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At the Jerusalem Magistrates Court **Adm. Pet. 1028/07**
Sitting as the Court of Administrative Matters

In the matter of:

1. _____ **(Mustafa)**
   I.D. _____
2. _____ **Mustafa**
   Jordanian Passport _____
3. _____ **Mustafa**
   Jordanian Passport _____
4. _____ **Mustafa**
   Jordanian Passport _____
5. **HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – R.A.**

Represented by attorneys Yotam Ben Hillel (Lic. No. 35418) and/or Yossi Wolfson (Lic. No. 26174) and/or Hava Matras-Iron (Lic. No. 35174) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Abeer Jubran (Lic. No. 44346) and/or Ido Blum (Lic. No. 44538) and/or Yadin Elam (Lic. No. 39475) and/or Alon Margalit (Lic. No. 35932)
Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida Street, Jerusalem 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **The Minister of the Interior**
2. **Director of the Population Administration**
3. **Director of the Population Administration Bureau in East Jerusalem**

Represented by the Jerusalem District Attorney's Office
7 Mahal St., Jerusalem
Tel: 02-5419555; Fax: 02-6223140

The Respondents

Petition for Order Nisi

A petition is hereby filed for an Order Nisi directed at the Respondents and ordering them to give reason why they do not approve Petitioner 1's application for grant of status for her children, Petitioners 2-4, and grant them a license for permanent residence in Israel.

Introduction

1. This petition is in the matter of honoring the right to a family life. Specifically, this petition is in the matter of residents' natural right to live with their children in their country, and their right to protect their children from forced exile to a country to which their children have no linkage.

2. This Petition is also in the matter of the strength of the connection between children and their parents. The nature of this connection changes coincidently with the maturation of the children. These are no longer children who only find shelter under the wings of their parents, and need their protection, but children, who have already become young people, and are now the ones who help their parents with the house chores, and who constitute the financial back rest of the entire family. This situation is what is discussed in the Petition at bar, and in which it is requested that status be granted to the children of a resident and her spouse – parents who suffer from chronic illnesses, and who are not capable of providing for the family's livelihood. This point exactly is where the tight connection between parents and their children comes into play. At this point exactly the children feel that now it is their turn to return the favor to their parents for the support, warmth and love that was bestowed upon them by their parents throughout all of their childhood.

3. Thus, this Petition is also in the matter of the principle, which is one of the most basic and sacred in every human society – honoring your mother and father. There is no need to spill ink about the importance ascribed to the commandment of honoring the parents in the Jewish tradition. It will suffice if we mention that we are dealing with the fifth commandment of the Ten Commandments: "Honor thy father and thy mother" (Exodus 20:12; Deut. 5:16). It will suffice if we also mention the stories associated with Rabbi Tarfon, one of the greatest Tannaim of

the first century C.E., who was known for his dedicated care of his elderly mother[1].

The Islam also relates great importance to this principle. According to the Qur'an, a man must treat his parents with great respect, especially as they are getting old. One must treat his parents and speak to them with respect, show them kindheartedness, and pray for the lord to have mercy on them[2].

4. Petitioner 1 (hereinafter: the **Petitioner**) is an Israeli permanent resident, who is married to a Jordanian citizen, who recently began a procedure for receiving status in Israel. The Petitioner's minor children recently received status in Israel. However, their older brothers and sister, Petitioners 2-4 (hereinafter: the **Petitioners**) were not as lucky. Together with the rest of their family members, the Petitioners have lived abroad for some time, and returned to Israel in 1995, when they were 13, 11 and 9 years old. About a year later, the Petitioner learned that the Respondents have revoked her residency. The Petitioner, who insisted on her right to lawfully live in her native land, began a long journey to regain her status. The problem is that the happy ending of that journey, in which the Petitioner regained her status, occurred too late as far as the Petitioners are concerned. At that time they were already adults.

5. Due to this chain of events – tragic, as far as the Petitioners are concerned – their status in Israel, similarly to their siblings' status, could not be arranged. Because of their adulthood, the Petitioners were 'thrown' out of the frameworks of the Respondent's procedures which deal with arrangement of status – directly to the "do not fit criteria" slot.

6. When the Petitioners filed an application for grant of status due to humanitarian grounds, the Respondents assured them that the application would be transferred to the examination of the inter-ministerial committee which handles these matters. To this day the Petitioners have not been able to understand whether their application has been transferred for discussion in the committee. In any event, the

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[1] Thus, for example, it is described that each time his mother wanted to get off her bed, Rabbi Tarfon would kneel on his knees and allow her to step on his back, in order to assist her in getting off her bed. It is also described that when one day his mother's sandal tore while she was in the yard, Rabbi Tarfon came over and placed the palms of his hands under her foot, and thus his mother walked to the house. He did that so his mother would not walk barefoot. (Kiddushin 31, as well as Yerushalmi Pea, Chapter 1, Halacha 1)

[2] Surah Al Asaraa, Passages 22-24.

Respondents' reply which refuses the application, a reply which lacks any reasoning, did not enable the Petitioners to understand whether all the humanitarian considerations in their matter were considered. Did the Respondents take the parents' health condition into consideration? Did they address the family's great dependency on its adult children? Did anyone pay attention to the fact that the Petitioners have no linkage to anywhere else in the world, and, in practice, have no place to go?

The Parties to the Petition

7. The Petitioner is a permanent resident of The State of Israel, married to a Jordanian citizen, Mr _____ Mustafa. Her application for family unification with her spouse has been recently approved, and he began the procedure of receiving status in Israel. The Petitioner is the mother of the Petitioners and four additional children. Her three young children, who are not petitioners in this Petition, have recently received status in Israel. The Petitioner's eldest daughter, who also is not a petitioner in this Petition, is married to a permanent resident, and her application for family unification with him is currently being handled by the Respondents.

