The Courts

At the Jerusalem District Court **Adm. Pet. 1238/04**
Sitting as the Court for Administrative Matters
Before: Honorable Judge Mosia Arad - President

In the matter of:

1. **_____ Jubran, ID. _____**
2. **_____ Jubran, (minor girl)**
3. **_____ Jubran, (minor girl)**
4. **_____ Jubran, (minor girl)**
5. **_____ Jubran, (minor boy)**
6. **_____ Jubran, (minor boy)**
7. **_____ Jubran, (minor girl)**
8. **_____ Jubran, (minor girl)**
9. **_____ Jubran, (minor girl)**
10. **HaMoked: Center for the Defence of the Individual**
    represented by attorney Adi Lustigman

The Petitioners

v.

1. **Minister of the Interior**
2. **Director, Population Administration**
3. **Director, Population Administration Office, East Jerusalem**
   represented by the State's Attorney's Office,
   Jerusalem District

The Respondents

Judgment

General

1. This petition concerns the respondents' decision to revoke the permit granted to petitioner 2 for temporary residency in Israel as well as their refusal to upgrade the permits for temporary residency granted to her sisters, petitioners 3 and 4, to permits for permanent residency in Israel.

The Main Facts and Proceedings

2. Petitioner 1 is a permanent resident of Israel who is married to a resident of Bethlehem. Petitioners 2-9 are their children. Petitioner 2 was born in Jerusalem on 26 August 1989. Petitioner 3 was born in the Area on 12 November 1990. Petitioner 4 was born in the Area on 29 October 2004. Petitioners 2-4, all three, are registered in the population registry in the Area. Petitioners 5-9, the siblings of petitioners 2-4, received permits for permanent residency in Israel in 2007. Therefore, their matter no longer necessitates review. Petitioner 10 (hereinafter – HaMoked) is a registered non-profit organization which has, over the years, conducted some of the communications with the respondents on behalf of the petitioners.

3. Petitioner 1-9 lived in the Area. In June 2002, the family took up residence inside the city of Jerusalem. In July 2002, petitioner 1 filed a family unification application for her husband and an application for status for her children. The respondents did not respond to this application. On 19 November 2003, HaMoked appealed to the respondents on behalf of petitioner 1 regarding the family unification application for petitioners 2-8. This appeal also went unanswered. On 29 April 2004, a further application for legalizing the status of petitioners 2-8 was filed. On 17 June 2004, petitioner 1 was informed that in view of the Nationality and Entry into Israel Law (Temporary Order), 5763 – 2003 (hereinafter: the temporary order law), as formulated at the time, applications may be filed only for petitioners 4-8 who had yet to turn 12 years old. As for petitioners 2-3, the respondents stated that applications could not be filed for them as they were over the age of 12. An objection to the respondents' decision regarding petitioners 2-3 was filed by the petitioners on 12 August 2004 and was rejected on 2 November 2004. On 12 September 2004, petitioners 4-8 received referrals to obtain DCO permits, despite the fact that their application related to permits for permanent residency in Israel.

4. The petitioners did not accept the respondents' decisions in their matter and filed a petition via HaMoked on 10 November 2004. In the petition, the petitioners claimed that the respondents should have granted petitioner 2 a permit for permanent residency in Israel and petitioners 3-8 permits for temporary residency in Israel for two years followed by permits for permanent residency. The petitioners argued, *inter alia*, that the petitioners were not "residents of the Area" as the term was defined in the temporary order law. In their view, the mere registration in the population registry in the Area is not sufficient to indicate residency in the Area. Therefore, the temporary order law did not apply to their case.

5. On 20 April 2005, the state attorney's office sent a letter to HaMoked which stated that petitioners 4-8, who were under 12 years old at the time the application was submitted, would be granted A/5 permits for temporary residency for two years, after

which, subject to proving center-of-life and to the opinion of security officials, they would received permits for permanent residency. As for petitioners 2-3: it was noted that they would not be granted any status as at the time the application was submitted they were over 12 years old.

