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**Before: Chair of the Appellate Committee for Foreigners, Jerusalem**

**Appeal 281/11**

**The Appellants:**      1.      V      Shanaytah, ID No. \_\_\_\_\_  
   2.      S      Shanaytah, ID No. \_\_\_\_\_

represented by counsel, Adv. Noa Diamond

v.

**The Respondent:**                      **Population and Immigration Authority, Ministry of the Interior**

Represented by the legal department, Adv. Ilanit Mendel

### **Respondent's Response – Appeal 281/11**

According to the decision of the chair of the honorable appellate committee the respondent hereby respectfully submits its position in the above captioned appeal.

1. The above captioned appeal concerns appellants' request to receive to their possession the evidentiary material which supports the "intention to deny" a family unification application, before their written arguments were filed according to the comments of agencies protocol No. 5.2.0015.
2. Firstly, the respondent will argue that the proper place to clarify this issue is before the appellate committee. It should be noted, that this position was also conveyed in the motion for extension which was filed by the state in AP 28252-11/11 **Shanayatah et al. v. Ministry of the Interior – Population, Immigration and Borders Authority.**

**A copy of the motion for extension which was filed by the state is attached hereto and marked as Exhibit A.**

3. To complete the picture, it should be noted that on August 4, 2008, appellant No. 1, who was born in 1968 and is a permanent resident (hereinafter: the "**appellant No. 1**"), submitted a family unification application for appellant No. 1 [*sic*], who was born in 1969 and is a resident of the Area (hereinafter: "**appellant No. 2**" or the "**appellant**"), application No. **558/08**.
4. In the examination of the application, the recommendation of the security agencies was received, according to which there was a security preclusion which prevented the approval of the application. Accordingly, the application was denied for security reasons.

5. On December 20, 2009, an appeal was submitted to the appellate committee for foreigners, appeal 817/09, which concerned, *inter alia*, a failure to respond to an appeal which was submitted by appellant 2.
6. On January 27, 2011, the appeal was deleted following respondent's notice that the appellants were given the opportunity to have a hearing in writing, within 30 days before a decision in the application would be rendered, in accordance with the "comments of agencies" protocol.
7. On February 21, 2011, a letter was received from HaMoked for the Defence of the Individual, in which HaMoked for the Defence of the Individual requested the entire evidentiary material which served as a basis for the recommendation of the security agencies to deny appellants' application. The appellants argued that they could not properly respond to the arguments under such circumstances, and requested to postpone the date for the submission of their response according to the comments of agencies protocol.

**The letter dated February 21, 2011 of HaMoked for the Defence of the Individual, is attached as Exhibit 20 to the above captioned appeal.**

8. On June 22, 2011 the above captioned appeal was submitted.

#### **Respondent's Position**

1. The underlying premise is that before status in Israel is granted to an applicant under a family unification application, the security or criminal preclusion issue and the level of risk posed to public safety and state security are examined.

On this issue see (HCJ 7052 **Adalah – Legal Centre for Arab Minority Rights in Israel v. The Minister of the Interior** (reported in Nevo, May 14, 2006)). On January 11, 2012 the Supreme Court denied the petitions against the Citizenship and Entry into Israel Law (Temporary Order)(HCJ 466/07 **Galon v. Attorney General**).

2. The applicants request to receive to their possession the entire evidentiary material which served as a basis for the security preclusion according to the recommendation of the Israel Security Agency (ISA).

The respondent will argue that when a security preclusion is based on legal proceedings – either detention proceedings which are subject to judicial scrutiny, or other legal proceedings which are specified in the paraphrase concerning the appellant, the appellant is already aware of same, and therefore there is no room or reason to transfer the documents which concern him for the purpose of submitting his arguments in writing, under the comments of agencies protocol.

For the exhaustion of the written hearing process there is neither need nor room to embark on an expedition for the location of materials which are already found in appellant's possession.

In any event, the decision in appellant's matter is mostly based on updated intelligence information concerning the appellant, as specified below:

In the past (April 14, 2002 – June 23, 2003) the appellant was placed under administrative detention due to his activity with the Islamic Jihad. His name was even mentioned in an interrogation which was carried out in December 2008, as a member of an Islamic Jihad cell in 2002.

**In the period which followed appellant's release, intelligence information was received which indicates that he continues with his activity with the Islamic Jihad organization.**

Some of appellant's brothers were also detained several times due to their activity with the "Islamic Jihad". His brother M. Shanaytah, was an administrative detainee in the past (April 2002 – September 2002, October 2006 – December 2006). His brother R. Shanaytah was incarcerated in the past for military activity with the military organization of the Islamic Jihad (March 2002 – January 2004) after he has admitted in his interrogation that he had been recruited to a military Islamic Jihad cell, that he attempted to make an additional recruit for the organization, and that he was involved with firearms.

3. The respondent will therefore argue that in view of the above specified information concerning the legal proceedings to which the appellant and his brothers were parties as described above, the appellant has the required information for the purpose of submitting a reasoned hearing in writing in his matter, in view of the fact that the appellant was a party to said proceedings. In view of the above, there is no room or reason for the production of said materials which relate to appellant's administrative detention due to his activity with the Islamic Jihad, of which the appellant is anyway fully aware, having been a party to these proceedings in his matter.
4. The respondent will argue further that the details specified and disclosed above, including dates which mostly relate to the appellant, facilitate the submission of a reasoned hearing by the appellant and that there is no justification or cause for the production of administrative detention orders or judicial decisions which are already in the possession of the appellant and his brothers who were also parties (each one them) to legal proceedings in their respective matters.

In any event, according to the intelligence information, in the period which followed his release from his administrative detention intelligence information was received which pointed at his continued activity with the Islamic Jihad. This is, as aforesaid, intelligence information.

Be it an administrative detention or a criminal proceeding, the above data points at appellant's activity with the Islamic Jihad organization in the past **and after his release from administrative detention.**

It should be clarified, that the position of the Israeli Security Agency concerning the security preclusion stems mostly from the risk to public safety and state security posed by the appellant, against the backdrop of his past within the framework of the Islamic Jihad organization and his continued activity with the organization.

5. In view of the abovesaid and before a decision is made in the application, the appellants are given an additional opportunity to respond to the security preclusion in their matter according to the above mentioned protocol, by a written hearing, within 30 days.
6. Under these circumstances, the honorable chair of the committee is hereby requested to order that the above captioned appeal be denied.

( signed )

Ilanit Mendel, Advocate  
Legal Department  
Population Authority

Today, 6 Adar 5772, February 29, 2012