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At the Court for Administrative Affairs in Beer Sheva

AP 50482-07-10 Abariqah v. The Ministry of the Interior
AP 50454-07-10 Farah v. The Ministry of the Interior
AP 50405-07-10 Sharab v. The Ministry of the Interior

August 5, 2010

Before:

Honorable President Yosef Alon

The Petitioners:

1. **Abariqah et al. (AP 50482-07-10)**
2. **Farah et al. (AP 50454-07-10)**
3. **Sharab et al. (AP 50405-07-10)**

v.

The Respondent:

State of Israel – Ministry of the Interior

At the presence of:

Counsels to the petitioners Adv. Elad Cahana, Adv. Martin Khial and Adv. Ido Bloom
Counsel to the respondent Adv. Alon Daphna

Protocol

Counsels to the parties:

In view of the fact that the subject matter of the three petitions is distinctly identical, we request to consolidate the proceedings therein.

Decision

At the request of the parties I consolidate the proceedings in the three petitions.

Given and notified today 25 Av 5770, August 5, 2010 at the presence of the attending parties.

(signed)

Yosef Alon, President

Advocate Cahana:

I am aware of the judgments of the Supreme Court concerning the limitation of the right of Gaza Strip residents to enter Israel for exceptional humanitarian cases. However, the above petitions concern minor children of mothers who are Israeli residents, who reside in the Strip and who have the right to freely travel from the Strip to Israel and back. Our argument is that the right which derives there from is that the mother will be able to bring in and take out her children with her whenever she goes in and out. This right derives from the right of the mother. In my argument I do not focus only on the travel of the children with their mothers for a summer vacation in Israel, but rather on any entry and departure of the children. My argument is that this concerns any minor under the age of 18. The reality is that the women do not tend to frequently leave the Strip, due to the fact that whenever they go back to the Strip, they need a permit, and they do not want to take the risk and the bureaucracy of the delays involved therein.

Refers to P/1 – respondents' procedure. Section D concerns the procedure of entering the Strip from Israel. According to this section the minor accompanies his parent and his entry into the Strip would be permitted whenever the parent's entry was permitted.

Secondly, until about two years ago, minors used to routinely enter Israel without a permit. About two years ago, as a matter of procedure, permits were required and this was done, according to the respondents, only to make it easier for the children to return to the Strip. Refers to P/2 to respondents' reply. My argument is that the permit issue is only a formality.

Advocate Daphna: The procedure in P/1 concerns Israeli residents who wish to exit. This is not a procedure but rather a policy which changes from time to time according to the number of the individuals who stay in the Strip at that given time and additional considerations such as security and additional considerations.

If respondents' position is accepted, it follows that any minor whatsoever whose mother is an Israeli resident has the right to enter. With all due respect, no such exception is included in the Temporary Order or is mentioned in the courts' judgments. This means that in cases of this sort the burden of proof shifts. A right exists and the respondents must point at circumstances in which the minors' entry should not be permitted. This position has no basis in the courts' judgments. I reiterate all of the arguments specified in our reply.

It is important to note that neither one of the above petitioners has presented a special circumstance which justifies the acceptance of his application to enter Israel. The reason raised by all of them is spending the summer vacation in Israel.

Advocate Cahana:

With respect to the argument that the policy which was referred to by us concerns passage in the opposite direction, my colleague argued that this was a changing policy, P/1 from July 2008, this has been the policy for two years.

Indeed, there is no reference in the Supreme Court's judgments to this specific issue, since, as we have argued and the respondents have approved, until two years ago the respondents permitted entry into Israel sweepingly and routinely. The burden lies on them. My colleague claims that we have not presented a circumstance and I am of the opinion that my colleague has not presented a circumstance which justifies a

violation of petitioners' rights and a deviation from said policy. With respect to the security arguments – no such arguments are raised against the petitioners hereof.

This is not only about spending a summer vacation in Israel but rather, the mother's ability to leave Israel, since, if the children stay in the Strip she would not be able to leave. This concerns going on long vacations.

Advocate Daphna: In cases of exceptional circumstances, where, for instance, there are very young babies who are breastfed by their mother or who cannot be separated from their mother, this may be a specific circumstance which, if raised before us, would be accepted by the respondents. But we object to the sweeping position presented by the petitioners.

Judgment

In the above three consolidated petitions, three women who reside in the Gaza Strip and are married to local residents, petitioned, together with their minor children, against respondents' decision to deny the minors permission to enter Israel together with their mothers for the summer vacation. The petitioners argue that the mothers are entitled, according to respondents' procedures, to travel in and out of Strip to Israel due to the fact that they are Israeli residents.

Indeed, the minors are not Israeli residents. However, it is argued that the mother's right to travel in and out of the Strip to Israel will be nullified if they are not allowed to take their minor children with them. In response to the court's questions, petitioners' counsels clarified, that as far as they were concerned, their argument applied to all minors under the age of eighteen. Respondents' counsel, on the other hand, refers to consistent judgments in which it was held that there was no room for judicial intervention with respondents' policy in the current security condition, according to which the entry of Gaza residents into Israel would not be permitted unless exceptional humanitarian circumstances existed which justified same.

According to his argument, the minors are neither residents nor citizens of the state of Israel, and therefore the procedure which applies to the mothers does not apply to them. He agrees that if any of the petitioners can show that special exceptional circumstances exist in his case, such as an infant who cannot be separated from his mother, then, the respondents will be willing to examine the possibility to grant a specific permit in his case.

After I have reviewed the petitions and the state's replies, and after I have heard the arguments of the parties during the hearing, I hold that there is no room to accept the petitions as they are.

There is no need to elaborate on the unique and difficult security and political condition which currently exists in the Gaza Strip, and accordingly, on the need imposed on the competent authorities to be very strict in granting permits to travel in and out of the Strip into Israel and *vice versa*. The argument, that anyone who is under the age of eighteen and whose parent is an Israeli resident, who lives in the Gaza Strip, has the right to travel in and out from Israel into the Strip whenever he so wishes, does not conform with the situation of the region at hand and is contrary to the consistent judgments of the Supreme Court on this issue.

Clearly, traveling from the Strip to Israel for the purpose of spending a summer vacation is not a humanitarian need and does not constitute sufficient cause for this purpose.

In view of all of the above, I do not accept the sweeping position of petitioners' arguments as presented in the petitions and as argued before me in the hearing.

The petitions do not specify, with respect to any of the minor petitioners, unique and exceptional circumstances, according to which the inability of such minor to exit the Strip together with his mother for a summer vacation in Israel, would forthwith deny the mother of the ability to go on such vacation.

Nevertheless, and according to the statements made by respondents' counsel in the hearing today, each one of the minor petitioners will have the right to resubmit a specific application if he is of the opinion that unique and exceptional circumstances exist which require that his travel together with his mother from the Strip be permitted.

The examination of such special circumstances, if such an application is submitted to the respondents, will be made by them on its merits and according to its circumstances.

In view of all of the aforesaid, and subject to the provisions of the last paragraph, the petitions are hereby denied.

No order for costs is granted.

Given and notified today 25 Av 5770, August 5, 2010, at the presence of the attending parties.

(signed)

Yosef Alon, President