At the Supreme Court in Jerusalem **AP 22556-04-11**

1. **_____ N 'Arafat**, ID **_____**
2. **_____ M 'Arafat**, born September 17, 1995, ID **_____**
3. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
   Represented by Counsel, Adv. Adi Lustigman (Lic. No. 29189) et al.
   of 27 Shmuel HaNagid Street,
   Jerusalem, 94269
   Tel: 02-6222808, Fax: 03-5214947

The Petitioners

v.

Minister of Interior

Represented by Counsel from the Jerusalem District Attorney's office,
7 Mahal St. MaAlot Dafna, Jerusalem **The Respondent**
Tel: 02-5419512, Fax: 02-5419582

Administrative Petition

An administrative petition is hereby filed in which the Honorable Court is requested to instruct the Respondent to:

A. Grant Petitioner 2, a child of parents who are residents of Israel, permanent status.

B. Grant permanent status to a minor who resides in Israel and whose parents are residents of Israel, or such child who is the child of a single guardian who is a resident of the Israel.

The grounds for the petition are as follows:

1. What should be the status of a child of Israeli parents, or a child whose Israeli parent is her sole guardian and who cannot live or acquire status anywhere but Israel? This is the question which is the focus of this petition.

2. Petitioner 2 (hereinafter: **the Petitioner**), a minor born outside Israel, is the child of permanent residents of the country. Since his mother and father are residents of the country, the Petitioner has resided in Israel for many years and is unable to acquire status

anywhere else. Indeed, over the years, the Petitioner has had no status anywhere in the world.

3. His mother filed an application for status for him on **June 23, 2008** (previous attempts to have him entered into the population registry were unsuccessful). The Respondent gave his final decision on the application through the appeals committee on **February 27, 2011 –<u>almost three years later</u>**.

4. Thus, after years of pondering the issue, the Respondent has decided that unlike his four siblings, two older and two younger, who received permanent status, only the Petitioner would remain without permanent status, but rather receive temporary status for two more years. The Respondent is not disputing the fact that the Petitioner lived in Israel in the two years that preceded the 2008 application. It is owing to this fact that he has granted the Petitioner's four siblings permanent residency status over the years. The reason the Respondent gave for this decision was that the child was born in Al Bireh, on the border of Jerusalem, but not inside Israel.

5. In view of the above, this petition is also directed against the Respondent's position that, as a rule, bringing the status of a child born outside Israel on par with that of his parents will be delayed, even when both parents are residents of Israel and it is established that the child lived in Israel with his parents, or one of them in the two years leading up to submission of the application. This position may be suitable for a situation in which one of the parents is a foreign resident and the child was born outside Israel, and as such, the Respondent believes an inquiry is needed in order to ascertain in which of the parents' countries the child's family settled (see protocol 2.2.0010). It is clearly not a reasonable approach when both of the child's parents are Israeli and therefore the child has no possibility of acquiring civil status anywhere outside Israel. Given that the child's parents are Israeli residents, there would be no place where the child would belong if for some reason he fails to pass the extremely prolonged probationary process the Respondent is seeking to apply. Where would the child go? Where would he acquire status?

6. As this case demonstrates, the Respondent's policy unnecessarily undermines the child's best interest and the right to family life and contradicts the principle outlined by the Supreme Court whereby the child's best interest must be given "significant and considerable weight" and only "rare and extreme cases" would justify not bringing the child's status on par with that of his guardian parent (AAA 5569/05, **State of Israel v. 'Aweisat**). It is clear that granting status to such a child should be done utilizing a process that is simple, quick and efficient – words that are entirely foreign to the process applied by the Respondent.

<u>The parties</u>

7. Petitioner 1, N _____ 'Arafat, is a permanent resident of the State of Israel. She lives in the Kafr 'Aqab neighborhood of Jerusalem. Petitioner 1 was born in Israel, but received her permanent status through her marriage to her first husband, the father of her three eldest children, including Petitioner 2. In addition to these three children, Petitioner 1 is the mother of two more children with her second husband. All of her children, with the exception of Petitioner 2, are permanent residents of Israel.

8. Petitioner 2, born on September 17, 1995, is the son of Petitioner 1, a resident of Israel and _____ Abu Jarbiya, also a permanent resident of the State of Israel. Until June 2010, the Petitioner had no status anywhere in the world. At this time, the Respondent decided to approve his mother's application for status for him, but instead of granting permanent status, in keeping with the parents' status, the Respondent chose to grant the Petitioner temporary status for two years.

9. Petitioner 3, a registered non-profit organization located in East Jerusalem, has taken upon itself to assist individuals who had fallen victim to abuse or discrimination by state authorities, including defending their rights before the courts, whether on its own behalf as a public petitioner or as counsel for individuals whose rights have been violated.

10. The Respondent is the minister empowered by virtue of the Entry into Israel Law 5712-1952 to handle all matters arising from this law, including applications for status in Israel which, in turn, include applications for status for children.

Factual background

11. Petitioner 1 has lived in the Kafr 'Aqab neighborhood of Jerusalem continuously and permanently since 1999. Her husband, Mr. Haddad, and her children live with her.

12. Mr. Haddad is the second husband of Petitioner 1. Her previous marriage, to a resident of the country from Jerusalem ended in divorce in 2001. She has three children from this marriage, including the Petitioner. Thus, M., the Petitioner, has two parents who are residents of the country and he has no possibility of acquiring status anywhere else.

