

1. Ahmed Zaki Najar
2. Physicians for Human Rights
3. Gisha - The Center for Freedom of Movement

v.

1. The Commander of IDF Forces in the West Bank
2. The Israeli Police
3. GOC Southern Command

The Supreme Court

Before Justice M. Naor, Justice E. Rubinstein & Justice D. Berliner

Petition for an *Order Nisi*

For Petitioners: Prof. Kenneth Mann & Sari Bashi

For Respondents: Haran Reichman & Gilad Shirman

JUDGMENT

Justice E. Rubinstein:

1. This petition, which was submitted on December 16 2005, regards the request of petitioner no. 1 (hereinafter "petitioner"), a medical student at Al Quds University in the West Bank, to receive an entry permit into Israel, which will allow him to participate in clinical studies and medical internship at the Makassed Hospital in East Jerusalem. In addition, petitioner asks that respondents recognize him as a resident of Abu Dis, and refrain from removing him to the Gaza Strip. Petitioners no. 2 & 3 are human rights societies involved in the issue in accordance with the fields upon which they focus, medicine (petitioner no. 2) and freedom of movement (petitioner no. 3).

2. (a) It is claimed in the petition that in 1999 petitioner moved from the Gaza strip to Abu Dis, and began his medical studies at Al Quds University. It is claimed that petitioner's attempts to change his registered address of residence in the computerized registry from 2001-2005 were not successful, and his requests were denied, it is argued, due to the authorities' refusal.

(b) As part of his studies, petitioner is required to participate in clinical studies. According to the petition, in November 2004 petitioner contacted the Palestinian Authority DCO at Abu Dis and asked to be granted a magnetic card that would allow him to receive a permit to enter Israel for his clinical studies. It is claimed that his request was denied as his registered address is in Gaza, and he was informed that he must return to Gaza and contact the DCO adjacent to the Erez Crossing regarding the magnetic card.

(c) In January 2005 a request on behalf of the Makassed Hospital to allow petitioner's entry into Israel for the purpose of his medical internship was submitted to the authorities. A similar reply was given to this request, and to additional requests on behalf of petitioners no. 2 & 3.

(d) Petitioner claims that his presence in the West Bank is legal, and that respondents' refusal to recognize him as a resident and allow him to participate in his clinical studies in Jerusalem constitutes a breach of their obligations to allow the granting of health services to the residents of the territories: it is argued that the State of Israel has the duty to provide humanitarian aid to the residents of the territories which are in a state of belligerent occupation, and that in that framework they have a positive duty to provide for the routine needs of the civilian population, specifically in the field of health, and a corresponding duty to refrain from disturbing the provision of such services. According to petitioner's argument, the refusal to allow him to complete his studies at Makassed Hospital also violates his right to freedom of occupation; that hospital is the university hospital of the Al Quds University, which has the only medical school in the West Bank and Gaza Strip. Without the possibility of coming to the hospital, petitioner cannot receive the training needed in order to work as a doctor and provide for the needs of the population of the territories. Furthermore, respondents' refusal to allow his participation in clinical studies violates his right to education, which is a right protected both by international law and by Israeli law. It is further argued that once petitioner moved his residence to Abu Dis, respondents are unauthorized to make legal effect of that move conditional upon receiving a retroactive permit.

3. On February 12 2006, respondents declared that petitioner can contact the Palestinian Authority in order to relay a request on its behalf – as required by the agreements – to allow his presence in the Judea and Samaria area until the end of his studies. It was noted that due to the special circumstances, to the extent that such a request is relayed by the Palestinian Authority to the DCO adjacent to the Erez crossing, it will be granted, subject to a security check. It was further declared that after receiving the permit to be present in the Judea and Samaria area, petitioner can file a request with the DCO to receive permits to be present in Israel for his clinical studies, and that such a request will also be granted, subject to the lack of negative security information regarding him. It was mentioned that his request for internship would be examined at the relevant time in the future. Regarding petitioner's status in the Judea and Samaria area, respondents declared that they shall not act to remove him from the *area* as long as his presence there is legal, and in any case, he can contact the Palestinian Authority with a request for a change of address; if the PA decides that it is an exceptional request justifying its referral to the Israeli authorities, the latter also shall examine it.

4. (a) As a result, this Court determined on February 15 2006 that petitioner shall contact the Palestinian Authority with the request to which the petition relates. On April 27 2006 petitioners submitted an update, in which they declared that petitioner's request to change his registered address was denied, in light of respondents' policy not to register changes of address of Palestinian residents who have moved their residence from the Gaza Strip to the West Bank. It was also argued that respondents had not fulfilled their obligation to grant petitioner a permit to enter Israel, which would allow him to participate in his studies in East Jerusalem.

