At the Jerusalem District Court **AP 48073-07-10**
Sitting as the Court for Administrative Affairs

In the matter of:

1. **_____ Ghazaleh, ID No. _____**
2. **_____ Ghazaleh, ID No. _____**
3. **_____ Ghazaleh, ID No. _____**
4. **_____ Ghazaleh, ID No. _____**
5. **_____ Ghazaleh, ID No. _____**
6. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel, Adv. Leora Bechor (Lic. No. 50217) and/or Elad Cahana (Lic. No. 49009) and/or Ido Bloom (Lic. No. 44538) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben Ari (Lic. No. 37566) and/or Daniel Shenhar (Lic. No. 41065) and/or Martin Khial (Lic. No. 54807)
Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
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Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Minister of the Interior**
2. **Director of the Population Administration**
3. **Director of the Population Administration Bureau in East Jerusalem**
4. **Appellate Committee for Foreigners**

represented by the Jerusalem District Attorney
7 Mahal St., Jerusalem
Tel: 02-5419555; Fax: 02-5419581

The Respondents

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause, why they should not allow petitioner 1 to enter Israel with her children, petitioners 2-5, until a decision is rendered in the appeal submitted by her to respondent 4.

Request for Urgent Hearing

The honorable court is requested to schedule an urgent hearing in the petition.

Preface

1. This petition concerns Petitioners' severe human case, and clear legal error of respondent 4.

2. The petitioner is a Jerusalem resident and a permanent Israeli resident. She moved to live in the Gaza Strip following her marriage to a Gaza Strip resident. The spouses had children. The petitioner was widowed under tragic circumstances and wishes to return to her home town, Jerusalem – naturally: with her children. The abusive behavior of the family of her late husband towards her adds to the urgency of her return to Jerusalem.

   Whereas the petitioner herself, as an Israeli resident, may formally enter Israel, her children have no status in Israel, Therefore, in practice, her return will not be made possible for as long as her children are not allowed to join her.

   With respect to the status of the children, the requirements of the Ministry of the Interior create a vicious circle: for as long as the petitioner is unable to show a center of life of two years in Jerusalem, her children would not be allowed to enter Israel. However, for as long as the children are not allowed to enter Israel, the petitioner will not be able to enter Israel either (not to mention: to create a center of life in Israel), since this would result in the neglect of the children – contrary to her duty as a mother and contrary to the law.

3. The petitioners appealed this senseless decision to the Appellate Committee of the Ministry of the Interior. Until a decision is made in the appeal, the petitioners requested a temporary relief, according to which the children's stay in Israel with their mother would be allowed. This relief is not different in nature from what is usually acceptable in other cases, in which the status of children without status is reviewed while they stay in Israel, and no measures to deport them are taken.

4. The Appellate Committee denied the request for a temporary relief. At the same time it gave the Ministry of the Interior a two month period to respond to the appeal, and has thereafter extended said period by two additional months. Following this last extension, which was the last straw, this petition is filed.

5. This petition concerns only the decision not to grant a temporary relief in the appeal. This decision is based on a clear *prima facie* legal error of the decision made by the Appellate Committee. The Appellate Committee based its decision on the contention that the sole purpose of a temporary relief was to freeze an existing situation. However, the clear rule is that a temporary relief is granted based on the balance of convenience, and a mandatory injunction should be granted when the balance of convenience requires that a mandatory injunction be granted. The committee has neglected to consider the balance of convenience in this case.

6. The balance of convenience, which the committee chose to neglect altogether, favored, from the beginning, letting the children stay in Israel, for as long as their case was pending. Even more so, in view of the prolonged proceedings in the appeal and the delay of justice caused to the petitioners.

A copy of the request for a temporary relief is attached hereto, marked **P/1**.

The Ministry of the Interior did not respond to the request for a temporary relief, and therefore a response on its behalf is not attached.

A copy of the decision of the Appellate Committee dated May 16, 2010 is attached hereto, marked **P/2**.