13. Petitioner 1 has guardianship and custody over all her children. It should be noted that currently her former husband, the Petitioner's father, also lives in Kafr 'Aqab in Jerusalem. The two older children of Petitioner 1, S_____, born February 13, 1991 and _____, born March 2, 1991, were born in Jerusalem and were registered in the population registry as permanent residents shortly after their birth. The boy M., was born in 1995, in the West Bank. From her current marriage to a resident of the Occupied Palestinian Territories, the Petitioner had R____, in October 2004 and H____ in November 2005. R___ and H____ were born in Jerusalem and their application was reviewed as an application for child registration. Like the Petitioner's application, his siblings' application was also filed in 2008. On February 8, 2009, the application to register the siblings as permanent residents in the population registry was approved, after the Respondent was persuaded that the family's center-of-life had been in Jerusalem for two consecutive years (at least from 2006.

    The Respondent's decision with respect to R___ and H____ is attached hereto and marked **P/1**.

    A photocopy of the identity card of Petitioner 1 is attached and marked **P/2**.

The process for securing status for a child

14. Although the years that precede the two years leading up to submission of the application have no relevance, it is noted, beyond requirement, that Petitioner 1 has had great

difficulty securing her son's status over the years. Her efforts to do so between 2000 and 2008 were to no avail. So, for example, Petitioner 1 filed an application for status on behalf of her son in 2000. At that time, the Respondent did not charge a fee for applications for children born outside Israel and Petitioner 1 has no receipt showing the application was submitted. She arrived repeatedly at the office of the Respondent for years and was told that her application was in processing. Note that residents of Jerusalem are accustomed to processing that takes many years, and it is, rather unfortunately, not the exception. When she contacted the office in the years 2002 and 2003, Petitioner 1 was repeatedly told that "everything is on hold". Indeed, the period in question is the time the Government Resolution was passed, followed by the enactment of the Nationality and Entry into Israel Law (Temporary Order) 5763-2003. In 2004, during one of her attempts to find out what had happened to her application at the interior ministry office, Petitioner 1 mentioned that she filed the application in 2000 and that she had been advised by the Respondent that he would continue processing this application. Petitioner 1 kept going to the Respondent's office, until, in 2008, on one of her visits to the office, or sometime thereafter, the Respondent deigned to actually check the status of her application, rather than just vaguely inform her that her file was still in processing without making any inquiries. It was then that Petitioner 1 learned that, according to the Respondent, there was no application in processing. She was instructed to file a new application and so she did.

A receipt for filing the application which is the subject of the petition is attached hereto and marked **P/3**.

15. Should the respected reader wonder why a mother is unable to have her application for status for her son processed for so many years, it is noted that Petitioner 1 has had a difficult life. She is poor and has had no legal assistance over the years. She communicated with the authorities directly, orally. When she found out, in 2008, after so many years, that her application was not being processed at all, she desperately contacted Petitioner 3, HaMoked: Center for the Defence of the Individual. After the matter was transferred to Petitioner 3, a skilled and experienced organization with lawyers on staff, a decision in her case was made only in 2011. The length of time it took for the application to be processed after Petitioner 1 obtained legal counsel tell something about the fate of people who communicate with the Respondent without legal assistance. As demonstrated, the orderly and documented communications Petitioner 3 made to the Respondent beginning in 2008, including an appeals committee process (the duration of which, according to protocol, is up to three months) have "shortened" the process to about three years. In any event, once Petitioner 1 filed a new application in 2008, following the Respondent's instructions, what is relevant is the chain of events beginning on the day the application was filed and the issue of center-of-life in the two years preceding submission thereof and there is no need to review the history. The aforesaid background about the submission of the application was presented beyond requirement, in view of a comment made by the appeals committee's about the timing of the application, a comment that was made despite the explicitly established rule that the fact that an application for status for a child is not filed shortly after her birth does not render the application moot (see, for example, AAA 5569/05, **State of Israel v. 'Aweisat** and that

the center-of-life test must be based on the two years leading up to submission of the application (AP 742/06 **Abu Kweidar v. Ministry of Interior**).

16. It is noted that the National Insurance Institute has recognized the Petitioner's residency in Israel for many years.

    Attached hereto is a sample printout showing receipt of child benefits, marked **P/4**.

    Attached hereto also is material from an investigation into the matter of Petitioner 1, which attests to residency in Israel for more than a decade, marked **P/5**.

Communications with the Respondent

17. On September 21, 2008; November 9, 2008; December 14, 2008; January 20, 2009 and March 9, 2009, Petitioner 1 sent the Respondent, via HaMoked: Center for the Defence of the Individual, reminders for the applications to have her son and husband registered.

    The letters are attached hereto and marked **P/6**.

18. As stated, on February 8, 2009, the application for permanent residency for the Petitioner's two younger siblings was approved (see exhibits P/2 and P/3). At the same time, the Petitioner was requested to fill out a curriculum vitae form for purposes of a security background check. The Petitioner was then only 13.5 years old (to the best knowledge of the Petitioners, under the Respondent's policy, security checks are conducted beginning at age 14). Petitioner 1 submitted the requested curriculum vitae form at the Respondent's office that same month.

19. In a letter dated March 31, 2009, received April 2, 2009, the Respondent notified that a decision had yet to be made.

