



המוקד להגנת הפרט
HAMOKED Center for the Defence of the Individual
هموكيد - مركز الدفاع عن الفرد

Date: April 4, 2011
In response please cite: 66601

To:
Mr. Eliyahu Yishai
Minister of Interior
2 Caplan Ave.
POB 615
Jerusalem 91950

By registered mail

Re: **Work permits for individuals holding Israeli stay-permits in the course of the family unification process**

1. HaMoked: Center for the Defence of the Individual is a human rights organization which works *inter alia* on the issue of family unification between residents of East Jerusalem and their loved ones.
2. I am turning to you as responses I have received from the population administration and the civil administration indicate that Palestinians who hold stay permits given in the course of the family unification procedure are required to undergo a complicated and unreasonable process in order to work in Israel lawfully.

The response of Mr. Avi Lekah, Senior Division Director, Population Administration Bureau, Ministry of Interior is attached hereto and marked **A**.

My letter to the Civil Administration Public Requests Officer is attached hereto and marked **B**.

The response of M. Amos Wagner, Civil Administration Public Requests Officer is attached hereto and marked **C**.

3. The matter concerns hundreds of Palestinians from the West Bank who are married to permanent residents. The Minister of Interior has approved their applications for family unification and they reside in Israel pursuant to stay permits issued by the military commander. These individuals live in Jerusalem with their families and their stay permits are renewed every year. Many of them have been doing so for years. Yet, when they try to work for a living and provide for their families, they encounter great difficulty as the stay permits in their possession read **“this permit does not constitute a permit for employment in Israel”**. As such, employers are unwilling to hire them or

take the necessary measures for arranging for their lawful employment for reasons which will be detailed below.

The process for issuing work permits

4. In order to obtain a work permit in Israel, a Palestinian who holds a family unification permit must find an employer who is interested in hiring him and begin a complicated process of obtaining a work permit, a process which was originally designed for Palestinian workers who live in the West Bank and return home at the end of the work day.
5. An employer who is interested in hiring workers from the West Bank must file an application to employ Palestinian workers, pay a fee, open an employer file in the payment division of the Ministry of Interior in the district where he lives or conducts his business. If the application is approved, a list of names of Palestinian workers whom the employer requested is transferred to the employment staff officer at the civil administration (whose offices are located in the West Bank – at the Tulkarem, Ramallah and Bethlehem DCOs). The list includes only Palestinians who have been issued with a magnetic card, that is Palestinians who have undergone thorough security screening and are not precluded from entering Israel. The employment staff officer conducts additional examinations and issues work permits which are valid for three or six months. As stated, this procedure was originally designed for issuing work permits to Palestinians who reside in the West Bank and return home at the end of the work day. The procedure is ill-suited, and in fact entirely unnecessary for Palestinians who have recently undergone thorough security screening and who permanently reside in Israel with their spouses and children. We explain:
6. The process of issuing work permits was primarily designed to meet a security need. It is meant to ensure that Palestinians who work in Israel undergo thorough security checks, that they leave Israel every evening to return to their homes in the West Bank, that they are registered with a specific employer and that their whereabouts are known. Security forces can thus control their entry into and presence in Israel.

This logic does not apply to Palestinians who reside in Israel in the context of family unification. First, the Israeli stay permit given in the context of the family unification process is issued only following extensive and thorough security screening indicating that there is no impediment to allowing the individual to enter and live in Israel. Second, stay permits allow people to travel freely throughout the country and there is no security advantage to having them registered with a specific employer in a specific place. Third, individuals holding family unification stay permits reside in Israel permanently with their families, who are residents of Israel. It is therefore clear that there is no, nor can there be, a security-based objection to allowing such persons to work in Israel and there is no logic in imposing a difficult and complicated process whose purpose is not achieved in any event.

7. Some might say that the process of issuing work permits for Palestinians is also meant to serve as a way of monitoring labor rights. It is well known that despite the procedure and despite the payment division's attempts at monitoring, many employers easily evade their responsibilities toward their employees. Therefore, imposing the procedure does not serve the purported intent of enforcing labor laws.

Controlling the number of Palestinian workers entering Israel in an effort not to undermine Israeli workers could be an additional objective of the work permit process. However, this objective is invalid in a situation in which a worker is already inside Israel.