6. On 4 July 2005, proceedings in the petition were halted, at the request of the state attorney's office, pending a judgment in AdmA 5569/05 **'Aweisat v. Minister of the Interior** (hereinafter – **the 'Aweisat case**). The **'Aweisat case** consolidated several appeals which concerned the question raised by this petition also, which is, whether according to the original definition of "resident of the Area" in the temporary order law, which is relevant for our matter, being registered in the population registry in the Area is sufficient to determine that a person is a resident of the Area.

7. On 1 August 2005, the temporary order law was amended (hereinafter: the 1 August 2005 amendment to the law or the amendment) and it was determined, *inter alia*, that it is possible to grant a permit for residency in Israel to a minor resident of the Area under the age of 14 (contrary to the original version of the law which specified the age of 12). The amendment further established that a minor over the age of 14 could receive DCO permits. Following the amendment to the law, the respondents amended their procedures such that children who were under the age of 14 at the time the application was submitted would receive an A/5 temporary permit for two years followed by a permit for permanent residency in Israel, and children over the age of 14 would receive DCO permits (section 11 of the response).

8. According to the respondents, on 7 December 2005, another application regarding petitioners 2-3 was sent and on 20 March 2006, a new decision was rendered in their matter, according to which petitioners 2-3 would receive an A/5 temporary residency permit for two years. In practice, petitioners 2-3 received permits for one year only.

9. On 27 June 2007, the petitioners were informed that petitioner 2 would receive an A/5 permit for another year and that petitioners 5-8 would receive permits for permanent residency in Israel. On 16 September 2007, the A/5 permits granted to petitioners 3-4 were extended.

10. On 11 December 2007, HaMoked requested the respondents upgrade the status of petitioners 2-4. In the framework of this request, a hearing was held for petitioner 2 on 13 March 2008. At the hearing, the respondents discovered that petitioner 2 had a marriage contract dated 24 September 2005. In view of this, on 18 March 2008, the respondents announced that the permit granted to petitioner 2 would not be extended and that she would have to return her ID card. An objection filed against this decision was rejected on 12 August 2008.

11. On 30 July 2008, another application for upgrading the status of petitioners 3-4 was filed. The respondents refused the application but extended the A/5 permits granted to petitioners 3-4 by another year.

12. On 10 August 2008, the Supreme Court rendered a judgment in the **'Aweisat** case. The judgment established that the definition of "resident of the Area", in the original version, is to be interpreted as an alleged finding only. Therefore, the Minister of the Interior must allow the applicant to convince it, using administrative evidence, that other than the registration in the population registry, he lacks any other ties to the Area and therefore, the temporary order law does not apply to him. Following the judgment in the **'Aweisat case**, on 11 November 2008, the petitioners filed a revised petition against the respondents' decisions to revoke the status granted to petitioner 2 and to refrain from upgrading the A/5 permits granted to petitioners 3-4. The petitioners asked the court to find that petitioners 2-4 must be granted permits for permanent residency in Israel.

13. On 10 May 2009, a hearing was held for petitioner 1 in order to examine her request to have her children registered in view of the test established in the **'Aweisat case**. The respondents' position following the hearing was that the petitioners have ties to the Area other than the registration tie since, as indicated by the investigation conducted by the National Insurance Institute in their matter, the petitioners moved to the territory of the State of Israel only in the middle of 2002.

The Petitioners' Main Arguments

14. The petitioners argue that the temporary order law should not apply to petitioners 2-4, as the law applies only to "residents of the Area" as defined in the law, whereas, the petitioners, they argue, do not fall under this definition. The petitioners argue that in accordance with the Supreme Court's finding in the **'Aweisat case**, the mere fact that petitioners 2-4 are registered in the Area is insufficient to determine that they are residents of the Area. The petitioners further argue that the judgment in the **'Aweisat case**, according to which a person who seeks status may prove that he has no ties to the Area other than being registered in the registry, relates to the applicant's ties at the time the application for status in Israel was submitted. The petitioners argue that at the time the application was submitted, July 2002, petitioners 2-4 lacked any further ties to the Area. Therefore, the petitioners argue, the respondents should have granted petitioner 2, who was born in Jerusalem, a permit for permanent residency in Israel under Regulation 12 of the Entry into Israel Regulations, 5734 – 1974 (hereinafter: Regulation 12) and granted petitioners 3-4, who were born in the Area, A/5 permits for two years and then upgraded them to permanent permits in accordance with the graduated procedure applicable to children who were born outside Israel to a parent who is a resident of Israel - a procedure which the respondents announced in Adm. Pet. 420/03 **Juda v. Minister of the Interior et al.**

15. Alternatively, the petitioners argue that petitioners 2-4 must be granted permits for permanent residency in Israel even if it is decided that they are residents of the Area who come under the temporary order law.

