**At the District Court in Jerusalem** **Adm. Pet. 413/03**
**Sitting as the Court for Administrative Matters**

In the matter of:

1. **T. Alsadeh**
2. **W. A.**
3. **A minor boy**
4. **A minor girl**
5. **A minor girl**
6. **A minor girl**
7. **A minor girl**
8. **A minor girl**

Petitioners 3-8 by their parents, Petitioners 1 and 2, all from the Issawiya neighborhood, East Jerusalem

9. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger (Reg. Assoc.)**

all represented by attorneys Adi Landau (Lic. No. 29189) and/or Yossi Wolfson (Lic. No. 26174) and/or Manal Hazan (Lic. No. 28878) and/or Tamir Blank (Lic. No. 30016)
of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeideh Street, Jerusalem 97200
Tel. 02-6283555; Fax. 02-6276317

**The Petitioners**

v.

**Director, Population Administration Office in East Jerusalem**
17 Nablus Road, Jerusalem

represented by the Jerusalem District Attorney's Office
4 Uzi Hasson Street, Jerusalem
Tel. 02-6208177; Fax. 02-6222385

**The Respondent**

# Petition for Order Nisi

A petition is hereby filed for an order nisi directing the Respondent to show cause:

A. Why he does not make a decision on the application of Petitioners 1 and 2 for family unification.

B. Why he does not take into account the lengthy period of time since Petitioners 1 and 2 submitted their application for family unification and their request that the spouse petitioner be given a temporary-resident visa (A/5 visa) and that he grant the status of temporary resident to the spouse.

## The grounds for the petition are as follows:

1. The petition deals with the application for family unification that the Petitioner 1, an Israeli resident (hereinafter: the Petitioner), filed as far back as 1994 for her spouse, Petitioner 2 (hereinafter: the Spouse), a resident of the West Bank. The application was approved in 1999. After receiving permits to stay in Israel for a period of 27 months, a request was submitted in November 2001 for a temporary-resident visa (an A/5 visa). More that *one year and two months* have passed since the day the request was submitted. However, even though all the Respondent's requirements have been met, no decision on the request has yet been made.

2. The foot-dragging by the Respondent in his handling of the application violates the most fundamental rights of Petitioners 1-8 to maintain a family life and to human dignity. As a result of the Respondent's failure to arrange the Spouse's status in Israel, he is constantly exposed to delays, arrest, and expulsion. Also, the entire family finds itself in an unstable financial and psychological condition because of the uncertainty regarding the status of the husband and father.

### The Petitioners

3. Petitioner 1 is a permanent resident of the State of Israel who has lived in Jerusalem all her life. She is the wife of Petitioner 2 and the mother of Petitioners 3-8.

4. Petitioner 2 has been the spouse of the Petitioner since they married in 1991, and he lives with her in Jerusalem. The Spouse is the father of Petitioners 3-8 and the sole supporter of the family.

5. Petitioners 3-8 (hereinafter: the children or the Petitioners' children) are permanent residents of the State of Israel. They are the minor children of Petitioners 1 and 2.

6. Petitioner 9, a registered society whose offices are in East Jerusalem, was established to assist persons who fell victim to abuse or oppression by state authorities, including protecting their rights by initiating court action, either as public petitioner or as representing the individuals whose rights were violated.

**The facts**

7. The Petitioner lived with her family in the Surfa neighborhood, in the Old City of Jerusalem, from the time of her birth until 1970, when her family was asked, as were other families residing in the neighborhood, to leave their homes. They were told it was necessary to leave to enable the search for antiquities on the site. Most of the neighborhood's residents, including the Petitioner's family, moved to the Dahiyat al Barid neighborhood, a Jerusalem suburb lying along the seam line.

8. Petitioners 1 and 2 married in 1991 in Jerusalem. It will be recalled that, until 1994, the Ministry of the Interior had a policy of refusing to approve applications for family unification for their spouses that were filed by female residents. In 1994, when this discriminatory policy was changed, the Petitioner submitted an application for family unification for the Spouse, which was given number 1643/94. Attached to the application were many documents indicating that the family's center of life was in Jerusalem.