8. The Petitioners hold Jordanian citizenship, and have been living with their parents – the Petitioner and her spouse – in Israel since 1995, about twelve years. The Petitioners are adults and are not married.

9. Petitioner 5 is a registered association with the objective of assisting people who have been the victims of abuse or deprivation by the state authorities, including protecting their rights before the courts, whether under its name as a public petitioner or as a representative of people whose rights have been prejudiced.

10. Respondent 1 is the minister authorized by the Entry into Israel Law, 5712-1952, to handle all matters deriving from this law, including applications for family unification and for arrangement of children's status, filed by the State's permanent residents living in East Jerusalem.

11. Respondent 2 is the director of the Israel Population Administration. In accordance with the Entry into Israel Regulations (5734-1974), Respondent 1 delegated his powers to Respondents 2 and 3, with respect to handling and approving applications for family unification and for arrangement of children's status, filed by the State's permanent residents living in East Jerusalem.

Furthermore, Respondent 2 participates in the policy determination procedures with respect to applications for receiving status in Israel by virtue of the Entry into Israel Law and the Regulations issued by its virtue.

12. Respondent 3 (hereinafter: the **Respondent**) manages the regional bureau of the Population Administration in East Jerusalem. In accordance with the Entry into Israel Regulations (5734-1974), Respondent 1 delegated his powers to Respondent 2 and 3 with respect to handling and approving applications for family unification and for arrangement of children's status, filed by the State's permanent residents living in East Jerusalem.

The Matter of Petitioners 1-4

13. The Petitioner and her spouse got married in 1978 and lived in Jordan and Saudi Arabia for work purposes until 1995. In 1995, the couple and their children returned to Israel and made their home in Jerusalem. Upon their return, the Petitioner filed an application for family unification with her spouse.

    A document indicating the filing of the application is attached hereto, marked **P/1**.

14. In 1996, the Petitioner learned that even though she made sure to maintain the validity of her travel documents, as she was guided to do in order to maintain her status, her status in Israel was revoked. Accordingly, the Respondent decided to deny her family unification application. The Petitioner approached the Respondent in order to regain her status in Israel. First, through a lawyer, and later she handled the matter herself with the Respondent's bureau. After those two routes of action did not result in any success, the Petitioner approached Petitioner 5. Following Petitioner 5's handling of the matter, the Petitioner received her status back on August 6, 2003. On May 11, 2004, the Petitioner filed an appeal with respect to the Respondent's refusal of the family unification application she filed for her husband in 1995. The Petitioner attached to her application extensive documents for the proof that her life center is with her family in Israel.

15. In this respect it shall be noted that following its return to Jerusalem, the family resided in the Shu'fat refugee camp and in the last two years it has been residing in the Ras Al 'Amud neighborhood. There is no dispute over the fact that the life

center of the family is in Jerusalem. Pursuant to this determination, the Respondent has long ago approved the Petitioner's application for family unification with her spouse and her minor children (see below). It shall be noted that the family members are known by the National Insurance Institute as residents of Jerusalem and the Petitioner receives child allowances for her minor children.

16. Petitioners 2-4 live in the family's home as well. Petitioners 2 and 3 currently work in sporadic construction projects. The projects in which they take part all take place in Israel. Their sister, Petitioner 4, has just recently completed her studies at a Jerusalem high school, and these days she is helping her mother with the house chores. Petitioners 2-4 have no linkage outside of Israel. Their mother's family members are residents of Israel. Their father's family lives in Jordan, and the Petitioners' connection with that family is very loose. It shall be noted that since the family returned to Israel in 1995, Petitioners 2-4 have not been to Jordan.

17. The Petitioner is a housewife and her spouse does not work. It shall be noted that the family has considerable monthly expenses. Aside from the living expenses, the rent payments and the apartment bills, the family has high health expenses. The Petitioner and her spouse suffer from high blood pressure and asthma. In addition, the Petitioner suffers from a serious condition in her thyroid gland as well as from back problems. Therefore, they need medications, the cost of which is regularly high. Petitioners 2 and 3 are the main providers of the family. Their 19 year old brother, Ali – for which the Petitioner's application of family unification has been recently approved (see below) – is working and helping with the family's livelihood as well. However, Ali suffers from serious birth defects (Dextrocardia and Situs Inversus – organs, including the heart, which are located on the opposite side of the body), and the medications which he takes are also added to the family's expenses.

    Certifications as to the health condition of the Petitioner, her spouse and their son Ali, are attached hereto, and marked **P/2**.

The Petitioner's Applications with respect to the Granting of Status for her Children:

18. On August 16, 2004, the Petitioner filed, this time through Petitioner 5, a preliminary application for family unification for all her children.

    The Petitioner's application, attached hereto, is marked **P/3**.

19. In October, November and December 2004, Petitioner 5 approached the Respondent with reminders in the matter of the application for granting of status for the Petitioner's children. On January 13, 2005, the Respondent notified that the Petitioner and her children are welcome to file their application with the Respondent's bureau on January 17, 2005. Nevertheless, with respect to Petitioners 2-4, it was reported that the application 'does not meet the criteria' due to their adulthood, and therefore it is destined to be denied.

    The Respondent's letter is attached hereto and marked **P/4**.

20. On January 17, 2005, the Petitioner filed a new family unification application for her spouse and for her three little children, who were minors at the time. At the same opportunity the Petitioner also filed an application for a residence visa for her spouse.

    A certification of filing applications for family unification for the spouse and the little children, as well as a certification of filing an application for a residence visa for the spouse are attached hereto and marked **P/5**.

