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

AP 57730-02-13

Before the Honorable Judge Dr. Y. Marzel

In the matter of:

_____ **Hamidat et al.,**
all represented by counsel, Adv. Noa Diamond 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.

Chair of the Appellate Committee for Foreigners et al.,
all represented by Jerusalem District Attorney's Office
7 Mahal Street, Jerusalem
Tel: 02-5419555; Fax: 02-5419581

The Respondent

Petitioners' Response

Following the decision of the honorable court dated February 10, 2015, the petitioners hereby respectfully submit their response to respondents' notice dated February 9, 2015.

1. Respondents' notice dated February 9, 2015, was submitted together with respondents' decision of the same date, according to which petitioners' family unification application was denied again (hereinafter: the **decision** or **respondents' decision**) on the grounds of "conflict of interests". The respondents are of the opinion that the fact that said decision was given, rendered petitioners' contempt of court motion redundant (the **motion**).
2. However, petitioners' position is that the respondents continue to contempt the honorable court's judgment. Indeed, the respondents removed their omission and complied with the judgment in the sense that they made a new decision in petitioner 2's matter. However, the judgment had two operative components: along the component of a renewed decision in the application, the second component consisted of a list of considerations which the respondents were required to take into account. Petitioners are of the opinion that in addressing these considerations the respondents paid lip service at best, and "directly opposed" them in the worst case, and that in so doing the

respondents continue to contempt the court's judgment. The petitioners will also argue herein that respondent's decision constitutes "an appeal without an appeal" against the judgment. Finally, the petitioners will request to schedule a hearing before the honorable court in the above motion.

3. In view of their importance to the case at hand, we shall specify in detail again the considerations which were specified by the court as considerations which should have been taken into account by the respondents. Thereafter, we shall analyze respondents' decision. It should be emphasized that the petitioners will refer to respondents' decision only from the contempt of court perspective, and will not specify all of their arguments concerning respondents' decision.

The Court's judgment: instructions to the respondent

4. The honorable court found several flaws in respondents' decisions – the decision being the subject matter of the decision as well as the decision which was made while the petition was pending. The flaws, in a nut shell, were as follows:
 - a. The decision to deny the family unification application was based on section 3D of the Temporary Order (the "security clause"). However, as it turned out in the hearing, the denial was not based on "security reasons" but rather on "conflict of interests, *per se*", and it was not argued that petitioner 2's presence in Israel posed any security threat. The respondents – and security agencies – did not point at any specific risk arising from petitioner 2. As stated by the court: **"Even if we assume that the respondent has in his possession an opinion of the competent security authorities in petitioner 2's matter under the circumstances of the matter, it is a general opinion which does not point at any specific risk...** In that regard it should be added, beyond need, that *ab initio*, the issue of such dual loyalties and conflict of interests is not a simple issue... In view of the above, **even if it is a relevant consideration, its relative weight under the circumstances is questionable and this fact should have been reflected in the decision concerning petitioner 2's matter** (Emphases added, N.D.). In addition the court stated that the fact that petitioner 2 stayed in Israel by virtue of interim orders, which were not objected to by the respondent, reflected on the strength of the arguments concerning the specific security risk which arose from the alleged conflict of interests argument raised against petitioner 2.
 - b. It is true that there are judgments which hold that a family unification application may be denied on the grounds of conflict of interests; However, the court **accepted petitioners' arguments** according to which the applications which were denied in said judgments were applications for a **permanent residency status** whereas in the case at hand the application was for **DCO permit**. In addition, in other cases additional data existed beyond the general "conflict of interests" argument, such as data concerning specific intelligence information. The strength of a denial due to "conflict of interests" should be examined taking into consideration additional factors, such as a specific concern or the delivery of false information. Such factors were not brought, were not proved and were not argued in petitioners' case.
 - c. The petitioners provided detailed explanations concerning the scope of petitioner 2's employment and position with the Palestinian Authority, as a position of a civilian-academic nature. The phrasing of the second decision of respondent 4 does not indicate that any weight was assigned to said details, despite the consent expressed in the hearing of respondent's willingness to examine them.
 - d. Respondent's position should be balanced against petitioners' right to family life. It is a family unit which is maintained in Israel for about 14 years. Respondent's decisions do not assign enough weight to this matter.