9. Until 1994, the Petitioners lived in the Dahiyat al Barid neighborhood. However, the center of their life from the day they were married was in the city. For example, the Petitioners' children who were born in 1992 and 1993 were born and immunized in the city (as were the other children), the Petitioners received medical treatment in the city, and the Spouse worked as a teacher in a school in East Jerusalem. In 1994, the couple moved into a rented apartment in Issawiya, a neighborhood of Jerusalem, in which they have lived with their children ever since.

10. The couple have six minor children (ranging in age from ten years old to one year old), all of whom were born and immunized in Jerusalem, and are lawfully registered as residents of Israel in the Israeli Population Registry and on their mother's identity card. The National Insurance Institute has recognized the family for years, and the family receives the children's allotment. The Petitioner and the children are insured with [national] health insurance and belong to the Clalit Sick Fund in the city. Petitioners 3, 4, 5, and 6 study in schools in Issawiya, a Jerusalem neighborhood. The

Spouse has taught English at schools in the Old City for years, and in recent years has served as supervisor and coordinator of English studies in schools in East Jerusalem.

**Correspondence with the Respondent**

11. On 6 November 1996, the Respondent requested the Petitioners to provide updated documents proving that the center of their life is in Jerusalem.

The Respondent's letter is attached hereto and marked P/1.

12. On 15 December 1996, Petitioner 9 sent the requested documents to the Respondent.

Petitioner 9's letter is attached hereto and marked P/2.

13. On 24 June 1997, the Respondent decided to reject the Petitioners' application for family unification, on the grounds that "center of life was not proven."

The Respondent's decision is attached hereto and marked P/3.

14. On 3 July 1997, Petitioner 9 requested the Respondent to provide it with the evidentiary material that led to the rejection.

Petitioner 9's letter is attached hereto and marked P/4.

15. On 8 July 1997, the Respondent requested additional documents regarding examination of the application.

The Respondent's letter is attached hereto and marked P/5.

16. On 20 November 1997, Petitioner 9 sent the requested documents to the Respondent.

Petitioner 9's letter is attached hereto and marked P/6.

17. On 19 January 1998, the Respondent announced that it had been decided to continue handling the application, and that "the center of life would be examined over the coming years, until the handling of the application is completed." Although this decision was announced some four years after the application for family unification was submitted, the Respondent surprisingly did not state that he approves the application. Rather, he indicated that he intends to continue to examine it over the coming years.

The Respondent's letter is attached hereto and marked P/7.

18. On 13 December 1998, the Respondent approved the Petitioners' request to register their children in the Population Registry.

The Respondent's letter is attached hereto and marked P/8.

19. When the Petitioners did not receive a decision from the Respondent regarding their application, on 23 December 1998, Petitioner 9 sent a letter requesting that the application for family unification be approved in light of the great amount of proof that had been sent to the Respondent's office indicating that the family's center of life was in Jerusalem. Petitioner 9 asked that the "center of life" test of the family be done in the context of the graduated arrangement for examining entitlement to family unification, which extends over a period of five years and three months.

Petitioner 9's letter is attached hereto and marked P/9.

20. On 7 February 1999, Petitioner 9 sent a letter to the Respondent requesting that he decide whether to approve the application for family unification.

Petitioner 9's letter is attached hereto and marked P/10.

21. On 26 July 1999, Petitioner 9 sent another letter to the Respondent requesting his decision in the matter of the application for family unification.

Petitioner 9's letter is attached hereto and marked P/11.

22. On 5 August 1999, the Respondent informed the Petitioners that he was handling their application and that he hoped to provide them soon with his decision.

The Respondent's letter is attached hereto and marked P/12.

23. On 10 October 1999, close to two years after having all the documents he requested, the Respondent informed the Petitioners that their petition for family unification had been approved, and the Spouse was invited to the office to obtain the referral to the Civil Administration to obtain a permit. On 30 October 1999, the Spouse received from the D.C.O. [District Coordinating Office] a permit to stay in Israel as part of the graduated arrangement. The permit was valid for one year.

The Respondent's notification of approval of the application for family unification, the referral to the D.C.O., and the permit to stay in Israel are attached hereto and marked P/13, A-C, respectively.