21. The Respondent did not hasten to handle the application. Only on September 25, 2005, following five reminder letters sent by Petitioner 5, did the Respondent's clerk call and invite the Petitioner and her spouse to a hearing that was held on October 11, 2005, at the Respondent's bureau. At the hearing the couple was questioned about the places they lived in from the day they entered Israel and until that same day, as well as about their occupations and family connections. Additionally, the Petitioner handed various documents to the clerk, as she was requested.

22. Even after the hearing, the Respondent continued to drag his feet. Even five additional reminder letters sent to the Respondent, and two phone calls made by Petitioner 5's employee with the Respondent's bureau, with the purpose of

finding out why the handling of the application is being delayed, did not motivate the Respondent to handle the Petitioner's application. The Petitioner was therefore left with no choice, and on September 18, 2006 filed her petition with this court, a petition which addressed the Respondent's failure to decide on the Petitioner's application for family unification with her spouse, and his failure to decide on her application for the arrangement of status for her little children (Adm. Pet. 917/06).

23. Following the filing of the petition, on November 14, 2006, the Respondent notified that the Petitioner's application for family unification with her spouse has been approved, and that he will receive a class B/1 visa for a year. The Respondent also notified that the Petitioner's little children will be registered with the status of A/5 for two years.

The Respondent's letter is attached hereto and marked **P/6**.

24. Following the Respondent's notice, a stipulation was filed for the withdrawal of the petition. On March 27, 2007, the Honorable Court ordered the dismissal of the petition without prejudice and determined that the Respondent will bear the Petitioners' expenses in a sum of NIS 7,500.

The judgment in Adm. Pet. 917/06 is attached hereto, and marked **P/7**.

The Petitioner's Applications with respect to Petitioners 2-4

25. As aforementioned, the Respondent's position was that the application for receipt of status for the Petitioners, if filed, would be denied, since it 'does not meet the criteria'. In order to try and prevent such a summary dismissal, on October 22, 2006, the Petitioners approached the Respondent with a request to allow them to file an application for arrangement of status. In the application, the Petitioners emphasized the special circumstances due to which the application is being filed today. They emphasized that they had been victims of a tragic chain of events, as far as they were concerned, which did not enable the Petitioner, until recently, to file a family unification application for them and for their younger siblings. They noted the humanitarian consequences deriving from the fact that they are not able to receive any status in Israel. They noted that this would, in fact, be the carving of the family into two, and that they have no linkage to any other place apart from Israel. The Petitioners also mentioned the

family's great dependency on the income of Petitioners 2 and 3. This is true especially in light of the fact that their parents do not work and need medications regularly.

The Petitioners' letter is attached hereto and marked **P/8**.

26. Following this application, on November 13, 2006, the Respondent's clerk, Ms. _____ Asraf, phoned Petitioner 5's office and spoke with the undersigned. Ms. Asraf notified that it had been decided to enable the Petitioners to file applications for receipt of status, for humanitarian reasons. According to her, the applications would be examined by an internal committee of the Respondent, and the committee's recommendation would be transferred to the inter-ministerial exceptions committee. Ms. Asraf undertook that the transfer of the applications to the inter-ministerial committee would be carried out in any case, irrespective of the recommendation of the Respondent's internal committee.

27. On December 25, 2006, the Petitioners arrived at the Respondent's bureau, pursuant to an appointment set for them. At the bureau, the Petitioners filed their applications for granting of status in Israel. In the applications, the Petitioners repeated their arguments with respect to the humanitarian reasons due to which they are to be awarded status in Israel. To the applications they attached documents indicating a life center in Israel as well as "resume" forms intended for the eyes of the security sources. The filing of the applications entailed payment of a NIS 590 fee per application.

    The applications for granting of status and the receipts for their filing are marked **P/9, P/10 and P/11**.

28. After no answers to the applications were received, reminder letters were sent to the Respondent on January 30, 2007 and on March 4, 2007.

    The letters are attached hereto and marked **P/12 and P/13**.

29. On March 5, 2007, the office of Petitioner 5 received the Respondent's letter, stating that a decision with respect to the aforementioned applications had yet to be made.

    The Respondent's letter is attached hereto and marked **P/14**.

30. On March 7, 2007, the office of Petitioner 5 received the Respondent's letter dated March 5, 2007, stating as follows:

> **Your application with respect to the registration of your children _____, _____ and _____ has been referred to the Head of the Central Team – the Department of Visas and Aliens at the Population Administration head offices, and pursuant to the decision made, no humanitarian reasons justifying granting of status in those cases were found.**
>
> **Therefore it has been decided to deny the three applications in question.**

The Respondent's letter is attached hereto and marked **P/15**.

31. On March 15, 2007, Ms. _____ Blumenthal from Petitioner 5's office spoke with Ms. _____ Levin, who signed the letter in which the Respondent notified of the denial of the application. Ms. Levin stated that the Petitioners' matter was not transferred to the inter-ministerial committee, and that the decision was made by an internal committee of the Respondent. In light of the fact that it is a breach of the promise given to the undersigned, Ms. Blumenthal called Ms. Levin again on that same day. At that point Ms. Levin claimed that the decision was made by the "headquarters", and that in fact that is the inter-ministerial committee. At the end of the conversation Ms. Blumenthal asked to receive the protocol from the committee's meeting as well as the reasoned decision. Ms. Levin replied that she will inquire whether it can be transferred to the Petitioners for review.

