At the Supreme Court **AAA 1966/09**
Sitting as the Administrative Appeals Court

Before: **Honorable President D. Beinisch**
Honorable Justice (retired) E. E. Levy
Honorable Justice A. Grunis

The Appellants:
1. _____ **'Attoun**, ID _____
2. _____ **'Attoun,** no status
3. _____ **'Attoun,** no status
4. _____ **'Attoun,** no status
5. **HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

v.

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

Appeal from the judgment of the Court for Administrative Affairs in Jerusalem dated January 26, 2009 in AP 8350/08, rendered by Honorable Justice **N. Solberg**

Session dates: 7 Tamuz 5769 (June 29, 2009)
23 Adar A 5771 (February 27, 2011)

On behalf of the Appellants: Adv. Adi Lustigman, Adv. Leora Bechor, Adv. Yotam Ben Hillel

On behalf of the Respondents: Adv. Hila Gorney

Judgment

President D. Beinisch:

An appeal from the judgment of the Jerusalem District Court sitting as the Court for Administrative Affairs in AP 8350/08 **_____ 'Attoun v. Minister of Interior** (not yet reported, January 26, 2009), handed down by Justice **N. Solberg** (hereinafter: the judgment). In the judgment, the Court rejected the petition filed by Appellant 1, a permanent resident of Israel, to have two of his minor children registered

as permanent residents of Israel under the Entry into Israel Law, 5712-1952 (hereinafter: **the Entry into Israel Law**).

The relevant facts in brief

1. Appellant 1 (hereinafter: **the Appellant**) is a permanent resident of Israel. The Appellant has 11 children born of two different wives. One of his wives is a permanent resident of Israel. She and the Appellant have seven children together. They are all permanent residents. The Appellant's second wife is a resident of the Area. She and the Appellant have four children together, two girls and two boys (Appellants 2 and 3), all of whom were born in Israel and are not registered in the Palestinian population registry. The two daughters were registered as permanent residents shortly after they were born in 1993 and 1994. Appellant 1 sought to register his two sons _____ and _____, twins born in 1996, as permanent residents of Israel, but his request was refused by the Ministry of Interior based on the argument that the family's center-of-life was outside Israel.

2. The Appellants live in the Wadi Hummus neighborhood which is part of the village of Sur Bahir. A large part of the village of Sur Bahir is included in the municipal boundaries of Jerusalem. Following the Six Day War, Israeli sovereignty was applied to this area. As described by the Trial Court in its judgment, the municipal border line of Jerusalem was drawn such that it included the built-up area of the village at the time, but some of the lands belonging to the village remained outside city limits, in the Area. Over the years, the village expanded and many homes were built in the area that lay outside Jerusalem city limits, including the Wadi Hummus neighborhood.

3. For many years, residents of Sur Bahir lived their lives with a perception of the village as a single organic unit that has shared community and social services which span both the areas located within Jerusalem city limits and the areas located in the Area. There has been some change with respect to this issue following the decision to build the security fence. According to the original plan for the route of the fence in the area, the fence would have split the village and separated its two parts – those located in Israel and those located in the Judea and Samaria Area. Residents of the village filed a petition challenging this decision and the route was moved, with the State's consent, in a southeasterly direction such that it would include all the houses in the village, including the Appellants' house (HCJ 9156/03 **Da'ud Jabur v. Seamline Administration** (not yet reported, December 30, 2003).

   This was not the end of the legal proceedings the residents of the village undertook in their attempt to grapple with the complex reality in which they found themselves. In 2004, some of the Israeli residents of the village who live in its Judea and Samaria Area part began receiving various notices of imminent cancellation of their entitlement to national insurance benefits under the National Insurance Law [incorporated version] 5755 – 1995 (hereinafter: **the National Insurance Law**) and the National Health Insurance Law 5754 -1984 [*sic*] (hereinafter: the National Health Insurance Law). Following these notices, the village committee filed a claim with the Jerusalem District Labor Court seeking the revocation of these decisions (NI 10177/05 **The Sur Bahir Village Committee on National Insurance et 52 al. v. The National Insurance Institute** (not yet reported, April 11, 2005)). In this case, a unique agreement was formulated with the cooperation of the State and the approval of the Attorney General, whereby permanent residents living in Sur Bahir, including in the area between the fence and the municipal border of Jerusalem, would be considered as coming under the National Insurance Law and the National Health Insurance Law. This agreement, to which the Appellants were also party, was entered on record as a judgment (hereinafter: the judgment of the District Labor Court). We shall return to this judgment below.

4. The Appellant's first application to have Appellants 2 and 3 registered as permanent residents was filed in 2000. It appears that no decision was made in this application as the Appellants failed to provide the documents they were requested to produce. In 2005, following the judgment of the District Labor Court, the Appellant once again contacted the Ministry of Interior with a request to have his children registered as permanent residents. The Ministry of Interior contacted the National Insurance Institute (hereinafter: the NII) and the latter's inquiries revealed that the Appellants were living outside the State of Israel. The decision on this request was not provided to the Appellants and in 2007, another application was filed. This application was also transferred to the NII for examination, and it too revealed that the Appellants were living outside the State of Israel. Therefore, the application was denied, based on the fact that the Appellants were living in the Wadi Hummus neighborhood, outside the State of Israel. An appeal filed against this decision was rejected.

   It was against this rejection that the petition which is the subject of the current proceeding was filed. As stated, the petition was rejected on January 26, 2009, in a judgment delivered by Justice **Solberg**.

The judgment of the Trial Court and the proceedings before it

5. The main argument presented by Appellants 2 and 3, in the proceeding at hand as well, is that in the circumstances of the matter, they are entitled to permanent residency status under the provisions of Regulation 12 of the Entry into Israel Regulations 5734-1974 (hereinafter: **Regulation 12**), which regulates the issue of granting status to children who were born in Israel to a parent who has status, but do not come under Section 4 of the Law of Return 5712-1952 (hereinafter: **the Law of Return**).