    In the matter of petitioner 2, it was argued that at the time the application was submitted in July 2002, she was under the age of 14 and therefore, according to the 1 August 2005 amendment to the law and under the respondents' procedures, the

respondents should have granted her an A/5 permit for two years and then upgraded it to a permit for permanent residency. The petitioners claim that the respondents' position, according to which, the temporary permits were granted to petitioners 2-3 *ex gratia* must be rejected both since they are entitled to the permits under the provisions of the law, and since the temporary order law does empower the respondents to grant permits *ex gratia*.

The petitioners further claim that the respondents erred when they revoked the A/5 permit granted to petitioner 2 due to the existence of a marriage contract. This, since, their decision ignored the meaning of a marriage contract in Muslim society. The argument is that the marriage contract of 24 September 2005 is tantamount to an engagement contract only. During the engagement, the signatories to the marriage contract continue to live separately, each in their parents' home, and do not conduct a joint family life or have a joint home. The couple is considered married and able to live together only after the wedding party. The petitioners refer to a ruling by the National Labor Court (LC 57/04-136 **National Insurance Institute v. Hajj Mahmud 'Issa Haniya**), in which the National Labor Court accepted the argument that in Muslim society a marriage contract is tantamount to an engagement contract. In our matter, the petitioners note that the marriage contract was signed when petitioner 2 was only 16 years and one month old, while still prohibited from marriage under Israeli law. After signing the contract, petitioner 2 continued to live in her parents' home, away from her fiancée, until June 2006. At that point, the two were considered married, and the spouse moved to live with petitioner 2 in her parents' home until February 2008. According to the petitioners, the respondents were not provided with false information relating to petitioner 2 as, until June 2006, she was still single. As for a false statement alleged to have been signed by petitioner 1, the petitioners argue that the claim cannot be considered without the respondents producing the statement. The petitioners further argue that the respondents' demand that applicants seeking status in Israel remain single through the duration of the period leading up to the final receipt of a permit for permanent residency in Israel is unreasonable, and does not appear in the provisions of the law or in the respondents' procedures.

In the matter of petitioners 3-4, the petitioners claim that at the time the application was submitted in July 2002, they were under 12 years old and therefore, even under the original version of the temporary order law, the petitioners should have granted them permits for permanent residency in Israel at the end of the two years during which they had A/5 permits.

In the matter of petitioner 3, the petitioners further argue that even if it is established that the application was submitted in 2004, indeed, at that time, petitioner 3 was under the age of 14 and therefore, the petitioners should have granted her a permit for temporary residency for a period of two years and thereafter a permit for permanent residency in Israel. The petitioners claim that the respondents' refusal to upgrade the permit granted to petitioner 3 originates in an unacceptable procedure implemented

by the petitioners, which several judgments had found contravened the provisions of the temporary order law.

The Respondents' Main Arguments

16. The respondents argue that there is no room for intervention in the decisions rendered in the matter of petitioners 2-4. The respondents first claim that petitioners 2-4 are residents of the Area, and therefore, the claim that the temporary order law must not be applied to them must be rejected. The respondents argue that the Supreme Court's judgment in the **'Aweisat case** must be interpreted as finding that an applicant's ties to the Area will be examined beginning with his birth and up to the submission of the application for status in Israel and not just as at the date the application was submitted. It must be noted that, according to the respondents' decision, the rule established in the **'Aweisat case** is relevant only to petitioner 2, who was born in Jerusalem, as the **'Aweisat case** referred to the relationship between the temporary order law and Regulation 12 which applies to persons born in Israel. Sine petitioner 2 lived in the Area from infancy until the submission of the application for status in Israel, indeed, in her case, there are significant ties to the Area. As for her sisters, petitioners 3-4, the respondents claim they were residents of the Area and added nothing further.