32. On April 15, 2007, the Petitioners filed an appeal on the Respondent's decision. The Petitioners stated in the appeal that it is not clear whether the Petitioners' applications were in fact transferred to the inter-ministerial committee. Therefore, the Petitioners requested that if that had not been carried out yet, then their matter is to be brought before the committee, and once a decision is made – they are to receive the protocol of the meeting. On the merits of the case, the Petitioners argued that in light of the Respondent's laconic decision it is not clear what were the grounds at the base of the decision and whether the

Petitioners' special circumstances were taken into consideration. The Petitioners emphasized that in light of the Respondent's decision to approve the Petitioner's applications for granting of status for her little children and for family unification with her spouse – then the Respondent's refusal to approve the Petitioners' applications creates a real tear within the family.

The Petitioners' letter is attached hereto and marked **P/16**.

33. After no response to the appeal was received from the Respondent, on June 3, 2007, the Petitioners sent a reminder letter to the Respondent.

The Petitioners' letter is attached hereto and marked **P/17.**

34. On June 19, 2007, the Respondent's letter was received in Petitioner 5's office, stating that the appeal was referred to the handling of the appropriate personnel at the Population Administration's head offices, and their answer has yet to be received.

The Respondent's letter is attached hereto and marked **P/18**.

35. On August 1, 2007 and on September 20, 2007, two additional reminder letters were sent to the Respondent.

The letters are attached hereto and marked **P/19** and **P/20** respectively.

36. On October 17, 2007, the Respondent's letter was received at Petitioner 5's office, and this letter was identical to the Respondent's letter dated June 19, 2007, according to which no answer with respect to the Petitioners' matter had yet to be received.

The Respondent's letter is attached hereto and marked **P/21**.

37. Therefore, and after the passage of **eight months** from the day on which the Respondent denied the Petitioners' applications and **seven months** from the day on which the appeal was filed with the Respondent's bureau – the petition at bar is being filed today.

The Legal Argumentation

38. First, the Petitioners will argue that if in fact the Respondent avoided transferring the Petitioners' case to the review of the inter-ministerial committee, then it is a breach of a governmental promise which was given to the Petitioners'

counsel, as well as an actual deviation from the Respondent's procedures and even from the case law which determined that an application to the inter-ministerial committee may not be summarily barred.

39. Second, the Petitioners will argue on the merits of the case that the Respondent's decision is not reasoned whatsoever, and it ignores the humanitarian circumstances of the case at bar, and the severe consequences of the Petitioners' severance from the rest of their family members who are lawfully living in Israel.

The Transfer of the Application for the Review of the Inter-ministerial Committee – Is that so?

40. From the language of the Respondent's decision and from the statements of the Respondent's clerk, Ms. Levin (see Sections 30-31 above), it is not possible to understand, whether, at the end of the day, the Petitioners' case was brought before the inter-ministerial exceptions committee.

41. As aforementioned, on November 13, 2006, the undersigned spoke with the Respondent's clerk, Ms. _____ Asraf, who promised that the transfer of the applications to the inter-ministerial committee will be carried out in any case, irrespective to the recommendation of the Respondent's internal committee. If the Respondent in fact avoided transferring the application for the review of the inter-ministerial committee, then it is a breach of a governmental promise given to the Petitioners. There is no dispute that the promise was given by the Respondent's clerk, who has the authority to give the promise. There is also no dispute that both parties understood this decision as a decision of legal validity (for this matter see: HCJ 135/75 **Sai-Tex Corporation Ltd. v. the Minister of Commerce and Industry,** Piskei Din 30(1) 673).

42. Indeed, an administrative authority has the power to take back its promise, however it is required to demonstrate that a change in the circumstances, which justifies a change of the policy, has occurred:

> In arguing there is lawful justification to alter or retract its governmental promise, the authority is expected, at least generally, to indicate a change in circumstances which applies to the giving of the promise, and to convince the court that

> keeping its promise in the new circumstances is unjustifiable and is inconsistent with carrying out its obligations towards the public. (HCJ 715/89, **Sarig v. Minister of Education and Culture et al.**, Takdin Elyon 93(3)1408, Paragraph 20 of the judgment).

43. In the case at bar it is clear that no change in the circumstances has occurred from the day the promise was given to the Petitioners' attorney, and until the day on which the applications were transferred – either they were or they weren't – for the review of the inter-ministerial committee. There is also no distortion to the authority's promise, leaving which intact is improper or prejudicial to the public (see HCJ 799/80 **Shlalam v. Licensing Officer for Weapons**, Piskei Din 36(1) 317). To the contrary. As described below, the transfer of the Petitioners' case for the review of the committee was the right thing to do, and it met the criteria stated in the Respondent's procedures and in case law.

44. The Petitioners will argue that if indeed their path to the committee was blocked, then it was also carried out against the procedures of the Respondent himself. The Respondent's procedure titled: "Inter-ministerial Committee for the Determination and Granting of Status in Israel" determines as follows:

> d. **The Manner in which Application files are transferred to the Committee**
>
> 1. **PA Bureaus**
>
> Once the aforesaid application is received for discussion before the inter-ministerial committee, a bureau committee will convene in the bureau and will summarize all the relevant details and write its opinion and recommendation with respect to the application.
>
> The bureau will transfer the file attached with the application form and the summarization of the bureau committee's results to the head of the suitable desk.
>
> 2. **Heads of Desks**

> The desk heads will examine the application. In the event that they decide that indeed there is room to bring the application for discussion before the inter-ministerial committee, they shall add their recommendation to the file and transfer the application to the committee coordinator.
>
> **In the event that the Desk Head finds that the application does not meet the criteria**, and that there is no chance it will even pass the committee, she will deny the application and return the same to the bureau with a detailed explanation as to why the application has been denied and has not been transferred to the inter-ministerial committee. (Emphasis Added, Y.B.).

The procedure is attached hereto and marked as **P/22**.