24. On 9 August 2000, Petitioner 9 contacted the Respondent and requested a one-year extension of the permit to stay in Israel that had been given to the Spouse in the context of the graduated arrangement. Attached to the request were updated documents that testify to the family's center of life in Israel.

Petitioner 9's letter is attached hereto and marked P/14.

25. On 1 January 2001, the Respondent approved the Petitioners' request. On 5 February 2001, the D.C.O. issued to the Spouse a permit to stay in Israel for another year.

The Respondent's notification of approval of the application for family unification, the referral to the D.C.O., and the permit to stay in Israel are attached hereto and marked P/15, A-C, respectively.

26. On 20 November 2001, the Petitioners submitted a request to the Respondent for a temporary-resident visa as part of the graduated arrangement. The Petitioners attached many documents testifying to the Petitioners' center of life in Jerusalem. Also, the Petitioners paid a fee upon submitting their request.

Petitioner 9's letter, to which the Petitioners' request and the updated proofs and confirmation of the submission of the request are attached, are attached hereto and marked P/16, A-B, respectively.

27. On 20 December 2001, Petitioner 9 sent a letter of reminder to the Respondent.

Petitioner 9's letter is attached hereto and marked P/17.

28. On 17 January 2002, Petitioner 9 sent a letter of reminder to the Respondent.

Petitioner 9's letter is attached hereto and marked P/18.

29. On 7 February 2002, an official in the Respondent's office contacted the Spouse and asked him to come to the Population Administration office. When the Spouse went to the office, an official in the Respondent's office gave him a letter requesting that he appear on 4 March 2002 at the Har Manoah D.C.O. to meet with "Gidron." The letter

mentioned that his failure to attend the appointment at the time and place set would result in delay in the handling of his request. The letter was signed with the stamp of the Ministry of the Interior and with the words "East Jerusalem Office of the Population Administration," but was not signed.

The letter on behalf of the Respondent's office is attached hereto and marked P/19.

30. At 10:00 A.M. on 4 March 2002, the Spouse appeared at the Har Manoah D.C.O., as requested. The Spouse answered the questions of a man who introduced himself as Gidron and was told that the meeting was over.

31. On 7 March 2002, Petitioner 9 sent a letter of reminder to the Respondent, asking the Respondent to approve the request without delay.

Petitioner 9's letter is attached hereto and marked P/20.

**Exhaustion of proceedings**

32. From March to the middle of May 2002, the Respondent's office did not handle applications for family unification, at first because of a strike and afterwards because of the decision to freeze the handling of family unification applications submitted by residents and citizens of Arab nationality. On 12 May 2002, the government adopted a decision that limited the freeze to applications for family unification that had not been approved prior to the date of that decision. The decision further stated that the status of persons taking part in the graduated arrangement for examining entitlement to family unification were not to be upgraded.

33. On 6 June 2002, Petitioner 9 sent a letter of reminder to the Respondent in which it provided details on 14 applications for family unification, among them the Petitioners' application, in which the Respondent's decision was demanded.

Petitioner 9's letter is attached hereto and marked P/21.

34. On 13 June 2002, Ms. Filmus, acting on behalf of Petitioner 9, contacted Ms. Porat, an official in the Respondent's office, to clarify the status of the Petitioners' application. According to Ms. Porat, a letter was sent on behalf of the Respondent demanding further documents. Ms. Filmus informed Ms. Porat that neither the office of Petitioner 9 nor the family of the Petitioner received the letter.

35. Nevertheless, Petitioner 9 sent a letter, on 28 July 2002, which contained updated documents proving that Jerusalem was the Petitioners' center of life.

Petitioner 9's letter is attached hereto and marked P/22.

36. On 4 September 2002, Petitioner sent a letter of reminder to Respondent.

Petitioner 9's letter is attached hereto and marked P/23.

37. On 2 December 2002, Petitioner 9 sent a letter of reminder to the Respondent setting forth the chronology of events relating to the Petitioners' application. Petitioner 9 mentioned that, in light of the 13 months that had passed since submission of the application, the failure to reach a decision on the application was unreasonable. The Petitioner further mentioned that, if a decision were not made immediately, the Petitioners would be compelled to file suit.