   The Trial Court addressed this argument, but ruled that the Appellants' circumstances do not justify granting status under Regulation 12, as the purposes thereof do not apply in their case. The Trial Court examined the case law generated by this Court with respect to Regulation 12 and held that the purpose of the regulation was to provide a child with status that is identical to that of his parents who reside in Israel, so that the child may live his life with his parents, without them having to relocate. According to the Trial Court, Regulation 12 is a practical regulation which is designed to enable a family to live together lawfully. The basis for this regulation is a person's right to have children and the children's right to develop and mature within a loving and supportive family unit. Therefore, it was held that in the circumstances of Appellants 2 and 3, wherein they are being raised by their parents in a complete family unit and outside the State of Israel, there is no justification to grant them status under Regulation 12. The Trial Court also stressed that granting minors social or other rights was not the purpose of the regulation.

   In light of this finding, the Trial Court examined whether there was room to grant Appellants 2 and 3 status as part of the family unification procedure, in keeping with the powers granted to the Minister of Interior under the Entry into Israel Law, based on a protocol the Ministry of Interior formulated on this issue. According to the procedure, the sponsor must have permanent residency and must be a resident de-facto. In other words, his center-of-life must be ascertained. However, in the circumstances of the matter, the Trial Court did not examine the place of residency using the test of ties. The Court did not undertake this examination since it ruled that the humanitarian purpose of the procedure, namely, to prevent an Israeli resident from having to choose between living with his family and living in Israel, did not apply in the circumstances of the case, as the Appellant and his entire family live outside the State of Israel.

   The Trial Court also rejected the implications the Appellants attempted to attribute to the agreement that was reached in the judgment of the District Labor Court. The Trial Court ruled

that the judgment on consent applied the National Insurance Law and the National Health Insurance Law only to individuals who meet two cumulative conditions, the first of which is being a permanent resident. Therefore, the Court ruled that the judgment was not relevant to the case of Appellants 2 and 3 who are not permanent residents. According to the Trial Court, the Appellants' attempt to rely on this judgment in order to claim that all residents of the Wadi Hummus neighborhood are entitled to Israeli residency "borders on bad faith and is logically deficient".

In view of all the above, the Trial Court found the position of the Ministry of Interior on the Appellants' matter to be reasonable and rejected the petition.

6. The appeal before us was filed on March 3, 2009, attached thereto was a motion to stay execution of the judgment which was denied by Justice **E. Rubinstein** on March 10, 2009. Shortly before the appeal at bar was filed, the State filed its own appeal against a judgment issued by Justice **Y. Tzur** in AP 8568/08 **Riyad Hamadah v. Ministry of Interior** (dated 26 January 2009) which concerned granting status to a Jordanian national who is married to a permanent resident and living with him in the Wadi Hummus neighborhood (AAA 1895/09). In that case, Justice **Y. Tzur** decided to accept the petition and instruct the Ministry of Interior to grant the permanent resident's wife an A/5 temporary residency visa, after she found that in the special circumstances of the Sur Bahir area and considering the judgment of the District Labor Court, it must be held that their center-of-life is inside the State of Israel. The hearing of these appeals has been joined.

7. The first hearing on the appeals was held before us on June 29, 2009. With respect to the appeal in AAA 1895/09, we too have identified a difficulty in granting status in Israel to the Jordanian wife of a permanent resident who lives outside Jerusalem city limits. However, considering her difficult personal circumstances which stem from the fact that she has no status either in Jerusalem or in the Area, we believed that it was necessary to arrive at a practical solution that would reduce the daily harm she suffered. Therefore, we delivered a decision wherein we held that the Respondent was advised to propose a reasonable solution for the resident's status and freedom of movement in her area of residency.

   With respect to the minor appellants in AAA 1966/09, we noted that "their situation is understandably complex, considering the fact that their center-of-life is in effect inside Sur Bahir, inside Jerusalem, despite the fact that their dwelling is located outside the municipal border and without a means of traveling to the Judea and Samaria Area. The parties will enter into negotiations regarding a solution for the difficulties caused as a result of the lack of status in Israel and the Respondent will propose a reasonable solution for this situation…"

8. On April 11, 2010, the Respondents filed a notice in which they stated that with respect to the Hamadah family (whose matter was discussed in AAA 1895/09), the family had moved to a dwelling in Sur Bahir which is located inside the municipal border of Jerusalem and that it was therefore possible to file a family unification application for the wife. Such application would be examined in accordance with Ministry of Interior protocols regarding the graduated procedure. Following this notice, the appeal had become moot and on August 15, 2010 we delivered our judgment instructing the judgment of the Court for Administrative Affairs be struck down and referring the parties to further processing of the case in accordance with the agreement they had reached.

9. With respect to the appellants in the procedure at hand, the Respondents proposed that they be registered in the Palestinian population registry and receive renewable stay permits for Israel. These would allow them to travel freely between their house and Jerusalem, as well as to enter the Judea and Samaria Area. The Appellants insisted on their appeal noting that the State's

proposal would subject the Appellants to curfews, closures, encirclements, checkpoints, DCO shutdowns and other limitations which would make it difficult for the children, whose center-of-life is effectively in Jerusalem, to have normal routines. It was also noted that the permits would not grant the children any social rights. The Appellants requested the Respondents to present them with figures on similar cases, inasmuch as such exist. This request was a response to Respondents' argument that conceding the remedy sought in the petition would have a broad effect. In light of this notice, the petition was scheduled for further hearings and the Respondents were instructed to submit to us their response to the requested figures prior to the hearing.

10. On November 14, 2011, the Respondents submitted a supplementary response, which indicated that as of the time of writing, there were no additional pending administrative petitions related to the issue discussed in the appeal and there was a single objection pending before the objections committee with respect to a decision to deny a child registration application because the family did not live inside the State of Israel. However, the Respondents stressed that in light of the number of people residing in Wadi Hummus and other areas along the seam line between Israel and the Judea and Samaria Area, indeed, any decision given in the appeal would have a broad effect.

11. On February 27, 2011, the further hearing was held before us, in which we informed Respondents of our position that since this was a case of a family members who have different status and since the children in this case had no status and were born in Jerusalem to a father who is a permanent resident, it would be appropriate to consider a fitting solution in their matter. On March 6, 2011, the Respondents notified that following reconsideration of the matter, they did not see fit to grant the Appellants an Israeli residency visa.