45. Thus, the procedure explicitly determines that avoidance of transferring a case to the committee is possible only when the application 'does not meet the criteria'. In the case at bar, the Respondent is not alleging that these are applications that do not meet the **criterions for transfer to the committee.** Indeed, in light of the fact that these are applications for granting of status to adults, they do not meet the **regular criterions** for the granting of status by virtue of family unification. **However, the inter-ministerial committee was created for discussing exactly these sorts of cases.** So it is explicitly determined also in Section (a) of the said procedure:

> The inter-ministerial committee deals with granting of status for exceptional humanitarian cases which are not entitled to receive status according to the regular criterions and for which the bureaus do not have the authority to grant status.
>
> In regards to this matter see also: Adm. Pet. (Tel Aviv Jaffa) 2053/06 **Nadulin Valeria v. The Minister of the Interior et al.** (unpublished), Section 16 of the judgment; Adm. Pet. (Tel Aviv Jaffa) 2852/05 **Dr. Moshe Levy et al. v. The Ministry of the Interior**, Takdin-District Courts 2006 (3), 11469.

46. Therefore, if in fact it has been decided to block the Petitioners way to the committee, it is not clear what is the reasoning for this decision, and in any event – it is a course of action which contradicts the promise given to the undersigned and the Respondent's procedure with respect to the matter. This Honorable Court has also criticized the Respondent's tendency to summarily bar the referral of applications to the committee. Thus, for example, in a similar case in which the Respondent refused to allow the filing of an application to the committee for the purpose of arranging the status of adult children, Justice Y. Tzur established:

> After considering the parties' arguments I have concluded that the reduced remedy sought by the petitioners should be granted. The respondent's position that the petitioners' case does not justify approaching the inter-ministerial committee is inappropriate. **This is an inter-ministerial committee for humanitarian matters whose duty is to determine whether it is indeed a humanitarian matter which justifies, considering its unique circumstances, avoidance of the separation of a mother from her children. The petitioners cannot be summarily barred from and denied their right to apply to the inter-ministerial committee, which is the only authority authorized to establish whether the circumstances of the case justify granting or denying the application.** "The inter-ministerial committee for humanitarian matters" or "the exceptions committee", as its title indicates - has the duty of discussing and considering whether a case is an exceptional humanitarian case which justifies a grant of remedy, *ex gratia*. As part of the framework of the petition before me, there is no need for me to express an opinion on the merits of the application, and the only remedy sought therein is that the petitioners will not be summarily barred and that their application will be examined and considered on the merit. (Adm. Pet. (Jerusalem) 811/05 **Galila Abu G'zala et al. v. The**

Minister of the Interior et al., Takdin-District Courts 2005(4), 4745, p. 4747. (Emphasis Added – Y. B.).

The Respondent's Duty to Give Reasoning for his Decision

47. An administrative authority, by nature, has great power and influence, much greater than those of the single citizen standing before it. Due to this difference in power, it is appropriate that that citizen gets to understand the nature of the decision and the considerations behind it, and not confront a laconic answer, which he does not understand why it was given and what were the considerations in making it.

48. The English Common Law followed by the Israeli Law, acknowledged the existence of **Natural Justice Rules**. These are rules of procedural decency, which reflect the Israeli legal scholar's sense of justice, and express his sense of decency. In the framework of these rules it is customary to include the **Duty of Reasoning**. (See: A. Barak, Interpretation in Law, vol. 2, (Jerusalem: Nevo, 1994), 508-509).

> This duty, the purpose of which is to protect the citizen's rights from harm, to ensure a controlled, systematic, relevant and non-arbitrary decision-making process as well as to protect the proper public order, is not be taken lightly (HCJ 497/81 **Rubinovitch v. The District Committee for Planning and Construction,** Piskei Din 36(2) 210, 214; HCJ 62/75 **Hev' Reh' Hibat Zion v. The Local Committee**, Piskei Din 29(2), 595… In my perception, the citizen's right to receive a decision which gives reasons for the denial of his application to the authority is an integral part of the right to a hearing, which is one of the essences of the natural justice ((Adm. Pet. (Tel Aviv Jaffa) 1961/96 **Menashe Shakuri Company v. The Committee**, Takdin-District Courts 97(3) 1594, 1599).

For this matter also see: HCJ 3914/92 **Lev v. The Regional Rabbinical Court**, Piskei Din 48(2) 491, 502.

49. A material reasoning, which enables the citizen to understand the authority's reasons, is an inseparable part of a democratic life culture. It is the very essence of an open government which treats the citizen with administrative decency. An authority which conceals the reasons for its decisions, or which gives blurred and unclear reasons, creates a feeling of Kafkaesque tyranny which capriciously mocks its citizens.

50. The rational of the duty of reasoning is, *inter alia*, to allow a person who was harmed by the administrative decision to consider whether the decision meets the requirements of the law, and whether there is a basis and a reason to submit the decision for judicial review. In addition, the reasoning contributes to a proper relationship between the administrative authority and the citizen, which is supposed to dull the sense of governmental arbitrariness (Y. Zamir, The Administrative Authority (5756) (II) 897-898).

> The reasoning is one of the essential pillars and foundations of the administrative decision. In the reasoned decision the authority presents to the citizen involved its considerations and its reasons. In this manner, the visible removes the concern of the concealed and of irrelevant considerations, and the transparency and decency which are required of the authority's actions and decisions are present. Furthermore, in the absence of reasoning, the decision is found to be naked and lacking also before the judicial review of the decision and its validity (L.A. 1460/01 **Salach Abu Awad v. Muaid Amasha et al.**, Takdin-National Labor Court 2002(2) 588, 589).

The Content of the Duty of Reasoning

51. The reasoning must place whomever was harmed by the authority's decision in a position in which he can have the decision examined by the appeal and review instances, and to enable such instances to properly perform their duties. The reasoning must also reflect the major parameters of the authority's process of adopting the decision, and should not be satisfied with the headings of the reasons which stood at the foundation of the decision.

