Date: November 5, 2012
In your response please make reference to: 15645

Chair of the Appellate Committee for Foreigners
Population Authority
Ministry of the Interior
Jerusalem

Via Facsimile: 5681670

Honorable Chair of the Committee,

Re: **Appeal against a denial of a family unification application**
In the name of Mr. _____ Dawood, ID No. _____
For Mrs. _____ Dawood, ID No. _____
Application No. 647/11

What is the meaning of an "indirect denial for security reasons" of a family unification application? When will a decision to "indirectly deny" a family unification application be deemed proportionate and reasonable, in view of the principles established in **Dakah**? The appeal at hand concerns these issues. In the following pages we shall describe how the Ministry of the Interior (hereinafter also: the **respondent**), uses the "indirect denial" cause as an automatic denial cause, without laying down a proper evidentiary infrastructure concerning the specific sponsored spouse in the family unification application, and without specifying the ostensible threat posed, according to it, by the approval of a family unification application of a woman who has been living in Jerusalem for many years, a mother of young children, whose family unification application has already been approved in the past.

Request for an Interim Order

1. At the outset of this appeal, the appellants request the committee to issue an order, prohibiting the expulsion of the appellant, _____ Dawood, ID No. _____, from Israel, for as long as the appeal in her case is pending.

Request to review open material

2. In addition to their appeal against respondent's substantive decision, the appellants request the committee to order the respondent to transfer to the appellants the requested open evidentiary material which is specified in this appeal below. It should be noted, that this request was raised by the appellants in the context of a "written hearing", which was completely disregarded by the respondent; It should be further noted that the request concerns the same type of materials which have already been transferred by the respondent to the appellants in the past, **in this same file**.

Factual Background

3. Mr. _____ Dawood (hereinafter: **appellant 1**) and Mrs. _____ Dawood (hereinafter: **appellant 2**) married in 1996. Ever since their marriage, they have been living in Jerusalem, in the house of appellant 1's parents, in Sur Bahir neighborhood.

4. Over the years the spouses had four children: _____, born in 1998; _____, born in 1999; _____, born in 2002; _____, born in 2007. The children are registered as permanent resident in the population registry.

5. In 1996 the spouses submitted a family unification application (application 816/96). The application was approved only in 2001. As of the approval of the application **and until 2008**, appellant 2 received renewable DCO permits (indeed, a considerable delay occurred in the issuance of the request for a new DCO permit in 2002, following which a petition was filed, AP 612/04, but it has not been argued that the delay occurred due to any security or criminal preclusion.

6. On July 14, 2008 the family unification application was denied for security reasons. As will be elaborated below, the grounds for the denial given back then are considerably similar to the grounds for the denial currently given.

   The denial notice dated July 14, 2008 (hereinafter: the **first denial notice**) is attached hereto and marked **A**.

7. According to the denial notice:

   > The sister of the sponsored spouse - _____ _____ Sa'afin – was mentioned in an interrogation of a Hamas detainee as having been involved in activities of the "Al-Kutla al-Islamia" organization when she was a student in Birzeit university; The brother in law of the sponsored spouse: _____ _____ Sa'afin – there is extensive negative security material against him. In 1998 he was detained and admitted in his interrogation that in 1996 he had been recruited to a Hamas cell and that within the framework of his activity with Hamas, he was guided and operated by Hasnin Romana – from Al Bireh. The latter, known as a Hamas wanted terrorist, was killed on December 1, 2003. He held several positions with the "Al-Kutla al-Islamia" organization. He admitted to have expressed his willingness, several times, to act as a suicide bomber in a terror attack and that he regarded suicide as an Islamic act of heroism. He was a Hamas prisoner from January 13, 1998 until April 17, 2001.

8. On July 31, 2008 an appeal was submitted against the first denial notice, and in the absence of any response, a petition was filed (AP 8951/08).

9. In the context of the petition, on March 4, 2009, Advocate Rosenthal, who handled the matter of Mr. and Mrs. Dawood on behalf of HaMoked for the Defence of the Individual, received an updated paraphrase and a protocol of the interrogation of the Hamas detainee, in which the name of appellant's sister was mentioned.

   The paraphrase and the protocol of the interrogation which was attached thereto are attached hereto and marked **B**.

