**At the Jerusalem District Court Sitting as the Court for Administrative Affairs**
**Before the Honorable Judge Moshe Sobel**

**AP 22556-04-11**

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| **The Petitioners:** | **1.** | **Arafat** |
| | **2.** | **(minor)** |
| | **3.** | **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**<br>Represented by counsel, Att. Adi Lustigman |

v.

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| **The Respondent**: | **Minister of Interior**<br>Represented by the Jerusalem District Attorney's Office |

## Judgment

1. In this petition a general remedy as well as a specific remedy were requested. As to the general remedy, in a hearing dated July 20, 2011, the parties agreed that "**procedure number 2.2.0010 (concerning registration and granting of status to a child of parents at least one of whom is registered as a permanent resident in Israel) does not apply to a child who was born outside Israel to parents who are both permanent residents of Israel, and that in this case the mere fact that the child was born outside Israel does not prevent the immediate granting of permanent residency to the child**." This agreement is hereby afforded a validity of a judgment, as requested.

2. Notwithstanding said agreement, the respondent refuses to grant, at this time, a status of a permanent resident to petitioner 2 (hereinafter – the "**petitioner**"), who was born in 1995 outside Israel (in Al Bireh in the Area) to parents who are both permanent residents of Israel. An application to register the petitioner in the Israeli population registry was submitted by his mother, petitioner 1 (hereinafter – "**petitioner's mother**") in November 2001. As no decision was made in this application, petitioners' mother submitted additional applications in this matter, in August 2005 and in June 2008. In a decision dated August 25, 2009, the respondent held that the petitioner would be registered for two years in a status of temporary resident, type A/5. No reason was provided in the decision for petitioner's exclusion from the rule, which was also acceptable to the respondent, pursuant to which the mere fact that a person was born in the Area may not, in and of itself, prevent him from being

immediately granted permanent residency. Following an appeal submitted by the petitioners, the matter was also reviewed by the appellate committee for foreign nationals. In a decision made by the chair of the committee dated February 27, 2011. the appeal was denied, but in this decision too, no reason for the exclusion of petitioner's case was provided. The decision in the appeal simply states that a status of permanent residency is not automatically inherited by a child born outside Israel, and that immediate registration as a permanent resident is conditional upon being born in Israel to parents, at least one of whom is a permanent resident. In a hearing dated July 20, 2011, respondent's counsel presented a reason for the refusal to apply the rule to the petitioner. The reason was that the petitioner had been born in the Area, resided in the Area and maintained the center of his life in the Area with his family for five years, from his birth in 1995 until 2000, when his mother (who had in the meantime separated from her husband, petitioner's father) moved to live in Jerusalem. The first application to register the petitioner as an Israeli resident was submitted by petitioner's mother towards the end of 2001, when the petitioner was over the age of six. In that year, petitioner's mother, who was not born in Israel, divorced petitioner's father, pursuant to whose permanent residency she was granted permanent residency (in 1991). In 2002, she re-married a person who was born in the Area with whom she currently lives in Israel. All of the above, the respondent claims, give rise to a certain concern that petitioner's residency in Israel will not be permanent and that he will move to the Area or elsewhere outside Israel. The granting of temporary residency for two years is meant to address this concern, since if during these two years the petitioner leaves Israel, his right to have his status upgraded to permanent residency by the end of these two years will automatically expire.

