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At the Supreme Court
Sitting as the High Court of Justice

H CJ 4047/13
Scheduled: May 21, 2014

Hadri et al.

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The Petitioners

v.

1. **The Prime Minister**
2. **Minister of the Interior**
3. **Attorney General**

Represented by the State Attorney's Office,
Ministry of Justice, Jerusalem
Telephone: 02-6466590; Fax: 02-6467011

The Respondents

Respondents' Preliminary Response

1. In preparation for the hearing in the petition, the respondents hereby respectfully submit their response thereto.
2. This petition concerns petitioners' requests that the respondents appear and show cause "why they should not revoke government resolution 3598 of June 15, 2008, which instructs the Minister of the Interior to deny family unification applications of persons registered in the population registry as residents of the Gaza Strip and anyone residing in the Gaza Strip even if he is not registered in the population registry as a resident of the Gaza Strip."

3. Respondents' position is that the petition should be denied, as specified below.

Preface

4. On September 29, 2000 an armed conflict erupted between Israel and the Palestinians. As described by the Honorable President Barak: "An intense barrage of terror descended upon the State of Israel. Most of the terror attacks were directed against civilians. They harmed men and women, the elderly and children. Entire families lost their loved ones. The terror attacks were intended to harm human life. They were intended to sow fear and panic. They sought to disrupt the way of life of Israeli citizens. The terror attacks are carried out inside Israel and in the territories. They took place everywhere." (HCJ 7052/03 **Adalah - Legal Centre for Arab Minority Rights in Israel v. Minister of the Interior** (dated May 14, 2006)(hereinafter: **Adalah**). Israel faces a host of terror organizations, some of which are supported by enemy states. These terror organizations use, among other things, civilians for the purpose of carrying out terror attacks.
5. President Barak continues to state, that "Against the backdrop of this severe security situation, and in view of these security evaluations, the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003, (hereafter: the **Temporary Order Law**) was also enacted.
6. Section 2 of the Temporary Order Law provides, that for as long as it is in force, the Minister of the Interior will not grant a residence visa or a stay permit in Israel, to a person who is registered in the population registry of the Region, and to a person who resides in the Region even if he is not registered in the population registry (other than a resident of an Israeli settlement in the Region).

The Temporary Order Law has a security purpose, which stems from the inherent difficulty to conduct an individual security examination in the Region to a "resident of the Region" as this term is defined in the law, and from the risk that an individual security examination which may be conducted, under the circumstances, will not predict the potential risk posed by those who originate from the Region, while an armed conflict takes place which is directed against the State of Israel and its citizens.

7. In the context of two amendments to the Temporary Order Law, several exceptions were added to the above referenced section 2. Thus, for instance, it was provided that the applications of residents of the Region, in the ages specified in the amendment, and who are spouses (according to the ages set forth in the law) of persons who lawfully resided in Israel, would be processed. It was further provided that applications of minors, residents of the Region (according to the ages set forth in the law), will be processed so as to prevent separation from their custodian parents who lawfully resided in Israel. In addition, an amendment dated March 28, 2007, included an exception concerning special humanitarian reasons, within the framework of which the Minister of the Interior was empowered, following the recommendation of a professional committee, to give a proper solution, under the circumstances of the matter, to a resident of the Region, as set forth in section 3A1 of the law.
8. It was further provided in said last amendment that the Minister of the Interior was authorized to determine that an applicant for a residence visa or stay permit may pose a security risk to the State of Israel based on an opinion of the competent security agencies, according to which within the domicile state or residence Region of said applicant, activity was carried out which was liable to pose a risk to the security of the State of Israel or its citizens.