17. In the matter of petitioner 2, the respondents claim that the permit had been granted to her *ex gratia* and legally revoked after discovery that her application was based on false information. According to the respondents, petitioner 2 and her sister, petitioner 3, were not eligible for residency permits in Israel in the first place. This, since at the time the application was submitted the two were over 12 years old. On this issue, the respondents claim that the date of submission of the application is not July 2002, as the petitioners claim, but, at the earliest, June 2004. This since only in June 2004 had the petitioners had a center of life in Israel for two years. The respondents argue that applications which are submitted before the existence of a centre of life in Israel for two years are to be rejected out of hand. Therefore, one must ignore the petitioners' application to the respondents in July 2002 and view the application as if it had been submitted at the earliest, in June 2004, when petitioners 2-3 were over 12 years old. The respondents further claim that petitioners 2-3 are not entitled to permits for residency in Israel even under the 1 August 2005 amendment to the temporary order law since petitioners 2-3 were over 14 years old on the date of the amendment. As for the revocation of the permit granted to petitioner 2, the respondents claim that the A/5 residency permit was granted to the petitioner on 20 March 2006 and periodically extended based on the knowledge that she was single and supported by her parents. Only on 12 February 2008, when petitioner 2 applied for an extension of her permit was it uncovered that she had been married since 24 September 2005. According to the respondents, at the time petitioner 2 was registered in the Israeli population registry, her mother, petitioner 1, signed a statement according to which petitioner 2 was single. The respondents also claim that the mother was present at the respondents' office in September 2007 and claimed that petitioner 2 was going to get engaged soon. According to the petitioners, their decision to deny petitioner 2 the residency permit she had been granted is consistent with the common law, according

to which it is sufficient that the application for a permit to be based on false information in order to revoke a permit that had been granted (HCJ 9047/00 **Yagmour v. Ministry of the Interior, Adm. Pet. 981/03 Samara v. Ministry of the Interior**, rendered 25 March 2004). It was also claimed that their decision was justified considering that the rationale which lies at the foundation of the possibility of allowing a minor child to remain in Israel with his custodial, Israeli resident parent, does not apply to a child who does not live with his parents and constitutes a separate family unit. According to the respondents, a person who has already obtained temporary or permanent status in Israel is permitted to carry on with his normal life, get married and the permit will not be taken away. However, a person regarding whom the rationale of unification with his parents who are in Israel did not apply in the first place upon granting the permit, must be revoked of the permit granted to him.

18. In the matter of petitioner 3, it was claimed, as aforesaid, that she was not eligible for a permit to remain in Israel for the same reasons specified regarding petitioner 2. The A/5 permit which she held was granted, it is claimed, *ex gratia*. The respondents added nothing further regarding petitioner 3, but it seems that according to their position, there is no obligation to upgrade the status of petitioner 3.

19. In the matter of petitioner 4, the respondents refer to a child registration procedure entitled "processing applications for status in Israel for a minor **only one of whose parents** is registered as a permanent resident in Israel" (emphasis in the original, exhibit PA/11 to the revised petition, hereinafter – child registration procedure). Under this procedure, a child who is a resident of the Area and under the age of 14 will receive the status of temporary resident for two years, at the end of which, he will receive status in accordance with the temporary order law. The procedure further establishes that "inasmuch as the minor passed the age of 14 while still holding A/5 status, he will remain in that status and will not be upgraded". The application of petitioner 4 was approved in April 2005 and she was then granted an A/5 permit for two years. According to the respondents, the decision not to upgrade the permit granted to petitioner 4 is consistent with the provisions of the temporary order law and with the child registration procedure, since, at the end of the two year period in which she had an A/5 permit, petitioner 4 was over the age of 14. During the hearing on the petition, the respondents raised another claim, according to which, section 3A(1) of the temporary order law which relates to minors under the age of 14, establishes that the minister of the interior is permitted to grant a "permit for residency in Israel" but the type of permit is not determined. According to the respondents, "a permit for residency in Israel" may be interpreted both as a permit for permanent residency in Israel and as a permit for temporary residency in Israel and therefore, there is no flaw in their decision not to upgrade the permit granted to petitioner 4.