> Alongside the grounds for the decision, a proper reasoning must at least include the essentials of the factual findings on which the decision is based… **It is not enough for the authority to explain its decision in a general and vague manner while mentioning "the headline" of its grounds and without a relevant and specific address of the circumstances of the case in question.** In other words, a notice saying "your application has been denied for security reasons" – is not enough. (Y. Dotan, The Duty of Reasoning of Administrative Authorities and Selected Bodies, Mechkarei Mishpat 19, 5, Page 37) (Emphasis Added – Y.B.).

52. It should be noted that the duty of reasoning sometimes applies not only to decisions of the body authorized **to decide** on a certain matter, but also to the decisions of the bodies which are supposed to **advise** the deciding body. Section A of the procedure which addresses the inter-ministerial committee explicitly determines that **the committee is a committee recommending committee to the Director of the Population Administration.** In this respect, the position of the courts is that **in cases in which the decision of the authorized body is based almost completely on the position of the advising body, it is appropriate that the reasoning of the advising body will also be accessible to the citizen.** (See: Y. Dotan, Administrative Authorities and Selected Bodies' Duty of Reasoning, Mechkarei Mishpat 19, 5, Page 10, note No. 28).

53. An "explanation" according to which "**No humanitarian grounds which justify granting of status in these cases were found**", therefore cannot stand. "Reasoning" which does not allow the citizen to understand the meaning of the decision given in his case, to identify mistakes in the data underlying the same, to object thereto and to have it judicially reviewed – is not considered reasoning.

54. **From the above description it is apparent that the authority is required to explain its decision in a relevant and specific manner to the circumstances of the case, and not be satisfied with an explanation which only notes the "headline" of its grounds. The Respondent did not meet this duty of his. In certain cases, as the case at bar, in which the authority's decision is based on the position of an advising body, the authority is required to also**

mention the reasoning of that body. The Respondent did not meet this duty as well.

55. In the case before us, the Respondent's failure to explain his decision cries out to the sky. This is the case in light of the weighty humanitarian grounds existing in the case at bar (as it will be described below), and in light of the fact the these grounds were presented time and again before the Respondent, in the Petitioners' request to allow the filing of applications for the granting of status and in the applications themselves (see Sections 25 and 27 above). Thus, in a similar case, in which all the data with respect to the humanitarian aspect were presented before the committee, but it was impossible to understand, in the absence of reasoning, why the committee determined not to grant status for humanitarian grounds. It was determined that:

> In fact, all the data which were brought before the court, were brought before the respondent while the petitioner's case was being discussed… In an unreasoned decision, the committee determined, as described in that document, that there is no justification for granting of status. This decision, as aforesaid, did not have any reasoning and it was not clarified in the committee's decision why its members believe that the according to the petitioner's personal data there is no room to grant her a humanitarian remedy. In the absence of reasoning, it is also impossible to accept the prosecutor's argument that the decision, as it was adopted, is a reasonable decision. No explanation was given with regard to why the committee does not find a humanitarian reason to enable petitioner 1 to continue her stay in Israel… **A decision without any reasoning, and without an address of all the arguments brought before the committee, cannot be considered as a reasonable decision and in any case it is impossible to understand from the language of the decision that appropriate consideration was given to all those reasons.** (Adm. Pet. (Haifa) 4112/07 **Evelyn (Chiat) Paulson et al. v.**

the State of Israel, Takdin-District Courts 2007(2) 3262, p. 3264). (Emphasis Added).

For additional criticism with respect to laconic decisions of the inter-ministerial committee see: Adm. Pet. (Tel Aviv Jaffa) 1285/03 **Lubnov Alexander et al. v. the Minister of the Interior et al**. Takdin-District Courts 2004(1), 10050; Adm. Pet. (Beer Sheva) 3113/06 **Physicians for Human Rights Association et al. v. the Minister of the Interior et al**, Takdin-District Courts 2006(4), 12059.

The Respondent's Disregard of Humanitarian Grounds

The health condition of the Petitioner and her spouse

56. The Petitioner and her spouse are not in good health. They both suffer from a chronic condition of high blood pressure. In addition, the Petitioner suffers from a problem in the thyroid gland and her spouse has asthma. Thus, the couple does not work, and in addition to their everyday expenses there are also high expenses for medications they need regularly. It should be noted that to the aforesaid should be added the expenses for the medication required by Ali, the couple's son, who suffers from birth defects.

57. A direct result of these sad circumstances is the reliance of the whole family, in the absence of any other option, on Petitioners 2-4. Petitioners 2 and 3 are indeed finding it difficult to find work without a permit for staying in Israel. However when they manage to find work, their meager salary is invaluable for the family, and provides breathing air for all the members of the household. In the absence of a stay permit, the daughter _____ also has trouble finding work, and she helps her mother with the house chores and with taking care of her little siblings.

58. The Respondent ignores all these. He disregards the special connection between the Petitioners and their parents, between the Petitioners and their little siblings. He disregards the entire family's need for three of its sons. He disregards the conscious and religious decree of the Petitioners, which requires them to provide all the possible help to their parents, who gave birth to them.

The Petitioners' Life Center

59. Starting the early teens of their life, and until this very day, the Petitioners have been living in Jerusalem. Outside of Israel, the Petitioners do not have a connection to any country. Their mother's family members are residents of Israel. Their father's parents have passed away, and all that is left of the father's family in Jordan is his brother, with which the relationship is very loose, and is limited to one phone conversation each year. It should also be noted that since the family came back to Israel in 1995, the Petitioners have not been to Jordan.

