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**At the Jerusalem District Court**  
**Sitting as a Couert for Administrative Affairs**

**AP 47538-01-14**

In the matter of:

\_\_\_\_\_ **Shweiki et al.**  
all represented by counsel, Adv. Sigi Ben Ari et al.  
Of HaMoked Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger  
4 Abu Obeida St., Jerusalem, 97200  
Tel: 02-6283555; Fax: 02-6276317

**The Petitioners**

v.

**Appellate Committee for Foreigners**  
represented by Jerusalem District Attorney  
7 Mahal Street, Jerusalem  
Tel: 02-5419555; Fax: 02-5419581

**The Respondent**

**Petitioners Request for the Withdrawal of the Petition, for Reimbursement of Court Fees and for a Costs Order**

The petitioners hereby respectfully submit to this honorable court a request for the withdrawal of the petition, for the reimbursement of court fees and for costs and legal fees as follows:

**Request for the withdrawal of the petition and for the reimbursement of court fees**

1. The petition was filed with the court on January 23, 2014, after a protracted and scandalous failure to respond by the three respondents, which continued from the submission of the initial application concerning the children on August 12, 2012, more than a year and a half ago. Beyond the requested remedy, respondents' decision in the application for the registration of the children in the

population registry as permanent residents, the petition was also filed in view of the inappropriate conduct of all respondents, jointly and severally, as an administrative authority, which acts in an unfair and insensitive manner, particularly when children at risk are concerned, all as specified in the petition.

2. Only following the filing of the petition, on March 2, 2014, the petitioners received an initial response from the respondent to their application. Within the context of this initial response, petitioner 1 was summoned for an interview by respondent 3 on March 5, 2014 and was requested to furnish at that date updated documents.
3. The interview was conducted as planned and on March 20, 2014, one year and seven months after the application was submitted, respondent 3's response to the application for the registration of the children was sent, according to which the application was approved and the petitioner was summoned to the bureau to arrange the status of the children on March 26, 2014. Today, March 26, 2014, the Petitioner arrived to the bureau and her children were granted a permanent residency visa in Israel.

Respondent 3's decision dated March 20, 2014 is attached and marked **P/26**.

4. Therefore, in view of the fact that the requested remedy was received, the petitioners request the honorable court to have the petition withdrawn. In addition, and in view of the fact that the petition is withdrawn in a stage in which no hearing has yet been held in the petition, the petitioners request the honorable court to issue an order for the reimbursement of the court fees according to the court regulations (fees), 5767-2007.

#### **Request for a costs order**

5. In addition to the request to have the petition withdrawn and for the reimbursement of court fees, the petitioners request the honorable court to have an exemplary costs order issued in their favor in this case, in view of the exceptional circumstances of the case and for the following reasons.
6. As specified in the petition, the application for the registration of the children, children at risk who are treated by the social services authorities, was submitted to respondent 3 already on August 12, 2012. After the elapse of seven months, during which no response was given, and following seven reminder letters in which the petitioners emphasized time and time again the special condition of the children whose matter was discussed in the petition, the petitioners had no alternative but to file, on March 14, 2013, an appeal against the failure to respond with respondent 1, the appellate committee for foreigners.
7. However, the petitioners received no response within the framework of the appeal as well. As specified in the appeal, time after time, the respondent in the appeal breached the directives of the chair of the appellate committee and refrained from giving his response. Hence, after ten months during which the appeal was pending without any progress, the petitioners had no alternative but to turn to this honorable court with this petition.
8. Hence, only after the petition was filed, the petitioners received, for the first time, a response to their application, and eventually the requested remedy was even granted – one year and seven months after the application submission date and after an appeal against the failure to respond and a petition against the failure to respond were filed.
9. The protracted failure to respond has an even greater effect when the case concerns children at risk, who are under close supervision of the social services authorities and who were removed from the custody of their parents and who need more than anything else stability and safety. Disregarding

the application for the registration of children in the above described condition and the failure to respond thereto, constitute outrageous lack of empathy and insensitivity on respondents' part.

10. Therefore, in view of the exceptional circumstances of the matter, the petitioners are of the opinion that exemplary costs and legal fees should be imposed on the other party, all in accordance with the criteria which were established on this issue in HCJ 842/93 **Al-Nasassreh v. Minister of Construction and Housing**, IsrSC 48(4) 217 (1994) and additional judgments as specified below.

