At the Supreme Court **HCJ 4699/14**
Sitting as the High Court of Justice

_____ Khaleq et al.

all represented by counsel, Adv. Benjamin Agsteribbe et al.,
of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Israeli Knesset**
   Represented by the Knesset legal counsel
   Tel.: 02-6753138; Fax: 02-6753495
2. **The Prime Minister, Mr. Benjamin Netanyahu**
3. **Minister of the Interior, Mr. Gideon Saar**
4. **Attorney General**
   Represented by the State Attorney's Office
   Ministry of Justice, Jerusalem
   Tel.: 02-6466246; Fax: 02-6467011

The Respondents

Preliminary Response on behalf of Respondents 2-4

1. According to the decision of the Honorable Justice N. Solberg dated July 8, 2014, and the agreed requests for extension, respondents 2-4 (hereinafter: the **respondents**) hereby respectfully submit their preliminary response as follows:

2. This petition concerns petitioners' request that the honorable court directs the respondents to appear and show cause: "why they should not upgrade the status of petitioner 2, and grant her at least a renewable A/5 visa, in view of the fact that she lives in Israel for a protracted period of time under military residency permits only."

In addition, the petitioners request that this honorable court directs the respondents to appear and show cause: "why an exception is not added to section 2 of the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003, according to which residents of the Area who live in Israel for a protracted period of time under residency permits in Israel within the framework of family unification proceedings, will be at least granted with a temporary residency license (A/5 visa)."

3. Respondents' position is that the petition should be denied summarily and on its merits, and that the petitioners should be obligated to pay respondents' costs.

With respect to the first relief requested in the petition, it should be summarily denied in view of the fact that it cannot be reconciled with the provisions of the law. According to section 2 of the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003 (hereinafter: the **Temporary Order Law**), the Ministry of the Interior shall not grant a resident of the Area, as defined in the Law, a temporary residency visa. Hence, the status of a "resident of the Area" as defined in the Law may not be "upgraded" beyond the status he already had on the effective date, according to the provisions of the Law in this regard.

The constitutionality of the Temporary Order Law (in its various versions) was discussed by an expanded panel of this honorable court long ago, and hence, this petition should be summarily denied in the absence of any cause under the law, for upgrading petitioner 2's status.

With respect to the second relief requested in the petition, petitioners' arguments on this level should also be denied based on two integrated institutional reasons: firstly – due to the nature of the requested relief. Namely, obligating the respondents to initiate a legislative proceeding within the framework of which an "exception" to the Temporary Order Law will be established; and secondly – due to the fact that the legislature is the right and proper state institution which should discuss the issue rather than the judiciary. According to case law, the honorable court will not issue an order directing the government and the Knesset to initiate an amendment to the law, since it runs contrary to the principle of separation of powers which constitutes a basic principle of our legal-constitutional regime. We shall specify below.

Respondents' Position

4. On May 12, 2002, the government of Israel resolved (resolution 1813) that the Ministry of the Interior would no longer grant residents of the Area status in Israel, according to both the Entry into Israel Law and the Citizenship Law. The government resolution was entrenched in the Temporary Order Law, which was published in the official gazette on August 6, 2003.

5. Section 2 of the Temporary Order Law provides unequivocally:

> During the period in which the Law is in force, notwithstanding any provision of any other law, including section 7 of the Citizenship Law, **the Minister of the Interior shall not grant citizenship to a resident of the Area or to a citizen or resident of a state listed in the schedule in accordance with the Citizenship Law and he shall not grant him a license to reside in Israel in accordance with the Entry into Israel Law**, and the Area Commander shall not grant a resident of the Area a residency permit in Israel in accordance with security legislation in the Area.[emphasis added – the undersigned].

6. A transitional provision was established in section 4 of the Law which provides that "The Minister of the Interior or the Area Commander, as the case may be, may extend the validity of a residency

visa in Israel or of a residency permit in Israel, which were in the possession of a resident of the Area on the eve of the commencement of this Law, taking into account, among other things, the existence of a security preclusion as specified in section 3D."