This state of affairs requires our ruling on the appeal.

The arguments of the Appellants

12. According to the Appellants, the Trial Court erred in holding that the purposes of Regulation 12 did not apply to the Appellants' case and therefore it should not be applied to them. The Appellants cited the judgments of this Court in HCJ 979/99 **Pavaloayah Carlo (minor) v. Minister of Interior**, (not yet reported, 23 November 1999) (hereinafter: **Carlo**) and in AAA 5569/05 **Ministry of Interior v. Dalal 'Aweisat** (not yet reported, 10 August 2008) (hereinafter: **'Aweisat**), claiming that the purpose of Regulation 12 is to prevent the creation of a disconnection or a discrepancy between the status of a parent who resides in Israel and the status of his Israeli born child, considering the importance of preserving the integrity of the family unit and the principle of the child's best interest. The Appellants allege that despite the aforesaid, the Trial Court failed to give sufficient weight to the principle of the child's best interest and the integrity of the family unit and that this failure resulted in a severe injury to Appellants 2 and 3. Thus, for example, it was alleged that in the current circumstances, Appellants 2 and 3 have no status whatsoever; they are trapped in the neighborhoods located outside the Jerusalem municipal border without social and medical rights, with no possibility of continuing with their routine lives in Sur Bahir and in constant fear of the authorities. It was also stressed that the different statuses among the family members create tension and instability in the family, such that the proper development of the Appellants might suffer.

The Appellants further argue that the Court erred in not examining the Appellants' center-of-life based on the assumption that Regulation 12 did not apply in the circumstances of the case. According to the Appellants, in the judgment given in **'Aweisat**, the Court explicitly held that in order to make a finding on whether or not Regulation 12 applies, one must examine the center-of-life of the sponsor and of the minor child and, therefore, there was an error in the judgment of the

Trial Court as it did not do so. On the issue of center-of-life itself, the Appellants also claim that the Court erred in holding that the fact that the Appellants do not live inside Jerusalem city limits is sufficient for finding that their center-of-life is outside Israel. According to the Appellants, the "test of most ties" requires the examination of a wider range of particulars pertaining to the daily lives of the sponsor and his children and the term "center-of-life" must be interpreted in a manner which is consistent with the purpose of Regulation 12. It was accordingly argued that for the Appellants, who live in Sur Bahir, a single organic unit which includes lands on both sides of the Jerusalem municipal border, this border is a virtual one. The Appellants receive their services and infrastructure from Israel. They study in Israel and receive medical care in the country. Their social and familial life also takes place in Israel. Therefore, it was argued that they must be viewed as persons whose center-of-life is in Israel. With respect to the Court's findings on the judgment of the District Labor Court, the Appellants claimed that the principles laid down in that judgment were relevant to their case in a manner requiring recognition of the homogeneity of the village and the unique situation the fence created for its residents.

The arguments of the Respondents

13. The Respondents support the holdings of the Trial Court. They contend that the purpose of the Entry into Israel Law and Regulation 12 is to protect the family unit and provide a child who was born to parents who are **residents of Israel** with status that is identical to that of his parents, so that he may live his life with them **in Israel**, without them having to relocate. This purpose is inapplicable in the circumstances of the matter at hand considering the fact that all family members live **together** outside the municipal border of Jerusalem. According to the Respondents, conceding the position of the Appellants is conceding that the Entry into Israel Law was designed to allow granting status in Israel to persons who do not live in Israel and that it must therefore be rejected.

The Respondents provided their detailed response to the agreements that were reached in the judgment of the District Labor Court and their ramifications for the matter at hand. In this context, the Respondents emphasized that the State's willingness to consider Wadi Hummus residents as residents for purposes of the National Insurance Law and the National Health Insurance Law (in accordance with the conditions stipulated therein) cannot be construed as willingness to recognize them as residents for purposes of the Entry into Israel Law. Moreover, the Respondents clarify that one of the preliminary conditions for applying the special arrangement that was enshrined in the judgment of the District Labor Court is that the person receiving the rights is a permanent resident of Israel and therefore, it is clearly impossible to deduce from the arrangement that all residents of Wadi Hummus are residents of Israel.

The Respondents also note that granting status to Appellants 2 and 3 would constitute granting legitimacy to Appellant 1's bigamous marriage in an indirect manner. Bigamous marriage is a criminal offense under Section 176 of the Penal Code 5737-1977 and has been recognized in case law as sufficient reason to deny a family unification application. The Respondents further emphasize the potential broad effect of granting the Appellants status. According to the Respondents' figures, 1,300 people live in Wadi Hummus alone and the neighborhood continues to grow. Thus, it was argued, the issue which is the subject of the appeal may also be relevant to an untold number of cases in the future. The Respondents also claim that the ruling on this appeal may be relevant to other cases that are not connected only to residents of Wadi Hummus, for example, cases of other bigamous families, or families who moved outside the State of Israel after one of the children were born, or families some of whose children were born in Israel and others outside the country and thus only some of the family's children have a permanent residency visa.

In light of all the above, the Respondents contend that there is no cause for intervention in the judgment of the Trial Court, especially considering the fact that their offer to grant the Appellants stay permits provides a reasonable solution to their predicament.

Deliberation and ruling

14. The central question which requires a ruling in the appeal at hand relates to the applicability of Regulation 12 to the Appellants' circumstances. The Regulation sets forth:

> The status of a child born in Israel
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> 12. The status in Israel of a child born in Israel, who does not come under Section 4 of the Law of Return 5710-1950, shall be equal to the status of his parents; where the parents do not have the same status, the child shall receive the status of his father or guardian, unless the other parent objects thereto in writing; where the other parent has objected, the child shall receive the status of one of the parents, as determined by the Minister.

This Regulation is unique among the laws regulating the issue of granting status in Israel under Section 1(b) of the Entry into Israel Law, which sets forth:

> The residency in Israel of a person who is not an Israeli citizen, or in possession of an oleh certificate [reserved for Jewish immigrants to Israel, translator's note], shall be pursuant to a visa under this Law.

The unique nature of the Regulation is that it sets the criteria for exercising the discretion granted to the Minister of Interior. This discretion is generally broad with respect to granting status in Israel under the Entry into Israel Law. These statutory guidelines for exercising discretion apply only to the circumstances of children to whom Regulation 12 relates.