Petitioner 9's letter is attached hereto and marked P/24.

38. On 16 December 2002, an official from the Respondent's office called the Petitioners and asked them a number of questions. The official wanted to know where they live, whether they work, how old their children are, and when their baby daughter was registered in the Population Registry. The official informed the Petitioner that the application would be approved shortly.

39. On 15 January 2003, Petitioner 9 set a letter of reminder to the Respondent regarding several of the applications, including that of the Petitioners, in a final attempt to avoid suit.

Petitioner 9's letter is attached hereto and marked P/25.

40. Thus, the Petitioners' application for family unification was submitted *approximately eight years* ago and approved *more than three years* ago (five years after it was submitted), even though two years earlier, the Respondent had all the documents necessary according to the criteria set by the Ministry of the Interior for approval of the application. Furthermore, the Spouse submitted a request to obtain a temporary-resident identity card and paid the requisite fee in November 2001 – all in accordance with the graduated arrangement in its then current format. It should be mentioned that the Petitioners' request for a temporary-resident visa was submitted in time, some six months prior to the government's decision freezing approval of pending family

unification applications and prohibiting upgrading of applications being handled within the graduated arrangement. Thus, had the Respondent acted according to his procedures and examined the Petitioners' application in the two months that he had given himself in the graduated arrangement process, the Spouse would have obtained an A/5 visa as long ago as January 2002. However, the Respondent did not meet his schedule: rather than *two months, one year and two months*, as of the time of the drafting of this petition, have passed and the Respondent has yet to make his decision.

**The legal argument**

41. The Petitioners will argue that the Respondent's failure to handle and to make a decision on the application for family unification is unlawful and unreasonable and infringes the most fundamental rights of the Spouse and of Petitioners 1 and 3-8, permanent residents of the State of Israel.

**Right to maintain family life**

42. The Respondents' conduct described above infringes the Petitioners' right to live together and to maintain a family unit as they choose. The right of a person to marry and establish a family unit is a fundamental right that must not be infringed. This right is derived from the right to dignity to which every individual is entitled. Marrying and establishing a family is the complete expression of the individual's personality, which enables the individual to attain self-fulfillment within society and within the family. The family is the basic unit of society. The family is also the nest that protects the children. It is not surprising, therefore, that both Israeli domestic law and international law seek to protect the family unit.

43. Israeli law recognizes a normal family life as a central and fundamental value that deserves protection by society:

> **The protection of family integrity constitutes part of Israeli public policy. The family unit is "the primary unity… of human society…"** (Justice Heshin in Civ. App. 238/53, *Cohen et al. v. Attorney General, Piskei Din* 8, at page 4, 35)

On this point, see also:

> HCJ 488/77, *John Doe et al. v. Attorney General, Piskei Din* 32 (3) 421, 434;
> Civ. App. 451/88, *John Does v. Attorney General, Piskei Din* 49 (1) 330, 337;

Reh. Civ. 401/95, *Nahmani v. Nahmani et al., Piskei Din* 50 (4) 661, 683; HCJ 979/99, *Pabaloya Carlo v. Minister of the Interior, Takdin Elyon* 99 (3) 108.

44. The right to family life is considered a natural right of constitutional dimension:

> **The right of parents to custody of their children and to raise them, with all that entails, is a natural, primary, constitutional right, as an expression of the natural connection between parents and their children… This right is expressed in the privacy and autonomy of the family: the parents are autonomous in making decisions regarding their children – education, lifestyle, place of residence, and so on – and interference by society and the state in these decisions is an exception that requires justification … This approach is grounded in the recognition that the family is "the most basic and ancient family cell in human history, which was, is, and will be the foundation that serves and ensures the existence of human society" (Justice (as his title was at the time) Elon in App. Civ. App. 488/77, *John Doe et al. v. Attorney General, Piskei Din* 322 (3) 421, 434).**
> (President Shamgar in Civ. App. 2266/93, *John Doe, a Minor, et al. v. John Roe, Piskei Din* 59 (1) 221, 235-236)