60. Jerusalem is therefore the life center of the Petitioners in every way possible. This is where the Petitioners went to school. This is where they made friends. This is where Petitioners 2 and 3 work. And above all – this is where their home is, the home of their family. This is where their closest beloveds live, the same family members who have status in Israel, or those who are taking part in the procedure for the arrangement of status. Therefore, it is hard to imagine a closer relationship of a person to a place of living.

61. The aforesaid depicts a picture according to which the Petitioners, in fact, have nowhere to go. In their decisions with respect to granting status in Israel for humanitarian grounds, the courts give a lot of weight to this consideration:

> I have given consideration to the arguments of the parties which brought before me the positions of the Ministry of Interior's authorities on the one hand, and of the petitioner on the other, and my conclusion is that it will be just and appropriate and reasonable to order that the petitioner stay in Israel and that she be granted an appropriate visa as follows therefrom.
>
> In my decision I did not disregard the policy which is practiced in the issue before me, however in a legal system which is based on an open humane approach which is capable of showing empathy to exceptional and difficult situations, it is appropriate to acknowledge that any general norm must also allow room to be considerate of exceptional circumstances, in which the implementation of the norm will lead to severe

> humane damage. Our ability to constitute general administrative norms must be integrated while using a proper balance with the ability to consider circumstances which are not suitable for the formal and automatic implementation of rules which lead to especially severe consequences. The moral content which enables the shaping of general norms must also allow room for consideration of situations in which the conclusion must be different. Being too automatic in implementation of rules is similar to a formalistic application of procedural rules, both justify consideration of exceptional circumstances…
>
> **The petitioner who has been living in Israel for eight consecutive years serves as a support for the entire family who lives here in Israel,** meaning for the mother, for her step grandmother (the Jewish mother of her step father) and for her step sister.
>
> These facts all arise from the petition, as brought by the petitioner, and have not been rebutted.
>
> **The deportation of the petitioner from Israel means sending her to a place where she has no relatives and cutting her off from her family**, meaning her biological mother who lawfully lives in Israel, and her sister who lawfully lives in Israel, who are her family, with which she is integrated. (Adm. Pet. 2430/04 **Kurilenko v. the Ministry of the Interior**, Sections 2-3 of the judgment. Published in "Nevo") (Emphasis Added – Y.B.).

For considering this consideration also see: Adm. Pet. (Tel Aviv Jaffa) 1068/03 **Vichristenko Valerie v. the Ministry of the Interior**, Takdin-District Courts 2003(2), 8243; Adm. Pet. (Tel Aviv Jaffa) 2053/06 **Nadulin Valeria v. the Minister of the Interior et al.** (Unpublished); Adm. Pet. (Tel Aviv Jaffa) 1136/03 **M' V' et al. v. the State of Israel – the Minister of the Interior**, Takdin-District Courts 2004(4), 3025.

62. The Petitioners do not have and have never had security problems. The Respondent also is not claiming so. His denial of their application for granting of status in Israel is completely based on the argument that **no humanitarian grounds that justify granting of status in these cases have been found.** From the aforesaid with respect to the case's specific circumstances, it is difficult to comprehend how this sort of answer can be given by the aforementioned administrative authority which is supposed to work diligently, *inter alia*, on examining the applications filed therewith on humanitarian grounds. The least would be to expect that a detailed reasoning would be given, from which the Petitioners could understand why their case does not justify granting of status.

63. It is not the first case in which the inter-ministerial committee or another body to which Respondent No. 1 delegated his powers – are not fulfilling their duty, to say the least. This Honorable Court and other courts have already described a number of failures in this respect. Thus for example, it was determined that:

> The Minister of the Interior is obligated, as is any administrative officer, to hold a discussion on the merits of a case which is subject to his discretion, and he must examine all the relevant facts and circumstances of that case. He must make his decisions accordingly. Once a minister delegated his powers to "the inter-ministerial committee", it must use its authority and discretion in the same manner… **As a rule, decisions in applications of this nature should not be issued in conveyor-belt style, and without considering the circumstances of each and every case… A quasi-judicial committee, which weighs the fates of people, and decides who will be deported and who will stay in the country, must carry out this procedure in a careful and responsible manner, while making sure that every case brought before it is discussed on its merits and on all its relevant details** (Adm. Pet. (Haifa) 1037/03 **Larissa Feldman et al. v. The Minister of the Interior**, Takdin-District Courts 2004(1), 2888, pp. 2891-2892). (Emphasis Added).

64. It will not be exaggerated to say that in the case before us there was no "careful and responsible procedure", as the court stated. This is especially true when **as of the day on which the applications for granting of status were filed, the Respondent had already approved the status arrangement for the Petitioner's minor children, as well as her application for family unification with her spouse.** The Respondent's decision therefore separates Petitioners 2-4 from the rest of their family members, who are lawfully staying in Israel. Were these new circumstances present before the decision makers in this case? Were they given the proper consideration?

65. In the aforementioned Adm. Pet. 1037/03 the court stated that it seemed that the inter-ministerial committee did not consider the change of circumstances which occurred in that case. It was determined that:

> In our case it is very doubtful whether the inter-ministerial committee actually had a substantial discussion in the case of the petitioner, while being aware of all her circumstances and of the change which occurred recently, rather **a concern arises that the committee may have served as a "rubber stamp" which repeats its previous decisions, without giving consideration to the change of circumstances.** (Ibid, p. 2893). (Emphasis Added).

66. To summarize this matter, it seems that there is no choice but to establish that not only did the Respondent disregard the humanitarian circumstances in the Petitioners' case, but he also disregarded his own decision – to approve granting of status to the Petitioners' minor children and to approve her application for family unification with her spouse – and its consequences to the Petitioners.