15. According to the language of the Regulation, the person seeking status who relies thereupon must meet two preliminary conditions: First, she must be born in Israel. Second, she must not come under the Law of Return. According to the Regulation, a person who meets these conditions will receive the same status in Israel as his parents and if they do not share the same status, he shall receive the status of the father, in the absence of a written objection on the part of the other parent. It should be noted that in **'Aweisat** the State clarified that the Ministry of Interior generally reads the language of the Regulation such that the child is granted the status of the parent with whom she maintains a center-of-life in Israel, even if said parent is the mother. To that one must add that the provisions of Regulation 12 are subject to the arrangement stipulated in the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: **the Temporary Order**), which places restrictions on granting status to children who are residents of the Area, as defined in the Temporary Order.

16. As noted, in the circumstances of the matter at hand, the Trial Court found that the provisions of the Regulation did not apply in the first place, in view of its purpose. As stated in the judgment, the Trial Court held, based on the **Carlo** and **'Aweisat** judgments, that "the Regulation aims to allow a child born to parents who are Israeli residents to have the same status as his parents, so that he may live his life with his parents without them having to relocate". Accordingly, the Trial Court found that in the circumstances of the matter, when the Appellants, their parents and their siblings all live outside Israel, indeed, the entire family unit is outside the State of Israel and there is no cause justifying the application of the Regulation. Therefore, in order to rule on the question

of whether there is cause justifying the application of the Regulation in the circumstances of the matter at hand, we must first rule on the question of whether the special and unique circumstances of the family's dwelling in the Wadi Hummus neighborhood, the Appellant, the father of the minors, should be considered as living in Jerusalem rather than in the Area.

17. As aforesaid, the Appellants live in the Wadi Hummus neighborhood, which is for all intents and purposes an extension of the Sur Bahir neighborhood, which is located inside the State of Israel. Over the years, Sur Bahir freely expanded toward the Judea and Samaria Area, and its residents lived their lives as a single organic unit that shares the same education, health, welfare and social services in Jerusalem. For many years, there was no difficulty traveling between the different parts of the neighborhood and family and social ties among all its residents took root. This reality began to change with the decision to build the security fence, following which the two parts of the village were almost cut off from one another. However, at the end of the day, and with the State's consent, the route of the fence was shifted such that its Israeli side would include parts of the village located in the Judea and Samaria Area. This state of affairs preserved the reality that had been in place previously whereby the Israeli part of the village is the center of the entire community. It is where the schools and health and social services are located. It is where most of the commercial and social life of the village residents takes place, many Israeli residents among them. Moreover, the fence that was built created a physical divide between the Judea and Samaria Area and Israel, such that makes it difficult for residents of Wadi Hummus to maintain a fabric of life in the Area, in a manner that significantly fortified their already well established connection to Israel. It appears that the State is aware of this unique fabric of life. This can be discerned, for example, from the aforementioned decision of the military commander regarding leaving the Wadi Hummus neighborhood on the "Israeli" side of the fence, a decision that was intended to prevent a rupture in the local residents' fabric of life. It can also be discerned from a document prepared by the military advocate general's office while processing the aforementioned HCJ 9156/03. This document was attached as Exhibit P/11 to the petition to the Trial Court and stated as follows:

> In the petition, the residents who live east of the route of the barrier claim that building the barrier on the planned route would result in severe harm to their routine lives. **What is at issue are Palestinians in possession of blue ID cards** [i.e., Israeli residency visas, translator's note] **who will be cut off from their center-of-life in the village of Sur Bahir and physically separated from their family members and the services they use…** (Emphasis added, D.B.)

The State's recognition of the unique situation in Sur Bahir can also be discerned from its consent to recognize permanent residents living in Wadi Hummus as coming under the National Health Insurance Law and the National Insurance Law, as part of the judgment of the District Labor Court, which stipulated, *inter alia*:

> In view of agreements between the parties, and the notice, and considering that this is a **single homogenous village**, and in accordance with the instruction given by the Attorney General to the Defendant, indeed, as long as the legal and political situation remains as it is today, and as long as the separation fence exists as planned, the Defendant shall deem anyone meeting all of the following as coming under the National Insurance Law with respect to both the rights granted and duties imposed according thereto, namely:

A. He holds a permanent residency visa under the Entry into Israel Law 5712-1952.

B. He is a resident of the village of Sur Bahir, including village territory between the separation fence and the municipal territory of Jerusalem, and he resides in the village permanently and not temporarily. (Emphases added, D.B.).

Note – it cannot be said that it is possible to infer from the judgment of the District Labor Court that all Wadi Hummus residents are entitled to permanent residency. However, one cannot ignore the fact that the agreement formulated by the state indicates that it too considers this a unique and complex reality.

18. The aforesaid clearly indicates that the reality of life in the village of Sur Bahir and its eastern neighborhoods, located in the Judea and Samaria Area, is complex and unique. This reality requires, in the matter of the Appellant's family, a substantive examination of the question of center-of-life and ties to Israel and cannot be resolved simply by relying on the physical location of the Appellant's home, as the Trial Court has done.

19. This Honorable Court has previously addressed the criteria for examining a person's residential ties to the State of Israel in different contexts. Thus, for example, held Justice **M. Cheshin** (as his title was at the time) in CrimFH 8612/00 **Haim Herman Berger v. Attorney General**, IsrSC 55(5) 439 (2001), at pp. 461-462:

> How might we learn of the residential ties a person has to the country? One could say: intent and action – a subjective test and an objective test – shall together create the status of residency.
>
> The residency condition is created by inference from the concept of possession, in spirit and body, *animo et corpore*, in the intent to settle (*animus manendi*) and in the act of settlement that accompanies the intent. One must examine a person's existing ties to the locale and **only an overall examination of the ties** shall lead us to the answer as to whether he is a 'resident' of the locale or not.
>
> …
>
> **The person claiming to be a resident must give more and more signs of residency until a critical mass that makes him resident is reached: place of residence, place of residence of the family, the residency-claimant's social life, the place where his income is produced, his customs and habits, the place where most of his assets are located, his language, his children's school.**
> [Emphasis added, D.B.]