Copies of the request of the Ministry of the Interior for an additional extension, petitioners' objection and the decision of the Appellate Committee to grant the Ministry of the Interior extension as requested, are attached hereto, and marked **P/3, P/4** and **P/5**.

The Parties to the Petition

7. Petitioner 1 (hereinafter: the **petitioner** or **petitioner 1**) is an Israeli resident and the widow of Mr. _____ Ghazaleh, ID No. _____, resident of the city of Gaza.

8. During their marriage the spouses had four children: _____, _____, _____, and _____, petitioners 2-5 (hereinafter: **petitioners 2-5**).

9. Petitioner 3, a registered not-for-profit association, which has taken upon itself to assist victims of cruelty or deprivation by state authorities, including by defending their rights in court, either in its own name as a public petitioner or as counsel to persons whose rights had been violated.

10. Respondent 1 is the minister who has the authority under the Entry to Israel Law, 5712-1952, to handle all matters associated with this law, including family unification and applications for the arrangement of the status of children, which are submitted by permanent residents of Israel, who reside in East Jerusalem.

11. Respondent 2 is the director of the Population Administration in Israel. Pursuant to the Entry into Israel Regulations, 5734-1974, some of the powers of respondent 1 concerning the handling and approval of family unification applications and applications for the arrangement of the status of children, submitted by permanent residents of the state residing in East Jerusalem, have been delegated to respondents 2-3. In addition, respondent 2 participates in the proceedings for the establishment of the policy concerning status applications in Israel, under the Entry into Israel law and the regulations promulgated there under.

12. Respondent 3 is the director of the Regional Population Administration Bureau in East Jerusalem. Under the Entry into Israel Regulations, 5734-1974, respondent 1 delegated to respondents 2 and 3 some of his powers to handle and approve family unification applications and applications for the arrangement of the status of children, submitted by permanent residents of the state, residing in East Jerusalem.

13. Respondent 4 (hereinafter: the **respondent**), reviews applications for the grant of status in Israel to spouses of persons who have permanent residency status in Israel as well as applications for the grant of status in Israel in accordance with regulation 12 of the Entry into Israel Regulations. By virtue of his authority in accordance with section 16(a) of the Entry into Israel Law, respondent 1 has delegated to the respondent his powers under sections 2(a) and (b), 3, 3a(a), (b) and (c), 4, 5, 6 – regarding specific cases, and under section 11 of said law. The power of the respondent to grant an interim or temporary relief is established in an internal procedure of the Ministry of Interior, procedure No. 1.5.0001, "Procedure of the Appellate Committee for Foreigners".

The matter of petitioners 1-5

Irreversible harm

14. Petitioner 2-5 _____, _____, _____ and _____ Ghazaleh, are the children of the petitioner, _____Ghazaleh and of the deceased, Mr. _____ Ghazaleh. The family has been living in the Gaza Strip since 1994.

15. During the war in the Gaza Strip in January 2009, a tragedy hit the family. Mrs. Ghazaleh's husband was killed, and Mrs. Ghazaleh suddenly became a widow and a mother of four orphans.

16. In view of the fact that the ties of Mrs. Ghazaleh and her children to the Strip were severed upon her husband's death, Mrs. Ghazaleh submitted, on September 29, 2009 an application to arrange the status of petitioners 2-5 in Israel.

17. The application was denied by the Ministry of the Interior on the grounds that the family did not maintain a center of life in Israel.

18. The appeal was submitted due to the refusal of the Ministry of the Interior to arrange the status of petitioners 2-5.

    A copy of the appeal and its exhibits is attached hereto and marked **P/6**.

19. The above denial is premised on an internal procedure of the Ministry of the Interior. According to procedure No. 2.2.0010, entitled "Procedure for the grant of Status to a Child, only one of whose parents is registered as a permanent resident in Israel" (hereinafter: the **procedure),** one of the conditions for the approval of an application for the registration of a child, who was born within or without Israel, is the existence of a center of life in Israel for two years, for the parent and his child.