10. On March 30, 2009 a hearing in the petition was held, by the end of which the court decided that respondent's counsel would transfer to petitioners' counsel (the appellants herein) the administrative order of 2009 concerning the brother in law, the decision which was made in the judicial review thereof and documented interrogations of the brother in law, if any.

11. On March 31, 2009 the order and the decision of the military court Ofer, were transferred.

    The administrative order dated January 19, 2009 and the documents of the judicial review of the administrative order dated January 26, 2009 are attached hereto and marked **C**.

12. Following the above, the petition was deleted on April 3, 2009 without an order for costs.

13. On December 20, 2011 the above captioned family unification application was submitted (a preliminary application was submitted on March 15, 2011).

    A confirmation regarding the submission of the family unification application is attached hereto and marked **D**.

14. On June 28, 2012 respondent's letter dated June 12, 2012 was received, which notified of his intention to deny the family unification application. The grounds of the notice of the intention to deny were almost identical to those of the first denial notice dated July 14, 2008, and additional administrative detentions of the brother in law Abdallah, were mentioned therein.

    The notice of an intention to deny is attached hereto and marked **E**.

15. At the end of the notice of the intention to deny the appellants were given the opportunity – a right regulated by procedure No. 5.2.0015 "Comments of Agencies Protocol in Family Unification Applications" – to respond to the notice of the intention to deny the family unification application, within 30 days.

16. Hence, on July 11, 2012 appellants' response to the notice of the intention to deny, was sent.

    Appellants' response (which will be hereinafter referred to as: the **written hearing**) is attached hereto and marked **F**.

17. In the written hearing it was argued that a weighty consideration which should be taken into account in the case at hand was the right to family life, which was recognized as a fundamental constitutional right in Israel. Granting the right to family life the status of a fundamental right means that any violation of this right should be made in accordance with Basic Law: Human Dignity and Liberty, based only on substantial considerations and based on a solid evidentiary infrastructure.

18. In addition, the appellants referred to the leading judgment regarding denial of family unification applications for security reasons, namely, HCJ 7444/03 **Dakah v. Ministry of the Interior** (hereinafter: **Dakah**). The appellants pointed at the distinction made in said judgment between a direct threat an indirect threat, and at the specific considerations which should be taken into account when a denial of an application

which has already been approved is concerned, and when the family unification application concerns a sponsored woman, a mother of young children.

19. In addition, the appellants have specifically discussed the indirect threat, ostensibly posed by the sponsored spouse, due to her sister and brother in law.

20. Finally, it should be noted, that within the framework of the written hearing the appellants demanded to receive **open evidentiary material** concerning the brother in law, Abdallah. **The application emphasized that the requested material was <u>open material</u>, and that material of the same type has already been transferred to the family in AP 8951/08**. It should also be noted that the family does not have the requested material in its possession, and that the extensive efforts which were invested by the undersigned in an attempt to reach the brother in law's attorney in order to receive the relevant documents from him, were in vain.

21. Reminders regarding the written hearing were sent on August 12, 2012, September 12, 2012, October 16, 2012.

    The reminders are attached hereto and marked **G1-3**.

22. On October 28, 2012, respondent's letter of the same date was received, in which the respondent reiterated his decision according to which the application should be denied for security reasons (hereinafter: the **second denial notice**). The letter stated that "The interests of the State and its security were balanced against the right of Mr. and Mrs. Dawood to family life." The letter did not refer to appellant's request to receive the open evidentiary material.

    The second denial notice is attached hereto and marked **H**.

23. Appellants' position is, that the respondent has failed to properly weigh the entire considerations which should have been considered by him in this case, and therefore respondent's decision is unreasonable and disproportionate. Hence this appeal.

<u>The Legal Framework</u>

<u>The Right to family life – a fundamental right</u>

24. The discussion herein is made in the context of the constitutional right of appellant 1 and his children – Israeli residents - to family life – to live with appellant 2 (appellant 1's wife and the mother of their children) in their country.

