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At the Supreme Court sitting as the High Court of Justice

HCJ 5964/07

Before: Honorable President D. Beinisch
Honorable Justice A. Procaccia
Honorable Justice U. Vogelman

The Petitioners: 1. Physicians for Human Rights
2. Kayan Organization
3. _____ Abu 'Arar
4. _____ Abu 'Arar

v.

The Respondents: 1. Minister of Interior
2. Population Administration Director
3. Ministry of Interior
4. Ministry of Health

Petition for Grant of Order Nisi

Session date: 25 Kislev 5768 (05.12.2007)

Representing the petitioners: Adv. Johanna Lerman

Representing the Respondents: Adv. Aner Helman

Decision

Following an exchange of words, it has been clarified that the petitioner did not apply to the special humanitarian committee, which under the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003, in Section 3A1, is the one authorized to recommend to the Minister of Interior to grant status in Israel for special humanitarian reasons, and according to its recommendation the Minister of Interior might have upgraded the petitioner's status in Israel. The State's claim is that the petitioner has been given a DCO permit, pursuant to which the petitioner is entitled to stay and

even work in Israel, but her status cannot be upgraded to a visa type A/5, which also affords its holder the right to receive medical insurance services, and this due to the provisions established in the said law.

The proposal of the State's counsel to refer the petitioner to the course of the special professional committee is indeed the course outlined by the legislator for solving special humanitarian problems; the petitioner, who suffers from health problems and requires examinations and constant medical follow-up, therefore requires the recommendation of the said committee. However, we learnt today that the committee has not yet been convened according to the law. It should be noted that for months state representatives have stood before us, referring the petitioners to the course of the special committee and declaring that the committee would soon be formed, and lo, to this day the State has not met the obligation to establish the committee

We view with concern the fact that the legislator's provision intended to provide a humanitarian solution to ease the Law's strict conditions has not been realized and the committee has not yet come into being. Section 3A1 of the Law stipulating the committee's existence is an amendment to the Law that was enacted in March 2007, and but now that eight months have passed since the Law's enactment, the committee still has not been established. This blatant violation of the Law blocks the path of receiving remedy for the people who need it and have no alternative course to solve their difficult predicaments. The continuation of this violation of the Law's provision cannot be accepted.

Therefore the State is to inform the Court within ten days whether the committee has been set up as stipulated in the Law.

The petitioner is to apply to the committee now, without waiting for its formation and within three months the parties' updating notice is to be submitted to us about what has been done in the matter of the petitioner before us. We shall then decide about continuing handling the petition.

Issued today, 25 Kislev 5768 (05.12.2007), before the parties' counsels.

President

Justice

Justice