20. In the appeal it was argued, *inter alia*, that the special circumstances of petitioners' family justified a deviation from the policy of the Ministry of the Interior and the immediate arrangement of the status of petitioners 2-5. The family's current condition in the Strip is catastrophic, and the status application must be immediately approved. This case concerns a widow – a single parent with independent ties only to Jerusalem. Upon the death of her husband, her world fell apart and the need to leave Gaza and return to the only place in which she has status and future - Jerusalem - became evident.

21. For Mrs. Ghazaleh, and especially for her children, after the death of Mr. Ghazaleh, her home turned into a place of confrontation, insecurity and destruction.

22. Mrs. Ghazaleh's life in the Strip are controlled by the tyranny of her mother in law. The mother in law often tries to separate between Mrs. Ghazaleh and her children and threatens that Mrs. Ghazaleh should go back to Jerusalem and leave the children with her in the Strip, while treating her and the children violently. She beats the children with rubber hoses and sticks. She drove the son _____ out of the house in January 2010, and even drove the entire family out of the house for a while last summer. In Mrs. Ghazaleh's words, the mother in law "gives them hell".

23. Mrs. Ghazaleh's brothers in law add to the threats of their mother. As far as they are concerned, petitioners 2-5 are the children of the Ghazaleh family, who must stay with the family in the Strip.

Recently, the brothers in law called Mrs. Ghazaleh's brothers, who reside in Jerusalem, and said that they intended to "take" the older children and "give Mrs. Ghazaleh" the younger children (petitioner 4-5) and that they would "bring her back" to Jerusalem.

24. In view of the above, _____, _____, _____ and _____ are constantly afraid – of the grandmother who beats them, of the expulsion of their mother, of the disintegration of the family and of the trauma, in view of the fact that they live in the same house in which their father was killed.

25. For as long as Mrs. Ghazaleh stays in the Strip, she actually has to fight for her survival. Her late husband worked and supported the entire family (including his parents and brothers). To date, the petitioners are supported by charity organizations. Her husband's relatives refuse to assist her financially. Recently, her father in law even stole some of the financial support she received, under the excuse that he was buying land for her.

26. Each additional day in Gaza, adds to the suffering of Mrs. Ghazaleh and her children, along with the feelings of loneliness, trauma and helplessness.

27. This case involves severe psychological and survival damages. Therefore, Mrs. Ghazaleh's request to move to Jerusalem is not a matter of choice between two places of residence, equal in all aspects. **This is an emergency request of an Israeli resident to save her family – to go back home, to her family in Jerusalem and settle down with her children in Israel, before additional harm is inflicted on her children**.

28. If she is not allowed to enter Israel while her above appeal is pending, the condition of the family in Gaza may deteriorate further.

29. The stay in Gaza also causes irreversible harm to Mrs. Ghazaleh, as an Israeli resident. By preventing her children from entering Israel, the entry of an Israeli resident into her own country is prevented. Mrs. Ghazaleh cannot and may not leave her children unattended for by her in the Strip. Therefore, in order to take care of her children, she must stay there. For as long as a temporary relief is not granted in her matter, she is unable to exercise her right as an Israeli resident, to live in Jerusalem and raise her children in her home town. In addition, the Order concerning the Implementation of the Disengagement Plan (Gaza Strip) (Restrictions on Entry), 5765-2005, prevents Israelis from living in Gaza, other than according to stay permits. Therefore, Mr. Ghazaleh is forced to continue to live in Gaza without a permanent status and with no stability.

30. Her other option is to move to Israel right now, alone. However, this option is humanely impossible. She cannot desert her children, who have already lost one parent. She cannot leave her children under the care of a violent mother in law, who is just looking forward for the day on which the relations between Mrs. Ghazaleh and her children will be finally severed.

31. In addition, the duty of the parent towards his child and the prohibition to neglect are duties which are well rooted in Israeli jurisprudence.

