**At the Supreme Court** **HCJ 10041/08**
**Sitting as the High Court of Justice**

**The Petitioners** **_____ Hijaz et al.**

represented by counsel, Adv. Adi Lustigman
27 Shmuel HaNagid St., Jerusalem
Tel: 02-6222808; Fax: 02-5214947

v.

**Minister of Interior**
represented by the State Attorney's Office
Ministry of Justice, Jerusalem
Tel: 02-6466590, Fax: 02-6467011

# Updating Notice on behalf of the Ministry of Interior

In accordance with the decision of the Honorable Court dated June 4, 2013, and the requested extensions, this Updating Notice on behalf of the Ministry of Interior is hereby submitted.

## A. General

1. The petition concerns the request made by Petitioner 1 (**the Petitioner**) for approval of her application for permanent residency status (or at least temporary status) in Israel.

2. The Petitioner married a resident of Israel in 1989. At the time of the marriage, the spouse was already married to another woman. The Petitioner and her husband took no action over the years to secure status in Israel for the Petitioner and she lived in the country unlawfully. The couple had three children, the youngest of whom was born in 1993. Unfortunately the Petitioner's husband passed away in 1999 as a result of an illness.

3. At the time the petition was submitted, the Petitioner's application for status in Israel was pending. On August 13, 2008, the professional committee operating pursuant to the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter **the professional committee** and **the Citizenship and Entry into Israel Law** respectively) made a recommendation to provide the Petitioner with a permit issued by the Area commander, which shall be renewed so long as the Petitioner cares for her minor children (hereinafter: **DCO permit**). On December 15, 2008, the committee's recommendation was approved by the Respondent (**the Minister of Interior**). Subsequently, following the first court session held in the petition (on February 10, 2011), the Petitioner's matter was brought to the humanitarian committee once more. The committee re-examined the Petitioner's matter (after receiving the Petitioner's arguments), and reached the

conclusion that its previous recommendation should not be altered. This recommendation was approved by the Minister of Interior and a notice to that effect was provided to the Petitioner.

4. In its responses, the State claimed that there was no room to intervene in the decision of the Minister of Interior, who approved the recommendation of the professional committee, to provide the Petitioner with renewable DCO permits until her children reach adulthood, given the overall circumstances of the case.

5. In brief, the responses explain that the Petitioner married her husband when he was married to another wife. The couple, or more accurately, the Petitioner's deceased husband, did not make an application for status for his wife prior to his demise. As emerges from the petition, the Petitioner and her husband refrained from making such application given their understanding that the Petitioner would not receive status in Israel, due to the policy that was described and the fact that the marriage was bigamous.

6. In the preliminary response, the Respondents note the legal situation as determined by the Citizenship and Entry into Israel Law. The Respondents explain that given the provisions of the Law, the Petitioner was referred to the professional committee operating under Section 3a1 of the law. As noted, in this case, the detailed recommendation made by the committee indicates that it did find **special** humanitarian grounds in the Petitioner's case, as the Petitioner is **the mother of two minor children** (the eldest son was no longer a minor at the time the application was made), who are permanent residents of Israel, and who, after their father's death, remained under their mother's guardianship **and need her to care for them and support them until they reach adulthood**. As such, the Minister of Interior used his discretion under the law to accept the application to grant the Petitioner temporary status in Israel until her minor children reach adulthood (i.e. until age 18).

7. It is our position, as explained, that this decision is reasonable and strikes a balance between the various relevant considerations. On the one hand, the humanitarian imperative to avoid the minor children being left without their guardian (their mother – the Petitioner) after their father's death, and, on the other, the fact that the Petitioner's own circumstances (independent of the children) do give cause for grant of status (as detailed above). All this is noted with attention to, *inter alia*, the current legal situation which is expressed in the Citizenship and Entry into Israel Law.

8. In this context, we add that as the committee noted in its second decision, the humanitarian grounds which provided the basis for the decision that was made, related to the Petitioner's children, some of whom were minors at the time. Now that all the children have grown – this reason no longer exists. The committee stressed that since the Petitioner was party to a bigamous marriage, she would not have been able to obtain status when her husband was alive. As such, there is no room to grant the Petitioner status at the present time, after the husband's death.

9. We note that the aforesaid was illustrated by Petitioner's counsel during the hearing, when she noted that throughout the time her husband was alive, the Petitioner "could not leave the house for fear she would be arrested and separated from her children", and that it was only after the husband's death, when she received permits subject to the decision of the professional committee and the Minister of Interior, that "she has been able to lead a normal life".

## B. <u>The decision dated June 4, 2013</u>

10. Another hearing was held in the petition on June 4, 2013. The following decision was rendered upon its conclusion:

> We have heard party's arguments and expressed our displeasure with the situation in which Petitioner 1 has found herself and the fact that her predicament could not be resolved through the humanitarian process. In light thereof, we repeated our request to State counsel to reconsider a creative solution which might aid the Petitioner in her difficult, unique situation, and to inform us thereof within 14 days.