45. In the judgment in *Stamkeh*, the Honorable Justice Heshin discussed the importance of the family unit, which has the status of a basic right, and also Israeli's commitment to this right, inter alia, from Israeli's being party to international conventions that recognize the importance of the right to maintain family life:

> **Our matter, we should recall, revolves about the basic right granted the individual – every individual – to marry and establish a family. It is superfluous for us to mention that this right is recognized in international conventions accepted by everyone…** (HCJ 3648/97, *Bijalbohen Petel et al. v. Minister of the Interior, Piskei Din* 53 (2) 728, 784-785)

46. International law states that every person has the liberty to marry and raise a family.

For example, Article 10(1) of the International Covenant on Economic, Social and Cultural Rights, ratified by Israel on 3 October 1991, states:

> **The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children….**

See also: Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, Article 8(1); International Covenant on Civil and Political Rights, Articles 17(1) and 16(3), which took effect regarding Israel on 3 January 1992.

47. Harm to the integrity of the family unit of a person violates the individual's dignity. The Petitioners will argue that their right to normal family life is enshrined in the Basic Law: Human Dignity and Liberty, in the provisions that protect liberty, dignity, and privacy.

**Rights of the child – harm to Petitioners 3-8**

48. The rejection of the Petitioners' application for family unification especially harms the couple's children, the oldest of whom is ten years old and the youngest one year old. The refusal to allow the father of Petitioners 3-8, residents of the State of Israel, to live with them lawfully in their home in Israel leads to a stressful, unstable and uncertain family life, factors that gravely affect the proper development of children, in general, and of young children of the ages of Petitioners 3-8, in particular. Living in a situation when both of their parents are not present will cause inestimable damage and suffering and infringe their right to live in a whole, supportive family framework, in those cases in which the family wishes to live together.

49. In Israeli law, the principle of the best interests of the child is an underlying, fundamental right. In Civ. App. 2266/93, *John Doe v. John Roe, Piskei Din* 49 (1) 221, Justice Shamgar held that the state must intervene to protect the child from infringement of his rights.

50. The right of minor children to live with their parents is recognized as an elementary, constitutional right by the Supreme Court. See the comments of Justice Goldberg in HCJ 1689/94, *Harari et al. v. Minister of the Interior, Piskei Din* 51 (1) 15, 20 opposite letter B.

51. The Convention on the Rights of the Child contains several provisions that require protection of the child's family unit.

For example, in the preamble to the Convention:

> **[The States Parties to this Convention being] convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.**
>
> **… that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.**

Article 3(1) of the Convention states:

> **In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.**

Article 9(a) of the Convention states:

> **States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.**

52. The provisions of the Convention on the Rights of the Child has been increasingly recognized as a complementary source for the rights of the child and as a guide for

interpreting the "best interests of the child" as a consideration in our law: see Civ. App. 3077/90, *Jane Roe et al. v. John Doe, Piskei Din* 49 (2) 578, 593 (the Honorable Justice Heshin); Civ. App. *John Doe, a Minor, et al. v. John Roe, Piskei Din* 49 (1) 221, 232, 233, 249, 251-252 (the Honorable President Shamgar); Reh. Civ. 7015/94, *Attorney General v. Jane Roe, Piskei Din* 50 (1) 48, 66 (the Honorable Justice Dorner); HCJ 5227/97, *David v. Supreme Rabbinical Court (Takdin Elyon* 98 (3) 443), in Section 10 of the judgment of the Honorable Justice Heshin.

53. The Petitioners' minor children suffer great harm from the refusal of the Respondents to arrange their father's stay in Israel. The psychological stress at home resulting from the Spouse being denied for a prolonged period of time a permit to stay in Israel, the economic hardship suffered by the family, and the uncertainty as to whether the family will be able to live together in their home in Jerusalem cause irreversible harm to the normal development of the children.

54. In refraining from handling the Petitioners' application for family unification and from responding to the inquiries and requests of Petitioner 9 over such a long period of time, the Respondent breached the provisions of the Convention on the Rights of the Child, and failed to take into account the best interests of the Petitioners' children, who are residents of the State of Israel, as to which they should have been given primary consideration.