- e. An administrative decision in cases of this sort should meet the proportionality requirement. The decisions made in petitioner 2's case do not address the proportionality tests particularly in the sense that petitioner 2 repeatedly emphasizes that he does not request – and also cannot receive – permanent residency status in Israel, and he even expressed his consent that the requested permit would not constitute part of the family unification application "procedurally".
5. The court concluded its judgment by revoking respondents' decisions, and held that petitioners' matter would be remanded to the administrative authority **"for the purpose of making a new decision by assigning proper weight to all relevant considerations."**

Respondents' decision dated February 9, 2015

6. Before the petitioners turn to analyze respondents' decision, they wish to emphasize a crucially important point. This hearing is conducted in the framework of an application according to the Contempt of Court Ordinance. The petitioners have many and diverse arguments concerning respondents' decision. However, their arguments below refer only to what they regard as relevant to the contempt of the judgment dated September 18, 2014. The petitioners reserve their entire arguments for the future, certainly, to the extent required.
7. In general, the petitioners will argue that respondents' decision indicates, that instead of filing an appeal against the judgment of the court – an option which was available to them – the respondents chose not to comply with several instructions of the court concerning the considerations which should be taken into account in petitioners' matter. Hence, the respondents continue contempt the court's judgment. We shall specify below the instructions which the respondents failed to comply with:

The issue of the normative framework

8. As stated in the judgment, the normative framework for respondents' decision is **section 3D of the Temporary Order**. Contrary to respondents' statement in their decision, **it is not a matter which was decided by the court** (page 3 of the decision) but rather a legal framework which was **outlined by the respondents themselves** – and see paragraphs 23-24 of the decision of the chair of the appellate committee being the subject matter of the petition, **and the words of respondents' counsel in the hearing, page 2 lines 6-7 of the protocol of the hearing**. Hence, this is the normative framework of the hearing and respondents' decision must satisfy the conditions specified in section 3D (for instance, the existence of a specific-personal risk) and in the case law which interpreted it (for instance, the **Dakah** judgment) while making a decision in petitioners' matter.
9. It should be emphasized as was repeatedly argued, that respondents' decision does not satisfy the above conditions – for instance in the absence of an argument concerning a specific threat and inability to point at a probable risk. The petitioners discussed this issue at length in the petition and will not reiterate their arguments on this issue. It should only be noted that the respondents emphasize again that there is no specific objection of security agencies in petitioner 2's matter.
10. However, **the respondents change their arguments and widen the scope thereof**, as now suddenly argue that their decision may be made **"by virtue of his general and broad authority** (of the Minister of Interior, N.D.) **and by virtue of the principle of state sovereignty** (page 3 of the decision). This is a **new** argument which **was not raised before the honorable court**. It deviates from the normative framework of the petition and therefore deviates from the instructions of the judgment.

11. The respondents cannot, in their distress, look for a new normative framework for making their decision, only because they cannot make the decision they desire to make – denial of the application – under the terms and in the normative framework upon which the judgment of the court was based.
12. Beyond need, we shall add that even if respondents' decision was made under the general discretion vested in the Minister of Interior, the court's holding in **Dakah** applies to the case at hand even more forcefully, as there is no dispute that in this case – which has been examined over a long period of time – there is no specific threat or any other aspect which may justify the denial of the family unification application. It should be further added that a decision made in the framework of the general discretion should also be founded, and a mere statement that "it is inappropriate" to give the petitioner a stay permit is not sufficient in this context.

The issue of the temporary orders

13. As aforesaid, the court mentioned the long period of many years during which the petitioner stayed in Israel by virtue of temporary orders, which were not objected to by the respondents and the abolishment of which was not requested. It was regarded by the court as an indication that no specific security threat was posed by the petitioner.
14. The respondents (page 3 of the decision) now halfheartedly admit that "apparently, the revocation of the temporary judicial orders which were given to the applicant should have been requested." Nevertheless, they state that "with all due respect, it seems that this fact does not carry much weight under the circumstances." **The petitioners will argue that if the respondents were of the opinion that the honorable court erred in its judgment with respect to the meaning that should be given to the temporary orders which were issued in petitioner's matter, they could have turned to the Supreme Court and appeal the judgment.**
15. The respondents continue to explain that there is a difference between the grant of status and temporary stay in Israel by virtue of judicial orders. They also note that there is no specific risk in petitioner's case but that "the conflict of interests issue is not necessarily based on the existence of such a specific risk." Again, the respondents widen the scope of their arguments and "improve" their own position, instead of appealing the judgment.

The issue of the relevant judgments

16. The respondents refer to the distinction drawn by the honorable court between the judgments on the conflict of interests issue and petitioners' case at hand (page 4 of the decision), and particularly to the fact that in such cases – according to the law which prevailed at that time – the application for a permanent residency status could have been approved, as opposed to petitioner's case in which only a DCO permit was requested (especially in view of petitioners' consent not to regard the grant of a DCO permit "as a family unification application from a procedural aspect").
17. On this issue too, **the respondents disagree with the court's holding** and state that "our ministry does not regard the fact that in those cases family unification applications were concerned, a sufficient reason to draw a distinction under the circumstances which justifies a deviation from prevailing case law."
18. Again, if the respondents refute the **legal holdings of the court**, and are of the opinion that they were erroneous, the right and proper way to act was to appeal said holdings, rather than to make a new decision which rejects the court's holdings. By refusing to assume upon themselves the clear

distinctions made by the court in its judgment, to internalize them and act upon them ("We do not find room to differentiate between the grant of permanent residency status and the grant of a temporary status in a conflict of interests situation, in general, and under the circumstances of the matter, in particular") the respondents **contempt** the court's judgment.