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

20. On April 13, 2009, the Petitioners sent the Respondent another reminder letter.

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

Continued exhaustion of remedies – Appeals committee submission

21. After a year and six months had elapsed from the time the application for status for the Petitioner was submitted without any pertinent response from the Respondent, Petitioner 1 made a submission to the appeals committee on July 20, 2009, with respect to her son's status and approval of her application for family unification with her husband. Petitioner 1 requested her son and spouse be granted status without further delay.

    The appeal submission is attached and marked **P/9**.

22. On July 21, 2009, in accordance with protocol 1.5.0001 on this issue, it was held that the Respondent would submit his response on the merits of the appeal submission within 30 days with respect to the main remedies and within 14 days with respect to the temporary remedy, to commence from the date on which recess ends.

The decision of the committee is attached hereto and marked **P/10**.

23. In a telephone conversation that was held in or around September 2009 between the undersigned and Adv. Ilanit Mendel, from the Respondent's legal department, his counsel in the appeal, the latter stated that the Respondent was willing to grant the application for family unification with the spouse and that Petitioner's application would be granted by way of temporary status for two years.

24. In a letter from the Petitioners sent to Ms. Mendel via e-mail on September 17, 2009, the Petitioners notified that they wished to proceed with the appeal despite the Respondent's notice. The Petitioners explained why there was no sense in leaving the Petitioner with no stable and permanent status when both his parents were residents of the state and when he had no possibility of maintaining stable ties, expressed by status, to anywhere but Israel. The Petitioners also drew attention to the great delay that had already occurred in the Respondent's decision on the application, to which he was now seeking to add two more years. Therefore, the Petitioners claimed that the Respondent's decision to further delay the granting of permanent status was extremely unreasonable.

The letter is attached hereto and marked **P/11**.

25. In the absence of a response to the appeal, the undersigned again contacted Ms. Mendel on October 20, 2009, requesting a response. In addition, without abandoning any claims that arise on the issue at the appeal, the undersigned asked that the consent that had been given with respect to granting the child temporary status be implemented.

The letter is attached hereto and marked **P/12**.

26. In a letter dated October 21, 2009, the Respondent summoned the spouse of Petitioner 1 to receive a referral as part of the family unification process. As for the Petitioner, it was stated that he should, once again, submit a curriculum vitae form intended for security screening.

The Respondent's letter is attached hereto and marked **P/13**.

27. In a letter dated October 22, 2009, the Respondent was provided with further documents that had been requested and with the curriculum vitae once again. The Petitioners noted that this form had already been submitted at the Respondent's request in February 2009.

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

28. On December 27, 2009 and December 28, 2009, the Petitioners sent the Respondent additional e-mails, in which they requested the Petitioner be granted permanent status, and, at minimum, the temporary status that had already been approved.

The letters of the Petitioners are attached hereto and marked **P/15a and P/15b**.

29. On December 21, 2009, the Respondent requested the committee grant him an extension for two more months.

The Respondent's request is attached hereto and marked **P/16**.

30. On December 30, 2009, the Petitioners notified that they opposed the granting of an extension so long after the date for submission of the Respondent's response had passed. In a decision dated December 31, 2001, the committee requested the Respondent provide the reasons for the lack of decision in the Petitioner's matter within 14 days.

    The Petitioners' letter with the committee's decision is attached hereto and marked **P/17**.

31. The Respondent ignored the decision of the committee and on January 20, 2010, filed another request for a two-month extension.

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

32. In their response, the Petitioners repeated their objection to the granting of an extension and requested the committee's immediate decision in the matter of the Petitioner. On January 24, 2010, the committee issued a decision requesting the Respondent to provide reasons for the failure to have the child registered thus far, in detail rather than "laconically".

    The Petitioners' response with the committee's decision is attached hereto and marked **P/19**.

33. The Respondent once again ignored the decision of the committee and refrained from providing a response on the scheduled date, and more. On March 10, 2010, the Petitioners requested the committee instruct the Respondent to grant the Petitioner status forthwith or, alternatively, to instruct the Respondent to respond forthwith. In a decision dated March 15, 2010, the chair of the committee instructed the Respondent to submit his response forthwith.

    The Petitioners' request with the committee's decision is attached hereto and marked **P/20**.

34. The Respondent continued to ignore the decision of the committee. Thus, on May 4, 2010, the Petitioners filed another request for a decision in the appeal and for an order nisi for the Respondent.

    The Petitioners' request is attached hereto and marked **P/21**.

35. On May 5, 2010, an order nisi preventing the Petitioner's deportation was issued. The Petitioner was, at the time, 14 years of age and without status anywhere in the world.

    The decision of the committee is attached hereto and marked **P/22**.

36. On May 6, 2010, the Respondent asked for a further two-month extension. The Petitioners objected, but the extension was granted.

    The Respondent's request with the Petitioners' objection and the committee's decision to grant an extension is attached hereto and marked **P/23**.

37. In an e-mail dated May 25, 2010, the undersigned asked Adv. Mendel to grant the Petitioner permanent status, and, at minimum, temporary status without delay. The undersigned repeated the Respondent's notice, which dated back to September 2009, with respect to the theoretic approval given to grant the Petitioner temporary status. The undersigned also repeated her request that the dispute with respect to the nature of the status be resolved in the appeal and that the granting of temporary status not be delayed.

The e-mail dated May 25, 2010 is attached hereto and marked **P/24**.

38. On June 1, 2010, an entire year after the appeal was submitted, the Respondent's notice was finally received. With respect to the Petitioner, the claim was that owing to the Respondent's broad discretion, his decision to grant the child temporary status for two years and only thereafter permanent status was to be accepted as reasonable.