3. Even if we disregard the fact that the above reason is not contained in respondent's decision or in the decision of the chair of the appellate committee – with the latter presenting a general position on this issue which is not in line with the general position presented by the respondent in the hearing and which was granted a force of a judgment above – even then, such reason is not acceptable as it exceeds reasonableness. The petitioner indeed maintained, together with his family, a center of life in the Area for five years. However, since then, the center of life of the family shifted to Israel and until the respondent's decision in the application to register the petitioner as an Israeli resident was made, no less than nine years have passed, almost double the duration of petitioner's residency in the Area. During these nine years, petitioner's mother has not only consistently resided with her children in Israel, but has also acted diligently to have her son, the petitioner, granted status. For that purpose, petitioner's mother submitted, as early as in 2001, an application to register the petitioner in the Israeli population registry (section 7 of the statement of response). The respondent, who does not provide a reasonable explanation for failing to make a decision in said application for a long period of time – an omission which forced petitioner's mother to submit and re-submit additional applications concerning petitioner's status over the years – may not disregard the years that have passed and commence counting from the date a decision was made in those additional applications, eight years after the first application was submitted. If a decision in the first application had been made within a reasonable period of time from the date of its submission, and a temporary status had been granted to the petitioner for two years due to the concern regarding the stability of the residency of his mother and brothers in Israel, these two years which are now required of him would have expired long before the decision was reached in 2009, and the petitioner would have already been holding permanent status for ages. One may not, on the one hand, delay processing of an application for such a long period of time, and on the other claim, after the petitioner has been residing in Israel with his mother and brothers for nine years, that there is a concern that they may move back to the Area. This is specifically so in view

of the fact that all four of petitioner's brothers (two of whom are of the same mother only) have long since received permanent status in Israel. Indeed, these brothers, unlike the petitioner, were born in Jerusalem. However, the duration of residency in Israel of two of the brothers, born in 2004 and 2005, is considerably shorter than the duration of petitioner's residency in Israel. In addition, the petitioner was not registered in the Area although he was born there. Furthermore, petitioner's two younger brothers are the children of the second husband of petitioner's mother, who is a resident of the Area and remains in Israel with DCO permits as part of the family reunification process with petitioner's mother, unlike the petitioner, both of whose parents are permanent residents of Israel. Taking into consideration the nine consecutive years of petitioner's residency in Israel until 2009; the fact that he has no status in the Area or elsewhere in the world; the fact that both his parents are permanent residents of Israel; and the general position of the respondent as presented above – it was unreasonable to draw a distinction in 2009 between the petitioner and his brothers, including those whose father is not an Israeli resident, based only on the place of birth.

4. Furthermore and beyond need: even if such a distinction was rightfully drawn at the time of the decision (August 25, 2009), in the meanwhile, two years have passed from the date of the decision which states that the petitioner "**will be registered in an A/5 status for two years**". One way or the other, at this time, respondent's grounds for not granting the petitioner permanent status immediately no longer exist. Indeed, the temporary status was effectively granted only on June 21, 2010, and a two year period commencing from that date will expire only in six months. However, a review of the circumstances of the case at hand shows that there was no justification for delaying the granting of status until such time: at the time of the decision dated August 25, 2009, the petitioner (born September 17, 1995) was under the age of fourteen. Therefore, at that time, in accordance with respondent's procedures, the petitioner was entitled to receive the temporary status without a security check. However, the petitioner was summoned to the population registry office for the purpose of arranging his status only on October 25, 2009, after he was over the age of fourteen, although his counsel demanded of respondent's representative not to delay his summons in spite of the fact that his application to receive permanent status was still pending before the appellate committee (see p/12). It, therefore, seems that the petitioner should not bear the responsibility for the additional delay of ten months which occurred in arranging for his temporary status after a decision approving granting such status was made. This conclusion, in and of itself, leads to a recognition of petitioner's right to receive permanent status now, even if the flaws in respondent's decision dated August 25, 2009 are disregarded.

5. The outcome concerning the specific dispute is, therefore, that the respondent is ordered to grant the petitioner, without delay, the status of permanent resident, subject to the absence of any criminal or security impediments and provided further that the petitioner still maintains the center of his life in Israel.

The respondent will pay petitioners their expenses in an aggregate amount of NIS 7,500.

The secretariat will send the judgment to counsels for the parties.
**Given today. Kislev 11, 5772, December 7, 2011, in the absence of the parties.**

[signed]

Moshe Sobel, Judge