<u>The Breach of the Right to a Family Life</u>

67. The right to a family life is a basic constitutional right in Israel, and is included in the right of human dignity and liberty. This position has recently received a sweeping support from the Supreme Court Justices in HCJ 7052/03 **Adalah – The legal Center for Arab Minority Rights in Israel et al. v. The Minister of the Interior,** Takdin-Elyon 2006(2), 1754. (Hereinafter: the **Adalah Affair**). Chief Justice (ret.) A. Barak ruled, in Section 27 of his judgment that "the right

to a family life is not limited to the right to get married and have children. The right to a family life also means the right to have a shared family life."

68. There is no need to spill ink about the great importance which the Israeli courts relate to the right to a family life, in general, and to the connection between a parent and his children in particular. In his judgment in the Adalah Affair, the Chief Justice (ret.) A. Barak mentioned statements made by judges and legal scholars with respect to the aforesaid connection between parents and their children (See Section 26 of the judgment):

> Indeed, "the parents' right to raise their children is a natural primal right, the importance of which cannot be exaggerated" (P. Shifman, Family Law in Israel, Volume B; 219 (5749-1989)). "The connection between a child and his parents – who gave birth to him is of the foundations on which human society is built" (App. Req. 377/05 **Jane Doe v. The Biological Parents** (Unpublished, Section 46)). As my colleague Justice A. Procaccia said: **"The depth and force of the parenthood connection, which stores within it the natural right of a parent and his child to a life connection, between them, turned the family autonomy to a value of legal status of the first degree, which the damage to such is bearable only in very special and exceptional cases. Any severance of a child from a parent is a violation of a natural right"** (LCA 3009/03 **Jane Doe v. John Doe,** Piskei Din 56(4) 872, 895-896). (Emphasis Added – Y.B.).

69. The international law also establishes that the right to a family life must be protected in a broad manner. Thus, for example, determines Section 10(1) of the International Covenant on Economic, Social and Cultural Rights, Treaties 1037, ratified by Israel on October 3, 1991:

> 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… [Translation: The Office of the United Nations High Commissioner for Human Rights (OHCHR) website]

See also: Section 16(3) of the Universal Declaration of Human Rights, which was adopted in the United Nations Assembly on December 10, 1948; Section 17(1) of the International covenant on Civil and Political Rights, Treaties 1040, came into force with respect to Israel on January 3, 1992.

70. In accordance with the great importance which is related to the right to a family life, the Israeli courts established that applications for family unification which do not fall within the regular criterions must also be addressed in a special manner. With respect to the issue which this Petition is about – granting of status in Israel to adults – the courts have also established that each case must be examined on its merits, and at least – to refer the applications filed with the Respondent to the inter-ministerial exceptions committee (for this matter see: Adm. Pet. (Jerusalem) 811/05 **Galila Abu Jazalah et al. v. The Minister of the Interior et al.**, Takdin-District Courts 2005(4), 4745; Adm. Pet. (Tel Aviv Jaffa) 1068/03 **Vicharistenko Valerie v. The Ministry of the Interior**, Takdin-District Courts 2003(2), 8243). As aforesaid, it not clear at all that this was done in the case at bar.

71. Therefore, a summary denial of an application by children – even if they are adults – for family unification with their parents, does not match the great sensitivity with which any possibility of damage to the family cell must be addressed, and constitutes a deviation from the way the courts address the matter. As described above, in the case before us the damage to the family cell is enhanced, and that is due to the great dependency of the entire family on the Petitioners, who are sentenced today to be deported from their home.

Conclusion

72. In the matter of this petition, the Respondent's failure to handle applications which are not within the norm, applications which deviate a little from the dry procedures, has once again been revealed. Applications which require attention which is beyond the automatic routine. Applications which require the Respondent to look to his right and to his left and to see the big picture of the family standing before him.

73. Above all, this petition sheds light on the Respondent's failure to provide those who approach him with the proper attention in genuine life-and-death cases – attention which must include if only an iota of humanity. First the Respondent refuses to handle the Petitioners' applications, since they do not meet the 'criteria'. Then the Respondent claims that the applications do not have humanitarian grounds.

74. Had the Respondent agreed to explain his decision, perhaps the Petitioners would have received answers, even if partial, to their claims. Perhaps we would have learned why the severance of family members from their home, from their loved ones, from the place where they have been living most of their lives – is not a humanitarian consideration. Perhaps we would have also learned why an exile forced on the Petitioners, to a foreign country, which they have no linkage to – is not a humanitarian reason. Perhaps we would have received an answer to the question why leaving sick parents behind, without their children who nurse and support them financially – is also not a humanitarian reason.

75. The Respondent chose not to do so, and did not specify his reasoning, for reasons which he has kept to himself. By doing so, he leaves the Petitioners without the ability to confront his puzzling course of action. Indeed the Respondent himself only recently approved the family unification application filed by the Petitioner for her spouse, and the application for granting of status to her minor children. Therefore this causes a situation in which the Respondent stirs with both hands the affairs of an entire family. With one hand he approves the granting of status to some of the family members, and with the other he sentences the other family members to deportation.

76. All, as aforesaid, in accordance with the dry procedures, which allegedly do not enable the Respondent even the minimal flexibility.

77. The Honorable Court is therefore moved to explain to the Respondent his duties to act reasonably and fairly. Duties, which mean in many cases, also the need to consider exceptional circumstances and to provide solutions in cases which call for discretion, which will prevent placing entire families in a hopeless situation.

For all of these reasons, the Honorable Court is moved to issue an Order Nisi as requested, and after hearing the Respondents' response to the Order Nisi, to make it absolute and to order the Respondents to pay the Petitioners' costs and legal fees.

Jerusalem, November 14, 2007

_____
Adv. Yotam Ben-Hillel
Counsel for the Petitioners

[T.S. 25857]