9. In this petition the petitioners request to revoke government resolution No. 3598 dated June 15, 2008 (hereinafter: the **government resolution**), which referred, *inter alia*, after the enactment of the amendment, to the Gaza Strip, based on a professional opinion of security agencies, as an area in which activity was carried out which could put the security of the State of Israel or its citizens at risk.
10. It should be clarified that the petitioners **do not challenge the Temporary Order Law itself**. Furthermore, the petitioners do not challenge the above professional position of the security agencies, **according to which the Gaza Strip is an area in which activity takes place which may put at risk the security of the State of Israel or its citizens**. Therefore, respondents' response to the petition will not pertain to the lawfulness of the Temporary Order Law as amended, which was affirmed by the court in H CJ 466/07 **Gal-On v. Attorney General** (judgment dated January 11, 2012) (hereinafter: **Gal-On**), and will even assume the correctness of the position of the security agencies concerning the situation in the Gaza Strip.
11. Petitioners' sole argument is that the government resolution concerning the Gaza Strip is a resolution which exceeds the realm of authority vested in the Minister of the Interior in the Temporary Order Law. Respondents' position is that the government resolution concerning the Gaza Strip, following several resolutions which were adopted by the government and the security-political cabinet, *inter alia*, after Hamas took over the Gaza Strip, is a resolution which "**reflects an existing situation**", and **declares** of the Gaza Strip as an area in which activity takes place which may put at risk the security of the State of Israel and its citizens (and in this sense it is solely a declarative resolution).
12. As we shall show below, the provision of section 3D of the Temporary Order Law empowers the Minister of the Interior to determine, *inter alia* based on the opinion of the competent security agencies, that a security preclusion exists for the approval of family unification applications – a preclusion which derives from hostile activity that takes place in the domicile state or area of residence of the foreign resident, who wishes to enter Israel.
13. As we shall show below, said provision was primarily designated to cope with the risk of granting stay permits in Israel to citizens of states which pose a risk or to residents of areas which pose a special risk, such as the Gaza Strip, due to the special security situation and due to the inability to conduct an individual examination for such residents/citizens, taking into consideration the hostile activity which takes place therein, its severity and scope, against the State of Israel and its citizens. There is no doubt that the intention of the legislator concerning the Gaza Strip, or a hostile state like the Gaza Strip, an intention which was reflected in the amendment which was enacted after the disengagement and the exit of IDF Forces from the Gaza Strip, was to provide the State of Israel, including the Minister of the Interior, the normative tools to cope with the special situation which was created as a result of the fact that the Gaza Strip became a heightened risk area, ever since the Hamas organization took over the Gaza Strip and decided to fight against the State of Israel and its citizens from the territories of the Gaza Strip, and in the absence of an effective control over the territories of the Gaza Strip.
14. Under these circumstances, respondents' position is that petitioners' argument concerning the government resolution has no basis, firstly, because the government resolution is nothing but a reflection of the security situation in Gaza, according to the position of the professional officials at the Israel Security Agency (ISA). It may even be said that regretfully, this security situation is in well known fact which does not require proof. On this issue see, for instance H CJ 9132/07 **Jaber Al-Bassiouni Ahmed et al. v. The Prime Minister** (dated January 30, 2008). And secondly, in view of the fact that this state of affairs, even according the honorable court in

Adalah and thereafter in **Gal-On**, does not enable the State of Israel to conduct a specific security examination to residents of the Gaza Strip area, under the circumstances of time and place.

See on this issue, for instance, the comments of the Honorable Justice Arbel, on which we shall elaborate below, who stated as follows: "The second difficulty which I see in the individual examination concerns the mere ability to conduct a real examination of the risk posed by a person, based on the gathering of information, in places in which there is a deep hostility against Israel."

In view of these circumstances, as a whole, the government resolution cannot be regarded as deviating from the provisions established by the Temporary Order Law, and the petition should be denied. Furthermore, under the current situation in Gaza and its relations with the State of Israel, this provision is required in view of the severe security circumstances.

15. We shall firstly describe the relevant normative background and thereafter we shall present respondents' position.

The relevant normative background

16. The Temporary Order Law, in its original version, was enacted according to government resolution No. 1813 dated May 12, 2002, in view of the severe security circumstances which existed from the eruption of the armed conflict between Israel and the Palestinians. It turned out that Palestinians who were originally residents of the Region and who were holding Israeli identification cards following family unification proceedings with Israeli citizens or residents, were increasingly involved in said conflict, as they have exploited their status in Israel for the purpose of carrying out terror attacks, including by providing assistance to the carrying out of suicide attacks.
17. It should be noted that Israeli identification cards which were issued to residents of the Region as aforesaid enabled them to travel freely between the territories of the Authority and Israel, thus, turning them into a preferred segment of the population, used the terror organizations for the execution of hostile activities in general, and within the territory of Israel, in particular.
18. In view of the aforesaid, section 2 of the Temporary Order Law established the rule according to which for as long as the law was in force, the Minister of the Interior would not grant a resident of the Region citizenship or a residence visa in Israel, and the commander of the Region would not grant a resident of the Region a stay permit in Israel.
19. Various exceptions were set to the rule which was established in section 2 of the Temporary Order Law. Among other things, **the first amendment to the law which was made in 2005**, broadened the authorities of the commander of the Region to grant a resident of the Region a stay permit in Israel for a period exceeding six months, for the purposes specified in the amendment. It was also provided that applications of residents of the Region of the ages specified in the amendment and who were spouses of persons who resided in Israel lawfully, would be processed. It was also provided that applications of children (according to the ages specified in the law) of residents of the Region who were residing in Israel, would be processed.