32. Thus, for instance, section 15 of the Legal Capacity and Guardianship Law 5722-1962, entitled Parents' Duties, provides:

> The guardianship of the parents includes the duty and the right to attend to the needs of the minor… it also includes the right to have custody over the minor, to determine his place of residence and the power to act on his behalf.

33. Section 323 of the Penal Law, 5737-1977, provides:

> A parent or the person responsible for a minor member of his household, is obligated to provide him with his necessities of life, to care for his health, and to prevent his abuse, bodily harm or other injury to his welfare and health; and he shall be held to have caused any consequences to the life or health of the other person which result from his failure to meet said obligation.

And see also section 373 of the law.

34. International law also recognizes the duty of the guardian. Article 5 of the Convention on the Rights of the Child provides that the state must respect the duty of the guardian:

> States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention**.**

35. It is inconceivable that during the period in which Mrs. Ghazaleh will be waiting for a decision in the appeal, she would have to desert her children and breach her duties under the law, in order to return to Jerusalem.

36. The proper test for a temporary relief in the interim period is the balance of convenience test. The balance of convenience mandates that a widow and a mother of four orphans, will not have to choose between life under threat in the Strip and the desertion of her children and moving to Israel alone, until a decision is made in the appeal.

37. Therefore, in order to save the family and enable the petitioners to live in Israel lawfully, for as long as the appeal in their matter is pending, it is hereby requested that the respondent directs the Ministry of the Interior to approve petitioners' entry into Israel and to grant them stay visas, until a decision is made in the appeal.

A copy of the request for a temporary relief was attached as Exhibit **P/1**.

Mrs. Ghazaleh is prevented from bringing her children into Israel

38. The current situation, according to which petitioners 2-5 stay in Gaza rather than in Israel, stems from the implementation of section 3b(3) of the Citizenship and Entry into Israel Law (Temporary Order) (hereinafter: the "**Temporary Order**") which prevents their entry into Israel.

39. Pursuant to section 3b(3), the commander of the area may permit the entry of Gaza residents into Israel "for a temporary purpose" provided that the stay visa is granted for an aggregate period which does not exceed six months.

40. In view of the above limitation, the petitioners cannot comply with the demand to prove a center of life of two years **without breaking the law**.

41. Mrs. Ghazaleh has already been advised by the military's international legal department, in response to her request to let her children enter Israel of May 10, 2009, that it should be clarified whether her

request was "that the children, residents of the Strip, would be allowed to visit their relatives who reside in Israel, or, alternatively, to allow the children to move and reside in the territory of Israel together with their mother." It was further stated that "to the extent that the request is for the issuance of permanent residency permits for the applicants whose registered address is in the Gaza Strip, the COGAT (the Coordinator of Government Activities in the Territories) does not have the authority to grant such permits."

A copy of the letter dated July 13, 2009 is attached hereto, marked **P/7**.

42. And when Mrs. Ghazaleh's request to let her children enter Israel was approved, the stay visas which were granted were limited for two weeks.

43. In view of the above, there is no dispute that in order to comply with the demand to prove a center of life according to the procedure, Mrs. Ghazaleh will have to violate the terms of the permits which would be granted to her children and force them to unlawfully live in Jerusalem for a considerable period of at least two years.

44. Mrs. Ghazaleh, however, as a law abiding woman, was not prepared to take the risk and expose her children to expulsion. She was not prepared to break the law in order to satisfy the requirement of a center of life in Israel. Therefore, upon the expiration of the permits, she returned to the Strip with her children.

45. To date, the commander of the area refuses to approve petitioners' request to enter Israel, even for short visits. The rejection letter of the humanitarian center at the Gaza DCO, dated March 24, 2010 indicates, that the military has decided to prevent Mrs. Ghazaleh from letting her young son, who is five years old, enter Israel, even for a short visit, based on the argument that the request "does not meet the criteria". **This means that currently, all possibilities which could have enabled compliance with the requirement for a center of life of two years in Israel were blocked**.

A copy of the rejection letter of the humanitarian center at the Gaza DCO is attached hereto, marked **P/8**.