The Respondent's response is attached hereto and marked **P/25**.

39. On June 17, 2010, the Petitioners submitted their response to the Respondent's notice, stating their objection to granting the Petitioner temporary status two years after the application was submitted, an application in which center-of-life in the two preceding years was established – that is – after a review of four years of center-of-life. The Petitioners recalled that according to the law, a gap and discrepancy between the status of a child and the status of his parents should be avoided and that such gap can be justified only in extreme circumstances (HCJ 979/99 **Carlo** and AAA 5569/05 **'Aweisat**). The Respondent offered no explanation for the distinction between the status of the Petitioner and the status of his parents and four siblings, other than his broad discretion.

The Petitioners' response is attached hereto and marked **P/26**.

40. On June 21, 2010, the Petitioner was entered into the Israel population registry with a temporary status for two years. This occurred many months after the Petitioners were first notified of the approval-in-principle for this registration and some two years after the application in his matter was submitted.

The population registry record is attached hereto and marked **P/27**.

41. On July 11, 2010, the Respondent requested another month-long extension to submit his position on the appeal. The Petitioners consented on condition that this would be the final request for an extension. The extension was granted.

The Respondent's request is attached hereto and marked **P/28**.

42. Despite this, even after more months elapsed, the Respondent did not provide his response. Therefore, on October 30, 2010, the Petitioners submitted another request for a decision on the appeal. According to the decision of the committee, in the absence of a decision on the part of the Respondent within ten days, a decision on the appeal would be made without the Respondent's position.

The Petitioners' request with the decision of the committee is attached hereto and marked **P/29**.

43. However, the Respondent's decision was not provided. On October 31, 2010, the Petitioners again begged for the committee's decision. On November 2, 2010, the chair of the committee notified that her decision would be delivered within a few days.

The Respondent's request with the committee's decision is attached hereto and marked **P/30**.

44. On November 23, 2010, the Respondent's response to the appeal was received. The Respondent claimed that given the fact that the Petitioner had a temporary residency visa, there was no violation of his right to family life. The Respondent also surveyed his processing of the application until the provision of a response, two years and four months after the application was submitted in 2008. The Respondent's response contained no explanation for the outrageous delay in reaching a decision on the application. The central reason the Respondent provided for his decision to grant the Petitioner temporary status for two years, upon which, he would continue to review the Petitioner's matter, unlike that of his parents and four siblings, was his broad discretion. It should be noted the Respondent erroneously claimed that the child never arrived to receive his temporary status. As stated, the temporary status was granted in June 2010.

The Respondent's response is attached hereto and marked **P/31**.

45. On December 26, 2010, the Petitioners submitted their response to the Respondent's position. In their response, the Petitioners reiterated that Respondent showed no cause for departing from the law with respect to the child's best interest and the importance of the right to family life, which demands bringing the child's status on par with that of his parents. The chair of the committee decided to refer the matter for another response by the Respondent within a further 21 days.

The response of the Petitioners with the committee's decision is attached hereto and marked **P/32**.

46. On January 31, 2011, after a month went by with no response from the Respondent, the Petitioners once again requested the committee's decision. In a decision dated February 1, 2011, the chair of the committee notified that according to protocol, she had 60 days to render a decision on the matter.

The Petitioners' request with the committee's decision is attached hereto and marked **P/33**.

The decision of the appeals committee – harm to the child under the guise of broad discretion

47. On February 27, 2011, a year and eight months after the appeal was submitted and some two years and eight months after the application for status for the Petitioner was filed, the committee rendered its decision. The committee accepted the position of the Respondent that the Petitioner should be granted temporary status for two years as reasonable. This decision means center-of-life would be examined from 2006 until at least 2012 and only then would the child, by then already a youth, be granted permanent status as his mother, father and four siblings. The grounds for the decision relate to:

a. The discretion of the Minister of Interior, which is seemingly so broad that it allows delaying the granting of status to a child both of whose parents are permanent residents and who has lived in Israel for years (see, paragraph 5).

b. Under the heading "center-of-life", the Respondent explains, via the committee, that his policy of examining two years of center-of-life prior to approving an application is rooted in case law (see paragraphs 6-7 that refer to case law on center-of-life during the two years **prior to submission of the application**, not two years following its approval. It should be noted that with respect to these two years, there is no dispute between the parties.

c. The Respondent further holds, via the committee, that the fact that the Petitioners (as well as the Respondent) did not provide the irrelevant details concerning past communications with the Respondent, beginning in 2000, prevents it from reviewing the Petitioners' arguments with respect to the great delay that occurred after the 2008 application was submitted, the application which is the subject of the appeal, including the period of more than a year that passed until the decision was made in the appeal itself (paragraph 8 of the decision).

d. The Respondent dismisses the argument regarding the discrimination of the Petitioner compared to his four other siblings who are residents of Israel because, according to the Respondent, the fact that he was born outside Israel creates a difference which renders an argument on factual discrimination moot on this level. The Respondent fails to mention that the Petitioner is a child of two Israeli residents, unlike his two younger siblings, who were granted permanent status and whose father is a resident of the Occupied Palestinian Territories.

48. The Respondent holds that the "the decision shall therefore only concern the question whether a permanent resident can automatically 'bequeath' his status to a child who was born outside Israel." However, this is not the issue raised by the Petitioners in the appeal.