7. In 2005 the Temporary Order Law was amended and, *inter alia*, section 3 was added to it, which established an exception to the above rule, according to which the Minister of the Interior may, at his discretion, approve the application of a resident of the Area **to receive a residency permit in Israel**, with respect to a male resident of the Area who is over 35 years of age and with respect to a female resident of the Area who is over 25 years of age.

8. Within the framework of an additional amendment to the Temporary Order Law, section 3A1 was added, which is entitled "Permit and License in Special Humanitarian Cases". The section which entered into effect in March 2007. Section 3A1 (1) provides, *inter alia*, that notwithstanding the provisions of section 2, the Ministry of the Interior may, for special humanitarian reasons, and upon the recommendation of a professional committee, grant a temporary residency visa in Israel to a resident of the Area whose family member (spouse, parent or child) lawfully resides in Israel.

9. As is known, the constitutionality of the Temporary Order Law was approved twice by the honorable court, by expanded panels, including less than three years ago (HCJ 7052/03 **Adalah v. Minister of the Interior** (given on May 14, 2006, reported in Nevo); HCJ 466/07 **Gal-on v. the Attorney General** (given on January 11, 2012, reported in Nevo)).

10. As aforesaid, and without going, at this stage, into the specific details of petitioners' case, the first relief requested in the petition, namely, the grant of a temporary residency visa to petitioner 2, who is a resident of the Area, runs contrary to the provisions of the Temporary Order Law, which was approved by this honorable court, according to which the Minister of the Interior will not grant a temporary residency visa to residents of the Area (subject to the provisions of section 3A(1) of the Law).

    Parenthetically we would like to note, that the petitioners did not argue that special humanitarian reasons existed in their case which justified the grant of a residency visa in Israel to petitioner 2 pursuant to the provisions of section 3A(1) of the Law, and anyway, they did not argue that such an application was submitted. In any event, to the extent the petitioners are of the opinion that special humanitarian reasons exist in their case (and it should be reminded that the Law provides that "the fact that the family member of the individual who applies for a permit or license, who lawfully resides in Israel, is his spouse, or that the spouses share common children, will not, in and of itself, constitute a special humanitarian reason") they can submit an adequate application.

11. Under these circumstances, it is not clear, on which legal or statutory source petitioner 2's request that the court directs the Minister of the Interior to upgrade her status and grant her a temporary residency visa, is premised. As a matter of fact, section 2 of the Temporary Order Law provides that the Minister of the Interior "will not grant" such a residency visa.

12. As noted above, the constitutionality of the Temporary Order Law was approved by this honorable court, and therefore, even on this level, the petition should be summarily denied due to the existence of a judicial decision on this issue. In that regard we would like to point out, that in general, the honorable court does not re-consider an issue which has been judicially resolved. See and compare, for instance, the judgment in HCJ 761/13 **O.D.C. v. Ministry of Defence** (given on February 20, 2013, reported in Pad-or), as follows:

> It should be remembered that the issue raised in the petition, on its merit, has already been raised in the past before this court in the **Saban** case. Indeed, the **Saban** petition referred to the hair-cut provision which was entrenched at that time in General Order 33.0118, **but on the general level Saban raised the exact same arguments which are currently raised by the petitioner before us**, namely, that the hair-cut demand disproportionately violates human dignity and the right to equality. Saban even argued further that his freedom of occupation was violated in view of the fact that he was working as a model for his livelihood. **In said petition an *order nisi* was indeed issued but following the submission of a response affidavit on respondents' behalf and following a hearing which was held by the court in the petition, it was decided to deny it**, by a short and concise decision which stated that "there is no proper cause for the court's interference with the arrangement customarily applied by the army to the issue being the subject matter of the petition….". **The petitioner before us is well aware of the Saban judgment and he has no argument which justifies an additional hearing in the same issue which has already been heard and resolved**. It is clear that the mere fact that a different petitioner is concerned does not justify an additional hearing as aforesaid (see HCJ 3227/09 **The Committee of the Families of the Dead Buried in the Maaman Allah (Mamilla) Cemetery v. the (Israeli) Antiquities Authority**, paragraphs 13-15 (December 23, 2009)). Therefore, **it would have been better had this petition not been filed, but since it was filed, we have no alternative but to deny it**…" [Emphases added – the undersigned].

