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Date: February 9, 2014
In your response please note: 26666

To:
The Advisory Humanitarian
Committee to the Minister of Interior
125 Menachem Begin Road
Tel Aviv

By Registered Mail
Return Receipt Requested

Honorable Chair of the Committee,

Dear Sir,

Re: **Humanitarian application for A/5 temporary residency status in Israel For Mrs. _____ (Ziyadah), ID No. _____, the wife of Mr. _____ Ziyadah, ID No. _____.**

On behalf of my client, Mrs. _____ Ziyadah, ID No. _____ (hereinafter: _____ or **Mrs. Ziyadah**), I hereby write to the honorable committee and request that her status be upgraded and that temporary residency status in Israel be given to her, for the humanitarian reasons specified below.

A power of attorney is attached hereto.

Preface

1. This exceptional application concerns a West Bank resident, the wife of a disabled person who is totally confined to his home, and a mother of three young children, all permanent Israeli residents. The applicant, who has been residing in Israel for about a decade by virtue of a family unification procedure undertaken by her together with her husband, holds, by virtue of said procedure, stay permits renewable from time to time. However, the fact that the applicant, being the central pillar of her family, cannot accept permanent status in Israel extremely encumbers the life of this unfortunate family. It encumbers the father of the family, a resident, who needs applicant's full assistance and support and who is constantly concerned about the future of his family, as well as the spouses' children, who are also permanent Israeli residents. Along the constant feeling of instability and uncertainty, applicant's current condition causes a direct and unreasonable harm to the quality of the family's life, and particularly, to the quality of the life of the father of the family and to the quality of the life of the children. Hence, after a description of the factual background of the life of applicant's family, we shall review the legal backdrop against which this application is submitted. In this application we shall review, *inter alia*, the legal developments on the issue of status upgrade to applicants who have been residing in Israel for many years and regarding the handling of humanitarian applications submitted by applicants to whom the Citizenship and Entry into



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Israel Law (Temporary Order), 5763-2003 (hereinafter: the **Temporary Order**) applies.

The application is supported by applicant's affidavit and additional documents.

The story of _____

2. _____ was born in 1975, in Sa'ir, a village located in the Hebron district, to a family of fifteen members, and lived in the Area until she married her husband, Mr. Ziyadah, in 2001.
3. Several months after _____ was born, it became evident that she was struck with polio. As a result of the disease by which she was stricken, the right leg of _____ did not adequately develop and she had to undergo two surgeries the purpose of which was to improve the quality of her life. In the framework of these surgeries, the last of which was carried out in 1997 in Jordan, _____ had a platinum implant in her leg.
4. On February 3, 2001, _____ married her husband, Mr. _____ Ziyadah, a permanent Israeli resident who was diagnosed a year earlier with Multiple Sclerosis (MS). During their marriage the Ziyadah spouses had three children. The daughter _____ was born in July 17, 2003, the son _____ was born on October 6, 2005, and the daughter _____ was born in May 2, 2009. The three children of the spouses are registered, like their father, as permanent residents in the population registry.
5. Unfortunately, over the years, Mr. Ziyadah's disease became more aggressive and his condition has deteriorated. Currently, Mr. Ziyadah is confined to his home and needs substantial assistance in all daily actions, including the simplest ones. Mr. Ziyadah's body which does not function degenerates, and he cannot even hold light objects in his hands. Due to his condition Mr. Ziyadah needs assistance with eating and drinking, going to the bathroom, washing, moving from the bed to a chair and *visé versa*. _____, his wife, assists him to carry out all of the above actions and in fact, is with him almost twenty four hours a day.
6. However, along the attentive care of her husband, _____, a loving mother of three young children, must also function as the head of the family. In this role _____ prepares the children for school, assists them with their homework, goes with them to health fund appointments etc., etc.
7. In addition, _____ is required, as the head of the family, to carry out all other household chores. Accordingly, among other things, _____ is the one who applies to the authorities for the purpose of providing them with documents associated with her husband's illness and which are required from time to time by the various institutions. _____ is the one who must schedule medical appointments for her husband and coordinate his arrival thereto. In addition _____ must do the household shopping and make sure that her children's needs are fully satisfied.
8. In the framework of her above roles _____, whose life is not easy to begin with, is encumbered by many and unnecessary difficulties. Among other things, _____ is not allowed access to the National Insurance Institute which she must occasionally visit in connection with her husband's

affairs. In addition, _____ who is prohibited from obtaining a driver's license and from driving a car in Israel is forced to beseech strangers for help whenever she, her husband or the family's children need to reach a certain destination. In addition, as a result of the fact that she is prohibited from obtaining a license and travel independently _____ is forced to leave her eldest daughter, once every few days, with her husband and go shopping by herself using public transportation, which is very time consuming for both mother and daughter who are anyway very busy in view of the difficult situation at home.