25. As is known, there is no longer any dispute that the right to family life is a fundamental constitutional right in Israel, constituting part of the right to human dignity. This position received in HCJ 7052/03 – **Adalah v. Minister of the Interior** TakSC 2006(2) 1754 – a wide support of eight out of the eleven justices of the panel. President A. Barak held, in paragraph 34 of his judgment as follows:

> From human dignity, which is based on the autonomy of the individual to shape his life, stems the derivative right to establish the family unit and to continue to live together as one unit. Does this lead to the conclusion that the realization of the constitutional right to live together also means the

> constitutional right to realize this right in Israel? My answer to this question is that **the constitutional right to establish a family unit means the right to establish the family unit in Israel. Indeed, the Israeli spouse has a constitutional right, which derives from human dignity, to live with his foreign spouse in Israel and to raise his children in Israel. The constitutional right of a spouse to realize his family unit is, first and foremost, his right to do so in his own country. The right of an Israeli to family life means his right to realize it in Israel**.
>
> (emphasis added – N.D.)

26. In addition, the status of the right to family life as a constitutional right, directly affects the ability to violate said right and deny a family unification application submitted by an Israeli citizen or resident for his spouse or children.

27. Granting the right to family life the status of a constitutional right is followed by the determination that any violation of this right should be made in accordance with Basic Law: Human Dignity and Liberty – based only on substantial considerations and based on a solid evidentiary infrastructure attesting to these considerations. This determination imposes upon the respondent a heightened obligation to maintain an administrative system which ensures that his power to deny family unification applications, a power which violates a protected constitutional right, is exercised only where such denial is fully justified.

The Dakah judgment – guidelines for an "indirect" security denial

28. In making a decision to deny a family unification application for securities reasons, the respondent is obligated to follow the court's determinations in HCJ 7444/03 **Dakah v. Ministry of the Interior** dated February 22, 2010 (hereinafter: **Dakah**), which constitutes an additional layer in the wall which protects against an arbitrary violation of the constitutional right to family life.

29. **Dakah**, in fact, established the circumstances under which the competent authority may deny a family unification application of a spouse residing in the Area, due to kinship between the spouse and a person posing a security threat – **where there is no security information regarding direct involvement on his part in activities against the security of Israel**. In paragraphs 15-16 of **Dakah** it was stated as follows:

> **…** the right to have a family is situated at the highest level of human rights. An infringement of such right may be allowed only when it is balanced against an opposing value having special power and importance. In the existing tension between the value of security of life and other human rights, including the right to have a family, the security consideration prevails only **where there is high probability, almost reaching certainty,** that if appropriate measures

involving the infringement of human rights are not taken, public safety may be materially injured**.**

The burden to prove the probability of a security risk to an extent which justifies an infringement of human rights **lies on the state… the state must prove that the probability of a threat to public safety is at the highest level, reaching, at least near certainty, and that it is impossible to defend against it without violating human rights**.

(emphasis added, N.D.).

30. In paragraph 41 of **Dakah**, the court requires that the Ministry of Interior differentiate between a direct threat and an indirect threat:

> Against the violation of the right to have a family, the competent authority should weigh the existence of a security preclusion involving the permit applicant – a direct preclusion involving the applicant himself, or an indirect preclusion which may result from his relationships with family members posing a security threat… the threat posed by the applicant of the permit, which stems, in its entirety, from his family relationships with parties associated with terrorism, is a complex issue, which is subject to probability assessment and requires careful discretion**. The indirect threat should be carefully assessed, and attributed its proper relative weight only, nothing more than that. A sweeping conclusion that each and every permit applicant, who has family ties with a person involved in terrorist activity, is disqualified, *a priori*, from family unification, should be avoided.** In each particular case, the probability that the permit applicant himself would be subject to influence and pressure by family members, thus becoming a source of direct security threat, should be examined.
>
> (emphasis added, N.D.).

31. Regarding the indirect threat, the court determines in **Dakah**, that "objective information" should be used, such as:

> Information regarding the long presence in Israel, for years, of the foreign spouse, against whom not even the slightest piece of information has been obtained associating him with any activity against Israel, despite having family relationships with terrorists. Such information may refute, at least *prima facie*, a presumption of an indirect security preclusion; **When the case concerns women from the Area who live in Israel for years within the framework of family unification, who raise a number of children and share the burden of providing for the family, the concern**

> **that the potential risk of getting involved in terrorist activity would be realized by them in view of family ties to relatives involved in terrorist activity may be small…**
>
> (emphasis added, N.D.).