With respect to spouses, the following was provided:

3. Permit to spouses

Notwithstanding the provisions of section 2, the Minister of the Interior may, using his discretion, approve the application of a resident of the Region to receive a permit to stay in Israel by the Region commander –

- (1) with respect to a male resident of the Region who is over 35 years of age – for the purpose of preventing his separation from his spouse who lawfully resides in Israel;
- (2) with respect to a female resident of the Region who is over 25 years of age – for the purpose of preventing her separation from her spouse who lawfully resides in Israel.

20. In addition, in view of the extension of the exceptions, and for the purpose of preventing the security risk which may arise there-from, the first amendment provided, in section 3D of the Temporary Order Law, that a security risk which arose from immediate family members of the person who applied for family unification in Israel or of a person who applied for another stay permit, may prevent the grant of the permit.
21. On September 12, 2005, the implementation of the disengagement plan ended, and the last IDF soldiers left the Gaza Strip. On that very same day, September 12, 2005, the GOC Southern Command at that time, who acted as the commander of IDF forces in the Gaza Strip, issued a proclamation which notified of the termination of the military regime in the Gaza Strip.
22. Accordingly, commencing from September 12, 2005, at 24:00, the military regime of IDF in the Gaza Strip terminated, along with IDF's belligerent occupation of the Gaza Strip, with all ensuing consequences thereof, from the political, security and legal aspects.
23. On March 25, 2006, Hamas government was sworn in (following elections which were held in the Palestinian Authority on January 25, 2006), and accordingly, from that day, a terror organization took control over the Gaza Strip, the declared purpose of which is to destroy the State of Israel.
24. On April 11, 2006, following the formation of the Hamas government, the government adopted another resolution, No, 4780, entitled "The policy of Israel towards the Palestinian Authority upon the formation of Hamas government." In the context of said resolution the government of Israel declared the Authority as a "terror authority hostile to the State of Israel."
25. On May 14, 2006, judgments were given in the petitions in H CJ 7052/03 **Adalah - Legal Centre for Arab Minority Rights in Israel v. Minister of the Interior** and in H CJ 7102/03 MK Zehava Gal-On v. Minister of the Interior and in H CJ 8099/13 **Association for Civil Rights in Israel v. Minister of the Interior** (TakSC 2006(2), 1754). The honorable court, sitting in an extended panel, held by a majority opinion that the petitions should be denied.

In the context at hand, it should be noted that even according to the reasoned minority opinion of the Honorable President Barak, when entry from a fighting zone is concerned, an individual examination of applications is not possible. And in his words: "Where fighting takes places an examination cannot be conducted: where it is impossible to conduct an examination due to security circumstances, it should be postponed until such time as the circumstances change."

Notwithstanding the denial of the petitions, in view of the fact that even according to the majority opinion it was held that a certain solution for exceptional humanitarian cases should be provided by the law, the government was required to amend the Temporary Order Law, following said judgment, in March 2007.

26. On March 28, 2007, the Temporary Order Law was amended once again for the purpose of incorporating therein an exception of special humanitarian reasons for the applicability of the limitation established in section 2, and for the extension of the applicability of the limitation also to residents and citizens of states posing a risk which are listed in the Schedule of the Temporary Order Law (Iran, Lebanon, Syria and Iraq).

In addition, it was provided that the Minister of the Interior had the authority to determine that an applicant of a residence visa or a stay permit may pose a security threat to the State of Israel, *inter alia*, based on the opinion of the competent security agencies, according to which in the domicile state or place of residence of the applicant activity took place which could put the security of the State of Israel or its citizens at risk.

Following the second amendment of the Temporary Order Law, section 3D of the law (in its consolidated version) provides as follows:

3D. Security Preclusion

A permit to stay in Israel or a license to reside in Israel shall not be granted to a resident of the Region, in accordance with sections 3, 3A1, 3A(2), 3B(2) and (3) and 4(2) and license to reside in Israel shall not be granted to any other applicant who is not a resident of the Region, if the Minister of the Interior or Region commander, as the case may be, has determined, pursuant to the opinion of authorized security personnel that the resident of the Region or other applicant or family member are liable to constitute a security risk to the State of Israel;

In this section, "family member" – spouse, parent, child, brother and sister and their spouses. **For this purpose, the Minister of the Interior may determine that a resident of the Region or any other applicant is liable to constitute a security risk to the State of Israel, among other things on the basis of an opinion by the security personnel according to which within the domicile state or place of residence of the resident of the Region or of any other applicant, activity was carried out which is liable to put the security of the State of Israel or of its citizens at risk.** [the emphasis in the above quotation and in the following quotations were added by the undersigned].