46. Petitioner 6 has discovered that recently the humanitarian center at the Gaza DCO refuses, **as a general rule**, to allow Israeli women, who stay in the Strip according to the "divided families" procedure and wish to enter their country to visit their family, to take their children with them for the duration of the visit. The new position is that the children "do not meet the criteria".

A copy of a general application of respondent 6 is attached hereto, marked **P/9**.

47. Mrs. Ghazaleh is in between the rock and the hard place – she is desperate to go back to Jerusalem with her children, and has no way of letting them enter Israel lawfully, without the intervention of the Ministry of the Interior.

48. In many cases, while the application is pending, the children stay in Israel without an arranged status, and the practice is that they are not expelled from Israel until a decision is made in the application. As far as the balance of convenience is concerned, our case is not materially different: all the more so, humanely, the ramifications arising from the fact that the children are prevented from staying in Israel are especially severe and tragic. This is a single parent family of an Israeli resident, and the parent who created the ties between the family and the Strip passed away. **The only difference is, that in our case the children cannot enter Israel, in the first place, without the intervention of a temporary relief, and that in our case, the mother has strictly complied with the terms of the permit which was granted to her and returned with her children to**

Gaza. She should not be deprived of her rights just because of the fact that she has complied with the law as specified above.

Delay of Justice is caused to the petitioners as a result of foot-dragging in the appeal

49. The denial of the application for a temporary relief causes, in our case, additional delay of justice, as the Ministry of the Interior does not make any effort to comply with the dates scheduled for the submission of its response to the main remedy. The appeal was submitted on April 11, 2010, and three and-a-half months later, no response has yet been submitted by the Ministry of the Interior.

50. The Ministry of the Interior is not troubled by the fact that an Israeli resident is prevented from going back to her home and that the condition of the petitioner and her children continues to deteriorate with each passing day. On the contrary: since the appeal was submitted, the Ministry of the Interior submitted two separate requests for an **extension of two months** for the submission of its response.

51. It should be noted, that in its decision dated May 16, 2010, the respondent granted the Ministry of the Interior the requested extension. However, the respondent directed the Ministry of the Interior to give "**priority to the handling of this appeal, in view of the severe circumstances described therein (if only for the purpose of preventing a delay of justice)**." The decision was attached hereto as Exhibit **P/2**.

52. The petitioners mentioned respondent's above directive in their written objection to the last request for an extension of two months, but regretfully, the respondent decided, again, to accept the request of the Ministry of the Interior and grant another extension until September 1, 2010 – **about five months after the appeal was submitted**.

    A copy of petitioners' request along with respondent's decision were attached hereto as Exhibits **P/4** and **P/5**.

53. Consequently, the petitioners are forced to wait impatiently until the Ministry of the Interior deigns to respond to their appeal. Since the respondent is not expected to render its decision in the application for the main remedy in the near future, it is imperative that this petition be approved.

The chances of the appeal: petitioners' argument against the implementation of the procedure in their case

54. The question whether a temporary relief should be granted, should be examined in view of the chances of the petition to succeed (in our case, the appeal) and the balance of convenience. The chances of the appeal to succeed in this case are high. As specified in section 12 above, the refusal of the Ministry of the Interior, which is appealed against by the petitioners in the appeal, is based on an internal procedure, which regulates the proceeding for the registration of a child, only one of whose parents is registered as a permanent resident in Israel. This procedure follows a certain paradigm, which is not applicable to our case. It is relevant only in cases which concern two parents, who decide, between themselves, where to build their home together. Here, in view of the fact that this case concerns a single guardian and a family situation which has suddenly changed as a result of the death of the father, it is imperative that the family moves to Israel without delay. Therefore, the application for the arrangement of petitioners' status should be approved forthwith, and the threshold condition of a center of life of two years should be waived.

55. The courts have already criticized the demand for a center of life of two years, when this demand involved the tearing apart of the family, and forced the family to stay in Israel unlawfully.