32. Hence, **Dakah** established the tests according to which a decision should be made by the respondent in case of an "indirect" threat. Namely, in addition to the "general" violation of the right to family life, the respondent should have examined:

    a. Whether the probability of a threat to public safety is at the highest level, reaching, at least near certainty? And whether it is impossible to defend against such threat without violating human rights?

    b. What is the probability in the **particular case** that the permit applicant – appellant 2 – would become a source of direct threat? A sweeping conclusion that appellant 2 is disqualified from family unification due to the fact that she has family ties with a person involved in terror activity should be avoided. Namely, it must be ascertained that appellant 2 does not merely "pay" for the deeds of her family members, but that a direct and specific threat arises from the indirect threat.

    c. Whether objective data were examined, such as the duration of the presence in Israel, the fact that the sponsored spouse is a woman, the fact that the spouses are parents of minor children?

33. There is no indication, in second denial notice, that said issues were examined. The respondent does not specify what would be, according to him, the probability of the threat to public safety should the family unification application be approved; he makes no mention of the threat ostensibly posed by the presence of **appellant 2 herself** in Israel; he does not mention whether, in addition to the right to family life, the objective data which he should have examined according to **Dakah**, were also considered by him.

34. The only thing which the respondent does is to divert the discussion from the family unification application to the deeds of the sister and the brother in law. It should be remembered that neither the sister nor the brother in law are the ones who request a stay permit in Israel by virtue of family unification. **Appellant 2** is the one who requests this permit, and the respondent must prove the threat which, ostensibly, arises from the approval of **appellant 2**'s application. The respondent failed to comply with the court's warning in **Dakah**, that family unification applications should not be automatically denied, only because of the existence of security material concerning family members of appellant 2, particularly, in view of the objective information, which should have been considered by him in this case:

    a. Firstly, this case concerns a young woman, a mother of four children, the youngest of whom, is only five years old. This is an objective piece of information which may refute an allegation of an indirect threat, as held in **Dakah**:

        > When the case concerns women from the Area who live in Israel for years within the framework of family unification, who raise a number of children and share the burden of

> providing for the family, the concern that the potential risk of getting involved in terrorist activity would be realized by them in view of family ties to relatives involved in terrorist activity may be small…

b. Secondly, it seems that the security authorities do not regard appellant 2's presence in Israel as posing an actual threat, in view of the fact that appellant 2 has received many times permits for family visits in Israel.

Attached hereto, for example, eight permits from recent years, marked **I 1-8**.

c. In addition, Mrs. Dawood holds a valid magnetic card.

A photocopy of Mrs. Dawood's magnetic card is attached hereto and marked **J**.

35. Therefore, respondent's laconic statement that "The interests of the State and its security were balanced against the right of the spouses to family life" is insufficient. The respondent must implement the **Dakah** judgment in a specific and particular manner, otherwise, his decision is neither reasonable nor proportionate.

Lack of reasonableness and proportionality

> **The competent authority which is required to make a decision in an application for a stay permit in the context of the transitional provisions of the law, must base its decision on foundations of reasonableness and proportionality**. Reasonableness is the standard used to review the administrative discretion; In the event that this discretion involves a possible violation of fundamental rights, it must also comply with the proportionality test in the context of constitutional principles and the limitation clauses included in the Basic laws.
>
> (**Dakah**, emphasis added, N.D.)

36. The **Entry into Israel Law** and the **Temporary Order** enable the Minister of the Interior to exercise wide discretion in family unification applications, and to deny a family unification application in the event that the sponsored spouse in the application poses a security threat.

37. Nevertheless, like any limitation which is imposed on a fundamental right, a decision to deny a family unification application must be made in accordance with the rules of reasonableness and proportionality, and proper weight should be given to the importance of the violated right.

38. Violation of human rights, and in our case, a violation of the right to family life, is lawful only if it complies with the test of reasonableness and the test of proper balance between said right and other interests under the authority's responsibility. The more important and central the violated right is, the greater the weight given to it in the balancing between said right and other conflicting interests of the authority. (PPA 4463/94, LA 4409/94 **Golan v. Israel Prison Service**, IsrSC 50(4) 136, 156).

39. The required weight of the evidence underlying the administrative decision depends on the nature of the decision. The weight of the evidence must reflect the importance

of the right or interest harmed by the decision and the extent of the harm caused. The fact that respondent's decision violates fundamental rights of the appellants, obligates the respondent to base his decision on weighty assessments and data:

> As far as the deprivation of fundamental rights is concerned, equivocal evidence are insufficient… I am of the opinion, that the evidence required to convince a statutory authority that the deprivation of a fundamental right is justified, must be clear, unequivocal and convincing… the greater the right, the greater the scope and weight of the evidence underlying a decision to limit said right (EA 2/84 **Neiman v. Central Election Committee,** IsrSC 39(2) 225, 249-250).