27. In June 2007, the Hamas movement took control over the entire Gaza Strip violently, and it currently effectively controls the territory of the Gaza Strip.
28. It should be mentioned that on September 19, 2007 the political-security cabinet determined that "The Hamas movement is a terror organization which took over the Gaza Strip and turned it into a hostile territory. The resolution further provides that said organization carries out hostile activity against the State of Israel and its citizens and that the responsibility for such activity lies on it. In view of the above, it was resolved to adopt the recommendations presented by the security establishment, including the continued military and preventive activity against the terror

organizations. Furthermore, additional limitations will be imposed on the Hamas regime... and a limitation on the travel of individuals to and from the Strip will be imposed..."

The draft resolution of the political-security cabinet appears in the judgment in HCJ 9132/07 **Jaber Al-Bassiouni Ahmed et al. v. The Prime Minister** (dated January 31, 2008).

29. In 2008, following the formation of the Hamas regime in the Gaza Strip, the Israel Security Agency expressed its opinion that the Gaza Strip was an area in which activity took place which posed a threat to the State of Israel or its citizens. A notice published by the government secretariat on this issue indicates that security agencies are of the opinion that whereas the threat posed by the entry of residents of the Gaza Strip into Israel has considerably increased during the period which preceded the date of the opinion, ever since IDF forces left the Gaza Strip and the dramatic changes which occurred in the area including the breaking of the Rafiach crossing, **the individual security check in the context of the examination of entry applications into Israel from the Gaza Strip became patently ineffective and inefficient.**

30. The notice of the government secretariat further indicates that according to the opinion of the Israel Security Agency, the Gaza Strip should be regarded as a single territorial unit, in view of the complete and effective control exercised by the Hamas regime over the entire Strip.

A copy of the notice of the government secretariat is attached and marked **R/1**.

31. On June 15, 2008 a government resolution was adopted concerning the extension of the Temporary Order Law. In said meeting the government was also presented with a professional opinion of security agencies according to which Gaza Strip was an area in which activity took place which could put at risk the security of the State of Israel and its citizens, according to the above referenced section 3D. Therefore, the government directed the Minister of the Interior, or anyone authorized by him for this purpose, to deny the grant of residence visas or stay permits in Israel, according to sections 3 and 3A(2) of the law, to any person who was registered in the population registry as a resident of the Gaza Strip, and to any person who resided in the Gaza Strip even if he was not registered in the population registry as a resident.

The government resolution reads as follows:

Resolved: ...

C. According to section 3D of the law, and based on the opinion of the competent security agencies, it is hereby determined that the Gaza Strip is an area in which activity is carried out which may put at risk the security of the State of Israel and its citizens. Therefore the government directs the Minister of the Interior, or anyone authorized by him for this purpose, not to approve the issue of residence visas or stay permits in Israel, according to sections 3 and 3A(2) of the law, to any person who is registered in the population registry as a resident of the Gaza Strip, and to any person who resides in the Gaza Strip even if he is not registered in the population registry as a resident of the Gaza Strip.

It is hereby clarified that this section will apply from now onwards and that in any event it does not apply to any person whose initial application has already been approved."

A photocopy of the government resolution is attached and marked **R/2**.

32. It is hereby noted that the government resolution refers only to sections 3 and 3A(2) of the Temporary Order Law which concern the issue of residence visa in Israel to spouses, and the issue of a permit to a child over the age of 14 for the purpose of preventing his separation from his custodial parent who lawfully resides in Israel.
33. Following the addition of section 3D to the Temporary Order Law, an additional petition was filed which concerned, *inter alia*, said section (HCJ 466/07 **Gal-On v. The Attorney General**, judgment dated January 11, 2012). The petition was denied, by a majority opinion, and the honorable court affirmed the lawfulness of the Temporary Order Law. As far as the above matter is concerned, it is hereby noted that in said judgment the court re-affirmed the security purpose of the Temporary Order Law and the difficulty of conducting an individual security check for residents of the Region.
34. On July 19, 2009, July 18, 2010, January 16, 2011, January 22, 2012, April 14, 2013 and March 19, 2014 the government adopted additional resolutions, based on updated opinions of the security agencies, according to which Gaza Strip was still an area in which activity was carried out which could put at risk the security of the State of Israel and its citizens. In said resolutions the government re-directed the Minister of the Interior, once again, to continue to deny the grant of residence visas or stay permits in Israel according to sections 3 and 3A(2) of the law, to any person who was registered in the population registry as a resident of the Gaza Strip and to any resident of the Gaza Strip even if not registered in the population registry.