Description of petitioner's position

19. According to the judgment, the respondents were required to examine the detailed data and explanations provided by the petitioners concerning the position held by the petitioner with the Palestinian Authority, and petitioners' argument that it was a position of a civilian-academic nature, after respondents' second decision, which was given in the framework of the hearings in the petition, has completely disregarded the detailed materials which were transferred concerning the position held by the petitioner.
20. Now, in their decision, the respondents refer (page 2) to the description of the contents taught by the petitioner. However, the respondents address these contents in a partial, selective and purposeful manner. The respondents mention only the contents which pertain to the Palestinian Authority, and disregard the vast majority of the transferred material, which is general material in the area of human rights, international law, international standards which apply to police work, police work in democratic regimes, rights of minors and women, etc. On this issue the petitioners refer again to their response which was submitted in the framework of the petition on May 22, 2014, and its attachments.
21. Hence, it is clear that respondents' consideration of the materials which were transferred to them was minimal. They did not assign these materials proper weight and did not consider them with the proper thorough seriousness, and for this reason also they contempt the court's judgment.

The proportionality tests

22. By the end of their decision (page 5) the respondents address the court's instruction to examine petitioners' matter from the proportionality perspective. The respondents argue that "There is an intrinsic difficulty in the argument that a decision which denies a family unification application based on substantial and pertinent grounds, is disproportionate because the possibility to "limit the visa" was not considered. With all due respect, when it was found that a person who requested to receive status in Israel, to reside in Israel, to maintain family life in Israel, was in a conflict of interests situation due to the position held by him with a foreign state or authority, there is no room to "limit the visa" only due to the principle of proportionality, when the balancing point between the right to family life and the denial of the application on the grounds of conflict of interests favors the latter."
23. If we remove from this paragraph its cautious wording, its evasive statements such as "there is a difficulty" or "with all due respect", we will find out that the respondents literally refuse to follow the court's instruction. The respondents did not consider the option to "limit the visa" under the proportionality tests, but simply reiterated their original position, while rejecting the court's stipulations. It is clear that the respondents do not agree with the court's legal holding and therefore chose to disregard its instructions. As was repeatedly said – the main road in such a case is to file an appeal. However, the respondents chose to take a crooked and evasive path, and to contempt the judgment of the court.

Conclusion

24. The respondents dragged their feet and failed to timely make a new decision according to the judgment, and have thus acted in a manner which constitutes a contempt of court, which forced the petitioners to return to the court and file the above captioned motion. When the decision has eventually been made, it turned out that the respondents continue to contempt the court's judgment. In a detailed decision, which was cautiously and evasively drafted, the respondents reject one by one the stipulations and instructions made by the honorable court in its judgment, stating that this is done "with all due respect" and that respondents' ministry holds a different opinion.
25. When a party to a legal proceeding does not agree with the stipulations or instructions of the judgment, the option available to it is to file an appeal – in this case, an appeal as a matter of right. Having failed to do so, **the respondents are estopped from acting or making decisions contrary to the stipulations and instructions of the judgment.** When they act in this manner despite the estoppel, they continue to – materially – contempt the judgment of the honorable court.
26. The respondents chose not to bring their position concerning the judgment to the Supreme Court. In the end of their decision the respondent note that the petitioners can submit an objection against the decision to the court of appeals, by virtue of section 13(24) of the Entry into Israel Law. It should be pointed out that such an objection is submitted and rejected, the petitioners will be entitled to submit an administrative appeal as a matter of right to the district court (section 13(31)(a) of the Entry into Israel Law). However, the petitioners will not have the right to file an appeal with the Supreme Court should their appeal be denied as well. Hence, it seems that the respondents did whatever they could do to prevent the issue being the subject matter of this petition from being heard by the Supreme Court. Hence, in the manner by which they contempt the court's judgment, the respondents also violate petitioners' procedural rights and make a cynical and inappropriate use of the legal proceedings established by law, particularly in view of the amendment to the Entry into Israel Law and the establishment of the court of appeals.
27. As stated in the outset, the petitioners have many more arguments in connection with respondents' decision. However, their response herein is submitted in the framework of a contempt of court motion. The petitioners are of the opinion that respondents' decision continues to contempt the court's judgment for all of the above specified reasons, and request the court to hold the same.
28. In view of the complexity of the matter, the petitioners are of the opinion that a hearing should be held before the court in the arguments raised in their response. In addition, the petitioners repeat their request for costs.

Jerusalem, February 11, 2015.

Noa Diamond, Advocate
Counsel to the petitioners