See and compare also: HCJ 2123/08 **A.v.B.** (not yet reported, July 6, 2008), paragraph 12 of the judgment of Justice **E. Arbel**.

It has been previously held in our case law, in different context, that the condition of dwelling in a certain place must not be interpreted narrowly in terms of physical presence only. It must rather be interpreted as examining substantive ties to a place of residency which are not expressed exclusively in a physical manner (see, e.g. CivA 4127/95 **Yael Zelkind v. Beit Zeit Communal Laborer Moshav LTD**, IsrSC 52(2) 306, 315 (1998)). It has also been established that the concept of residential ties must be examined in the context of the statutory provision in which it

appears and interpreted in accordance with the background and purpose of said provision (ibid., **ibid.**).

20. With respect to the purpose of Regulation 12, we have already established in **Carlo** that:

> It appears that the situation the legislator envisaged and sought to prevent is the creation of a disconnection or a discrepancy between the status of a parent who resides in Israel pursuant to the Entry into Israel Law and the status of his child, who was born in Israel but is not entitled to legal status in the country as a result of his birth therein. As a rule, our legal system recognizes and respects the value of the integrity of the family unit and the principle of protecting the child's best interests. **Therefore, one must prevent the creation of a disconnection or a discrepancy between the status of a minor child and the status of the parent who has custody of him or who is entitled to custody.** [Emphasis added, D.B.]

Note, this purpose is not unique to Regulation 12 alone, as Israeli law strives to prevent a discrepancy between the status of a minor child and the status of his parent who has custody or is entitled to custody of him (see §§.36, 48 of the judgment of Justice **U. Vogelman** in AAA 5718/09 **State of Israel v. Huda Muhammad Yousef Srur** (not yet reported, April 27, 2011) (hereinafter: **Srur**).

We further found in **'Aweisat**, that Regulation 12 seeks to promote human rights on two central aspects – the first aspect relates to the right of the parent who has status in Israel to live with his child in Israel and the second focuses on the minor and relates to his autonomous and independent right to live his life with his parent. The second aspect reflects the principle of the best interest of the child which is recognized in our legal system as a principle worthy of protection. In this spirit, it was held in **'Aweisat** that:

> … [W]hen the Minister of Interior considers an application filed under Regulation 12, he must give **significant** weight to the child's best interest and to the integrity of the family unit. (§20 of the judgment, emphasis in original, D.B.)

Thus, equating the civil status of the child to that of his parent serves this important principle and the importance of doing so is derived from "the combination of the right to family life and the principle of the best interest of the child" (**Srur**, §36). These matters are dictated by logic, as clearly, a reality in which a parent and child in the same family unit have different status may undermine the stability and balance which are so necessary for the proper development of a minor. Moreover, a discrepancy in status leads to a discrepancy in the rights attached to that status in a manner that creates, within the same family unit, groups with lesser social rights than the rest of the family. This situation is also undesirable from the perspective of the benefit of the child. This is all the more relevant when it comes to a family in which most of the children do not have the same status as their parents and other children, very young in age, have no status at all – as in our matter.

21. It follows that when examining residency requirements for the purpose of Regulation 12, while we consider the familiar criteria for residency we must also take into account the fact that we are giving this concept substance that leads to the fulfillment of the purposes of the Regulation. Therefore, we must substantively examine whether this is a family unit which is so closely connected to Israel that denying the children status in Israel would result in interference with the integrity of the family unit and the principle of the child's best interest. Indeed, as we noted in our

decision of June 26, 2009 "The premise is that it is impossible to grant status in Israel to a person who lives outside the State of Israel, even if the fence cuts him off from the Judea and Samaria Area and leaves him on the Jerusalem side of the fence". However, there may be unique and exceptional situations in which living outside the municipal borders of Jerusalem is almost a virtual situation. In these exceptional situations, living outside city limits would be one aspect of the overall elements involved in determining the question of residency in Israel, such that, despite the geographic location of the residence, it is found that there are more ties to Israel than to the Palestinian Authority. In such circumstances, it is impossible to determine, solely based on the place of residence, that the applicant cannot be considered a resident of Israel for purposes of Regulation 12 and it is necessary to perform a substantive examination of the residency issue, according to the tests adopted in case law and in keeping with the purpose of the regulation.

22. This is the situation in the Appellant's unique circumstances, as has already been clarified in the aforesaid decision of June 26, 2009. As emerges from the particulars presented by the Appellants and which the Respondents did not dispute, the Appellant is a permanent resident of Israel whose children were born in the country and study within its territory. The family members lead their routine daily lives – their family life, social and commercial life, in a manner in which the locale in which they reside cannot be separated from Israeli territory. Additionally, at the present time, and following the erection of the fence, there is also a physical divide between them and the territory of the Area which greatly impedes their free travel thereto. Therefore, it seems almost self-evident that the connection of the Appellant's family to the village of Sur Bahir, within Jerusalem territory, is extremely close and in fact, they have had no substantial connection to the Area for many years, with the exception of the physical location of their home within the Sur Bahir extension. To this, one should add the complex composition of the Appellants' family. In the circumstances, as stated, the father is a permanent resident, as are the remaining siblings of Appellants 2 and 3 – seven brothers from his father's other wife and their two sisters who, like the Appellants, were born in Israel. The Appellants are therefore the only children in the family who have no status. As recalled, they are not registered in the Palestinian population registry and the first application to have them registered in the Israeli population registry was filed when they were four years old. Processing of the application took many years due to the Respondents' position. This situation, in which the children have no status either in the Area or in Israel, is improper, both internally and externally. Internally – it undermines the stability of the family unit, while creating an internal distinction among family members. Externally – it undermines the ability of the family unit to carry on a proper routine in Sur Bahir, studying, visiting friends and family etc. In the absence of permanent status, the Appellants are vulnerable to more frequent monitoring on the part of security forces and the police, and their daily lives depend on permit renewal processes vis-à-vis civil administration officials. All this when, unlike the rest of their siblings, Appellants 2 and 3 have no social rights and are not entitled to medical treatment in Israel. This reality of life is difficult for the minors, Appellants 2 and 3, and points to the importance of providing protection for the whole family unit, in accordance with the purpose of Regulation 12 and based on the principle of the best interest of the child.