Photocopies of said resolutions are attached and marked **R/3**.

35. We shall now turn to respondents' position concerning the petition.

Respondents' Position

36. The rule established in section 2 of the Temporary Order Law is that a stay permit shall not be granted to "a person who is registered in the population registry in the Region and to a person who resides in the Region even if he is not registered in the population registry of the Region, other than a resident of an Israeli settlement in the Region."

As specified above, the Temporary Order Law and its underlying purpose were fully referred to in the general legal proceedings which were held in connection with the Temporary Order Law, on which we shall not elaborate herein. In this context it was held that the Temporary Order Law had a security purpose, which derived from the inherent difficulty in having an individual security examination conducted in the Region to a "resident of the Region" as defined in the law (and all the more so when a heightened risk area is concerned such as the Gaza Strip and see above, the words of the Honorable President Barak in **Adalah** and the Honorable Justice Arbel in **Gal-On**) and from the risk that the partial security examination which could be carried out would not predict the potential risk posed by persons who originated from the Region, at times of an armed conflict which was directed against the State of Israel.

37. Several exceptions were established for the rule set forth in section 2 of the Temporary Order Law. Thus, for instance, section 3 of the Temporary Order Law provides that the Minister of the Interior may grant residence visas to male residents of the Region who are over 35 years of age, and to female residents of the Region who are over 25 years of age, "to prevent their separation from their spouses who reside lawfully in Israel." This exception is based on the evaluation of

security agencies that, in general, the risk posed by residents of the Region in said ages is lower, and from the need to balance between the risk posed by them and the grounds underlying their applications.

Following the comments made in the majority judgment in **Adalah**, section 3A1 was added to the Temporary Order Law, in the 2007 amendment, which provides that the Minister of the Interior may approve the applications of residents of the Region whose family members lawfully reside in Israel, for special humanitarian reasons, and upon the recommendation of a professional committee appointed for this purpose. It should be noted, that section 3A1(e)(1) provides that "The fact that the family member of the applicant for a permit or license, who lawfully resides in Israel is his spouse, or that the spouses share common children, will not, in and of itself, constitute a special humanitarian reason."

38. The respondents will argue that petitioners' interpretation of the relevant provision of section 3D of the Temporary Order Law – according to which it concerned another layer of the individual examination rather than an established rule concerning the risk posed by the residents of said risk posing state and/or residents of said risk area with respect of which a professional opinion was given – has no basis in the **Gal-On** judgment, which affirmed the amended version of the Temporary Order Law. Furthermore, petitioners' interpretation does not reconcile with the wording of the Temporary Order Law and its purpose.
39. As specified above, although the IDF forces left the Gaza Strip area, and although the military regime therein ended, the terror organizations have continued to carry out terror attacks against the State of Israel and against its citizens and residents from the Gaza Strip area, including the continuous firing of rockets at the State of Israel and the execution of terror attacks and attempted terror attacks against civilians and IDF soldiers in the crossings between the Gaza Strip and Israel, along the security fence and within the territory of the State of Israel. Said terror attacks derive directly from the activity of the terror organizations against the State of Israel and its residents.
40. Hence, the provision established by the legislator in section 3D, was designated to enable the Minister of the Interior to give a solution to the security needs of the State of Israel and its citizens, against residents of a an area which poses a unique risk, such as the Gaza Strip, in which, according to professional opinion of security agencies, terror activity takes place against the State of Israel.
41. The respondents will argue that the purpose of the amendment of section 3D of the Temporary Order Law was to entrench in the law the possibility that if according to the opinion of the competent security agencies, a special security situation existed in a certain area, the Minister of the Interior would have the authority to determine that a security preclusion existed which prevented him from approving settlement applications of residents of said defined area, according to the exceptions set forth in section 3 and 3A of the Temporary Order Law. It is clear, that the purpose of the amendment was to determine that under these specific circumstances, namely – when the professional opinion of the security agencies is that in a certain territory hostile activity takes place which may put at risk the security of the State of Israel, the Minister of the Interior shall take into consideration said professional opinion.
42. It should be clarified, that with respect to the Gaza Strip there are two combined parameters for this matter. There is no dispute that intensive activity takes place therein which may specifically put at risk the security of the State. Moreover, the State of Israel does not have an effective

control over said territory and it cannot conduct an individual security examination of the residents of the Region from the Gaza Strip.

