

Israel Defense Forces
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11 November 2008

To:
"HaMoked: Center for Defence of the Individual"
Adv. Yadin Elam
(By fax: 03-6244130)

Re: **Passage from Judea and Samaria to the Gaza Strip – Mrs. _____ Mahram**
ID No. _____

Ref: your letter 235 dated 5 November 2008

1. The subject of your letter referenced herein is the application by your client, Mrs. _____ Mahram (ID No. _____), for a permit to travel from Judea and Samaria, through the territories of the State of Israel, to the Gaza Strip, where her husband resides.
2. Your letter claimed that Civil Administration personnel required your client to undertake permanent relocation to Gaza as a compulsory precondition to the approval of her application. You claim that the said requirement is unacceptable, unreasonable and illegal. Our response to your said letter is detailed below. We seek to set the record straight and specify the policy in effect in this regard.

Passage of Judea and Samaria Residents to the Gaza Strip:

3. As is well known, since September 2000, Palestinian terrorist organizations have been waging an armed conflict against the State of Israel. Following the IDF's withdrawal from the Gaza strip in September 2005, these organizations have been endeavoring to transfer terrorist infrastructures to the Judea and Samaria Area, and strengthen those which exist there already; the State of Israel is fighting against these attempts, inter alia, by separating Judea and Samaria from the Gaza Strip.
4. The security necessity to increase the segregation between Judea and Samaria and Gaza also stems from the security related events of June 2007, in which the Palestinian Authority (PA) lost its power over the Gaza Strip, which came under the authority of Hamas. Following these events, on 19 September 2007, the Ministerial Committee on National Security passed decision B/34, which determines that the Gaza Strip is "**a hostile territory.**"

5. On this point we refer you to honorable President Beinisch's ruling in HCJ 9132/07, in the **Al-Bassiuni** case:

"... to conclude, we state again that the Gaza Strip is controlled by a murderous terrorist organization, which is tireless in its efforts to harm the State of Israel and its population, and violates every possible precept of international law in its violent actions, which are indiscriminately directed towards civilians – men, women and children..."

6. At the present time, Hamas wields effective control over the territory of the Gaza Strip as well as over the crossings between Israel and the Gaza Strip, on the Palestinian side. In practice, permitting the free passage of PA residents between the two areas would clearly endanger the State of Israel and its civilians. All the more so, if these residents were permitted to pass through the territory of the State of Israel.
7. As a result, the policy in practice is to reduce passage between the areas to a necessary minimum. As a consequence of this policy of minimization, a limited visit to the Gaza Strip is possible only in exceptional humanitarian cases, and the existence of family ties in Gaza in itself does not constitute a sufficient humanitarian cause to justify the approval of the application.
8. On this point we cite the judgment of Justice Grunis in HCJ 9657/07 **Jarbo'a v. Commander of the IDF Forces in Samaria and Judea**:

"Petitioner 1, who resides in the Gaza Strip, has applied for entry to the Judea and Samaria area, via passage through Israeli territory, in order to visit three of her children who reside in the Judea and Samaria Area. The children in question are aged 17, 19, and 23.

The authorized body has decided that under the current circumstances the aforesaid passage shall only be permitted in exceptional circumstances, and the case of petitioner 1 does not fall under this category. Taking into account the present security circumstances, especially those which exist in the Gaza Strip, we have not found any fault in the decision not to accede to the request by petitioner 1. The present case is qualitatively different from other cases in which there are exceptional medical circumstances and the like. One must bear in mind, that petitioner 1 has no inherent right to enter Israel for any purpose whatsoever, including passage to the Judea and Samaria Area.

[Emphasis added]

These paragraphs pertain to visitations by residents of Gaza to Judea and Samaria, however, as previously stated, the policy of minimization also applies to

residents of Judea and Samaria who wish to visit Gaza and thus, these paragraphs are here relevant.

9. From the general to the specific, insofar as your client requests a limited visit to the Gaza Strip, she should have submitted an appropriate application, specifying the circumstances of the visit, which would have been examined in light of the policy in effect, as detailed above.
10. However, your client's application was, unequivocally, to relocate from Judea and Samaria to the Gaza Strip. Note well: In her application, **your client willingly made it clear that she intended to settle, along with her children, in the Gaza Strip, and did not intend to return to Judea and Samaria.** Your client's application was reviewed accordingly, and it was approved, as we shall specify below.