9. Finally, the difficult situation of the applicant who acts as a sort of a "single" parent to her children, injures her important family relations with her parents. Whenever _____ wishes to travel with her children to visit her parents who reside, as aforesaid, in the Sa'ir village, _____ must go through the Qalandiya crossing on her way back to Jerusalem. Thus, despite the fact that the three children are entitled, as permanent Israeli residents, to go through any crossing or checkpoint as they may wish on their way from the West Bank to Jerusalem, their mother is forced to take her minor children with her to the Qalandiya crossing, which other than the fact that it is far from Sa'ir, is notorious for being congested and unpleasant. Hence, a mother of children and a daughter of parents is found in a situation in which she refrains from taking her children to Sa'ir to prevent them from going through the unpleasant experience of going through the Qalandiya crossing.
10. There is no doubt that had _____ been given temporary status, which would have enabled her to obtain a driver's license and to drive in Israel, the quality of the life of said unfortunate family would have improved immensely. The father of the family could have left the house more often and the family could have functioned independently without having to beseech the help of others whenever they had a medical appointment or whenever the children had to be taken to school, to a doctor's appointment or anywhere else.
11. Having described the factual circumstances of the application we shall now review the legal backdrop against which this petition is filed.

Legal developments regarding the humanitarian mechanism established in the Temporary Order

12. Section 3A1(a) of the Temporary Order provides that:

Notwithstanding the provisions of section 2, the Minister of Interior may for special humanitarian reasons, upon the recommendation of a professional committee appointed for this purpose (in this section: the committee) –

- (1) grant **temporary stay permit** Israel to a resident of the Area or to a citizen or to a resident of a country listed in the schedule, **whose family member lawfully resides in Israel;**
- (2) approve an application for a stay permit in Israel to be granted by Area commander to a resident

of the Area whose family member lawfully resides in Israel.

13. As is known, the Temporary Order extremely limits the possibility of granting status in Israel to applicants defined by it as residents of the "Area", even if they married Israeli residents or citizens. Therefore, it may be reasonably assumed that precisely in view of the severe injury arising from the sweeping limitation imposed on the grant of status prescribed by the Temporary Order, in exceptional humanitarian cases, like applicant's case, in which the law does not limit the grant of status, but rather empowers the committee to grant temporary status where humanitarian circumstances exist, such authority would be exercised in a fair and educated manner.
14. Relevant to our case are the words of the honorable court in its judgment in HCJ 4541/95 **Alice Miller v. Ministry of Defense**.

Legislation that violates a basic human right must be construed narrowly, 'with the aim of giving said right maximum viability rather than limiting it in any way beyond what is clearly and expressly stipulated by the legislator' (the comments of Justice Shamgar in CA 732/74 *HaAretz Newspaper Publishing Ltd v. Israel Electric Co. Ltd* [26], p. 295).

(Emphasis added. B.A.)

15. The importance of a broad and considerate implementation of the humanitarian mechanism entrenched in the Temporary Order, was also expressed by this honorable court in its judgment dated January 11, 2012 in HCJ 466/07 **Gal-On v. State of Israel** (hereinafter: **Gal-On**).
16. Accordingly, *inter alia*, the Honorable Justice Arbel stipulates in paragraph 26 of her judgment in **Gal-On** as follows:

From the date of its enactment as a temporary order, the law was extended twice by the Knesset and ten additional times by government resolutions which were ratified by the Knesset plenum. Twelve extensions. These and other changes occurred in the security arena, some of which are more significant than the others, but a significant change in the law – none whatsoever. **An examination of the changes which were made in the law during the years which passed from its enactment raises, at least, a concern, that they were intended to entrench the severe impingement embedded in the law, rather than to mitigate it... The above stems from the fact that despite the established possibility to grant a temporary stay permit or a stay permit in Israel in special humanitarian cases (section 3A1 of the law), the data presented by the state raise, at least, queries concerning the criteria according to which the humanitarian committee operates and the manner of their application.**

(Emphasis added – B.A.).

17. The Honorable Justice Rubinstein also noted in paragraph 48 of his judgment that the humanitarian committee was making a limited use of the humanitarian mechanism established in the Temporary Order :

The authorities should always be "on the alert" both with respect to the security needs as with respect to the possibility to create effective measures which are less injurious. **They must also make an effort and examine ways to improve the handling of exceptional cases: both within the framework of the humanitarian committee**, as by thinking of additional mechanisms which may assist those couples, who were deprived, for the time being, of the opportunity to jointly establish their home in Israel...