49. Note well, the Petitioners did not claim that the Petitioner should be granted status automatically, but rather in accordance with the law respecting the child's welfare, following an examination of center-of-life for two years (leading up to submission of the application) and considering the fact that the Petitioner has no status, is a child of Israeli parents, cannot obtain status elsewhere and lives in Israel with his four other siblings who have been granted permanent status. The Petitioners also addressed the long delay in processing the Petitioner's application thus far, no less than two years and eight months – and claimed that the granting of permanent status to the petitioner should not be delayed any further.

50. The Respondent's conclusion, via the appeals committee, is that the fact that a person is statusless does not give cause for **immediate registration** as a permanent resident (emphasis on immediate registration added, A.L.). According to the committee this is immediate registration and a reasonable decision.

The decision of the committee is attached hereto and marked **P/34**.

51. The petition herein is filed against this decision

The legal framework

52. Israeli law has adopted the principle that a child's status must be identical to the status of his guardian parent who is a resident of the country, if the child lives with this parent in the country. On this, see the remarks of President (as was his title then) A. Barak in **Adalah** (§28 of his opinion).

> Israeli law recognizes the importance of making the civil status of the parent equal to that of the child. Thus, s. 4 of the Citizenship Law provides that a child of an Israeli citizen shall also be an Israeli citizen, whether he is born in Israel (s. 4A(1)) or he is born outside it (s. 4A(2)). Similarly, r. 12 of the Entry into Israel Regulations, 5734-1974, provides that 'A child who is born in Israel, to whom s. 4 of the Law of Return, 5710-1950, does not apply, shall have the same status in Israel as his parents. (Emphasis added, A.L.)

53. Regulation 12 of the Entry into Israel Regulations 5734-1974, which instructs that a child's status must be equal to that of his parent, has no direct application with respect to children born outside Israel. However, for many years, the Respondents applied the same rules and procedures to children born inside Israel and children born outside the country. Their status was reviewed in the context of an "application for child registration" and according to the center-of-life criteria. Moreover, despite the fact that Regulation 12 does not apply to children of residents who were born outside the country, based on its language, it has been ruled that the purpose Regulation 12 was meant to serve also applied to children of permanent residents who were born outside Israel. So, for example, it has been ruled that: "as a rule, our legal system recognizes and respects the value of the integrity of the family unit and the interest of safeguarding the child's welfare**, and therefore, the creation of a discrepancy between the status of a minor child and the status of the parent who has custody of the child or who is entitled to custody should be avoided**" (Honorable Justice, now President D. Beinisch, in HCJ 979/99 **Carlo (Minor) et al. v. Minister of Interior** (§2 of the opinion of Justice D. Beinisch, emphasis added, A.L.). It was further ruled in **'Aweisat**, that the principle of the child's best interest must be afforded "significant and considerable weight" and that "except for rare and extreme cases, and in the absence of any concrete criminal or security impediment, the […] obligation will be upon the Minister of the Interior to grant status that is identical to that of his mother and of his father who have Israeli status." (*Ibid.*, p.20).

54. In 2001, the Respondents began charging a fee for a grant of residency to children who were not born in Israel. The rationale was that the children who were born in Israel received their status pursuant to the law, whereas, when only one parent is a resident, the Minister of Interior serves as an arbiter of sorts who makes a decision whether the correct status is that of the father's or that of the mother's. Children who were born outside Israel, however, are granted status under Sec. 2 of the Entry into Israel Law 5712-1952.

This process (unlike a decision under the last clause of Regulation 12) involves payment of a free.

55. Following a petition filed by Petitioner 3, AP 727/06 **Nofal et al. v. Minister of Interior**, the Respondent issued a protocol entitled "Processing of applications regarding the granting of status to a minor only one of whose parents is registered as a permanent resident in Israel" (hereinafter: **the procedure** or **the child registration procedure**). This petition is still pending and Petitioner 3 has many reservations with respect to the procedure. However, it is the procedure according to which the Respondent currently operates. According to the procedure, the status of a child who was born and registered outside Israel is to be arranged via an application for a permanent residency visa. According to the table that appears at the top of the procedure, such a child, **one of whose parents is Israeli and the other a foreign national**, is to receive temporary residency status for two years, followed by permanent residency, provided he is found to have a center-of-life in Israel. According to the Respondent, the rationale for adding the probationary process was the need to see in which of the parents' countries the family would choose to reside on a permanent basis. Should the family choose the foreign parent's country, the child is to gain residency in that country. This rationale is not present when both parents are residents.

The procedure is attached hereto and marked **P/35**.

56. It is impossible to describe the normative framework without noting that according to Respondent protocol no. 5.2.0008, a child of a foreign citizen who married an Israeli for whom status is sought is to receive the status of his foreign parent. If the application on his behalf is filed prior to the age of 15, no examination of center-of-life in Israel is carried out and the child receives the status of the parent who married the Israeli. So, for example, if the parent received permanent status, the child also receives permanent status.

57. The Respondent's treatment of the parents herein, residents of the country, is particularly disconcerting when it occurs even as the children of illegal work migrants are given status. These children are given permanent status upon approval of their applications, whereas the petitioner herein, is subjected to a long probationary process. It should be said that the Petitioners welcome the Respondent's decision with respect to migrant workers. It is a just and humane decision. However, it illustrates, all the more, the blatant arbitrariness in the Petitioners' matter.