13. Accordingly, it is clear that the comments made in the above HCJ 761/13 – which referred to a "short and concise" decision in a previous petition on the same issue – are all the more so relevant to our case, which concerns general decisions of this court, which were given by expanded panels.

    Therefore, the first relief requested in the petition should be summarily denied in view of the explicit and unequivocal provision of section 2 of the Temporary Order Law in conjunction with section 4 of the Law. It seems that petitioner 2's request disregards the general decisions of this honorable court on this issue, in an attempt to re-open the issue which has been discussed and resolved a long time ago.

14. With respect to the second relief requested in the petition, according to which the court is requested to order the respondents to establish an "exception" to section 2 of the Temporary Order Law as specified in the petition, this petition should be denied in the absence of a normative infrastructure for the substantiation of the relief sought for in the petition – a mandatory injunction which in fact obligates the legislature and the executive authority to enact primary legislation, and if this is not enough – legislation the contents of which is pre-determined.

    Case law provides that the honorable court will not issue an order directing the government and the Knesset to initiate an amendment to the law, since it contradicts the separation of powers doctrine which is a basic principle of our legal-constitutional regime. Relevant to this issue are the words of Justice Cheshin in HCJ 5677/04 "**Al-arfan" Association v. Minister of Finance** (reported in Nevo, March 16, 2005):

> Furthermore: in the petition at hand we are requested to direct the Minister of Finance and the Minister of Education to amend the provision of section 3A of the Foundations of Budget Law, **and we do not know what is the source of our authority to so direct the government and its ministers. Indeed, the initiative to amend the law is vested with the executive authority and the legislature and it stems from the separation of powers doctrine and decentralization of authorities. If the petitioner wishes that action is taken to amend the Foundations of Budget Law – or any other law – to remove the discrimination, it must find relief and remedy with the legislator or with the executive authority, rather than with the court**." [Emphases added – the undersigned].

15. See also the recent words of the Honorable Justice N. Solberg, who was joined by the Honorable Justice A. Grunis and the Honorable Justice H. Melcer, in HCJ 7717/13 **Kolian v. Minister of Finance** (October 2, 2014, reported on the Judicial Authority Website), as follows:

> "… it should be recalled and reminded, that the Knesset laws must be respected. Legislation enjoys the presumption of constitutionality. In its legislation the Knesset expresses the wishes of the people's elected representatives (see a comprehensive discussion in the words of the President (as then titled) D. Beinisch in HCJ 2605/05 **Academic Center of Law and Business (AR), Human Rights. Division v. Minister of Finance**, IsrSC 63(2) 545 (2009)). The balance between the principles of the majority rule and separation of powers and protection of human rights requires caution and self-restraint in the interference with the policy which was chosen by the legislator. The Knesset out-spoke, and we, the court, must refrain from re-designing the policy.
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> …
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> If the petitioner is of the opinion that steps should be taken to amend the law – to condition financing of parties on the grant of opportunity to women to become members thereof – then "it must find relief and remedy with the legislator or with the executive authority, rather than with the court." (the words of the Deputy President (as then titled) M. Cheshin in HCJ 5677/04 "**Al-arfan" Association v. Minister of Finance** (2005)). **The purpose of the court is to adjudicate; not to legislate**. Adjudication includes the exercise of judicial review, and constitutional examination, but the court should not make a decision concerning the wisdom of the law, whether it is good, efficient, justified or whether a better statutory arrangement exists: "The establishment of the social policy is vested with the legislator, and the realization thereof is vested with the government. They were given legislative maneuvering space." (Words of the President (as then titled) A. Barak in HCJ 1715/97 **Israel Investment Managers Association v. Minister of Finance**, IsrSC 51(4) 367, 386 (1997)). **Indeed, the separation of powers doctrine obligates us, as a court, to deny petitioner's request and refer her to the Knesset.**

> In summary: the petitioner on her part did not substantiate a violation of a constitutional right; and we, on our part, will not order the Knesset to legislate…" [Emphases added – the undersigned].