23. Therefore, in view of the unique reality of life experienced by the Appellant's family, the minors' lack of ties to the Area, the family's close connection to Israel and the complex family composition, it is my opinion that in the circumstances of the matter, there is justification to view the Appellant, the father of Appellants 2 and 3, as present in Israel for the purpose of Regulation 12.

Therefore, the conclusion that necessarily follows is that there is cause to review the Appellant's application to have Appellants 2 and 3 registered as permanent residents of Israel, using Regulation 12. This finding is insufficient, since, as stated above, the Temporary Order imposes

restrictions on the application of Regulation 12 and therefore, prior to deciding whether it is possible to grant Appellants 2 and 3 status pursuant to the Regulation, one must first examine whether they are "residents of the Area" under the definition that appears in the definition clause in the Temporary Order. This definition was amended in 2005, in the context of the amendment entered that year. Its current version reads as follows:

Definitions	Resident of the Area – someone who has been registered in population registry of the Area, as well as who resides in the Area notwithstanding the fact that he has not been registered in the Area, excluding a resident of an Israeli settlement in the Area.

The Appellant's most recent application was filed in 2007 and, therefore, the current version of the definition of resident of the Area is relevant to our case. As recently held in AAA 1621/08 **State of Israel v. Ziyad Hatib** (not yet reported, January 30, 2011) "for the purpose of the Temporary Order Law, a 'resident of the Area' is one of two – a person who is registered in the population registry of the Area, **and an examination of his actual ties to the Area is of no consequence for this matter**, or a person who is present in the Area but not registered therein. For the latter, a substantive examination – according to the test of most ties – with respect to the actual residency of the person seeking status will naturally be required." [emphasis in original].

As stated, Appellants 2 and 3 are not registered in the population registry of the Area and therefore, only the second part of the definition applies to them. In this context, I have already noted, as detailed above, that even if their home is located in the part of Sur Bahir that is located outside the municipal borders of Jerusalem, indeed, there is no dispute that most of the children's ties are to the village of Sur Bahir, which is inside Israel. As noted, this is where Appellants 2 and 3 study, maintain the center of their family and social lives and receive medical services, welfare services etc. We also note that there is a physical divide between the Appellants' home and the Area – the security fence, which makes their travel to the Area difficult and prevents any real connection to this area. In this state of affairs, I believe that based on the test of most ties, Appellants 2 and 3 have no real ties to the Area (compare **Srur**, §25). Therefore, in my view, they are not to be considered residents of the Area for purposes of the Temporary Order, and as such, its provisions do not impede the application of the provisions contained in Regulation 12 in any way.

Considering that the Appellant's first application was filed as early as 2000, prior to the 2005 amendment of the Temporary Order, I shall further add, albeit superfluously, that I would have come to the same conclusion even if the previous definition of "resident of the Area" were examined in the Appellants' case. This definition was discussed in detail in **'Aweisat**.

Thus, I have reached the conclusion that the Temporary Order does not impede the Respondents from applying the provisions contained in Regulation 12 to the Appellants' case.

24. However, this conclusion does not complete the examination process, as it is still necessary to examine whether the Appellants themselves meet the conditions of Regulation 12. In this context, it should be noted immediately, that Appellants 2 and 3 do meet the preliminary conditions of the Regulation. They were born in Israel and the Law of Return does not apply to them. However, it is accepted practice that the status given pursuant to the Regulation is not given automatically and that processing of an application for status under the Regulation involves an examination of aspects related to the minor's center-of-life, whether or not there is a security or criminal

impediment and any other relevant consideration relating to the exercise of authority under the Entry into Israel Law (see §20 in **'Aweisat**).

25. It seems that there is no need to further detail what has been stated and suffice it to hold that the Appellants' unique circumstances justify granting them status pursuant to Regulation 12. **First**, in view of the unique and complex circumstances of their residency in the Wadi Hummus neighborhood, as detailed above. These have convinced me, as stated, that the Appellants' center of life is effectively in Israel. **Second**, in view of the discrepancy in the status of the Appellants and their father and remaining siblings, as well as the fact that the Appellants are not registered in the registry of the Area and have no status at all. Allowing this discrepancy to persist, as well as allowing the Appellants to remain without any status is inconsistent with the protected values that underlie Regulation 12, including the best interest of the child.

    Therefore, I have reached the conclusion that the Appellant's request must be granted and his children, Appellants 2 and 3 must be granted the status of permanent residents in Israel pursuant to Regulation 12.

26. Before concluding, I shall note that I have considered the Respondents' arguments regarding the potential broad implications granting the Appellants status might have in their view. However, I have found that they do not change the conclusion I have reached. This, partly because as detailed above, the circumstances at issue, the circumstances of Appellants 2 and 3 are unique. They were born in Israel, to a father who is a permanent resident. The reality of their life in Sur Bahir and in Wadi Hummus is complex and unique and is also characterized by the fact that their remaining brothers and sisters have permanent residency status, while they lack any status. In this state of affairs, it seems that the Respondents have given too much weight to the argument regarding the potential broad ramifications a decision might have instead of making a focused and individual decision in the unique circumstances of the case. It should also be noted that I have examined the Respondents' proposal to grant the Appellants stay permits for Israel as a substitute for status in the country, but I have not found that this proposition provides an adequate response to their predicament. In addition, I have not found substance in the Respondents' argument that granting status to Appellants 2 and 3 provides indirect support for the offense of bigamy, as the decision to grant status relies on Regulation 12 and its purposes rather than on the marital relationship between the Appellant and his wife who is a resident of the Area.

    In addition to all the aforesaid, I cannot conclude without stating my opinion that the Respondents might have been expected to give greater weight to the fact that building the security fence greatly contributed to creating the complex reality in which the Appellants live. In my view, such recognition would have compelled the Respondents to show greater willingness to provide a reasonable solution to the case of the Appellants without need for a court ruling.

27. In view of all the above, should my opinion be heard, I would accept the appeal, instruct that the judgment of the Trial Court be overturned and the Respondents' decision not to grant Appellants 2 and 3 status under Regulation 12 and in keeping with their father's status, be revoked.