43. The respondents will continue to argue that petitioners' argument renders the legislator's determination in the last part of section 3D meaningless, as there will be no difference between the residents of the Gaza Strip and other risk posing states, and the residents of the Judea and Samaria Area, despite the different security and political circumstances which exist in these two areas.
44. Already in the first judgment which examined the constitutionality of the Temporary Order Law, President Barak (who was in a minority opinion in said judgment) stated that "The security examinations must be taken very seriously. Therefore, if they cannot be carried out due to the security condition in that part or another of the Region, the individual decision shall be postponed until such time as the examination may be carried out." (HCJ 7052/03 **Adalah v. Minister of the Interior**, IsrSC 61(2) 202 (2006), paragraph 94 of his judgment).

In addition, see the comments of President Barak in paragraph 113 of the judgment: "Obviously, if *de facto* it is actually impossible to receive relevant information from an individual examination of a foreign spouse due to the security condition, there is no alternative but to postpone the decision in his matter until the individual examination may be carried out. Where fighting takes place examinations are not carried out; where it is impossible, due to the security conditions, to conduct an examination, it should be postponed until the conditions change. All of the above will be determined in accordance with the conditions of the time and place, and will not be governed by a blanket prohibition..."

45. In **Gal-On**, the Honorable Justice Arbel specifically discussed the possibility of conducting an individual security examination to the residents of the Gaza Strip. It should be noted that Justice Arbel was of a minority opinion in said proceeding. The Honorable Justice Arbel stated as follows:

The difficulty which I see in the individual examination, concerns the mere ability to conduct a real examination as to the risk posed by a person, based on the gathering of information, in places where the hostility against Israel is severe. It seems to me that even in the absence of a professional opinion on this matter, a distinction may be drawn between the ability to evaluate the risk posed by residents of Judea and Samaria, and the ability to evaluate the risk posed by citizens of risk posing states, as by residents of the Gaza Strip. The Gaza Strip and the risk posing states are hostile entity and states with which Israel has no relations. It is therefore hard to assume that Israel has the ability to carry out a real factual-security examination concerning the foreign spouse vis-à-vis the authorities of said states. Under these circumstances, it will be difficult to obtain reliable information concerning the foreign spouse or to verify the information provided by him. Therefore, it seems that in such cases it will be difficult for the security agencies to practically evaluate, in a satisfactory manner, the risk posed by the foreign spouse for whom status in Israel is requested. Said difficulty is also relevant as aforesaid, with respect to spouses who are residents of the Gaza Strip, where Israel does no longer have effective control (see for instance: the above HCJ 5268/08, paragraph 6), and which is controlled by a terror organization the purpose of which is to harm the security of the State. In view of the above, I am of the opinion, that in general, it is difficult to

carry out an individual examination of the risk posed by spouses who are residents of risk posing states and of the Gaza Strip.

Justice Arbel continued to state as follows:

Should respondent's professional agencies be of the opinion that there is a difference between the Judea and Samaria areas and the Gaza Strip and the risk posing states, with respect to the ability to gather information for the purpose of carrying out an individual examination, I do not cross out the possibility that the arrangement which will be established will differentiate between these territories and will provide that for as long as the hostile situation is in force, the carrying out of individual examinations of family unification applications of foreign spouses originating from the Gaza Strip or risk posing states, is not possible. Hence, family unification in such cases will not be possible.

46. Hence, section 3D of the Temporary Order Law is based on the relatively low effectiveness of the ability to carry out an individual security examination of a resident of a risk area in which hostile activity takes place against the State of Israel and its citizens, taking into consideration the limitations of the examination. Following the above, the government resolution, which declares of the security situation in the Gaza Strip, of which there is no dispute, is based, in its turn, on the explicit provision of the legislator in said section and on the underlying rationale of the Temporary Order Law.
47. According to the above, respondents' position is that the entire purpose of section 3D is to authorize the Minister of the Interior to designate a certain area as an area in which activity takes place which may put at risk the security of the State of Israel or its citizens (like an applicant from a risk posing state, as defined) and therefore, no residence visas or stay permits in Israel will be granted to the residents of such designated areas.
48. And indeed, a review of the **Gal-On** judgment indicates, that the provision in the last part of section 3D, is regarded as a provision which authorizes the Minister of the Interior to determine that a security preclusion exists, which derives from the fact that the applicant is a resident of a risk area, as aforesaid.
49. See for instance, paragraph 7 of the judgment of the Honorable President (*emeritus*) D. Beinisch, in which it was held as follows: "In the context of the amendments which were made after the first judgment, the "presumption" of security risk was not changed and it even seems to have been broadened. Currently the law provides that a person's entry into Israel may be prevented even when the competent security agencies are of the opinion that in the domicile state or area of residence of the applicant, activity takes place which may put at risk the security of the State of Israel or its citizens. **Namely, not only that a specific examination of the risk posed by the spouse or his family members or close environment is not required, but rather, a general profile of dangerous activity which takes place in the place of residence of the spouse, is sufficient.**"
50. Also see paragraph 20 of the judgment of the Honorable Justice H. Melcer, in which it was held that "Therefore, according to the evaluation of security agencies, allowing the entry into Israel of the entire population of applicants, **without any distinction which is based on their place of residence within the Palestinian Authority**, or their being citizens of the four enemy states which are specified in the amended law, and without any distinction which is based on the risk