16. The honorable court has reiterated said ruling in a host of judgments, repeatedly clarifying that in view of the clear separation of powers between the judicial authority, the legislator and the executive authority, as far as initiation of legislative proceedings are concerned – it does not accept petitions the purpose of which is to compel the Knesset and the government to initiate legislation or amend it. See on this issue: HCJ 3065/04 **Israel Union for Environmental Defence v. The Prime Minister** (reported on the Judicial Authority Website; July 23, 2007); HCJ 6820/12 **Shamir v. Israel Knesset** (reported in Nevo, December 24, 2012); HCJ 5472/12 **Klein v. Ministry of Industry and Trade** (reported in Nevo, December 18, 2012); HCJ 9567/06 **Yosef Moshe v. Israel Knesset** (reported in Nevo, February 1, 2007); HCJ 11716/05 **Peretz v. Reuven Rivlin, Chairman of the Knesset on behalf of the Knesset** (reported in Nevo, March 7, 2006); HCJ 3788/04 **Elazar v. State of Israel** (reported on the Judicial Authority Website, June 17, 2004); and more.

17. Hence, the rule according to which the honorable court refrains from directing the Knesset and the government to legislate or initiate amendments to the law became a corner stone of our constitutional legal regime, since it runs contrary to the separation of powers doctrine in a democratic state. For the above reason only, the petition should be summarily denied.

18. In any event it should be noted in this context, that in view of the fact that recently, in several proceedings, this honorable court made various comments concerning the Temporary Order Law, it has been recently decided, following said comments, *inter alia*, by the Minister of the Interior, after consultation with the Israel Security Agency, that an individual who submitted a family unification application pursuant to the Temporary Order Law before December 31, 2006; whose application was approved; who holds renewable residency permits from the date on which his application was approved; and who proves that he satisfies the required conditions for the examination of such applications (namely, proof of center of life in Israel, proof regarding the sincerity and continued existence of the marital connection and the absence of criminal and security preclusion); will receive renewable residency permits for two years at a time. Notice in that regard was submitted to the honorable court on May 15 2014 within the framework of AAA 6481/12.

    It should be noted that petitioner 2 in the petition at hand, also holds in her possession a residency permit in Israel. As indicated by the petition, it is a renewable permit which enables her to live with her family in Israel.

    As was advised by the Population and Immigration Authority, the comments of the honorable court were brought and will continue to be brought to the attention of the relevant agencies which are engaged with the Temporary Order Law and will be examined by all relevant agencies.

    As is known, the Temporary Order Law is a law with respect of which a special extension mechanism was established by statute. Said mechanism requires a security opinion along with a government resolution and an approval of the Knesset. In this context, it should be noted, that on April 3, 2014 the Citizenship and Entry into Israel Decree (Temporary Order) (Extension of the Validity of the Law), 5774-2014 was published in the official gazette, which extends the validity of the Temporary Order Law until April 30, 2015.

19. To complete the picture it should be noted, that this petition constitutes part of a series of identical petitions which were recently filed (between July and October 2014) with the honorable court by petitioners' counsel concerning the Temporary Order Law, within the framework of which the same remedies are requested. The following is the list of the petitions: HCJ 4699/14 (the current petition); HCJ 4701/14; HCJ 4704/14; HCJ 5135/14; HCJ 5136/14; HCJ 5904/14; HCJ 5908/14; HCJ 5909/14; HCJ 5498/14; HCJ 6209/14; HCJ 6209/14; HCJ 6404/14; HCJ 6211/14; HCJ 6713/14. Namely, until the date hereof a total of **14** petitions were filed, all of which request the same remedies and raise the same arguments.

It should be emphasized that in all said petitions, other than the part which pertains to "Petitioners' Case", the opening part "Preface"; the part which pertains to the "Temporary Order – Background"; and the "Legal Argument" part are all almost completely identical. It should be further emphasized, that all said petitions concern Palestinian residents who **receive** residency permits in Israel which enable them to maintain family life in Israel.