### **The Legal Framework**

11. The criteria which were established in HCJ 842/93 **Al-Nasassreh v. Minister of Construction and Housing** are, as is known, as follows: was the filing of the petition justified in the first place; did the petitioner exhaust his remedies before the petition was filed; was there any delay in the filing of the petition; and was the requested remedy granted as a result of the petition. It should be further noted, that according to case law, the criteria which were established regarding the right to be awarded costs in HCJ 842/93 **Al-Nasassreh v. Minister of Construction and Housing**, are not cumulative criteria, and a petitioner does not necessarily have to meet all of them in order to be entitled to his costs (see HCJ 5662/02 **Rish v. Minister of Transportation**, TakSC 2002(3) 3055).
12. Although a petitioner does not have to meet all criteria in order to be entitled to his cost, there is no doubt that in this petition the petitioners meet all of the criteria which were established, cumulatively. The petitioners have exhausted the remedies exceptionally well prior to the filing of the petition, there was no delay in the filing of the petition and it is clear that the remedy which was recently obtained from the respondents, was granted only after the petition was filed and as a result thereof.
13. Furthermore, as described in the petition, this case does not concern a unique or exceptional mishap. On the contrary, it concerns a typical delay in the appeal proceedings, which regretfully injures almost any person who happens to be involved in such proceedings.
14. On this issue it should be noted that in HCJ 10239/03 **Seltzer v. Minister of the Interior** it was also held that a protracted failure to respond by the authority justifies, in and of itself, to obligate the authority to bear the costs incurred by the citizen who consequently, had to turn to the court:

A petition which was filed with the court, due to the fact that repeated requests which were sent to the authority in writing did not receive a pertinent response, is a result of the authority's omission, and the authority should therefore bear at least some of the costs which were caused as a result of its omission, if no satisfactory explanation for such omission was given.

15. It should be further emphasized, that in AP (Jerusalem) 54853-01-03 **Ilham Sarhan v. Minister of the Interior** (reported in Nevo), the court has extensively discussed the improper conduct and unreasonable procrastination in the appeal proceedings as to the issue of the costs:

**There is no and there can be no dispute that the respondent breached the procedure of the appellate committee** by having submitted his response to the appeal more than eight months after its submission, while the initial term which was available for this purpose

was about one month. However, **respondent's conduct is not characterized only by a significant delay, in view of the fact that it was coupled by an additional layer (which is difficult not to define as serial in our case) of disregarding the decisions of the appellate committee**, which directed him time and time again to submit his response to the appeal, **as of petitioners' right to have their case heard by the appellate committee within a reasonable and foreseeable period of time.**

**Respondent's heavy work load** (as was argued in his requests for extension for the submission of response to the appeal) **cannot justify such a long delay in the submission of his response to the appeal, either.** One of the central objectives underlying the establishment of the appellate committee was to reduce the load imposed on the courts for administrative affairs in issues in which it had jurisdiction. Unreasonable delays in the submission of responses to appeals, contrary to the term which was prescribed in the procedure of the appellate committee, may necessarily cause a proliferation in administrative petitions, which will frustrate the purpose underlying the establishment of the appellate committee.

Relevant to this matter are the comments of my honorable colleague, Judge Moshe Yoad HaCohen in AP (Jerusalem) 294/10 **Saham Salem et al. v. State of Israel**, Minister of the Interior (July 14, 2011)

In this matter I also accept petitioners' position according to which the unfortunate situation, whereby the court for administrative affairs constitutes a "reception desk" for the respondent and that only when an administrative petition is filed with the court, the wheels of bureaucracy start moving faster, is unacceptable. (Emphases added by the undersigned).

16. In the petition before us the respondents acted towards the petitioners as inappropriately as the respondent acted in **Sarhan**. Respondent 2 has likewise procrastinated for many months in giving a response to the appeal, respondent 2 has likewise argued that his heavy work load prevented him from responding to the appeal, respondent 2 has likewise breached the work procedure of the committee, disregarded its directives and petitioners' right to have their matter heard by the committee within a reasonable timeframe.
17. In conclusion, in view of respondents' conduct described above, the court obligated the respondent in **Sarhan** to pay **costs in a considerable amount** of 12,000 NIS, and stated as follows:

In view of the circumstances of the case at hand, I am of the opinion that the filing of the petition by the petitioners was the right and effective thing to do, since only following the filing thereof the respondent has finally deigned to submit his response to the appeal.
18. There is no doubt that the filing of the petition at hand, following an unreasonable delay in making a decision in the application and in the appeal, was the right and effective thing to do, since only after the filing thereof a decision was finally made which gave the petitioners the requested remedy. Hence, they are also entitled to costs according to the criteria established by case law.

19. Respondents' counsel, Advocate Havi Toker, informed that she had no objection to the withdrawal of the petition, but that she objected to have a costs order issued under the circumstances.

Jerusalem, March 26, 2014.

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Sigi Ben Ari, Adv.  
Counsel to the petitioners

(File No. 72011)