56. In AP (Jerusalem) 8339/08 **Abu Git v. the Minister of the Interior** ([published in Nevo], November 16, 2008) it was held, that the demand for the existence of a center of life in Jerusalem for two years:

> **is problematic if it prevents the family from living together under the same roof**.

As specified above, this is exactly the situation in our case.

57. It was further held in AP (Jerusalem) 8340/08 **Abu Git v. the Minister of the Interior**, paragraph 12 ([published in Nevo], December 10, 2008) that the general position of the Ministry of the Interior:

> **According to which the children are not entitled to any status until the demand for a center of life of two years was fulfilled, exceeds reasonableness**.

58. The court noted, that said demand may expose the children of the resident to an improper reality of unlawful stay in Israel for a considerable period of time. Therefore, "it is not compatible with the recognition that the 'interest of protecting the child's best interest' (quote made in the original) should be respected as with the special nature of regulation 12, as a regulation the purpose of which is to promote human rights in two [ ] central aspects – the right of the parent to family life and the right of the minor to live his life with his parent." *Ibid*.

59. In view of the unreasonableness of the demand for a center of life of two years, it has already been held by the Court for Administrative Affairs, that **children should not be left without a lawful status in Israel during the "interim period", from their entry into Israel until the fulfillment of the demand for a center of life of two years.** The Ministry of the Interior must ensure that the children are granted with stay visas in Israel for this period.

60. In AP (Jerusalem) 8340/08 **Abu Git v. the Minister of the Interior**, paragraph 12, it was held that:

> … as a general rule, and in the absence of special reasons not to act accordingly, the respondent must grant the child, during the interim period, until the demand for maintaining a center of life is fulfilled, a stay visa in Israel.

61. With respect to temporary stay visas to a foreign spouse during the two years prior to the submission of the family unification application, the Ministry of the Interior itself has already stated, in AP (Jerusalem) 8339/08 **Abu Git v. the Minister of the Interior:**

> A solution to this problem may be found in the issuance of renewable DCO permits pursuant to section 3b of the Temporary Order Law, or by using section 3 of this law, which authorizes the Minister of the Interior to approve the request of a resident of the Area (who is over the age of 35) for the grant of a stay permit in Israel by the commander of the area for the purpose of preventing his separation from his spouse who stays in Israel lawfully. According to this approach, this section may be used **also for the purpose of granting temporary stay permits in**

> **the two years during which the Israeli spouse should live in Israel before the submission of the application**. (emphasis added – L.B.).

62. This implies, that the position of the Ministry of the Interior is, that also in cases which concern children, temporary stay permits may be issued to them before the application is approved, pursuant to section 3b (mentioned in paragraph 33 above) and pursuant to 3a1 of the Temporary Order, which pertains to the arrangement of status of minors. Namely, the limitation set forth in section 3b according to which permits may be given for six months only, is merely an ostensible limitation, and there is no impediment which prevents the grant of renewable permits for a two year period, also pursuant to the Temporary Order.

63. **The conclusion which arises from the above is that the Ministry of the Interior itself does not see any harm in the grant of the requested remedy**. If the Ministry of the Interior is willing to undertake to issue permits for a two year period, it means that there is no impediment which prevents the approval of petitioners' entry into Israel and their stay herein, for a defined period, until a decision is made in the appeal.

64. And if it was held that the demand for a center of life of two years exceeded reasonableness when the family was staying in Israel, all the more so in our case, when the applicants are not allowed to enter Israel altogether. The courts for administrative affairs ruled that the stay of children in Israel for a two year period should be approved, in order to encourage the continued life of the entire family under one roof in Israel, until the requirements of the procedure are fulfilled. This implies that in our case, when the family is forced to be torn apart between residency in Jerusalem and residency in Gaza, or, alternatively, to stay together in Gaza and suffer hardship and threats, it would be appropriate to approve their request to stay in Israel for a defined period, until a decision in their matter is made.

A clear legal mistake of the respondent

65. In similar cases of arrangement of status of children, when the custodial parent is in Israel, the **common practice is not to take any measures to expel the children from Israel**, for as long as the application is pending.