Settlement of Judea and Samaria Residents in the Gaza Strip

11. First, we emphasize that this section refers only to residents who request, willingly, to relocate to Gaza. If a resident does not wish to do so, indeed, contrary your claims, he is not compelled to undertake never to return to Judea and Samaria, but rather, his application for a visitation is examined on its merits, in accordance with the aforementioned.
12. To the matter at hand, despite the policy of minimization, in appropriate cases, requests by residents of Judea and Samaria to settle permanently in the Gaza Strip are often approved.
13. In order for a resident to reach an informed decision, we believe that, indisputably, it is important to provide the resident with relevant information regarding his request and its possible future consequences.
14. For this purpose, a resident who wishes to relocate to the Gaza Strip receives a statement, on behalf of the military commander, which reads: (the original version of the statement and its translation into Arabic are enclosed)

"I hereby inform you that your application for a travel permit from the Judea and Samaria Area to the Gaza Strip has been approved based on your statement that you intend to permanently relocate to the Gaza Strip.

We wish to inform you that according to the current policy, the entry of residents whose center of life is in Gaza to the Judea and Samaria Area is permitted only in exceptional humanitarian cases.

We emphasize that should you request to return to the Judea and Samaria Area, you will have to submit a detailed application to the Palestinian Civilian Committee. Insofar as the application is transferred to the Israeli side, it will be examined pursuant to the policy in effect at that time. "

15. We clarify again, that this does not constitute an undertaking by the resident to relocate to Gaza, and that persons who receive such a statement noted in their application that they intend to do so. In practice, the statement is meant to explain the current policy regarding persons whose center of life is in Gaza, which was approved in the framework of HCJ 9657/07, in the Jarbo'a case.
16. We further emphasize that, as specified in the statement, should your client wish to return to Judea and Samaria, her application will be examined according to the policy in effect at that time, and we cannot at this time state our opinion regarding future applications, which are hypothetical and have not yet been submitted.
17. It should be noted that your claim - that the aforementioned statement contradicts the State's position in HCJ 6180/08 **Emam v. Commander of the IDF Forces in Samaria and Judea** - is perplexing. To the contrary – the contents of the statement were established according to the spirit of the State's response in that petition:

"Petitioner 1, like any other resident of the Area, has no vested right to enter Israel, for the purpose of passage or for any other purpose. However, after reviewing all of the circumstances in this matter, the Respondent does not object to permitting Petitioners 1-2 passage, once, through Israel to the Gaza Strip.

However, the Respondent wishes to emphasize that the current policy does not permit the passage of residents whose center of life is in Gaza to Judea and Samaria, except in extraordinary cases. Therefore, clearly, with regard to any future applications by Petitioner 1 to return to Judea and Samaria, the Respondents' policy in effect at that time will determine their position concerning such applications, and at this time we take no position regarding applications which have yet to be filed, and which will be examined in accordance with circumstances of time and place. "

[Emphasis added]

From the General to the Specific: Mrs. _____ Mahram's application

18. As stated above, your client requested to relocate to Gaza. Therefore, she received the aforementioned statement. We emphasize that the requirement to sign the statement is only intended to ensure that the statement arrived, via the Palestinian District Coordination Office, at its destination.
19. Our inquiry indicates that your client has yet to sign the statement. However, since Mrs. Mahram is now represented by your office, we see no further need for her to sign the statement, and we are certain that you will clarify the military commander's position, as specified above, to your client.

20. If your client does not wish to relocate to Gaza, indeed, she must file a new application for a limited visit to Gaza. Provided this application is transferred to the Israeli side, it will be reviewed according to the policy and regulations in effect at the time it is transferred.
21. We would be grateful for your update regarding your client's final decision. We note that if your client persists in her initial application, indeed, she is not required to submit a new application and her passage will be arranged in accordance with your request. We would be grateful if you could communicate the desired date to our office a reasonable amount of time in advance.

Regards,

Matan Solomon - Lieutenant

[signature]

Consulting Officer – Population Registry Division

On behalf of the Legal Advisor