20. It is clear, that in as much as the real intent was to present before the honorable court the legal issue which is ostensibly in question, there was no need to file 14 petitions which are almost completely identical. The filing of one petition would have been perfectly sufficient. All the more so when, *prima facie*, the different specific petitions do not add to the discussion, but only repeat the same arguments which have already been raised. Naturally, the procedural conduct described above raises the concern that in filing the above 14 petitions, the final word has not yet been said, and that similar petitions may find their way to the honorable court.

21. We would like to add, that the petitioners indeed note in each petition that "this petition is one of a series of petitions concerning Palestinians, who have been living in Israel for many years…". However, the petitioners do not draw the attention of the honorable court to the number of the petitions which were filed, as well as to their case numbers and the judicial decisions made therein. Thus, different judicial decisions were given by different Justices in the 14 different petitions (in which the requested remedy is completely identical). Thus – in the petition at hand and in the petitions in HCJ 4701/14; HCJ 4704/14; HCJ 5135/14; HCJ 5136/14; HCJ 5908/14; HCJ 5904/14; HCJ 5908/14 *[sic]*; HCJ 5909/14; HCJ 5350/14; HCJ 5498/14; HCJ 6404/14 and HCJ 6713/14 - decisions were given by the Honorable Justices N. Solberg, U. Shoham, Daphne Bark-Erez, N. Hendel, S. Joubran and Y. Danziger according to which the respondents should submit a preliminary response to the petition. At the same time, in two other petitions – HCJ 6209/14 and HCJ 6211/14, which were filed recently, the Honorable Justice N. Solberg held that the petitions would be scheduled for a hearing before a panel and that the respondents should submit a response on behalf of the state prior to the hearing. As of the date hereof, the hearings in the petitions in HCJ 6211/14 and HCJ 6209/14 are scheduled for June 3, 2015.

The respondents are of the opinion, that it was at least expected of the petitioners to have noted in the opening part of the petition, that recently identical petitions were filed with the honorable court together with their case numbers and the judicial decisions which were made therein thus far, even if only for the purpose of an efficient handling of the different petitions and presentation of the full picture before the Justices of the Honorable Court.

22. In this context, and to complete the picture we would like to note that eight additional petitions are pending before this honorable court, in which the requested remedy is that the honorable court order the respondents to state that "the total denial of the possibility to upgrade the status of petitioner 2 and grant him a temporary A/5 status in view of the extension of the validity of the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003, without any possibility to undergo an individual examination, is not constitutional, and that the transitional provision in said

Law was null and void in view of the passage of time, and that based on such statement will order the respondents to upgrade his status."

The first petition in the additional series of petitions – HCJ 813/14 was scheduled for a hearing on January 1, 2015, after the respondents submitted, on April 6, 2014 a preliminary response on their behalf according to which the petition should be denied, and after the Honorable Justice Solberg decided, on April 23, 2014 to schedule the petition for a hearing. The additional petitions of this series (HCJ 813/14, HCJ 2302/14, HCJ 2305/14, HCJ 2415/14, HCJ 2420/14, HCJ 3069/14, HCJ 3071/14) – were **deferred** by the honorable court until judgment is given in HCJ 813/14.

23. Hence, in summary, respondents' position is that the petition should be denied on all causes.

The first remedy requested in the petition should be denied, due to the fact that section 2 of the Temporary Order Law, which was found to be constitutional by this honorable court sitting in expanded panels along with the other provisions of the Law, provides that the Minister of the Interior will not grant temporary residency visa to a resident of the Area;

The second remedy requested in the petition should be denied, due to the fact that according to case law, the honorable court will not order the government and the Knesset to enact a law, and will certainly not issue an order specifying the contents of the law.

In this context, as specified above, the comments of this honorable court concerning the Temporary Order Law were brought to the attention of the relevant agencies. As advised by the Population and Immigration Authority, these comments will be examined by the agencies which are engaged with the Temporary Order Law.

For all of the reasons specified above, respondents' position is that the petition should be summarily denied together with an order for costs and legal fees.

Today, 9 Heshvan 5775
November 2, 2014

(signature)	(signature)
Yochi Genessin, Advocate Senior division director (administrative affairs) in the State Attorney's Office	Moriah Frieman, Advocate Deputy in the State Attorney's Office