66. Our case is different in that the children were prevented from **entering Israel**. However, this difference should not adversely affect the applicants. In our case, maintaining the current situation, in which the petitioners are prevented from entering Israel, is that which causes the applicants irreversible damage, and therefore the requested relief is sought. This is an emergency request,to arrange the status of the petitioners in Israel, in order to liberate them from the suffering of their life in Gaza. It makes no sense that during the prolonged period until a decision in the appeal is made, an Israeli resident will be forced to choose between being trapped in the Strip with her children under a severe daily distress, and deserting her children alone in Gaza and returning to Israel by herself.

67. An application for the grant of a temporary remedy should be decided based on the balance of convenience. The court should examine the "damage that will be caused to the applicant if an interim order is not granted *vis-à-vis* the damage that will be caused to the respondent if the order is granted as requested." LAA 2077/06 **Yamit Administrative 2000 Ltd. v. The Municipality of Jerusalem** (judgment rendered on March 9, 2006). In this case, the balance of convenience clearly favors the petitioners. The Ministry of the Interior cannot point at any damage that would be caused if the application is granted. Especially in view of the fact that this is a temporary relief. And if

petitioners' arguments are rejected in the appeal, the Ministry of the Interior will be able to expel them after a final decision is rendered.

68. The Supreme Court has already instructed, in temporary orders, to grant litigants temporary status. See for instance AAA 8569/02 **Bourana v. the Minister of the Interior** (Decision rendered on July 24, 2003) (the Supreme Court decided to instruct the respondent to grant the appellants B/1 visa in addition to an interim order which was granted to prevent their deportation). In LAA 4026/08 **State of Israel – Ministry of the Interior v. Kanchi Jagadesh (**decision rendered on June 29, 2008), the Supreme Court discussed a case which was similar to the case at hand. In that case the Ministry of the Interior filed a leave for appeal on the decision of the Court for Administrative Affairs, which instructed the Ministry of the Interior to release a foreign employee from custody and arrange his status with a lawful employer until judgment was rendered in the petition. Among its considerations, the court of first instance emphasized that:

> A release under terms that would not enable him to work in nursing during the interim period means, that we send him to the street, on the one hand, or to the possibility that he would work in cleaning and such similar works, which were not the works for which he came to Israel. I chose the least bad option. *Ibid*, paragraph 4.

The court of first instance has further noted, that "**this concerns a temporary relief for the interim period only, which would be subject to the final decision in the petition**." In this case, the Supreme Court did not find reason to interfere with the decision to arrange the status of the respondent in Israel.

See also: LAA 10948/08 **Kroant v. Ministry of the Interior** (judgment rendered on December 30, 2008). In that case the applicant filed a petition against the decision of the Ministry of the Interior not to extend his work permit. The Supreme Court was of the opinion that the balance of convenience favored the applicant – if his work permit was not extended, he would lose his work, be left without a roof over his head and would probably lose his medical insurance. In view of all of the above, the Supreme Court instructed to temporarily extend the applicant's work permit.

69. In certain cases the Supreme Court instructed to grant temporary status for humanitarian reasons. In HCJ 7937/06 **Unisco v. The Ministry of the Interior** (the decision was given on October 10, 2006) the Supreme Court discussed petitioner's right to receive Israeli citizenship. Along with the petition, the petitioner requested an interim order which would direct the Ministry of the Interior to grant him an A/5 temporary residency, in order to enable him to continue to receive medical treatment by his health fund. The Supreme Court has acknowledged the fact that a mandatory injunction was not given as a matter of course, "however, under the circumstances described in the petition, and especially in view of his illness and the medical treatments which [the petitioner] needs, it is only evident that the case before us is not an ordinary and standard case." Therefore, taking into consideration the special circumstances of the petitioner, the Supreme Court instructed the respondent to grant the petitioner A/5 temporary residency until a different decision was made.