8. Not only are the rationales and objectives of the work permit issuing process inapplicable to individuals holding family unification permits, but the process itself, which presumes the existence of an employer and his good will, makes it very difficult for family unification permit holders to find work and provide for their families in dignity. We specify.
9. Work permits are limited to specific sectors (construction, agriculture, industry and service). A person who does not wish to work in one of these sectors cannot lawfully work in Israel. This restriction may be reasonable when it comes to Palestinian workers who live in the West Bank or migrant workers who choose to enter Israel in order to work in these sectors in the first place; however, it is not reasonable when it comes to Palestinians who live in Israel permanently.
10. Moreover, even if a stay permit holder wished to work in those restricted sectors, he would have great difficulty finding an employer willing to ask for a work permit for him. The reason is that employers who obtain permits for employing Palestinians work with Palestinian labor contractors. The contractors provide the Israeli employers with lists of names of workers in the requested sector. For example, a building contractor from Netanya who receives a permit to hire 50 Palestinian construction workers would contact a labor contractor from the Tulkarem area who would provide him with a list of 50 Palestinian laborers from the area who have security clearance to enter Israel. The Israeli employer would then give this list to the employment staff officer at the civil administration. This officer would issue the permits and they would be handed to the employees at the Tulkarem DCO. There is no reason for an Israeli employer who obtains a permit to hire Palestinians to ask for a single work permit for a Palestinian who resides in Israel as part of the family unification process when there is a Palestinian contractor who locates suitable employees on a wholesale scale.
11. Even when an employer wishes to hire a single employee (an unusual situation as permits for employing foreign workers are given only in specific sectors which usually require a large number of employees), there is no reason for him to bother with the complicated procedure for procuring a work permit once every few months only in order to employ a Palestinian who has a family unification stay permit. He can hire any Palestinian resident of East Jerusalem with no need for procedures and at no cost.
12. Another difficulty is that a person who has a family unification stay permit and wishes to open his own business – a barbershop, a grocery shop etc. – cannot do so as the only way to be lawfully employed is to have an employer contact the authorities.
13. Thus, imposing a procedure which does not serve the security purpose for which it was intended in the first place, creates a situation in which people who lawfully reside in Israel and wish to provide for their families, all Israeli residents, are unable to take advantage of available employment opportunities.

Restrictive employment

14. Subjecting family unification stay permit holders to the procedure for issuing work permits creates a situation in which an employee who lives in Israel is chained to his employer and remains at his mercy. Even if, despite all the difficulties described above, a stay permit holder finds an employer who takes the necessary measures for obtaining a work permit, the permit he receives is valid for a few months and lists the sector in which he is allowed to work, as well as the name and address of the employer. His continued employment and ability to provide for his family is forever dependant on the employer's good will. This situation creates complete dependence of employees on their employers and provides fertile ground for exploiting them and violating their basic rights.

15. In some situations restricting an employee to one employer serves security or state interests. So, for example, in the case of migrant workers, allowing an employee to work for only one employer is a response to the need to battle illegal immigration. In the case of Palestinian workers from the West Bank, it serves a security need. However, restricting Palestinians who have family unification stay permits to specific employers serves no purpose as there are no concerns of illegal immigration or a security threat. In this case, restrictive employment serves only the employers' interests and paves the way for taking advantage of employees. For this reason, it is entirely unacceptable.
16. It should be noted that even where restrictive employment serves some interest, such as in the case of migrant workers, where restrictive employment is meant to allow monitoring of their presence in Israel, the Supreme Court has ruled that restricting workers to their employers was disproportionate and violated human dignity and liberty in their most basic sense, including autonomous free will and freedom of choice as the basis of a person's liberty to shape his life and develop his personality according to his wishes, freedom of occupation, freedom to make decisions and bargaining rights. ([HCI 4542/02 Kav LaOved Worker's Hotline v. Government of Israel](#)). The violation is all the stronger when restrictive employment serves no legitimate interest.

The Temporary Order

17. As known, the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: **the Temporary Order**) prevents upgrading the status of Palestinian stay permit holders. This has led to a situation in which Palestinians whose family unification applications have been approved by the Minister of Interior, live in Jerusalem, maintain their center-of-life in the city and have their children there, but hold only temporary stay permits for many years. Their status cannot be upgraded to temporary or permanent residency in view of the Temporary Order and they live in the city without social rights, and as detailed above, without a real possibility of working lawfully.
18. This state of affairs is patently unreasonable and illogical. It is entirely unreasonable that people who have a family unification stay permit and who live in Jerusalem lawfully, often for many years, are unable to provide for themselves and their families in dignity. There is no logic in allowing a person to reside in Israel and raise a family in the country without allowing him to work.
19. Additionally, the legislator, the state Attorney's Office and the Supreme Court have all asserted that the Temporary Order was enacted strictly for security purposes. Withholding work permits from family unification permit holders is not anchored in the Temporary Order and does not serve its security purpose. It does, however, cause disproportionate and purposeless injury to individuals who come under the terms of the Temporary Order.

Wrongful discrimination

20. Palestinian family unification permit holders who live in Israel suffer discrimination compared to other groups. Foreign nationals who are not Palestinians from the West Bank and who marry permanent residents enter the family unification process and receive B/1 visas. These visas also serve as work permits and are not limited to specific sectors. There is no relevant difference between the two groups.
21. In this context, it should be noted that both the court and the Ministry of Interior generally view the two types of visas (family unification stay permits and B/1 visas) as essentially parallel. So, for example, in AP (Jerusalem) 430/04 '**Abd al-Malek al-Jaber v. Minister of Interior**', judgment of Hon. Jus. Adiel dated March 18, 2004; Ministry of Interior procedure regarding processing status for foreign nationals married to Israeli citizens, procedure no. 5.2.2008 and Ministry of Interior procedure regarding processing status for foreign nationals married to Israeli permanent residents,

procedure no. 5.2.0011. Additionally, the test that is commonly applied in these contexts, the test of most ties, makes no distinction between individuals holding family unification stay permits and individuals holding B/1 visas given as part of the family unification process.