(Emphasis added – B.A.)

18. The Honorable Justice Hendel, also emphasized, in paragraph 5 of his judgment, the importance of the humanitarian committee for the purpose of reducing the injury caused to the applicants, and ruled as follows:

I am of the opinion, without setting limits, that there is room to interpret the powers of the Committee more broadly than it is currently done. The amended law provides in section E(1) that:

"The fact that the family member of the applicant who applies 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;"

This provision, like almost any provision, may be interpreted narrowly or broadly. I am of the opinion that it should be interpreted somewhat narrowly, in a manner which would nevertheless expand the discretion of the humanitarian committee

(Emphases added – B.A.)

19. The Honorable President Beinisch adds in paragraph 16 of her judgment:

The injury should, and may be mitigated by making a change in the arrangement – either by making an individual examination of the family unification applicants; by giving the opportunity to refute the presumption of dangerousness; or by the **expansion of the possibility to obtain status in Israel for humanitarian reasons.**

(Emphases added – B.A.).

20. Hence, both the legislator and the honorable court gave the committee the required power and tools for the implementation of the humanitarian mechanism established in the Temporary Order, in the broadest and most optimal manner. Therefore, also in the case of the applicant at hand, the committee should interpret its powers under the Temporary Order broadly, in a manner which would grant the entire family the sense of stability and security which it so desperately needs as well as a better quality of life which it deserves to have. The comments of the honorable court in **Gal-On**, justify that in the case of the applicant at hand the committee would exercise its power in a broader and more beneficent manner which would grant the applicant in view of section 3A1(a)(1) actual status in Israel.

Legal developments on the issue of status upgrade

21. Along the comments made by the court in **Gal-On** regarding the humanitarian mechanism established in the Temporary Order the justices of the Supreme Court made it clear to the legislator unequivocally in a host of recent judgments that it should take into account the condition of individuals who have been residing in Israel for a protracted period of time in the framework of family unification applications and undergo a security check on an annual basis.
22. Accordingly, *inter alia*, Justice Vogelman states in paragraph 19 of his judgment in AAA 6407/11 **Dejani v. Minister of Interior** (hereinafter: **Dejani**) that:

Under these circumstances, it seems that the provision regarding the stay of status upgrade of individuals, who fall under the transitional provisions, is no longer necessary in view of the security purpose of the Temporary Order Law – a purpose which was emphasized by this court when it examined the constitutionality thereof. Firstly, as far as the latter are concerned, not only that an individual examination may be conducted, but rather, such an examination is actually conducted once annually upon the renewal of the permit. Secondly, these individuals were subordinated, for over a decade, to the examination of the security agencies, in view of the fact that permits are renewed only in the absence of security preclusion. Thirdly, even after a person's status in Israel is upgraded – from residency under a DCO permit to residency under an A/5 temporary residency visa (and this is the category with which we are concerned) – he continues to be subordinated to security examination, in view of the provisions set forth in respondent's procedures within the framework of the graduated procedure.

23. Many of the Supreme Court justices join this position including Justice Barak-Erez who states in paragraph 38 of her judgment dated January 1, 2014 in AAA 4014/11 **Abu 'Eid v. Ministry of Interior** that:

From a broader perspective which veers from the facts of this case, once again it becomes clear that a statutory consideration of the status arrangement of individuals

whose status upgrade was "frozen" and they have been hanging in this intermediate state of "between heaven to earth" for years, is required. I can only join in this regard the words of the Deputy President M. Naor in DeJani according to which **"it would be appropriate... to take into consideration the condition of the individuals who do not receive an upgrade despite the fact that they have commenced the graduated procedure such a long time ago** (Paragraph 6 of her judgment).

(Emphasis added, B.A.).

24. All of the above indicate that applications such as the application of the applicant in the case at hand, who on the one hand, has been undergoing a family unification procedure for so many years, and on the other, satisfies the humanitarian exception established in the Temporary Order, enable the honorable committee and even obligate it to interpret its power in an optimal manner which would grant her temporary status in Israel. Said status will grant the applicant and her family a sense of stability and security which they so desperately need and on the other hand will provide this unfortunate family whose daily struggle is not easy by any standard, a better quality of life. To conclude the legal argument we would also wish to refer to considerations which pertain to the child's best interest and the right to family life upon which this application is based as well.