**Obligation of governmental authorities to act with due dispatch**

55. The Respondents have the obligation to handle the Petitioners' matters in a fair and reasonable manner and with due dispatch. Section 9(b) of the Administrative Procedure Amendment (Decisions and Reasons) Law, 5719 – 1958, indeed exempts the Respondents from the provisions of the said law; however, its provisions do not exempt them from the obligations imposed on every public authority – to treat every person in a fair and reasonable manner.

Thus, in HCJ 6300/93, *Rabbinical Court Pleaders Preparatory Institute v. Minister of Religious Affairs et al., Piskei Di*n 48 (4) 441, 451, the Honorable Justice Heshin stated:

> **The competent authority must act in a reasonable manner. Reasonable also means meeting a reasonable time schedule.**

On this matter, see also HCJ 758/88, *Kandel et al. v. Minister of the Interior, Piskei Din* 46 (4) 505; HCJ 4174/93, *Vialeb v. Minister of the Interior*

(unpublished), in Section 4 of the judgement; HCJ 1689/94, *Harari et al. v. Minister of the Interior, Piskei Din* 51 (1) 15.

56. The Respondents obligation to act in the Petitioners matter with due dispatch is also enshrined in Section 11 of the Interpretation Law, 5741-1981, which states:

> **Any empowerment, and the imposition of any duty, to do something that shall, where no time for doing it is prescribed, mean that it shall or may be done with due dispatch and be done again from time to time as required by circumstances.**

57. The duty to act within a reasonable time, and not to neglect and drag their feet in handling pending requests, is an elementary precept of proper administration.

> On this point, see Civ. App. 4809/91, *Jerusalem Local Planning and Building Committee v. Kahati et al., Piskei Din* 48 (2) 190, 219.

The Supreme Court stated this duty in HCJ 3680/95, *Tiveria v. Ministry of the Interior, Takdin Elyon* 96 (1) 673. In that matter, the Court deemed reasonable the Respondent's policy of examining in certain cases the candor of the marriage prior to registering a person in the Population Registry as "married" where that individual presents a marriage certificate. The check was found to be reasonable, but the Court added that:

> **It is to be hoped that it [the check] is done efficiently and with due dispatch, and it is assumed that in the case before us as well, the check will not be prolonged.** (From the opinion of President Barak, at page 673)

58. The Respondent dragged his feet in handling the Petitioners' application from the time that it was submitted *about eight years ago.* According to the procedures that he set, the Respondent was obligated to examine an individual's annual request to stay in Israel as part of the graduated arrangement for a two-year period. In the present case, one year and two months have passed, and the Respondent has still not taken the necessary action. The Respondent's foot-dragging has created an extremely harsh and increasingly distressful situation for the family.

59. Clearly, the Respondent has not only failed to act with dispatch or efficiently, but his conduct has deviated sharply from that expected of a reasonable administrative agency

that is charged with the handling of significant aspects of the lives of persons requiring its services.

**Lack of reasonableness and fairness**

60. The Petitioners will argue that the Respondent's failure to handle and make a decision on the application for family unification, and his negligent handling of the application, violate the rules of proper administration and deviate from all principles of reasonableness, according to which an administrative agency is required to act.

As a result of the Respondent's conduct as described above, and notwithstanding the unquestionable candor of the Petitioners' married life, their center of life in Jerusalem, and their unstained past in terms of criminal and security acts, for more than one year, the Spouse has been compelled to stay in Israel unlawfully, even though his application for family unification has been approved.

61. The current situation is that, on the one hand, the Petitioners submitted to the Respondent extensive proof clearly showing that their center of life is in Jerusalem, and the Spouse was questioned, in March 2002, by the General Security Service, as part of the process regarding the application for family unification, and, on the other hand, *no substantive reason whatsoever* exists to justify the failure to approve the Petitioners' application.