Postscript

28. The opinion of my colleague, Justice (retired) E. E. Levy, to which my colleague Justice A. Grunis gave his assent, and according to which the appeal should be rejected has been brought to my attention. It is clear that my colleagues were aware of the severe harm caused to the minor Appellants, but in their view, under the circumstances, considering the purposes of Regulation 12 and in view of the concerns regarding the broad ramifications of this judicial ruling, it is not possible to grant them the remedy they seek. In my opinion, the circumstances of the Appellants compose a unique and rare puzzle of circumstances. Therefore, I have not been persuaded that

there is a real concern of significant broad ramifications should the minors be granted status. This is balanced against the severe harm done to the Appellants, which is partly the result of a reality of life that was imposed on them following decisions made by the Respondents regarding the erection of the security fence in the area, and the nature of life in Wadi Hummus. Therefore, after having reviewed the opinions of my colleagues, I have seen no cause to change my position.

The President

Justice (retired) E. E. Levy

1. Unfortunately, I cannot join the result reached by my colleague, the President.

   This appeal involves many difficulties as it centers on two youths who have remained, unlike their siblings, without status in the place where they were raised and where they live. As noted by my colleague, the President, one can presume that the fact that the Appellants live in Wadi Hummus created a reality wherein they use many services that are given inside the territory of the State of Israel. As noted by my colleague, "the Israeli part of the village is the center of the entire community. It is where the schools and health and social services are located. It is where most of the commercial and social life of the village residents takes place, many Israeli residents among them." (§17 of the judgment of the President). In this state of affairs, it seems that even the Respondents do not dispute the fact that Appellants 2 and 3, like the rest of the family, have characteristics that may indicate that their center-of-life is inside Israel. However, could these particulars and the unique circumstances of the Wadi Hummus neighborhood allow granting a permanent residency visa **in Israel** to individuals who established their place of residents outside it? Is the fact that a person needs status in the country and carries out some of his daily routines therein sufficient for granting him the status of **resident** in the country, despite the fact that he does not at all reside within its territory? In my view, the answer is negative.

2. The Entry into Israel Law 5712-1952 is, as its name indicates, a law regarding entry into Israel and the regulation of the status of those persons who are present in but are not citizens of the country. The law begins with entry into Israel which is regulated under Section 1(a): "The entry into Israel of a person who is not a citizen of Israel shall be by virtue of an oleh certificate [reserved for Jewish immigrants to Israel, translator's note] or a visa issued pursuant to this law." The Law continues with presence within the country in Section 1(b): "**A person who is not an Israeli citizen, or does not possess an oleh certificate, shall reside in Israel by virtue of a visa issued pursuant to this law**." I believe that these provisions contain a clear presumption that the law applies to people who are present inside the country rather than outside it. Clearly, the State of Israel, as any sovereign state, has borders and only people who traverse them cross its gates and enter its territory. The Appellants' family established its place of residence a few hundred meters outside the municipal borders of the city of Jerusalem. Indeed, in these circumstances, one standing at the threshold of the country might feel that he is inside it, but it is not so, as the border, even if it appears to some as arbitrary and inflexible, is the only marker of where a person resides. In other words, this is the nature of a border, that "we are always on one side of it… or on the other" (the written statements of my colleague, the President, in a different context, in CrimC 534/04 **A. v. State of Israel**, IsrSC 59(4) 885, 902 (2005); in the same spirit, see also HCJ 8803/06 **Ganei Huga LTD. v. Minister of Finance**, §6 (not yet reported, April 1, 2007)). "Borderline cases that challenge the limitations of the law always exist. The question is not how the law handles borderline cases, but what the purpose of the law is and what its guiding rationale is" (CrimC 534/04 above, p. 902).

3. It is clear that this concept of the application of the Entry into Israel Law reflects on the interpretation of regulations enacted pursuant thereto:

> …[T]he interpretation of secondary legislation is integrated into the interpretation of the primary Law by virtue of which it was regulated. Indeed, as a rule the purpose of the 20 secondary regulation conforms to the purpose of the primary Law (see HCJ 8233/99 **Ben Zuk v. Minister of Transport**, IsrSC 55(2) 311, 316 (2000)). This is clearly also the case when it comes to the Entry into Israel Law and the regulations which were regulated by virtue thereof. (AAA 5569/05 **Ministry of Interior v. Dalal 'Aweisat**, §20 (hereinafter: **'Aweisat**)

Regulation 12 of the Entry into Israel Regulations 5734-1974, to which the Appellants refer, addresses granting "**status in Israel**" to an individual who is born to parents who have status in Israel but does not come under Section 4 of the Law of Return. My colleague, the President, believes that in the unique circumstances of the case at bar, the purpose of the Regulation necessitates granting a permanent visa also to persons who do not reside in Israel but whose center-of-life is in the country. This is the result of a combination of exceptional particulars that pertain to the Wadi Hummus neighborhood, which create "unique and exceptional situations in which living outside the municipal borders of Jerusalem is almost a virtual situation." (§21 of her judgment). However, the attempt to find a solution for the concrete problem in which the Appellants find themselves practically leads to our instructing that the Respondent grant a "visa for residency in Israel", as stated in the Law, to a person who wishes to continue to live outside its borders. In my humble opinion, this result fails to achieve the purpose of the Regulation and it is inconsistent with the Law from which the Regulation draws its validity.