(b) On September 14 2006 respondents announced that examination of current intelligence information that had been recently gathered by the security authorities regarding petitioner showed that permitting petitioner's entry into Israel is liable to endanger public safety. Respondents also declared their intention to have petitioner interviewed by the security authorities. On September 28 2006 respondents announced that after petitioner's interview, it was decided not to allow his entry into Israel, for security reasons. They however declared that they would not oppose allowing his presence in the Judea and Samaria Area for one year, for his internship there. It was also stated that his interview had indicated that he had begun his internship in a hospital in Ramallah.

(c) On November 13 2006, respondents submitted a supplementary brief, in which they reiterated their petition that due to the information that had been received as a result of an updated security examination, and after petitioner had been interviewed, it was decided not to change the decision to deny his entry into Israel. It was argued that petitioner, who is not an Israeli citizen, like any other foreigner, has no legal right to enter the borders of the state, as that is a privilege, granting and denial of which are a matter of wide discretion of the State of Israel. Regarding the request to recognize petitioner as a resident of Judea and Samaria, respondents claim that it is premature, and that the change of address request will be examined at the proper time, to the extent that it is relayed by the Palestinian Authority. Respondents added that they are willing to allow petitioner's presence in the Judea and Samaria area for the period of his one year internship, should he choose to do his internship in the *area*.

5. During the hearing on November 15 2006, the intelligence material that, as argued, supports respondents' assessment regarding the security risk, was presented to us *in camera* with petitioners' consent. After viewing the intelligence material, which seems, *prima facie*, to be well based, we clarified to petitioner, with the consent of respondents, that the suspicions against him are that he is active in the "Popular Front" organization which, as is well known, is a terrorist organization. In an affidavit submitted by him on November 20 2006, petitioner denied any activity in that organization, including activity on behalf of the organization on the Abu Dis University Campus.

On November 26 2006 respondents submitted a brief in which they noted that the intelligence material regarding petitioner is sufficient to prohibit his entry into Israel. It was argued that in the framework of the affidavit, petitioner provided no explanation regarding the suspicion of his activity in the Popular Front organization, nor was sufficient reason given why the State of Israel should be obligated to allow him to enter her gates. It was argued that his blanket denial regarding his activity in the organization contradicts well based administrative evidence of it. In a supplementary affidavit of November 29 2006, petitioner reiterated the argument that he is not a member or activist in the Popular Front organization, and described, in detailed fashion, his activities on the university campus for which, according to his opinion, it was claimed that he is involved in that organization.

In their response of December 9 2006 regarding the supplementary affidavit, respondents noted that it does not change their position, and they reiterated the

question why petitioner did not reveal the details of his activity on campus previously, but rather did so only when he understood that respondents are aware of that activity anyway. It was again stated that the intelligence material that was presented leaves no doubt regarding petitioner's activity in the Popular Front organization, and that his blanket denial regarding any activity in that organization testifies to the fact that he has not revealed the whole truth, and thus the risk posed by him should be assessed as more intense.

6. (a) With heavy heart, we have reached the conclusion that we cannot accept the petition regarding the refusal to allow petitioner's entry into Israel. With heavy heart, as we hoped that a person who has chosen the medical profession – a humanistic profession – as a career, and who is interested in an internship in Israel, would refrain from illegal acts, and that the door would open for him, as part of the effort to build peaceful relations. We make the inevitable assumption that the Palestinians and we must live side by side, as has been ruled by history, and that any door that can be opened toward advancing neighborly relations, certainly in the field of education and humanistic areas, should be examined, and an effort should be made to see it through. For that reason, and despite the problematic information in the classified information we viewed, which *prima facie* seemed significant, we granted the parties time to clarify and examine their positions, out of a hope that an appropriate solution could be found, and in light of the difficulty of making a decision on the basis of classified information and the caution which must be employed when relying on it; *see* ADP 8788/03 *Federman v. The Minister of Defense*, 58(1) PD 176, 186 (*Grunis, J.*); H CJ 5555/05 *Federman v. GOC Central Command*, 59 PD (2) 865, 869. However, indeed, there is no right by law, and respondents correctly note that it has been held a number of times that a foreigner has no vested right to enter Israel; every state is permitted to determine which foreigners will enter its gates and which of them will be present within its borders, and is authorized and permitted to remove foreigners who are not wanted by it. This authority is directly derived from the sovereignty of the State, and the State's zone of discretion on the issue is most wide. Thus, the accepted caselaw is that the Court will not hasten to intervene in decisions regarding entrance into the State, unless there are special reasons for it (*see, mutatis mutandis*, H CJ 482/71 *Clark v. The Minister of the Interior*, 27 PD (1) 113 (*Berenson, J.*); H CJ 7277/94 *A. v. The Military Governor of the Gaza Strip (Mazza, J.)* (unpublished); H CJ 1810/96 *Maskinai v. The Minister of the Interior* (unpublished); H CJ 1689/94 *Harari v. The Minister of the Interior*, 51 PD (1) 15 (*Goldberg, J.*); APA 4332/06 *Safro v. The Minister of the Interior* (unpublished)). We ruled, *mutatis mutandis*, that it is desirable that when dealing with neighbors from the Palestinian Authority, the intuitive human approach would be to find a way to help. However, the State of Israel must protect her citizens from daily threats and voices calling for her destruction, including among the Palestinians. Unfortunately, reality has shown that part of the Palestinian population supports the armed struggle against Israel and participates in it: "the terrorist organizations and their members are well placed in all levels of the Palestinian public, and receive assistance, at least by silence and non-prevention of terrorist attacks" (H CJ 7052/03 *Adalah - The Legal Center for Arab Minority Rights in Israel v. The Minister of the Interior* (unpublished)(*M. Cheshin, V.P.*)). In the present situation, there is a complex relationship between Israel and the Palestinian Authority, which dictates, *inter alia*, the policy regarding entrance into Israel, against the background both of terrorism and the positions of central leaders in the PA negating the very recognition of Israel; *see ibid.* When dealing with someone

