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[Emblem of the State of Israel]

RESHUMOT

HAZZA'OT HOQ

ha-Memshala

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Proposed Nationality and Entry into Israel Law (Temporary Order) (Amendment), 5765–2005

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A proposed bill on behalf of the Government is hereby published:

Proposed Nationality and Entry into Israel Law (Temporary Order)
(Amendment), 5765 – 2005

Amendment of Article 1

1. In the Nationality and Entry into Israel Law (Temporary Order), 5763–2003¹ (hereinafter: **the Temporary Order**), in Article 1, in the definition of “resident of the region,” instead of “includes” shall come “a person who is registered in the Population Registry of the region, and also”.

Amendment of Article 3

2. In Article 3 of the Temporary Order –
 - (1) At the beginning's end shall come shall come “and in accordance with the provisions of Article 3A”;
 - (2) Instead of paragraph (1) shall come:
 - “(1) The regional commander may grant [a resident of the region] a permit to stay in Israel for the following purposes:
 - (a) for medical treatment;
 - (b) to work in Israel;
 - (c) as regards a [male] resident of the region who is over 35 years of age – to prevent the separation from his [female] spouse who is staying lawfully in Israel;
 - (d) as regards a [female] resident of the region who is over 25 years of age – to prevent the separation from her [male] spouse who is staying lawfully in Israel;
 - (e) as regards a resident of the region who is a minor over 12 years of age – to prevent separation from his [or her] parent who has been issued a permit stay in Israel pursuant to subparagraph (c) or (d) or pursuant to Article 4(2);

¹ Sefer ha-Huqqim 5763 [2003], p. 544.

- (f) for a temporary purpose, provided that the permit to stay that is granted for the said purpose does not exceed a total of six months.”
- (3) In paragraph (2), instead of “if he is convinced that the said resident” shall come “and the regional commander may grant a resident of the region a permit to stay in Israel, if they are convinced that the resident of the region” and, instead of “or giving the permit to reside in Israel” shall come “grant a permit to reside in Israel or grant a permit to stay in Israel, as applicable.”;
- (4) After paragraph (2) shall come:
 - “(3) The Minister of the Interior or the regional commander, as applicable, may grant a resident of the region who is up to 12 years old a permit to reside in Israel, or a permit to stay in Israel, to prevent separation from his [or her] parent who is staying lawfully in Israel.”

Addition of Article 3A

- 3. After Article 3 of the Temporary Order shall come:

“Security impediment

- 3A. A permit to stay in Israel pursuant to Article 3(1)(b) to (f) and pursuant to Article 4(2) shall not be granted to a resident of the region if, based on the opinion of security officials, the Minister of the Interior or the regional commander determined that the resident of the region or a member of his [or her] family is liable to constitute a security threat to the State of Israel; in this article, “member of family” means spouse, and parent, child, brother, sister, and their spouses.”

Amendment of Article 4

- 4. In Article 4 of the Temporary Order, at the beginning's end shall come shall come “except Article 3A.”

Amendment of Article 5

- 5. In Article 5 of the Temporary Order, instead of “for one year from the day of its publication” shall come “until 2 Nisan 5766 (31 March 2006)”.

Explanatory Notes

General

Hoq ha-Ezrahut weha-Kenisa le-Yisra'el (Hora'at Sha'a) [the Nationality and Entry into Israel Law (Temporary Order)], 5763–2003 (hereinafter: **the Temporary Order**), was published on 8 Av 5763 (6 August 2003). According to Article 5 of the Temporary Order, its validity extends for one year from the day of publication. However, pursuant to the provisions of the said Article 5, the validity of the Temporary Order was extended in 2004 and 2005, by government orders, with the approval of the Knesset (Qovez ha-Taqqanot 5764, p. 834, and Qovez ha-Taqqanot 5765, p. 398), and its validity is scheduled to expire on 22 Iyyar 5765 (31 May 2005).

The Temporary Order restricts, during the period in which it is in effect, the granting to residents of Judea and Samaria and the Gaza Region (hereinafter: **the region**) nationality pursuant to Hoq ha-Ezrahut [the Nationality Law], 5712–1952, including through family unification, and the granting to the said residents permits to reside in Israel pursuant to Hoq ha-Kenisa le-Yisra'el [the Entry into Israel Law], 5712–1952, or permits to stay in Israel pursuant to the security legislation in the region.

The Temporary Order was enacted in accordance with Government Decision No. 1813, of 12 May 2002, in light of the security situation following the outbreak of the armed conflict between Israel and the Palestinians, in which there was found to be increasing involvement of Palestinians originally from the region who hold Israeli identity cards following family unification with Israeli citizens or residents. These Palestinians exploited their status in Israel to take part in terrorist activity, including aid to the execution of suicide attacks.

Israeli identity cards given, as said, to the residents of the region enabled them to move freely between the territories of the Palestinian Authority and Israel, and transformed them into a preferred group for terrorist organizations in carrying out hostile activity in general, and in Israel in particular.