11. As stated in the extension requests, a decision was made to bring the Petitioner's matter to the Minister of Interior. We note, *inter alia*, that the recommendation of the professional committee dated August 6, 2013 not to grant the Petitioner status, was also brought to the minister's attention.

12. Recently, the Minister of Interior considered the Petitioner's matter. The minister agreed to determine, **as a compromise and beyond legal requirement,** that the Petitioner would be given a DCO permit (the grounds for this decision are detailed below).

## C. The Respondent's position

13. **From a legal standpoint**, the Respondent's position is that there is no room for intervention in the original decision. The premise is that the Petitioner was party to a bigamous marriage, and therefore – even if her husband had been alive, **she would not have received status**. Additionally, this case cannot be considered independently of the larger issue of bigamy, and this matter was explained in detail in the response submitted on November 14, 2010 (we refer to the authorities cited therein in reference to bigamy, AP 369/07; HCJ 5291/05).

14. In this context, the decision to issue the Petitioner renewable stay permits until her children reach adulthood is reasonable and strikes a balance between the various relevant considerations. On the one hand, the humanitarian imperative to avoid the minor children being left without their guardian (their mother – the Petitioner) after their father's death, and, on the other, the fact that the Petitioner's own circumstances (independent of the children) do not give cause for grant of status (as detailed above). All this is noted with attention to, *inter alia*, the current legal situation which is expressed in the Citizenship and Entry into Israel Law and the Ministry of Interior's policy position that being a parent to a minor who is a resident/citizen of Israel does not constitute sufficient grounds for granting a foreign resident permanent residency status.

15. In this context, our legal position is that the petition must be dismissed on grounds of no cause for intervention. It should be recalled that, at the end of the day, the discretion granted to the Minister of Interior in such matters is broad and the Court does not readily intervene therein (see ruling in section 32 of the response dated November 4, 2010).

16. The aforesaid notwithstanding, given the comments made by the Honorable Court during the hearing, the Minister of Interior has agreed, **as a compromise and beyond legal requirement,** that the Petitioner would be given a DCO permit (subjected to accepted procedures, including on condition to criminal or security impediment arises, etc.). As such, the Petitioner will in fact be able to continue to live in Israel lawfully and remain with her children.

17. Our position is that this is a reasonable balance and a practical and reasonable solution and we therefore ask, that subject to this proposition, the petition be dismissed.

18. In this context we emphasize that in keeping with the policy of the Minister of Interior, the minister considers granting a temporary residency visa in Israel only in the **most exceptional cases**, in which an Israeli stay permit alone cannot meet the exceptional humanitarian need. In this way, the Minister of Interior balances between the humanitarian grounds presented by the applicant and that provisions of the Citizenship and Entry into Israel Law and the minister's overall policy of not

granting Israeli residency visas to foreign nationals in in particular to Palestinians. On this issue, we refer to remarks made in HCJ 6883/06 **Nasser v. Minister of Interior** PadOr 867-6-610 (2010):

> The Petitioners' application for family unification has been accepted and the Petitioner was given a DCO permit as per Section 3(2) of the Citizenship and Entry into Israel Law. On the other hand, the Petitioner's application for status on humanitarian grounds, as stated in Section 3a1(a) of the Citizenship and Entry into Israel Law was rejected on the grounds that the Petitioner "is not dependent, financially or otherwise, on her mother, who had made the application (Notice on behalf of the State, December 27, 2009, Appendix 1). Does this rejection constitute cause for the Court's intervention? Our response is no…
>
> The updating notices indicate that the Respondent's actions were in keeping with the provisions of Section 3a1(a) of the Citizenship and Entry into Israel Law, that the Respondent reviewed the recommendation made by the professional committee which had determined that the circumstances of the Petitioners' lives did not come under the definition of "special humanitarian grounds", and ultimately decided to reject the application. The Respondent also noted that the rejection of the humanitarian application was based, *inter alia*, on the fact that the Petitioner received a DCO permit as part of her family unification application, such that the rejection of the humanitarian application did not cause her separation from her spouse and children. Moreover, the Petitioners did not establish the facts proving that the Petitioner's case presents special grounds for issuing a temporary residency visa specifically, though, one can understand why the Petitioner is seeking the same status as her close relatives.

See also HCJ 4244/10 **Jal'ud v. Ministry of Interior** (May 12, 2011).

19. We reiterate that in the present case, our legal position is that there is no cause for intervention in the original decision whereby there is currently no justification to grant the Petitioner stay permits after her children reach adulthood. The decision of the Minister of Interior to grant the Petitioner renewable DCO permits therefore constitutes a compromise which goes beyond legal requirements.

20. Therefore, the Respondent will once again claim that subject to the above proposition, the petition must be dismissed.

Today, 30 Cheshvan 5774
3 November 2013

[signed]
Uri Keidar
Senior Deputy, State Attorney's Office