62. On the obligation of the state to act reasonably and fairly, see the comments of Justice (as his title was at the time) Barak in HCJ 840/79, *Contractors Center v. Government of Israel and Builders in Israel, Piskei Din* 34 (3) 729, particularly at pp. 745-746:

> **The state, through those acting in its name, is the public's trustee, and it holds the public interest and public property for use that benefits the public… This special status is what imposes the duty on the state to act reasonably, honestly, with integrity, and in good faith. The state is forbidden to discriminate, act arbitrarily, or without good faith, or be in a conflict of interest. In brief, it must act fairly.**

In neglecting the request of the Petitioners to live together lawfully, as a family, for such a long period, the Respondents acted in a grossly unreasonable manner. The

Respondents' failure, to this very day, to reach a decision on the application is unfair, so much so as to be abusive and a violation of the Petitioners' human dignity.

## Conclusion

63. The Respondent must exercise the powers granted him by the administrative law, including the constitutional limitations on exercising authority that infringes fundamental rights. In the present case, the injustice caused to the Petitioners' family is obvious: because of the Respondents' discriminatory policy, they were prevented from submitting an application for family unification *some 12 years ago*; their application for family unification, filed in 1994, was not approved until 1999, *some five years* after it was submitted; now, when the spouse has been involved in the graduated arrangement, and although he met all the arrangement's demands, he is compelled to stay unlawfully in Israel because the Respondent has failed for one year and two months to reach a decision on the application. Furthermore, although the Petitioners submitted an application to obtain a temporary-resident visa, paid for it, and attached all the required documents, which proved beyond a doubt that they live in Jerusalem – all within the time set by the directives relating to the graduated arrangement – the Respondent continued to refrain from reaching decision on the request in the course of the period of months that he set for himself to decide. Now, he contends, at the time of the "upgrade freeze" that was decided only six months later, the Spouse will continue, *eight years* after he submitted the application for family unification and one year after he was supposed to become a temporary resident, to live in Israel without social rights, including the right to health services.

64. The Petitioners were never involved in acts of a security or criminal nature, nor were they suspected of committing such acts. The National Insurance Institute recognized the family's residence in Jerusalem, as did the Ministry of the Interior, years ago. Therefore, it is unclear why reaching a decision on the application has taken such a long time.

On the other hand, the grave consequences of the Respondent's foot-dragging are evident. The shamefully slow handling of the application for family unification violates the right of the Petitioner, her spouse, and their minor children to live together as a family. Whenever the Spouse leaves his house to earn a living for his wife and children and to care for their needs, he takes the risk of delay, arrest, and expulsion. The Spouse, who is a teacher and supervisor in schools in East Jerusalem,

must move among schools in the city, but not having a permit, taxi drivers are not willing to take him, and he is often stopped by police officers and soldiers. Therefore, the Spouse has difficulty reaching his place of work, in moving about outside his house with his children, and in living a normal human life. The Petitioners' family lives an unstable and uncertain existence because of the fear that the father of the family will not be able to live with them any longer. The Respondent's conduct infringes the Petitioners' rights to maintain a family life, to stability, and to fair and equal treatment.

The harm to the Petitioner' family unit violates Israeli domestic law, international law, and the Petitioners' right to human dignity.

**The relief requested**

65. According to the graduated arrangement, 27 months after obtaining approval of an application for family unification, the applicant obtains an A/5 visa if the applicants meet all the requirements of the Ministry of the Interior. This status entitles the holder to social benefits, including health insurance. The application for family unification was submitted in 1994 (because it was not permissible to submit applications prior to that time) and was not approved until 1999. Thus, according to the graduated arrangement, whose requirements were met by the Petitioners' family, the Spouse was supposed to obtain an A/5 visa a year ago – six months or so prior to the government's decision. Therefore, the Petitioners request that the Honorable Court order the Respondent to approve in expedited manner their request to extend the Spouse's permit to stay in Israel, whereby he is given an A/5 visa, to which he was entitled, in accordance with the graduated arrangement and its conditions, as far back as January 2002.

For these reasons, the Honorable Court is requested to issue an order nisi as requested at the beginning of this petition, and after receiving the Respondents' response, make it absolute, and also to order the Respondents to pay the costs of suit and attorney's fees.

Jerusalem, Today, 26 January 2003

*[signed]*
Adi Landau, Attorney
Counsel for Petitioners