70. See also: In AAA 1682/09 (Jerusalem) **Martinez v. the Ministry of the Interior** (the decision was given on February 2, 2010), the petitioner was deprived of her status in Israel following the death of her husband who was a citizen. Although she filed the petition with the court two years after her she was deprived of her status, the court held that:

> There is no doubt that the petitioner needs an identification card in order to make a living and receive the social rights which are

> also a necessity of life. The damage which was inflicted on the petitioner and which will be further inflicted on her if she is not granted with an identification card is immense, and there is no need to elaborate on this issue.

71. In HCJ 396/09 **Eglitz v. The Minster of the Interior** (the decision was given on March 22, 2009), the Supreme Court discussed a case in which the petitioners were deprived of their citizenship ten years after it was granted to them. The court held that under the circumstances of the matter, the balance of convenience "conspicuously favored the petitioners" and has accordingly directed the Ministry of the Interior to issue temporary visas (A/5) to the petitioners.

72. Relevant to our case are the words of Justice Grunis, in paragraph 2 of the decision:

> There is no doubt that a continued stay in Israel without any visa and based only on an interim order which prohibits expulsion poses many difficulties. This is the case, with respect to employment opportunities and the existence of health insurance coverage. Indeed, an interim order which orders to grant a stay visa changes the current situation. However, this does not prevent the issuance of such an order. **It was the decision of the Ministry of the Interior to revoke the citizenship which changed the state of affairs that existed during a period of ten years**. An interim order which directs the grant of a visa will put the petitioners in a state similar to that in which they were before the decision of the Ministry of the Interior was made (emphasis added – L.B.)

73. The same applies to our case – one possibility is to deprive the petitioners of any opportunity to stay in Israel until a decision is made in the appeal, and cause them irreversible damage, for as long as they stay in Gaza. Another possibility is to give a temporary relief, which would preserve an existing state of affairs, **had they been allowed to enter Israel**.

74. It should be noted, that in certain cases the Supreme Court directs to issue mandatory orders when the proceedings in litigants' matter are delayed. In HCJ 1710/08 **Yevgeni v. The Ministry of the Interior** (an interim order was granted on May 22, 2008; a revised decision was given on May 27, 2008), a petition was filed against a refusal to grant legal status to the petitioner in Israel. An interim order for the extension of her status was requested (in addition to an order which would prohibit her deportation), and a decision was rendered which instructed the respondents to respond to the petition and the request for an interim order within a month and a half. The Ministry of the Interior, however, did not rush to respond to the petition. The petition was filed on February 21, 2008, and after their request for extension was accepted, the respondents requested an additional extension until June 30, 2008 (more than four months from the petition's filing date). The respondents argued that the extension was required due to the need to "make additional inquiries and the heavy work load of the legal department of the Ministry of the Interior and of the attorney who was handling the case in the state attorney's office." The court held that in view of the long time which has elapsed from the date the petition was filed and in view of the repeated requests for extension "there was no alternative" but to arrange the status of the petitioner until a different decision was rendered.

75. Similarly, in HCJ 10851/06 **Bodinger v. The Ministry of the Interior** (the decision was given on January 30, 2007) it was decided to grant the petitioner an interim order, according to which she would be issued a B/1 visa for one year or until a different decision was rendered, according to the

earlier, "**and this, in view of the fact that a hearing has not yet been scheduled and to enable the petitioner to continue, for the time being, with her daily routine**."

76. In view of the immense and daily suffering of the petitioners in the Strip, along with the long procrastination of the appeal proceeding, "there is no alternative" but to accept petitioners' request. Therefore, the Honorable Court is hereby requested to direct the respondents to approve petitioners' entry into Israel and grant them stay visas in Israel, until a decision is made in the appeal.

Conclusion

77. In view of all of the above, the petitioners will argue, that respondent's conclusions must not be adopted. The honorable Court is hereby requested to accept the petition and direct the respondents to allow petitioners' entry into Israel and to grant them stay visas in Israel, until a decision is made in the appeal.

Jerusalem, July 27, 2010

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(file No. 62647)