

Gaining and Regaining Permanent Residency Status, and Visitor Permits

Andre Rosenthal, Advocate

1. Gaining and Regaining Residency Status

Until recently, a female Palestinian resident of Jerusalem was not permitted to have her non-Jerusalemite husband live with her in Jerusalem because the Israeli Ministry of Interior operated on the basis that, traditionally, a Palestinian woman will follow her husband*. Meanwhile, male Jerusalemites rarely had a problem obtaining family reunification for their wives. Recently, the Ministry of Interior has changed its attitude and is now willing to grant non-Jerusalemite husbands family reunification as long as the wife can prove that she actually resides in Jerusalem. It is now a matter of proving that the center of life of the woman and her children, and perhaps of her family, is in fact Jerusalem. This moves into line with a body of law that has developed in the High Court whereby the residency status of a person depends upon where the center of that person's life is.

The Israeli policy takes into account regulations from 1974 containing three unconnected conditions, whereby a permanent resident is judged to have lost the right to residency if he or she: 1) remains abroad seven years, 2) becomes a permanent resident of another state, or 3) becomes a naturalized citizen of another state (section 11A of the Entry Into Israel Regulations, 1974)**. There is some flexibility in the application of this Regulation, but on the whole it is my experience that a very good reason must be shown why a person stayed abroad for more than seven years before he/she will succeed in regaining the identity card. An example might be a person who has been studying abroad and can prove a more or less continuous period of study.

The status of residents of East Jerusalem was challenged in the major Israeli High Court decision of 1988, *Awad*, which has already been discussed. *Awad*, in my opinion, put the nail in the coffin by allowing the court to make a ruling on this issue; it established the criteria according to which the center of life is to be decided.

Palestinian extended family members (beyond the nuclear family which is spouse and minor children) are not recognized in Israeli law or practice as having rights to come back or to gain residency status unless they fall within a 'humanitarian' category. This has not been defined but, for example, for elderly parents or a single parent with small children, the chances of gaining residency are good. One factor is how much of the extended family lives in Jerusalem, another is the socio-economic status of the extended family in Jerusalem. However, the law is applied on a case by case basis and any attempt to generalize or to define criteria has not been successful.

Unfortunately, one of my cases resulted in a rather bad judgment of the Israeli High Court. The court accepted as legitimate the stated policy of the Ministry of Interior to limit the number of "those who lack the right to enter" (the words used by the court – this means non-Jews) who may enter Jerusalem. (This decision, *Abu Dahim*, H.C.1404/93, is so far unpublished.) The case did not completely close the door because it was decided on its facts. It was the case of a student who lived seventeen years in Jordan and became a specialist doctor. His brothers, sisters and parents all live in Jerusalem. He failed to come back at the end of seven years but there was no need for him to become naturalized in Jordan because he already had Jordanian citizenship; nor did he have to ask for permanent residency in Jordan because as a citizen, he was automatically entitled to this. Furthermore, he married a Jordanian citizen and has a medical practice in Jordan.

I attempted to use what I thought to be a loophole in the law, and requested an A5 visa, a temporary residency status. The Ministry of Interior said that this status is granted either where the state has an interest in a person becoming a resident or where the state will eventually grant residency. (For example, sometimes they grant this status in cases of children when they are not sure that they are in fact living with the mother in Jerusalem, for a maximum of two years, at the end of which they usually grant permanent residency.) This status may also be granted where a definite purpose for remaining in Israel for a limited period can be shown. Here, in my view, lies the only glimmer of hope in the *Abu Dahim* decision; it is sometimes possible to show that the person is essential or needed because of his or her skills, abilities or knowledge. I succeeded to obtain A5 temporary residency status in a subsequent case, although there were special circumstances.

It is important to note that the onus of proof in establishing a right to residency or a right to regain residency is on the applicant.

2. Visitor Permits

As I have mentioned, the stated policy is to limit the number of persons entering on different permits. However, an exception is made in the case of visitor permits where the visitor is a very close family member. If an application for a more distant relative is rejected, the chances of success may be increased if socio-economic factors are raised, and a financial guarantee that the person will actually leave is usually accepted.

It should be remembered that until recently we were dealing with people holding passports from states which are at war with Israel. There is a definite fear on the part of the Ministry that these people will want to extend their stay in Israel, which also extends to citizens of other states. Filipinos must pay a NIS 5,000 cash or bank guarantee in order to enter, obtain a work permit or stay as a visitor. (This may be reduced to NIS 3,000 depending on how close the relative is and the reason for the visit.) I would stress that the general policy is to limit the granting of such applications.

Finally, the physical conditions in the office where Jerusalemites submit applications are extremely poor. A few years ago there was a fire at the Ministry of Interior in which many files were lost and people were forced to resubmit applications which had been lost.