The legal argument

58. Approving a situation that leaves a minor child of Israeli residents without status when there is no dispute that he resides in Israel and no dispute about the fact that he is unable to obtain status anywhere but Israel, for a prolonged period of time, in this case for almost three years from the time the relevant application was filed, while the child remains at the mercy of the Respondent who delays processing, is entirely unacceptable and contrary to express law regarding the best interest of the child and the constitutional right to family life. Family life includes a modicum of certainty, a modicum of stability, a status equal to that of his parents and siblings.

The right to family life – a constitutional right

59. In HCJ 7052/03 **Adalah - The Legal Center for Arab Minority Rights in Israel et al. v. The Minister of Interior et al.**, TakSC 2006(2), 1754 (hereinafter: **'Adalah**), the court ruled that the right to family life is a fundamental constitutional right in Israel and that it is part of the right to dignity. This position was widely supported by eight of the eleven justices that presided in that case.

60. Case law has drawn constitutional borders with respect to state interference with the family unit and the parents' autonomy with respect to decisions relating to their children.

> Parents' right to have their children and raise them, with all that is involved, is a constitutional, natural and primary right, an expression of the natural bond between parents and their children (CA 577/83 **Attorney General v. A.**, IsrSC 38(1) 146). This right is expressed in the privacy and autonomy of the family: the parents are autonomous with respect to making decisions in all matters relating to their children – education, way of life, place of residence etc. Intervention in these decisions by the state or by society is an exception the requires justification (see, CA 577/83 above, pp. 468, 485). This approach is rooted in the recognition that the family is the "the most fundamental and ancient unit in human history. It was, is and will be the foundation that serves and guarantees the existence of human society (Justice Alon, (as was his title then) in CA 488/93 **A's v. Attorney General**, IsrSC 32(3) 421, p. 434). (CA 2266/93 **A's v. B.**, IsrSC 49(1) 221, pp. 237-238).

61. The determination that the right to family life is a constitutional right leads to the determination that any impingement upon this right must be carried out in accordance with Basic Law: Human Dignity and Liberty, i.e. only due to weighty considerations and based on a solid evidentiary foundation attesting to such considerations. This determination imposes on the Respondent an increased obligation for diligence in maintaining an administrative mechanism that ensures that his power to deny applications for permanent, stable status, particularly for children, a power that impinges upon a protected constitutional right, is exercised only in cases where full justification for doing so exists. The same holds true for bureaucratic foot-dragging, which is contrary to the principles of good governance and the rule of law.

On the position of the law *vis-à-vis* the importance of the family unit see further:

LCA 238/53 **Cohen and Bulik v. Attorney General**, IsrSC 8(4), 35; HCJ 488/77 **A. et al. v. Attorney General**, IsrSC 32(3) 421, 434; CA 451/88 **As v. State of Israel**, IsrSC 49(1), 330, 337; CFH 2401/95 **Nahmani v. Nahmani et al.**, IsrSC 50(4) 662, 683; HCJ 979/99 **Pavaloyia Carlo v. Minister of Interior**, TakSC 99(3) 108; The Universal Declaration of Human Rights, passed in the UN General Assembly on December 10, 1948, Art. 8(1); Arts. 17(1) and 16(3) to the International Covenant on Civil and Political Rights, 1966, entered into effect with respect to Israel on January 3, 1992.

The rights of the child – the harm to the Petitioner

62. There is no need to belabor the severe harm suffered by the petitioner as a result of being left without status for many years and as a result of being left with temporary status, at the mercy of the Respondent even after the application for status was approved. This application, one must recall, was approved following a thorough review lasting some three years, during which the Petitioner's mother presented proof of the family's center-of-life for five full years and more.

63. The best interest of the child is a fundamental and deeply rooted value in Israeli law. In CA 2266/93 **A. v. B.**, IsrSC 49(1) , 221, Justice Shamgar ruled that the state must intervene in order to protect the child against a violation of his rights. In all actions relating to children, whether carried out by courts, administrative authorities or legislative bodies, the child's best interest must be a primary concern.

64. The child's best interest is considered a supreme value under international law as well. This is expressed in the drafting and signing of the Convention on the Rights of the Child. The Convention, ratified by Israel on August 4, 1991, sets forth a number of provisions that require protection for the child's family unit (see: Preamble, Arts. 39(1) and 9(1) of the Convention). In particular, Art. 3 of the Convention stipulates that the interest of children must be a primary concern in every governmental act. It follows that any piece of legislation or policy must be interpreted in a manner that facilitates safeguarding the rights of minors.

65. The provisions of the Convention on the Rights of the Child have been increasingly recognized as a supplementary source on the rights of the child and a guide for interpreting "the best interest of the child" as a primary consideration in our legal system: See CA 3077/90 **A. et al. v. B.**, IsrSC 49(2) 221, 578, 593 (Honorable Justice Cheshin) CA 2266/93 **A., minor et al. v. A.**, IsrSC 49(2), pp. 232-233, 249, 251-252 (Honorable President at the time, Shamgar); CFH 7015/94 **Attorney General v. A.**, IsrSC 50(1) 48, 66 (Honorable Justice Dorner); HCJ 5227/97 **David v. Supreme Rabbinical Court**, TakSC 98(3) 443), §10 of the opinion of Honorable Justice Cheshin.

66. In March 2009, the UN General Assembly published Resolution 63/241, which reaffirmed the importance of children's rights. The resolution addressed the issue of child registration, declaring that the UN:

> 12. Once again urges all States parties to intensify their efforts to comply with their obligations under the Convention on the Rights of the Child to preserve the child's identity, including nationality, name and family relations, as recognized by law, to allow for the registration of the child immediately after birth, to ensure that registration procedures are simple, expeditious and effective and provided at minimal or no cost and to raise awareness of the importance of birth registration at the national, regional and local levels.