Review

20. The petition must be accepted.

21. During the period in which proceedings in the petition were halted, an amendment which changed the law applicable to the petitioners was passed, as explained below. Following this amendment the need to review the question whether petitioners 2-4 are "residents of the Area" under the temporary order law and the rule established in the **'Aweisat case** has become redundant. This, since even if we presume that they are residents of the Area, indeed, according to the amendment to the law, the petitioners are entitled to the remedies sought in the petition. Therefore, the matter of petitioners 2-4 shall hereinafter be reviewed under the assumption that petitioners 2-4 are residents of the Area to whom the temporary order law applies.

22. The legal provisions relevant to our matter in the temporary order law pertain to the granting of status to minors. In the law's original version of 6 August 2003, section 3 established:

> Notwithstanding the provisions of section 2 –
>
> (1) The Minister of the Interior … may grant a … a permit to reside in Israel or a permit to remain in Israel … in order to prevent the separation of a child under 12 years of age from his parent who is lawfully present in Israel";

On 1 August 2005, in the framework of the amendment to the temporary order law, section 3 of the law was replaced by section 3A which establishes that:

> "Notwithstanding the provisions of section 2, the Minister of the Interior may, at his discretion –
>
> (1) grant a minor who is a resident of the Area and under 14 years of age a permit to reside in Israel in order to prevent his separation from his custodial parent who is lawfully present in Israel;
>
> (2) approve a request that a permit to remain in Israel be granted by the commander of the Area to a minor who is a resident of the Area and is over 14 years of age in order to prevent his separation from his custodial parent who is lawfully present in Israel…"

As is apparent, section 3A of the law raised the maximum age for granting a residency permit in Israel to a minor from 12 to 14. This section applies both to new applications filed following its enactment and pending applications (see Adm. Pet. 771/06 **Abu Gweila v. Minister of the Interior** (rendered 7 August 2007).

The Date of the Request

23. In accordance with common law, the age of a person seeking a permit for residency in Israel shall be examined in accordance to the factual situation at the time the application was submitted (Adm Pet. 128/05 **Razem v. Ministry of the Interior**, rendered 13 November 2005; Adm. Pet. 142/07 **Abu Harub v. Minister of the Interior**, rendered 26 March 2007; Adm. Pet. 1092/07 **Abu Romi v. Minister of the Interior**, rendered 10 June 2008). In our matter, the parties are in disagreement as to the date on which the application for petitioners 2-4 was submitted. The petitioners claim the application was filed in July 2002, shortly after the petitioners moved to Jerusalem, whereas the respondents claim that the application must be seen as having been submitted in June 2004 at the earliest, when two years of a center of life were completed, as far as petitioners 2-4 are concerned. According to the respondents, if the petitioners' application had been reviewed by them at the time, it would have been rejected out of hand due to lack of center of life in Israel for the required period of two years. However, since the respondents did not even consider the petitioners' July 2002 application and never responded to it, the date of submission of the application must be seen as July 2002. Therefore, one must examine the ages of petitioners 2-4 at that time.

Petitioners 3 and 4

24. There is no dispute that the legal provision which originally applied to the application of July 2002 is the provision set forth in section 3(1) of the temporary order law in its original version which entered into force on 6 August 2003 (see HCJ 4022/02 **Association for Civil Rights in Israel et al. v. Ministry of the Interior** *Takdin Elyon* 2007(1) 18 (2007). This section sets age 12 as the maximum age for granting a residency permit in Israel for the purpose of preventing the separation of a child from his parent. In July 2002, petitioners 3 and 4 were under the age of 12. On 20 April 2005, the respondents notified that petitioner 4 would be granted an A/5 permit for two years which would be upgraded at the end of two years to a permanent permit. This since she was under the age of 12 at the time the application was submitted Since petitioner 3 was also under the age of 12 on the day the application was submitted, this decision must be applied to the matter of petitioner 3 as well. In practice, petitioner 3 indeed received an A/5 permit on 20 March 2006, however, the respondents claimed this had been done *ex gratia*. In view of the age of petitioner 3 at the time the application was submitted, this claim must be rejected. Beyond necessity, it shall be noted that the respondents did not mention in their decision dated 20 March 2006, that the permit was granted to petitioner 3 *ex gratia*.