22. It should be further noted that we were unable to locate the normative arrangement which forms the basis for distinguishing between family unification stay permits and B/1 visas or a procedure which establishes that stay permits for Israel do not constitute work permits.

Presence without employment

23. The reality described above forces many family unification permit holders to leave Jerusalem and work in the OPT to provide for their families. This may make renewal of their stay permits difficult or even impossible, as the Minister of Interior often claims that working outside Israel signifies lack of intent to settle in the country and may even indicate that the marriage is a marriage of convenience. The result is an absurd situation in which by not granting family unification permit holders work permits, the Minister of Interior is forcing them to work outside Jerusalem in order to provide for their families thereby breaching the Minister's own conditions for renewing the permits that allow them to remain in Jerusalem with their families. This conduct might raise a suspicion that the Minister of Interior is setting a trap designed to make applicants fail the family unification process.
24. Another undesirable option for family unification permit holders is to work in Israel for employers who are willing to hire them without work permits. This leaves them exposed to exploitation and discrimination.
25. In many cases concerning the question of issuing work permits to foreign nationals who have a residency visa for Israel, the court has held that a situation which leaves foreign nationals to remain in Israel with no ability to work for their basic subsistence is inconceivable and unreasonable. If the state decides that a person is not to be removed from the country, it is incumbent upon it to provide a solution allowing the basic human subsistence of said person.

Hon. Jus. Amir, of the Central District Court, sitting as the Court for Administrative Affairs, has held that no one should go hungry in the State of Israel whatever visa they hold and that it is impossible for the state to put people in a situation that compels them to break the law in order to make a living, in the most basic sense of the term (AP 35858-06-01 **Seiko v. Ministry of Interior** and other petitions, not yet reported, judgment dated July 13, 2010). These remarks, *mutatis mutandis*, are relevant to the present case.

26. The foregoing is all the stronger when the person remains in Israel for a long period of time. In the same judgment, Hon. Jus. Amir added that not everyone who is permitted to remain in Israel is also entitled to work in the country. However, when the issue is a long-term arrangement, albeit temporary rather than permanent, it is impossible to ignore the problem and say that a person may live in Israel for many years unable to provide for himself on a basic level. As stated, in view of the Temporary Order, the status of Palestinian stay permit holders will not be upgraded and they are destined to live in Israel for many years with these permits only.
27. The justices of the Supreme Court have expressed their opinion on a similar issue in their judgment in 5539/05 '**Atallah v. Minister of Defense et al**, where they ruled on the issue of driving permits being granted to individuals who have stay permits for Israel: "... We were troubled by the question of whether to give weight to how long a person has had a DCO permit. The question is more troubling considering the fact that the possibility that the Petitioners and others in a similar position

would be able to upgrade their status is significantly diminished at the present time due to the provisions of the Temporary Order Law.

28. Not allowing a person to work for a living infringes on the right to minimal dignified subsistence which the Supreme Court has recognized as part of the right to dignity enshrined in Basic Law: Human Dignity and Liberty. The Basic Law applies to anyone present within Israel.

29. Additionally, a person's inability to provide for his family is an impediment to fulfilling his parental duties toward his child. These duties are recognized both in Israeli and international law. So, for example, Sec. 15 of the Legal Competency and Guardianship Law 5722-1962, entitled "parental duties" stipulates as follows: "Parental guardianship includes the right and the duty to care for the needs of a minor, including his education, studies, employment and professional training as well as to oversee, manage and develop his assets".

Art. 5 of the Convention on the Rights of the Child stipulates that a state must respect the rights of the guardian: "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention".

30. It should be further noted that allowing Palestinian family unification permit holders to provide for their Jerusalemite relatives is clearly in the State's interest as it would prevent them from becoming dependent on welfare.

31. In conclusion, imposing the procedure for issuing work permits on Palestinians who live in Israel with their families as part of the family unification process injures the fundamental rights to equality, liberty, dignity and a livelihood disproportionately and for no purpose. It also makes them vulnerable to exploitation by their employers.

In light of all the above, we request that your office:

32. Provide us with a detailed explanation about all the normative arrangements pertaining to employment in Israel by Palestinian family unification permit holders, including the procedure stipulating that a stay permit does not constitute a work permit; the procedure stipulating that individuals who receive stay permits must follow the procedure applicable to Palestinians living in the West Bank for the purpose of employment and the procedure stipulating that "residents of the Area who are in the process of family unification are given preference when it comes to issuing work permits" (as indicated in the attached letter marked **A/1**) and that "the Israeli employment quotas do not apply" (as indicated in the attached letter marked **A/3**).

33. Reconsider its position that family unification permits do not constitute work permits in Israel.

34. Establish that a Palestinians whose family unification applications were approved by the Minister of Interior and who receive stay permits for Israel would be able work and earn a living in Israel without any additional procedure or limitation.

35. I would be grateful for your prompt pertinent response in order to be able to consider our next step.

Respectfully,
Sigi Ben Ari, Adv.