that his intents are pure and that he meets the criteria, is imposed on the status applicant.

85. As it was proved that petitioners 2-3 made false statements, very strong evidence is required to prove that their current intentions and statements are sincere. Under these circumstances, and taking into account the new information presented by the petitioners, this burden was not met. It certainly cannot be said that the decision was unreasonable.

86. The above clearly indicates that it was not petitioners' confusion which caused them to claim that they did not own the property in Qalandiya and that they have been living in Jerusalem for a few years (petitioner 2 even said so in one of the hearings). Their intention was to deceive the respondent, prevent him from regarding this house as petitioners' main house and make him think that they maintained a center of life in Jerusalem.

87. The main implication of unclean hands, as far as the respondent is concerned, is that it puts in doubt the allegation concerning center of life in Jerusalem. False statements create an indication for a center of life outside Jerusalem and affect the credibility attributed to the other arguments raised by the petitioners.

Conclusion

88. Respondent's decision – which is based on petitioners' unclean hands who presented false data in support of their application, and on the absence of center of life in Israel contrary to their statements, is reasonable and pertinent.

89. Petitioners' argument that respondent's decision is infected by extraneous considerations has no merit, since respondent's considerations were utterly pertinent and it certainly cannot be said that taking them into consideration is unreasonable in and of itself.

90. The different versions which were repeatedly presented by the petitioners throughout the years, made it difficult for the respondent to formulate a clear and stable factual basis for the purpose of making a decision. Therefore, petitioners' claim regarding absence of proper factual infrastructure for making a decision does not make any sense, since the vagueness was created by the petitioners themselves.

91. Beyond necessity, the respondent will note that petitioner 1 was born in 1991. As of 2005 he does not comply with the criteria of section 3A(1) of the Amended Temporary Order Law 5765-2005.

As of 2009, the petitioner is an adult, and it is doubtful whether and to what extent he is 'supported by his parents' as argued in the petition.

92. In view of the lengthy discussion above, the respondents did not satisfy the administrative evidence requirement.

93. Furthermore. The honorable court, sitting as a court for administrative affairs is not an additional or supreme hearing instance over respondent's decisions. The burden is on the petitioners to show why the decision of the authority, as made, exceeds reasonableness and justifies the court's intervention. As specified above, respondent's decision in petitioners' matter is reasonable and inevitable, and in any event it does not exceed reasonableness, it does not lack factual basis and it is not infected by extraneous considerations as argued by the petitioners. **Therefore, the petition should be denied.**

94. **A duly signed affidavit in support of this response will be submitted shortly before the hearing.**

In view of the above, the honorable court is requested to deny the above captioned petition and order the petitioners to pay respondents' costs.

(signed)
Amitzur Eitam, Advocate
Assistant to Jerusalem District Attorney (Civil)

25 Iyar, 5773
May 5, 2013