In the professional opinion of the security officials, the security situation that formed the basis for enactment of the Temporary Order has not changed as regards the intention of terrorist organizations to carry out as far as possible severe attacks inside the State of Israel, and as regards the potential to exploit the said population in carrying out these attacks, and now as well the terror organizations continue their attempts to carry out such attacks.

It was also found that, with the construction of the separation fence, the preference of terrorist organizations for Palestinians who hold Israeli identity cards has increased.

Since the enactment of the Temporary Order, Israel has not processed new requests for family unification in Israel of residents of the region, and the professional assessment of the security officials is that the Temporary Order is an effective tool to reduce the free movement of residents of the region between the territories of the [Palestinian] Authority and Israel, and prevents a potential grave security threat by this population.

It is proposed, therefore, to extend the validity of the Temporary Order for a further period of time.

However, in accordance with Government Decision No. 2265, of 18 July 2004, and in light of the comments of the High Court of Justice in the petitions that were filed regarding the Temporary Order (H CJ 7052/03, *Adalah – The Legal Center for Arab Minority Rights in Israel et al. v. Minister of the Interior et al.*, H CJ 7102/03, *MK Zahava Gal-On v. Minister of the Interior*, and H CJ 8099/03, *The Association for Civil Rights v. Minister of the Interior*), it is proposed that, together with the extension of validity, the Temporary Order will be amended to expand the exceptions to the restrictions set forth therein. This expansion relates to the population groups that, according to the assessment of the security officials, have lesser potential to threaten security, the objective being to achieve the purpose of the Temporary Order, on the one hand, and to ensure that this purpose is attained in a more proportionate manner, on the other hand.

Article 1

Article 1 of the Temporary Order defines "resident of the region" as follows: "includes those who live in the region but are not registered in the region's Population Registry, and excludes those who are residents of Israeli communities in the Region."

The legislative purpose of the Temporary Order was, as stated, to prevent the granting of a status in Israel to residents of the region who are registered in the population registry of the region, and, in addition, to actual residents of the region who are not recorded as residents in the said registry.

It is proposed, for the avoidance of doubt, to amend the definition of "resident of the region" and to make it clear that this definition also includes the obvious, that is – persons who are registered in the population registry of the region.

Article 2

Article 3 of the Temporary Order sets forth exceptions to the restrictions stated in the order.

It is proposed, as mentioned above, to expand the exceptions in the said article as regards the population groups that, according to the assessment of the security officials, have a lesser potential to threaten security.

Paragraph (2) of Article 2 of the bill proposes to expand the powers of the regional commander to give a permit to stay in Israel to a resident of the region, also for a period of more than six months, for the purposes set forth in the proposed clause.

In this context, it is proposed that requests of male residents of the region who are over 35 years of age and of female residents of the region over 25 years of age who wish to live together with their Israeli spouses staying legally in Israel will be processed. Simultaneously, it is proposed to empower the regional commander to give permits to stay in Israel also to minor children, who are over 12 years of age, of the said couples. This power is in addition to the powers given to the regional commander and the Interior Minister, set forth in paragraph (4) of Article 2 of the bill, to give a resident of the region under age 12 a permit to stay in Israel or a permit to reside in Israel, as applicable, to prevent the child's separation from his parent who is staying legally in Israel.

It is also proposed to enable the regional commander to give a resident of the region a permit to enter Israel, for more than six months, to obtain medical treatment or to work in Israel.

The statistics for 2001 (prior to Government Decision No. 1813, of 12 May 2002) indicate that the addition of the proposed exceptions to the restrictions in the Temporary Order can bring about the re-processing of some 28.5 percent of the requests for family unification of residents of the region, including some of the requests that were submitted after the said government decision was made that have not yet been handled.

It is also proposed, in paragraph (3) of Article 2 of the bill, to enable the regional commander as well to give permits to stay in Israel to a resident of the region who identifies with the State of Israel and its goals, a power currently given only to the Interior Minister.

Article 3

In light of the expansion of the exceptions as proposed in Article 2 of the bill, and to prevent the security threat resulting therefrom, it is proposed that the Temporary Order set forth the principle that is recognized in case law, whereby a security threat resulting from first-degree relatives of an applicant for family unification in Israel or of an applicant for another permit to stay can prevent the granting of the permit to stay in Israel to that resident. This in light of the professional assessment of security officials that the connection of a resident of the region with such a relative who represents a security threat is liable to be misused, as occurred more than once in the past.

Article 4

It is proposed to clarify that the granting of a permit to stay in Israel pursuant to Article 4, which concerns "transitional provisions", is subject to the provisions of the proposed Article 3A.

Article 5

It is proposed to amend Article 5 of the Temporary Order, which concerns "validity", and to extend its validity until 2 Nisan 5766 (31 March 2006).