40. In this case, respondent's decision is sweeping, the probability for the realization of any threat as a result of the approval of the family unification application is not sufficiently substantiated and the considerations specified in **Dakah** are completely disregarded. On the other hand, this case concerns a severe violation of a fundamental right of Israeli residents: the right to family right. Hence, respondent's decision is unreasonable. It is also disproportionate in view of the fact that clearly, the least harmful measure has not been adopted, especially in view of the fact that this is a sweeping denial, and that appellant 2's individual case has not been examined (contrary to the detailed account given with respect to her family members).

> The need to adopt the least harmful measure, often prevents the use of a flat ban. The reason for this is that in many cases the use of an individual examination achieves the proper purpose by employing a measure that violates the human right to a lesser degree. This principle is customarily applied in the judgments of the Supreme Court (see **Ben-Atiya**, p. 15; **Stamka**, p. 779).

(HCJ 7052/03 **Adalah v. Attorney General**)

41. Security concerns are not an absolute value, since "the interest of maintaining the security must be balanced against other protected and conflicting rights and interests" (Justice Dorner's judgment, paragraph 6; HCJ 5627/02 **Ahmed Saif v. Government Press Office**, IsrSC 58(5), 70). It was further held there, that the respondent should examine all possible alternatives, and balance them in the context of an individual examination of petitioner's case, to ensure that his right was violated by the least harmful measure:

> In our case, the total refusal to give press badges to Palestinians who are residents of the Area - including those who hold permits to enter and work in Israel - shows that the balancing of the concerns of expression and information against security concerns was not made at all, and in any event the balancing which was made is unlawful. Even establishing a procedure for obtaining a permit to work as a journalist, which was formulated in the course of the hearing, and which *prima facie* is not an appropriate substitute for a press badge that allows for ongoing and immediate coverage, does not repair this defect.

> A refusal to give a press badge without any examination of the individual case, because of the danger inherent in all Palestinian journalists who are residents of the Area - including those entitled to enter and work in Israel - is the most harmful measure possible. This measure severely harms the interest to have a free press, which could have been prevented by individual security checks that are justified in order to mitigate the individual security threat posed by the residents of the Area, in so far as such threat is posed by residents who have successfully undergone the checks required in order to receive permits to enter and work in Israel.
>
> Indeed, it is always possible to argue that the mere fact that a Palestinian journalist is a resident of the Area creates a special security risk if that journalist holds a press badge. This risk exists even if that journalist holds entry and work permits as aforesaid, even if he has undergone additional, special security checks, for the purpose of obtaining a press badge. Notwithstanding the above, this special risk is slight and theoretical, and it does not justify an unquestionable violation of the protected interests of freedom of expression and information, and a distinction — which is in fact a discrimination — between foreign Palestinian journalists and all other foreign journalists.
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> (*Ibid*, pages 77-78).

42. Also relevant to our case are the words of the Honorable President emeritus, Justice Dorit Beinisch, in **Dakah**:

> It should be further added, that even if according to the majority opinion of this court in **Adalah**, the general infrastructure underlying the relevant sections does attest to any inherent constitutional difficulty, yet – and my collegue has broadly discussed this issue – one cannot disregard the fact that each decision to prohibit the presence in Israel of a foreign spouse of an Israeli, severely violates the constitutional right to family life, as broadly discussed and established in **Adalah** (and see for instance: paragraphs 6-7 of my judgment), and as such requires a careful examination of each such decision as aforesaid. In this regard, it was held in **Amarah**, which decision is also relevant to our case, that **the Minister of the Interior should exercise his authority under the provisions of section 3D "according to the basic principles of Israeli administrative law. He should exercise authorities which enable an infringement of fundamental constitutional rights according to the standards established in the limitation clauses included in the Basic laws concerning human rights… The determination of the Minister of the Interior under section 3D should therefore comply with the requirement of proportionality**."