Considerations pertaining to the child's best interest and the right to family life

25. The considerations which pertain to the best interest of the children Amira, Salah and 'Eina, should be the primary considerations of the honorable committee while discussing the arrangement of the status of their mother. Relevant to this issue are the words of the court in AP (Jerusalem) 705/07 **Mari Lovo Romero Muskara v. Minister of Interior** (reported in Nevo):

The right to family life is a fundamental constitutional right recognized by Israeli law as well as by international law. This right has two aspects: the first, the right of the Israeli parent to maintain ongoing relations with his child and not to be separated from him, and the other, the right of the minor to family life while his best interest mandates not to separate him from his parents and maintain ongoing relations with each one of them. From the minor's perspective his separation from one of his parents may have severe ramifications on his life and development. It should be emphasized that the parents' right to maintain relations with their children is independent and distinct of the children's right to maintain close and ongoing relations with their parents.

... In the examination of the humanitarian circumstances of the case at hand, the consideration of the child's best interest is a consideration of substantial importance, if not a superior consideration. Indeed, other considerations may be added to this consideration, but these are mostly secondary considerations which are not as equally as

important as the primary and central consideration of the child's best interest.

(Emphases added, B.A.)

26. In addition, it was held by case law that the child's best interest should be taken into account while considering whether or not **status should be granted** to his foreign parent, despite the fact that the child's lawful status in Israel does not, in and of itself, grant his parent status:

This decision (**to grant the petitioner A/5 status**, B.A.), in petitioner's case, is appropriate in view of the fact that as a matter of principle, under such circumstances humanitarian considerations should be taken into account, despite the absence of a vested right for status. **And what are these humanitarian considerations? Without exhausting the matter, it is clear that under such circumstances considerations of the child's best interests as well as considerations of the right to family life, should be taken into account.** Although the child's status does not grant, in and of itself, status to his parent, case law recognized the principle according to which **certain humanitarian cases may justify, and even require, a deviation from the rule that a child does not create status for his parents** (see for instance, HCJ 4156/01 **Dimitrov v. Ministry of Interior**, IsrSC 56(6) 289, 294 (2002); also see HCJFH 8916/02 **Dimitrov v. Ministry of Interior** (not reported, [reported in Nevo], July 6, 2003); AAA 10993/08 **A. v. State of Israel** (not reported, [reported in Nevo], March 10, 2010); see also, AP (Jerusalem) 529/02 **Burna v. Minister of Interior** [reported in Nevo] (August 26, 2002); AP (Tel Aviv) 1295/03 **Shabasof v. Minister of Interior** [reported in Nevo] (March 8, 2005)). Furthermore, the separation of a minor who is an Israeli citizen from his parent, involves, at least ostensibly, a certain violation of the minor's right to family life (see and compare, **Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of Interior** (not reported, [reported in Nevo], May 14, 2006); see also, AP (Tel Aviv) 3111/08 **Salamovah v. State of Israel** [reported in Nevo] (June 4, 2010)). **Hence, before making a decision concerning a status or a lack of status of a foreign parent of a minor who is an Israeli citizen, the entire circumstances of the case should be thoroughly examined, including the possible consequences of the minor's separation from his parent. This examination should be based on a professional and exhaustive factual inquiry** (compare, AP (Jerusalem) 705/07 **Muskara v. Minister of Interior** [reported in Nevo] (December 21, 2009); AP (Tel Aviv) 3143/04 **Mariano v. Minister of Interior** [reported in Nevo]

(AP (Jerusalem) 37903-03-11 **A. v. Minister of Interior**; Emphases added, B.A.)

27. Hence, in addition to the difficult condition of _____'s husband, the committee should also seriously consider the fact that _____ is a mother of children who in many respects acts as a single parent of three minor children, Israeli residents, whose best interest is to live safely with their mother, in their home-land, without having to fear for her future.

Conclusion

28. _____ has been residing in Jerusalem since 2001. Ever since she married and until this day _____ has been taking care of her husband and children and has been providing for their entire needs with remarkable love and devotion. Now, _____ and her family need the help of the committee which is vested with the authority and has the ability to give them both the security and quality of life which they need and which they are entitled to have.
29. The grant of an A/5 status to _____ will secure the best interests of her husband and children and will assist the family to deal with the situation in the best way possible.
30. Therefore, the honorable committee is hereby requested to approve the application of _____ and her family to grant her A/5 temporary status in Israel.

Sincerely,

Benjamin Agsteribbe, Advocate

Enclosures:

Powers of Attorney

Affidavit

Exhibits **1-11**