67. In his refusal to grant the Petitioner permanent status, the Respondent is breaching Israeli and international law and disregarding the consideration of the Petitioner's best interest, which ought to guide him as a primary concern.

Parents' obligations toward their children

68. Parents' obligations toward their children and the prohibition on neglect are deeply entrenched in Israeli legislation. So, for example, Sec. 15 of the Legal Competency and Guardianship Law 5722-1962, entitled The Role of the Parents, stipulates:

> The parents' guardianship includes the obligation and the right to care for the needs of the minor... It goes hand in hand with the right to the child, the right to determine his place of residence and the authority to act on his behalf.

Sec. 323 of the Penal Code 5737-1977 stipulates:

> A parent or a person who is responsible for a minor who resides with him must provide him with the necessities of life, care for his health and prevent abuse of the minor, harm to his person or any other injury to his health and safety. Such person shall be deemed as having caused the results that came upon the life or health of the minor child as a consequence of failing to meet his aforesaid duty. (For more see Sec. 373 of the law).

69. The Respondent's decision denies the Petitioner, a child, stability and certainty, leaves him at the mercy of the office of the Respondent for an excessive period of time and prevents Petitioner 1 from carrying out her duties as specified. In so doing, the Respondent is turning Petitioner 1 into a criminal against her will. Worse still, the Respondent's decision severely injures the family unit and as such frustrates the main societal tool for protecting the Petitioner's person, life and dignity.

The authority's obligations to act in a timely fashion

70. According to protocol 2.2.0010, the Respondent must generally decide on an application for status for a child within six months. The question of whether a delay in granting status to a minor is relevant to the question of whether or not to delay grating said minor permanent status was addressed by the Honorable Court in AP (Jerusalem) 700/06 **Da'ana v. Director of Population Administration in Jerusalem**:

> It is not for nothing that I have detailed the factual chain of events relating to the Respondent's processing of the Petitioners' application for status for the minor. The Petitioners submitted their petition two years after they filed their application, which included all the documents required for establishing the sincerity of the connection between the guardian and the minor and the need for this connection to continue in order to serve the child's best interest. The Respondent

did not bother to answer communications from the Petitioners and made no decision on the matter of the minor.

Even the submission of the petition and several court decisions in the matter failed to speed the processing of the minor's matter and help advance the long awaited decision. Only now, three years after the application was submitted, was a decision in the matter of the minor made.

Indeed, processing applications for status in general, and those of minors in particular, is a complex matter that requires sufficient time in order to conduct the review in the appropriate thorough manner. However, a state of affairs wherein the timetable for reviewing an application has no limits, as was the case herein, is unacceptable. (§§ 38-39 of the judgment).

71. It was further ruled in **Da'ana**:

> A review of the Respondent's protocol reveals that the Respondent instructs itself to follow a defined timetable of approximately six months. According to this protocol, this timetable may be exceeded when pertinent circumstances so require, such as the need to obtain the position of various agencies and any further inquiry required for such. This is not the case at bar. In this case, the minor was left without a decision on the part of the Respondent and without status whatsoever for some three years, with no pertinent justification or explanation. It is entirely clear that if the Respondent had acted according to the rules of good governance, which are incumbent upon any public authority, the Petitioner could have received temporary status as a permanent resident, and, as two years have passed, the Respondent would have granted her the permanent status to which she is entitled now. As a result of the unjustified delay of the procedures with respect to the minor's matter, the Respondent is now seeking to grant her temporary status without establishing a clear and binding outline for granting her permanent residency. This position is unacceptable. (*Ibid.*, §40).

72. In our matter too, the Respondent has presented no grounds justifying the protracted processing of the Petitioner's matter beyond the six months stipulated in protocol no. 2.2.0010.

73. The duty to act within a reasonable timeframe and refrain from neglect and delays in applications pending before the authority is one of the major tenets of good governance.

See on this issue: CA 4809/91 **Jerusalem Local Building and Planning Counsel v. Kehati et al.**, IsrSC 48(2), 219; HCJ 758/88 **Kendal et al. v. Minister of Interior**, IsrSC

46(4) 505; HCJ 4174/93 **Vialeb v. Minister of Interior**, (unreported), §4 of the judgment; HCJ 1689/94 **Harari v. Minister of Interior**, IsrSC 51(1) 15.

74. The Respondent's duty to act with due speed in the Petitioners' matter is also entrenched in Sec. 11 of the Interpretation Law which stipulates as follows:

> Granting power or imposing an obligation to take a certain action without setting a timeframe for taking said action means that there is power or obligation to take the action within a reasonable amount of time and continue to take it periodically, all as required by the circumstances.

75. It took the Respondent many years to decide on the application. There is no doubt that this conduct on the part of the Respondent is not merely inefficient or slow, but that it is a far cry from the conduct expected from a reasonable administrative authority which is entrusted with significant aspects of the lives of those seeking its services. The decision of the appeals committee to disregard this torturous road due to an alleged absence of specifics relating to irrelevant years, is extremely unreasonable.