> Thus, for instance, a decision not to extend a residency permit which was granted in the past, due to a security preclusion which derives from an immediate family member of the applicant, will comply with the proportionality tests, if the Minister of the Interior fulfills the obligation imposed on him to conduct a thorough and rigorous examination of the entire administrative evidence presented to him based on which he wishes to define the scope and degree of the potential threat posed by the foreigner for whom status is requested, and to prove by significant administrative evidence that a security threat is indeed posed by the status applicant as a result of the threat posed by his family member (and see also, paragraph 17 of **Amarah**). In this regard, I adopt the words of my colleague in paragraph 41 of her judgment concerning the array of details which should be considered in the assessment of the risk posed by the applicant, as well as concerning the proper weight which should be attributed, in assessing the degree of the risk, to security information which points at a direct security threat posed by the applicant, and to information which points at an indirect threat posed by him, which arises because of his family members.
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> (*Ibid*, emphases added, N.D.).

43. In the case at hand, it was determined that appellant 2 posed a threat, based only on information concerning her family members. The respondent did not deign to conduct an individual examination in her matter, in the sense that he has failed to examine the threat which ostensibly derived, from the approval of appellants' family unification application, in view of the information in his possession concerning appellant 2's family members. The only thing he did was to specify the information he had in his possession concerning her family members. In other words: the conduct of an individual examination concerning family members of a sponsored spouse in a family unification application is insufficient. The respondent must examine whether the sponsored spouse poses a threat, and the probability thereof. If this is not done, the denial is sweeping, disproportionate and inappropriate.

<u>Additional arguments concerning the "indirect" material</u>

44. Finally, the appellants also wish to comment on the "indirect" material which was presented in the denial notices.

A. The sister Shaden

45. The denial notice stated that the sister "was mentioned in an interrogation of a Hamas detainee (1994) as having been involved in activities of "Al Kutla al Islamia" when she was a student in Birzeit university".

46. This sentence is peculiar, since the sister Shaden studied in Birzeit from 1999 until 2004, and therefore it is unclear how an interrogation which was conducted in 1994 could have pointed at this or another activity on her part. To the best of our knowledge, the interrogation (of a female detainee rather than of a male detainee as indicated in the letter) was conducted in 2004, in view of the wording of the first denial notice , which is almost identical, in this matter, to the wording of the notice of an intention to deny and the second denial notice.

47. In any event, the sister Shaden claims that she has not been a member of Al Kutla al Islamia". Said "Hamas detainee" whose interrogation was mentioned, is, to Shaden's best knowledge, a woman named Yakin Khazatmeh. According to Shaden, Yakin mentioned her in the interrogation merely as a friend, and not as member of "Al Kutla al Islamia". To Shaden's best knowledge, Yakin Khazatmeh has not been detained, interrogated or arrested since her graduation. Furthermore: from common acquaintances Shaden knows that Yakin travels freely from the West Bank abroad, and apparently there is no security preclusion in her matter.

48. Hence, it should be emphasized that the information – which is anyway weak – concerning the sister Shaden is **merely ostensible information**. Shaden has never been interrogated, detained or tried and she is a mother of young children.

49. In addition, currently, like in 2008 (when the first denial was issued), and even more forcefully in view of the passage of time, it is unclear why the interrogation of Yakin Khazatmeh was used all of a sudden as a cause for denial, in view of the fact that the family unification application was approved in 2001, and was renewed (following a petition against the delay in the renewal of the permit) in 2004. Mrs. Dawood continued to renew the family unification permits on an annual basis, for a number of years **after the interrogation and after the sister has completed her studies**. It is highly likely that upon the renewal of the application in 2004, and upon the annual renewals of the permits thereafter, said information was known to the security agencies, which have nevertheless confirmed that as far as they were concerned there was no preclusion which prevented the approval of the application. Hence, currently, like four years ago, it is unclear why the security agencies have suddenly changed their position.

50. Finally, it should be noted that the connection between appellant 2 and her sister is quite weak. The last time the sisters met each other in person was about a year or a year and a half ago. They speak on the phone only once a month or two months.

51. Accordingly, as far as the sister Shaden is concerned, clearly there is no cause to deny the family unification application. The relevant material has a very weak evidentiary weight, if any, and it does not cause appellant 2 to pose any threat which complies with the condition of "probability almost reaching certainty" as established in **Dakah**.