about whom there is administrative evidence of links to an organization defined as a terrorist organization, it is obvious that the warning lights flash.

(b) Indeed, petitioners raised arguments regarding Israel's obligations toward the Palestinian population, including health needs (HCJ 10356/02 *Hess v. The IDF Forces in the West Bank*, 58 PD (3) 443, 461 (*Procaccia, J.*); HCJ 4764/04 *Physicians for Human Rights v. The Commander of IDF Forces in Gaza*, 58 PD (5) 385, 395 (*Barak, P.*); and Article 56 of the Fourth Geneva Convention, which is among the humanitarian provisions which Israel adopted, and deals with medical staff). On that issue it was argued that preventing petitioner from completing his training in the Makassed Hospital detracts from the possibility of providing the *area* with medical services, and violates his freedom of occupation and his right to continue his studies. However, provision of medical services is not dependent upon any one person, such as petitioner or any other single person; and regarding petitioner's right to education and freedom of occupation, without dealing with the question of the State of Israel's duties regarding them, sitting on the other side of the scales is the aforementioned security risk; and even after viewing material submitted by petitioner we cannot discredit the material presented by respondents, which is well based, and it is certainly not right to act in direct contradiction to that material.

(c) To summarize, unfortunately, after studying the case and viewing the classified material, we are of the opinion that it significantly intensifies the information regarding petitioner, and indicates his activity, and his network of relationships, which at this time pose a real concern for the security of the public. Indeed, level of risk is not measured by the carpenter's level; the assessment of risk is an aggregate result of the impression from various materials. We examined, *inter alia*, the weight of the material presented to us against the background of the security tension and sensitivity during these times, and we have reached the conclusion that in this case, the information pushes the scales toward rejecting the petition, to the extent that it deals with the relief of permitting petitioner's entry into Israel. We would like to hope that petitioner's conduct in the future, as well as the general situation, will be such that the door will not be locked; but we cannot, of course, decide that now.

7. Petitioner requests, as additional relief, that he be registered as a resident of Abu Dis, and that he not be removed to Gaza. Regarding the former, we accept respondents' stance, that petitioner must exhaust the proceedings with the Palestinian Authority. We note respondents' promise to examine an application for change of address if it is relayed via the Palestinian Authority, pursuant to the agreements. We are aware of the present relations between Israel and the Palestinian Authority, and the difficulties that stem from them, and indeed the situation is not as it should be, and it appears that the officials of the State of Israel are not the proper address for complaints in that context. In any case, to our best knowledge, there are work contacts at certain levels even today, and petitioner must contact the Palestinian Authority and persuade it to relay a request. For the time being, we have noted respondents' obligation to allow petitioner's presence in the Judea and Samaria area for the one year period of his internship. Thus the issue of the additional relief in the petition, preventing the removal of petitioner to the Gaza Strip, is also solved.

8. After this judgment was written, and before it was signed, petitioners' motion of December 13 2006 to hold an additional hearing in the petition arrived.

Unfortunately, given the circumstances, there is no justification for that. The motion also discusses the additional requested relief, but we discussed it above.

9. Subject to the above, we cannot accept the petition; and we hope for a better future. No order for costs.

Justice M. Naor

I concur.

Justice D. Berliner

I concur.

Decided according to the judgment of *Rubinstein, J.*

Given today, 26 Kislev 5767 (December 17 2006).