age group – based on an individual examination of all applicants, **is not expected to give an adequate and effective solution (even if such an option existed – a condition which is not satisfied as aforesaid) to the risk posed by it, as such** (in view of the fact and manner by which it was used to harm the security of the State and the life of its citizens and residents as aforesaid)."

51. The respondents will argue that the above reflects the evident interpretation, and that the above distinction which is entrenched in the Temporary Order Law is materially similar to the distinction which is based on the risk age group, and defines the realm of ability of the security agencies to obliterate the security risk on an individual basis.
52. It should be noted that petitioners' argument according to which respondents' policy indicates that an effective individual examination may be conducted for residents of the Gaza Strip, has no basis. The grant of a permit for a short temporary stay in Israel, or for traveling through it, is not similar, as far as the security risk is concerned, to the grant of a permit according to sections 3 and 3A(2) of the Temporary Order Law, which concern the settling down in the State of Israel, and with respect of which the government resolution concerning the Gaza Strip was adopted.

On this issue see, for instance, the comments of the Honorable President Barak in his judgment in **Adalah**, as follows:

We had some doubts concerning the security purpose of the Citizenship and Entry into Israel Law in view of the provisions of section 3B(2) of the law, which allows the entry of residents of the Region to Israel for work purpose. The petitioners argue that this section indicates that the law has no security purpose whatsoever, in view of the fact that security risk is also posed by the entry of laborers to the territory of Israel. Petitioners' conclusion is that said section reveals the demographic purpose of the law. According to them the purpose of the law is to prevent the migration of residents of the Region to Israel for family unification purposes. **Respondents' response is that the naturalization or settlement of Palestinians, who hold Israeli identification cards, constitutes a special and separate kind of security threat, which does not merely concern the entry into the territory of Israel.** In view of the fact that the presence of these individuals in Israel is not time limited, and in view of the fact that they have unlimited freedom of movement within Israel as well as between Israel and the Region (freedom of movement which is not granted to the holders of temporary permits), there is a heightened concern that they take part in terror activity (see paragraph 180 of respondents' summations of December 2003). We find respondents' response satisfactory. **We were convinced that the distinction drawn between the entry of laborers by virtue of temporary permits and the entry of residents of the Region for family unification purposes, is entrenched in security needs,** and therefore it does not point at any other purpose.

53. Finally, we shall refer to an additional argument raised by the respondents, according to which the government resolution exceeds the realm of the Temporary Order Law due to the fact that it applies to individuals "who are registered in the population registry as residents of the Gaza Strip" and not only to individuals who actually reside there. The respondents will argue that this argument should be rejected.

54. We shall firstly turn to the definition of the term "resident of the Region" in the Temporary Order Law. In the original version of the Temporary Order Law of 2003, a "resident of the Region" was defined as follows: "Resident of the Region – including a person who resides in the Region even if he is not registered in the population registry of the Region, other than a resident of an Israeli settlement in the Region."

55. On August 1, 2005 the first amendment to the Temporary Order Law was published in the official gazette, following which a "resident of the Region" was defined as follows: "resident of the region – a person who is registered in the population registry of the Region, and any person who resides in the Region even if he is not registered in the population registry of the Region, other than a resident of an Israeli settlement in the Region."

56. The explanatory notes of the amendment to the Temporary Order Law provide as follows:

"The Temporary Order Law was enacted according to government resolution No. 1813 dated May 12 2002, in view of the security circumstances that existed from the eruption of the armed conflict between Israel and the Palestinians. It turned out that Palestinians who were originally residents of the Region and who were holding Israeli identification cards following family unification proceedings with Israeli citizens or residents, were increasingly involved in said conflict, as they have exploited their status in Israel for the purpose of carrying out terror attacks, including by providing assistance to the execution of suicide attacks.

It is proposed, for the avoidance of doubt, **to amend the definition of 'resident of the Region' and explicitly clarify that this definition also includes the obvious, namely, those who are registered in the population registry of the Region.**" (bill 173, May 16, 2005, page 624).