Unreasonableness and unfairness

76. The Respondent's refusal of the application to grant the Petitioner permanent status, providing his broad discretion as the sole grounds for the decision, contravenes the rules of good governance and exceeds any criteria of reasonableness by which an administrative authority must act:

> When an administrative authority is vested with the power to decide on what action to take with respect to a given matter, it must, within the scope of the power vested in it, weigh all the relevant facts and considerations and determine its position in light thereof. When a decision is required to be made according to the facts and circumstances of a specific case, and where these circumstances may affect the decision, formulating a "policy" whereby the authority takes a certain course of action no matter the circumstances, is tantamount to a decision to refrain from exercising discretion, and, as a decision that is made with disregard to the pertinent facts, it may be struck down. (HCJ 2709/91 **Heftzibah Constuction v. Israel Land Administration**, IsrSC 45(4), 428, pp. 436-437).

77. On the state's duty to act reasonably and fairly, see the remarks of Justice (as was his title at the time) Barak in HCJ 840/79 **Builders' Center v. Government of Israel and Builders of Israel**, IsrSC 34(3), 729, particularly pp. 745-746.

> The state, through those working on its behalf, is a public trustee and has been entrusted with public interests and assets to be used for the benefit of all… This special status imposes a duty upon the state to act reasonably, honestly, in good faith. The state must not discriminate,

act arbitrarily or in bad faith or find itself in a conflict of interests. In short, the state must act fairly.

Remedies sought

78. We have observed that the Respondent has chosen to apply protocol 2.2.0010, "**Processing of applications regarding the granting of status to a minor only one of whose parents is registered as a permanent resident in Israel**" (emphasis added, A.L.) also to children both of whose parents are residents.

79. Protocol 2.2.0010 was designed to guide policy on a different matter – children one of whose parents is a foreign national. The purpose of the protocol is to examine in which of the two countries of origin the child should obtain status. The Respondent's attempt to apply this protocol to a child both of whose parents and all four of whose siblings are residents of Israel, when it is clear that the child cannot obtain status somewhere else and when center-of-life has been thoroughly examined over a period of five years – is clearly an attempt on the Respondent's part to create a bureaucratic labyrinth for some extraneous purpose. The Respondent is attempting to use the granting of some type of temporary status and his broad discretion in order to employ systematic and pointless foot-dragging and prevent pertinent judicial review.

80. Thus, the period examined continues to expand – according to the Respondent's appeals committee, the family's history must be examined from its inception and so the review is stretched to include many years and only after this examination is concluded, can the a probationary process, which originates in a protocol that relates to entirely different circumstances, may be applied.

81. In light of the above, the granting of permanent status to the Petitioner must be delayed no further and status must be granted immediately.

82. However, declaring the Respondent's decision in the matter of the Petitioner null and void is insufficient. The Respondent must be instructed to adopt a reasonable policy with respect to children like the Petitioner. The matter of the Petitioner illustrates both the fact the Respondent's policy is unacceptable and the need to ensure that children of parents who are residents or children of a single parent (as a result of the death of the other parent or abandonment by him) who is a resident would receive permanent status in a quick, efficient and simple manner. This issue – the status of a child, which is a fundamental condition for securing his best interest, must no longer be left open to interpretation and whim. When it comes to the children of residents, the Respondent must follow the guidelines established in statute and common law with respect to the best interest of the child and particularly with respect to comparing the child's status to that of the guardian parent. This means that the child, who is unable to live or obtain status anywhere but Israel and who lives in Israel with his parent who is a resident of Israel, must be granted stable, permanent status upon approval of his application.

Conclusion

83. The Respondent must exercise his powers in accordance to the rules of administrative law, which include constitutional restrictions on exercising power that impinges on fundamental rights:

> The duty of the court is to see to it that the value of service is entrenched and that state authorities abide by it. This principle requires the court to prevent unnecessary protraction of procedures at the expense of the individuals receiving the service. This principle requires a serious approach to applications by individuals, the prevention of abuse, the assimilation of the values of equality and the uprooting of privileges for individuals in position of power, governmental or otherwise. Individual rights are an everyday matter. If they are not effectively upheld, they will soon become empty words that are thrown around to create a fleeting illusion that rights are respected; an illusion that fades away due to impenetrable bureaucratic obstacles placed at every step along the way. (AP (Jerusalem) 769/04 **Amina v. Minister of the Interior**).

84. In light of all of the above, the remarks of the Honorable Court in AP (Jerusalem) 411/05 are relevant and accurate:

> It will not be long before we wonder how we have come to accept what is already clear. Placing bureaucratic obstacles is a different way of stating the obvious, and that is that the Respondent finds such applications undesirable. One cannot help but wonder just how many bureaucratic "externals" and legalistic "arguments" we hide behind and what administrative tricks can be carried out in order to prevent real processing of such applications – beginning with the physical queue in the Respondent's office and ending with the excessive number of documents that must be submitted to the Respondent. The existence of a proper law necessitates a reasonable mechanism allowing for its implementation. The existence of a proper law without reasonable means is no better than a blanket ban. In order that we do not seem as peddlers who treat visas like cheap commodities, the law had better be respected and claims that there is no real and valid marital relationship between spouses who are the parents of seven children, the youngest of whom is three years old, had better be based on real arguments and not on an unanswered telephone call and separate residences for work purposes.

The Court is requested to instruct the Respondent to follow the rule of law and the standards of reasonableness and fairness and guarantee the best interests and rights of residents of the country and their children.

For all the above reasons, the Honorable Court is requested to issue an order nisi as sought and render it absolute following receipt of the Respondent's response. The Honorable Court is also requested to order the Respondent to pay legal fees and court expenses.

Jerusalem, today, April 13, 2011

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