B. The brother in law Abdallah

52. With respect to his arrest in 1998-2001, this period precedes the approval of the family unification application and the annual renewals thereof. Presumably, the information concerning said arrest was known to the security agencies, which nevertheless determined that there was no preclusion, as far as they were concerned, to approve the application. It is therefore unclear why this issue was brought up and became relevant. The same is also relevant to the allegations concerning the period during which the brother in law was a student.

53. As to his administrative detention in 2009, with respect of which the detention order, the protocol of the hearing and the decision in the judicial review of the order were received in AP 8951/08, the case concerns an order which was shortened due to the medical condition of the brother in law (he underwent an operation to remove a tumor from his back).

54. As to his administrative detention from June 2011 – May 2012, a petition was filed in this matter with the High Court of Justice (HCJ 9633/11), within the framework of

which the respondent (the military commander of the West Bank Area) notified that he was willing to submit the administrative detention order for judicial review more frequently. Indeed, the brother in law and his attorney were unable to know what was included in the material which was presented by the state's legal counsel, in view of the fact that the hearing was held *ex parte*. However, the material is most likely not very serious, in view of the fact that the state has agreed to subordinate the matter to a frequent judicial review.

The judgment in HCJ 9633/11 is attached hereto and marked **K**.

55. In addition to all of the above, it should be emphasized that the connection between appellant 2 and her brother in law is quite weak. She hardly ever sees him in person (according to her, she has not seen him for more than a year) and she does not speak with directly on the phone either.

56. **It should be noted here that in the written hearing, the appellants requested to receive the <u>administrative detention order</u>, the <u>protocol of the hearing</u> in the military court and the <u>decision in the judicial review of the order</u>. It should be noted that this is an <u>open material</u> of the same type that has already been delivered to the appellants in AP 8951/08**. It was noted that the requested material was not in the possession of the family, and that the extensive efforts invested by the undersigned to reach the attorney of the brother in law in order to receive from him the above mentioned documents, were in vein. The appellants insisted that the material be transferred for their review, for the realization of appellants' right of inspection and right to be heard.

57. **This request remained unanswered by the respondent, despite the fact that in this same file, open material of exactly the same type has already been given**.

58. **The appellants reiterate their demand to inspect the requested open evidentiary material, and request to complete their arguments in view of said material, if required**.

<u>Conclusion</u>

59. As of the date of the first denial notice of appellants' family unification application, the normative infrastructure for the denial of family unification applications for security reasons has undergone changes. The **Ghabis** judgment was rendered, which entrenched the right to be heard**,** following which the comments of agencies protocol was amended; The **Dakah** judgment was rendered, which established the guiding principles for an "indirect" denial of family unification applications.

60. The existence of negative security information against a family member of a sponsored spouse in a family unification application does not provide an automatic cause to deny the family unification application. The burden to prove that high probability almost reaching certainty that the **sponsored spouse himself/herself** poses a security threat, is imposed on the Ministry of the Interior. In so doing, the Ministry of the Interior should take into account the fundamental right to family life, and various objective details which may refute the "presumption of risk".

61. It is clear that in the case at hand, not all relevant considerations were taken into account as required according to **Dakah**. Thus, for instance, the fact that the family unification application has already been approved in the past, and that the stay permits were renewed for years, the weak connection between appellant 2 and her sister and brother

in law; her long stay in Israel and the fact that it has never been argued that she had a direct connection with terrorists; the fact that appellant 2 is a mother of four young children. In view of all of the above, a heavy burden is imposed on the Ministry of the Interior to prove that there is **high probability almost reaching certainty** that public safety will be at risk, in the event that the family unification application is approved. **This burden was not satisfied**.

62. It seems that the respondent, in his examination of appellants' family unification application and the material which was received by him from security agencies, erroneously regarded appellant 2's sister and brother in law as the persons applying to a stay permit in Israel under the family unification application. This is not so. Respondent's position should focus on the threat allegedly posed by the presence of ***appellant 2*** in Israel, in view of the security material which exists about her family members.

63. Hence, in view of the fact that respondent's decision does not comply with the tests established in **Dakah,** and in view of the fundamental right to family life which is severely violated by respondent's decision, the appellants request that their appeal be accepted in the sense that the family unification application be approved and appellant 2 is granted a residency permit in Israel.

Sincerely,

Noa Diamond, Advocate

Enclosed:
Exhibits A-I
Affidavit