4. This court addressed the purpose of Regulation 12 in a number of judgments, namely, to prevent "the creation of a disconnection or a discrepancy between the status of a parent who resides in Israel pursuant to the Entry into Israel Law and the status of his child, who was born in Israel but is not entitled to legal status in the country as a result of his birth therein". (HCJ 979/99 **Pavaloayah v. Minister of Interior**, §2, (not yet reported, 23 November 1999) (hereinafter: **Pavaloayah**). This matter was discussed at length also in **'Aweisat**, where emphasis was put on the humanitarian purpose of Regulation 12, which is founded on the need to preserve the integrity of the family unit:

> … [W]hen the Minister of Interior considers the application that is filed under Regulation 12, he must allot significant weight to the welfare of the child and to the integrity of the family unit. This is for two main reasons. Firstly, he must set his mind to the fact that the secondary legislator chose to regulate a special regulation on the matter of the status of children who were born in Israel. As we have already noted, for the most part the provisions of the Entry into Israel Law and those of the regulations which were regulated by virtue thereof do not establish criteria for granting an Israeli permanent residence permit. Therefore by the very fact that a special regulation was instituted that deals with the resolution of the Israeli status of children who were born there we may learn that the secondary legislator sought to establish that when dealing with these minors special and significant weight should be accorded to the aspect of the integrity of the family unit. Secondly we must take into account the special nature of Regulation 12 as a regulation that is designed to promote human rights, and it does so from two aspects. The first one is the aspect which relates to the right of the parent with Israeli status to raise his child, that is to say the constitutional right of the parent to a family life. The second aspect relates to the independent and autonomous rights of the minor to live his life alongside his parents. ('**Aweisat**, §20)

This purpose of safeguarding the family unit has always been reviewed in the context of children who resided in Israel. In these cases, the judgments examined whether granting residency status was required for the purpose of preventing separation between parent and child and allowing the family unit to be maintained in Israel. The picture in the case at bar is quite different, as the Appellants seek permanent residency status in Israel for the purpose of continuing to live with their parents **outside its territory**. Additionally, there is nothing to prevent Petitioners 2 and 3 and their parents from continuing to live together in Wadi Hummus. Thus, the current situation involves no risk for the integrity of the Appellants' and their parents' family unit. Note well: should the Appellants' parents wish to relocate into the territory of the State of Israel (as stated in the opinion of my colleague, the President, the Appellants' father is a resident of Israel), there will be no impediment to them doing so, since, in such circumstances the Appellants would be entitled to petition for residency status under Regulation 12 based on the intent to protect the integrity of the family unit.

5. This too must be noted: I am not arguing that a person's center-of-life is measured solely by his place of residence. As stated above, the reality in which residents of Wadi Hummus live has created a situation whereby many of them conduct their lives in the territory of Jerusalem. However, I believe that granting residency status under Regulation 12 to persons who reside with their parents **outside the territory of the country**, for reasons of preserving the integrity of the family unit, is not reasonable. Some may see this as a conceptual expansion of the borders of the city of Jerusalem for the purpose of granting residency status, such that the Wadi Hummus area is included therein. Yet, it is clear that the Court is not competent to take such a measure and Regulation 12 of the Entry into Israel Regulations does not allow doing so.

   My colleague, the President, emphasized the unique case of the Wadi Hummus neighborhood and the concrete distress of the Appellants who are before us, a distress that results, in part, from the fact that they are not registered in the population registry of the Area; their siblings have been granted residency status; there is a physical barrier between the Appellant's home and the Area in the shape of the separation wall. However, if the examination is ultimately to be a substantive examination into the ties the family unit has to Israel – as my colleague proposes to rule (§21 of her judgment) – I am afraid that accepting the appeal would indeed have broad ramifications. I refer to the fact that there may be many more situations in which a person would conduct a center-of-life in Israel and establish his place of residence outside its territory. This is all the more the case in an age where means of transportation are such that make travel between communities simple (Is it not conceivable that there are other cases of people who live on the outskirts of Jerusalem, but work in the city every day and use the services it offers?). True, the Appellants' unique circumstances are such that presented them with a complex reality. However, it is my view that it is inappropriate to resolve this difficulty by employing the general interpretation my colleague proposes for Regulation 12 and that rather, the solution should be a concrete one that provides an answer to the problem the Appellants have encountered. The Respondents offered such a solution in the form of renewable stay permits for Jerusalem. The Respondents have declared in their notice that such permits would allow the Appellants to continue to study and receive medical treatment in Jerusalem.

6. True, being granted residency status is accompanied by various social rights whose importance cannot be underestimated (see for example Sections 150, 158, 195, 223 of the National Insurance Law [incorporated version] 5755 – 1995). However, the possibility of granting such rights to persons who are not residents of Israel where justification exists has been recognized in the past, particularly in situations where there was a finding of close ties between the person seeking the right and the state (see Section 378(b)(1) of the National Insurance Law and HCJ 890/99 **Halamish v. National Insurance Institute**, IsrSC 54(4) 423, 431 (2000); HCJ 494/03

Physicians for Human Rights v. Ministry of Finance, IsrSC 59(3) 322, 333 (2004)). In addition, my colleague the President has noted that recognition of the unique situation of Wadi Hummus residents has led the state to be willing to expand its arm's reach beyond the invisible line that cuts across the Sur Bahir neighborhood (see §3 of her judgment). One way or another, I do not believe that the solution for the issue of social rights can be found in the interpretation my colleague the President proposes for Regulation 12.

7. In light of the aforesaid, I shall propose to my colleagues to reject the appeal and uphold the judgment of the Court for Administrative Affairs.

Justice (retired)

Justice A. Grunis

I have read the contradicting opinions of my colleagues; President **D. Beinisch** and Justice (retired) **E. E. Levy**. As emerges from the two opinions, the case poses a difficult problem. The obvious and, I would hazard, natural tendency is to rule in favor of the Appellants, in view of the harsh results for Appellants 2 and 3 were their arguments to be rejected. However, one cannot ignore the issue of principle and the broad ramifications of a ruling that accepts their arguments, particularly considering that the relevant law, the Entry into Israel Law, 5712-1952 (hereinafter: the Law) and the regulations enacted pursuant thereto, seek to regulate a person's status **in Israel**, not outside it. As known, Appellants 2 and 3 live with their family outside the country. A Supreme Court ruling in favor of the Appellants cannot be reduced to the matter of Appellants 2 and 3 only. It is clear that in Wadi Hummus, where Appellants 1-3 reside, there are others in similar circumstances. Even if no court proceedings have taken place in the matter of these other individuals, it is incumbent upon us to foresee the possibility that the issue will resurface. In these circumstances, I join my colleague, Justice (retired) **E.E. Levy**.

The appeal is rejected as per the judgment of Justice (retired) **E.E. Levy** and the assenting opinion of Justice **A. Grunis** and in contrast to the dissenting opinion of President **D. Beinisch**.

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President Justice Justice