25. The respondents base the refusal to upgrade the permit granted to petitioner 4 to a permit for permanent residency, despite statements made in the respondents' notice dated 20 April 2005, on the child registration procedure. These are the provisions of the procedure which are relevant to our matter:

> "7. When the matter relates to a minor who was registered in the Area, or who lives in the Area despite not being registered in the population registry of the Area… and the minor is under the age of 14 (the age of the minor shall be examined in light of his age at the time the application was submitted), inasmuch as the examination

> indicates a center of life in Israel, the minor shall receive an A/5 for two years and then permanent [residency].
> 8. Inasmuch as the minor turned 14 while still holding an A/5 status, he will remain in this status and will not be upgraded".

According to the petitioners, section 8 of the child registration procedure does not allow upgrading an A/5 permit granted to a minor resident of the Area if, during the two year period, the minor turned 14. This claim must be rejected. The decisive date is the date on which the application was submitted and not the end of the two year period required for examining the application and deciding on it (see Adm. Pet. 8295/08 **Mashahra v. Minister of the Interior** rendered 24 November 2008; Adm. Pet. 8336/08 **Zahaikeh v. Minister of the Interior** rendered 2 December 2008).

26. The claim that there is no obligation to upgrade the status of petitioners 3 and 4 since section 3A of the temporary order law does not expressly stipulate the type of permit to be granted must also be rejected. This claim was not included in the respondents' written arguments, but rather was first raised during the hearing on the petition. This is sufficient to reject the claim. Furthermore, according to the child registration procedure, the process terminates with the granting of a permit for permanent residency in Israel and the respondents have not shown any reason for deviating from this policy in the case at bar.

27. In view of the aforesaid, the respondents must upgrade the permits granted to petitioners 3 and 4 to permits for permanent residency in Israel.

Petitioner 2

28. Petitioner 2 was some 12 years and 10 months old in July 2002. According to the version of the temporary order law in effect at the time, petitioner 2 was not entitled to a permit for residency in Israel at the time. However, as illustrated below, one must view the application submitted for petitioner 2 on July 2002 as a pending application which comes under the 1 August 2005 amendment to the law, petitioner 2 is entitled to a permit for permanent residency in Israel.

29. In the matter of petitioner 2, the respondents decided on 17 June 2004, that it was impossible to file an application for her. The significance of their decision was that petitioner 2, a young child under 13 years of age at the time the application was submitted, would not be granted a permit for residency in Israel or any sort of temporary permit which would allow her to live with her mother and siblings in Israel. The petitioners filed a petition regarding this decision on 10 November 2004, yet, at the request of the respondents, proceedings in this petition were halted on 4 July 2005, pending the Supreme Court's ruling in the abovementioned **'Aweisat case**

30. On 14 May 2006, while proceedings in the petition were still on hold, the Supreme Court rendered its judgment in HCJ 7052/03 **Adalah – The Legal Center for Arab Minority Rights in Israel v. Minister of the Interior**. In this case, arguments against the constitutionality of the temporary order law were reviewed. The petitioners in that case argued, *inter alia*, that the provisions of the law infringed on

the right to family life and impeded relationships between the Israeli parent and his child who was registered in the Area. In the judgment, the majority opinion was indeed that the law must not be struck down, however, this finding related to the amended, less restrictive version of the law, which entered into force on 1 August 2005 and not to section 3(1) of the original version of the law which did not allow children over the age of 12 to remain in Israel with their parents. Justice M. Cheshin, who held the majority opinion, made a reference to the arrangement which was established in the original version of the law and noted that he had refrained from striking down the law in view of the 1 August 2005 amendment to the law which reduced the harm to children. These are his remarks:

> "I will add to this that the harm caused by the Citizenship and Entry into Israel Law to children is limited. We should recall that the law, in s. 3A, provided a special exception for the cases of children, as follows... Thus we see, according to s. 3A(1) of the law, that minors up to the age of 14 are entitled to receive a status in Israel in order to prevent their separation from a custodial parent who lawfully lives in Israel. In other words, the right of these minors to live with the custodial parent is not harmed at all. With regard to minors over the age of 14, these can, according to s. 3A(2), receive a permit to stay in Israel in order to prevent their separation from the custodial parent. Such a permit will be extended only if the minor lives permanently in Israel.
>
> This is the case with regard to the right of children to live with the custodial parent in Israel. This arrangement is satisfactory, and the legislature did well to provide an exception that allows children to stay if only with one of their parents in Israel. **It should be admitted that the Citizenship and Entry into Israel Law in its original version harmed children considerably by preventing them from living with the custodial parent in Israel. But after the law was amended by adding the arrangement in s. 3A, the position has improved greatly, both with regard to minors under the age of 14 and minors above the age of 14. According to the law in its current form, I see no proper justification to declare it void in this respect."** (Emphasis added, M.A.)

