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October 21, 2013
MRA. 15098- 2013

To:
Mr. Benjamin Agsteribbe , Adv.
HaMoked: Center for the Defence of the Individual
4 Abu Obeida St.
Jerusalem 97200

Dear Sir,

Re: Procedure on Security Agency Comments regarding Family Unification Applications

I would first like to apologize for the delay in responding to your inquiry.

On the subject itself, I would like to inform you that following an examination of all aspects of the procedure in reference and its implementation, a decision has been made to introduce a number of amendments, as detailed below:

1. With respect to the manner in which hearings are held pursuant to the procedure – the procedure will include a distinction between new, yet-to-be approved applications to enter the graduated procedure, where the foreign spouse has not yet been granted an Israeli residency visa or stay-permit, and there are prima facie security or criminal reasons precluding approval of the application and applications that have already been approved, where the foreign spouse has already received an Israeli residency visa or stay-permit and there are prima facie security or criminal reasons justifying the revocation of the visa or permit.
2. According to this distinction, in cases involving new applications, written arguments may be submitted, as currently stated in the procedure. In cases involving cessation of the procedure, the spouses will be given the opportunity to complete their arguments orally, unless they choose to submit their response in writing only.
3. In this context, note that according to case law, the right to a hearing may be fulfilled either orally or in writing, in the presence of the parties, separately, or by way of supplementary arguments,

depending on the circumstances of the matter. The courts have ruled that under ordinary circumstances, an authority will have fulfilled its duty by holding a hearing in writing. See HCJ 6339/05 **Matar v. IDF Commander in the Gaza Strip**, where the Court found no basis for the argument that the right to a hearing had been denied since: "The duty to hold a hearing may be fulfilled in a large variety of ways. The authority will normally have fulfilled its duty by holding a hearing in writing. It is only under special circumstances that the duty to hold a hearing might compel an authority to hold an oral hearing (HCJ 164/97 **Conterm v. Ministry of Finance, Customs and VAT Department**). Such circumstances are not present in the case at hand. The Petitioners were given the opportunity to challenge the eviction order in writing. They failed to do so and instead, requested an oral hearing. They are not entitled to such. We conclude, therefore, that the Petitioners' right to a hearing has not been violated..." Similarly, in HCJ 4706/02 **Salah v. Minister of Interior**, the Court held: "I have considered these principles, and I am satisfied that, having been given a proper opportunity to make his objections to the Minister of Interior as regards the fear that his departure from the country would be exploited for meetings with hostile persons, and the Respondent having responded to the objections, the Petitioner's right to argue his case and to be heard has been thoroughly exercised, despite the fact that the hearing was held in writing and after the order had been given. Therefore, the Respondent has fulfilled his duty". See also, AAA 2827/07 **Rachel Hayut et al. v. Ministry of Construction and Housing et al.**: "The transparency in the work of the authority should be expressed in that people are able to respond to what is said against them. For the most part, these are allegations which may be controverted in writing".

4. Accordingly, the Security Agency Comment Procedure provides for the right to a hearing in writing in such cases. However, similarly to cessation of the graduated procedure for other reasons, in cases involving individuals already residing in Israel and holding a residency visa or stay-permit issued as part of a graduated procedure that is already underway, there will be an opportunity to supplement written submissions orally. In this context, note that this procedure is held subsequently to issuance of a notification, containing as many details as possible regarding the reasons why rejection of the application is under consideration, depending on the non-classified information security and police officials provide to the Population Authority.
5. Oral hearings will take place at the Israeli spouse's local Population Authority branch office, based on the non-classified information provided to the spouses in the preliminary notification and on the spouses' written submission, which they will be required to bring to the hearing. Note that the goal of the hearing is to allow the spouses to respond to the information presented to them in the preliminary notification. In all cases, the hearing is based on the spouses' response to the non-classified information. The classified information, which, according to the position of police and security officials, is available to a select group of officials only, cannot be presented to the spouses, and will, therefore, not be provided to the branch office ahead of the hearing. The goal of the hearing, as communicated by you as well, is to allow the spouses to respond to the non-classified information provided to them, and this goal will be achieved in the manner described.
6. Subsequent to the hearing in the aforesaid cases, the spouses' written response and the hearing summary will be transferred to the relevant security or National Police Headquarters officials. In cases of a hearing in writing, the spouses' written response will be transferred to these officials. Upon receipt of the officials' position, the desk chief will issue a decision. In making a decision, both

in cases in which the hearing was held in writing and in cases involving an oral hearing, the desk chief will review all aspects related to the matter, including the hearing, the circumstances of the case, the classified material received by the desk and the security agencies' comments. The decision reached by the desk chief will strike a balance among all considerations and aspects of the individual case, including a relevant balance when the information relates to a relative of the foreign spouse. Note, in this context, that the Security Agency Comments Procedure relates to the relevant agencies' working process and therefore does not specify the considerations involved in decision making, which, naturally differ from case to case.

7. In response to your inquiry, we clarify once again, that inasmuch as no response is received, rejection of the application will be considered (Section 2.3 of the procedure), and that an affidavit is required only with respect to facts concerning the spouse.
8. Additionally, the procedure will stipulate that the desk issue a decision within 30 days of receiving the response of the relevant National Police Headquarters/security officials to the response submitted by the spouses. At the same time, we see no reason to extend the time allocated for submission of the spouses' written response.

Sincerely

[signed]

Naama Paley, Adv.
Supervisor (Entry into Israel)

CC:

Mr. Amnon Ben Ami, Director of the Population and Immigration Authority.