57. Hence, a "resident of the Region" is an individual who is registered in the population registry of the Region or an individual who resides in the Region even if not registered in the population registry. See on this issue the judgment of this honorable court in AAA 1621/08 **State of Israel v. Ziad Hatib** (dated January 30, 2011, reported in Nevo).

58. It should be emphasized that the position of the state is that the term "resident of the Region" – at least in the context of the Temporary Order Law which explicitly defines this term – is different from the term "resident of Israel" (or resident of another country) which appears in other laws, and which refers to the place of residence of the individual and which is usually determined according to the maximum ties test. In our case, the definition of the term "resident of the Region" in fact refers also to the issue of nationality, and not only to the physical place of residence.

59. As a general rule, when a state is concerned, the term which reflects a legal connection of **nationality** thereto is citizenship. On the other hand, when the territories of the Palestinian Authority are concerned, which is not a state, the term residency inherently also includes – at least in the context at hand – the legal aspect of nationality (in fact "quasi nationality", in view of the fact that nationality uniquely refers to states). The population registry of the Region does not include registrations of "Palestinian citizens" but rather only of "residents". The legal status of a "resident of the Region" provides various rights which characterize the legal status of citizenship,

such as the right to vote and be elected to the Palestinian Authority. The term "resident of the Region" therefore incorporates the connection of nationality to the Palestinian Authority, and hence, the duty of loyalty towards it.

60. The above is as doubly as important in view of the geographic proximity between Israel and the territories of the Region, and the fact that the residents of the Region **continue to maintain family and social relations with the Region**.

61. In the case at hand, the last part of section 3D refers to the "domicile state" of a person or to his "place of residence" and it's clear purpose is to cope with the special potential of risk posed by a person who has a close geographic connection to an area in which activity takes place which may put at risk the security of the state. Taking into consideration the purpose of the provision, on the one hand, and the close connections of the residents of the Gaza Strip to the place from which they originate, even if they unlawfully reside elsewhere, on the other, respondents' position is that section 3D should be interpreted in a manner which reconciles with the term "resident of the Region" as defined by the legislator. In both cases, the legislator's intent was to refer to the term "nationality", as was clarified above.

It should be further added, that the use of the term "place of residence" (as opposed to "domicile state") was intended to provide a solution to a certain relevant area which is not necessarily a "state", such as the Judea and Samaria Area or a specific and defined part thereof (according to a specific professional opinion) or the Gaza Strip, in view of the fact that the Palestinian Authority, or any part thereof, currently or in any other given time, is not a state, but rather a political entity, which is not a state, but the construction rule referred to above, also applies thereto.

62. It should be noted that petitioners' argument leads to an absurd result, according to which a person who is a "resident of the Gaza Strip", who moved to live in Israel or in the Judea and Samaria Area unlawfully, will be considered as an Israeli resident and at least, as a person who is no longer a resident of the Gaza Strip, as defined in the Temporary Order Law.

63. According to all of the above, the above argument of the petitioners should also be denied.

Conclusion

64. The petitioners do not challenge the constitutionality of section 3D of the Temporary Order Law – which was affirmed by this honorable court in **Gal-On**. Moreover, they do not raise any argument against the factual professional determination of the security agencies that the Gaza Strip is an area in which activity takes place which may put at risk the State of Israel or its citizens.

65. Petitioners' sole argument is that the government resolution exceeds the realm of authority vested in the Minister of the Interior pursuant to section 3D of the Temporary Order Law. It is difficult to find petitioners' argument appropriate, when the Gaza Strip, according to the opinion of security agencies, as well as according to the case law of this honorable court, is an area which is controlled by a government lead by the Hamas organization, the purpose of which is to destroy the State of Israel, and when along the Hamas organization, fundamentalist activity is carried out in Gaza by a host of additional terror organizations which act from the Gaza Strip against the State of Israel and its inhabitants. Under these circumstances the purpose of section 3D of the law is to enable the Minister of the Interior, within the realm of his authorities under the law, to provide a proper solution to the security needs of the State of Israel and its citizens, *vis-à-vis* the

residents of a unique area in which, according to a professional opinion of security agencies, clear terror activity takes place against the State of Israel and its citizens.

For all of the reasons specified above, the respondents are of the opinion that the above argument should be denied.

66. Therefore, the honorable court is hereby requested to deny the petition and obligate the petitioners to pay respondents' costs.

Today, 13 Iyar 5774

May 13, 2014

(signed)

Yochi Genersin, Advocate
Senior Division Director (Administrative Affairs)
In the State Attorney's Office

(signed)

Daniel Marks, Advocate
Senior Deputy in the State Attorney's Office