31. On 1 August 2005, about a month after proceedings in this petition were halted, the amendment to the law which reduced the harm to children and established arrangements relating also to children between the ages of 12 and 18 was passed. In reference to this amendment, in the **Abu Gweila** case, it was ruled that section 3A of the amended version of the law applies also to pending decisions on which the respondents have yet to issue a decision. The respondents indeed issued a decision in the matter of petitioner 2 on 17 June 2004, but, in view of the aforesaid, this cannot be viewed as a final decision in the matter of petitioner 2. Therefore, as far as petitioner 2 is concerned, one must view the application of July 2002 as pending at

the time of the 1 August 2005 amendment to the law.

32. According to section 3A of the law in its 1 August 2005 version, the petitioner was entitled to an A/5 permit as well as to having this permit upgraded to a permit for permanent residency in Israel.

33. As for the revocation of the permit granted to petitioner 2 due to her marriage – there is no dispute that petitioner 2 was a single child supported by her parents at the time the application was filed in July 2002. As has been stated more than once, the relevant date for examination of an applicant's factual situation is the date on which the application was submitted. There is also no dispute that on 1 August 2005, when the amendment to the temporary order law which raised the eligibility age to 14 was passed, petitioner 2 was single.

34. The respondents claim that at the time the decision was made to grant the petitioner an A/5 permit for the first time (20 March 2006), the petitioner was already married in accordance with the marriage contract she signed on 24 September 2005. The petitioners respond that petitioner 2 was single on that date too, as the marriage contract of 24 September 2005 is merely an engagement agreement. On this matter, there is no need to decide between the parties' positions, since, as has been clarified above, the relevant date for examining the personal circumstances of petitioner 2 is not the time at which it was decided to grant her a permit, but rather the time she filed her application. Beyond necessity, I shall note that the claim according to which a marriage contract is perceived by the Muslim public in the State of Israel merely as an engagement agreement was accepted by the National Labor Court LC 57/04-136 **National Insurance Institute v. Hajj Mahmud 'Issa Haniya,** *Piskey Din – Labor*, 33 382).

35. The respondents added that the permit granted to petitioner 2 must be revoked because she had provided false information. This claim too is to be rejected. Until 24 June 2006, petitioner 2 was not married according to the petitioners' position, thus, no false information on this issue was provided by them. As for the information provided after this date, indeed, the respondents did not present any documentation taken in real time. All that was presented on this issue was the hearing sheet from the hearing held for petitioner 2 on 13 March 2008. This sheet indicates, at best, what petitioner 2 thought at that time about the facts presented to her as reflecting events from the previous year. Petitioner 2 was asked why in March 2007, when she filed an application for extension of her permit, she did not note that she was married and she replied that she feared her permit would be taken away. This is not sufficient to indicate that petitioner 2 was required to answer questions on the subject in March 2007 and replied falsely. As for the claim that her mother, petitioner 1, stated in September 2007 that her daughter was merely engaged, petitioner 2 responded that her mother wanted to find out what would happen to the permit in case there was a marriage. It is clear that one cannot infer from the assumptions of petitioner 2 during the hearing regarding her mother's utterances at an earlier date that petitioner 1 provided false information. Beyond necessity, the alleged information regarding the

marriage of petitioner 2 was irrelevant on the dates mentioned since, the extension of the A/5 permit and its upgrading are not conditional upon remaining single.

Conclusion

36. In light of the aforesaid, the respondents must grant petitioners 2-4 permits for permanent residency in Israel, subject to the absence of security or criminal preclusions in their matter.

    The respondents shall bare the petitioners' expenses and legal fees to the sum of NIS 10,000.

The Court Clerk will provide copies to the parties' counsels.

Issued today, 29 Av 5769 (19 August 2009) in the absence of the parties.

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Mosia Arad, President