At the Jerusalem District Court
Sitting as a Court for Administrative Affairs

AP 32869-10-14
Scheduled for a hearing on
December 16, 2014, at 11:00
before the Honorable Judge A. Darel

In the matter of:

1. **_____ Hamadah, ID No. _____**
2. **_____ Hamadah, Jordanian Passport _____**
3. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel, Adv. Benjamin Agsteribbe
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

Population Immigration and Border Authority

represented by counsel from the Jerusalem District Attorney's Office (Civil),
7 Machal Street, Maalot Daphna, P.O.Box 49333
Jerusalem 91493
Tel: 02-5419555; Fax: 02-5419581

The Respondent

Statement of Response

According to the decision of the honorable court dated October 22, 2014, the respondent hereby respectfully submits a statement of response on its behalf. As specified below, respondent's position is that the petition should be denied, summarily and on its merits, and that the petitioners should be ordered to pay trial costs as required by law.

1. This petition concerns respondent's decision to deny the family unification applications due to failure to prove a center of life and submission of false documents.

2. Material contradictions were marked between petitioners' versions, as those were manifested in the hearings which were held for them and in the investigations which were conducted by the respondent. In view of said contradictions, the petitioners

failed to prove that during the last two years, prior to the submission of the application, they maintained a center of life in Israel.

3. Therefore, respondent's decisions dated February 15, 2009, which denied the application, and the decision of the appellate committee dated September 9, 2014, are lawful, proper and reasonable, and the petition should be denied.

A. The Relevant Facts

The Relevant Facts:

1. Petitioner 1, a permanent Israeli in Israel, born in 1970, married on February 4, 1994, petitioner 2, a Jordanian citizen, born in 1974. The spouses have five children: _____ born on June 26, 1995; _____ born on November 28, 1996; _____ born on January 6, 1999; _____ born on November 13, 2002; and _____ born on October 9, 2011. All children are registered in the population registration as permanent resident of Israel. The children were registered shortly after their birth: _____ on September 17,1998; _____ on December 12, 1996; _____ on January 25, 1999; _____ on December 4, 2002; and _____ on February 14, 2012.

2. As will be specified below, the children were registered as permanent residents under false representation of residence in the house of petitioner 1's parents. Only later it turned out that the petitioners were, in fact, residing in Wadi Hummus, in the Area.

3. On August 30, 1994, petitioner 1 submitted, for the first time, a family unification application for petitioner 2, application No. 2510/94.

4. On August 4, 1998, a response letter was sent to the petitioners, which stated that the application was approved, and that petitioner 2's status could be upgraded to a status of a temporary resident of Israel. The application was approved based on their statements (which later turned out to be false) that they were living in the house of petitioner 1's parents in Sur Bahir. On September 17, 1998, petitioner 2 received an A/5 temporary residency status.

5. On January 10, 2000, summaries of investigations conducted by the National Insurance Institute (hereinafter: the **NII**) which were concluded on August 21, 1995 and on May 12, 1996, were received, which indicated that petitioner 1 was living in a private property in Wadi Hummus, outside Israel.

   A copy of the findings of the NII investigation is attached and marked Exhibit A.

6. On June 18, 2001, in an interview which was held for the petitioners, they argued that they were living in the house of petitioner 1's father in Sur Bahir, and that they left the Wadi Hummus property in 1994.

   On June 21, 2001, a summary of an NII investigation, which was concluded on February 21. 2001, was received, which indicated that petitioner 1 continued to reside in his private Wadi Hummus property in the Area. Consequently, petitioners' family unification application was denied on June 21, 2001, on the grounds that the petitioners were residing in Wadi Hummus, in the Area.

7. A copy of the letter was delivered to the petitioners on February 16, 2005.

   A copy of respondent's decision is attached and marked Exhibit B.

8. On August 7, 2006, petitioner 1 submitted a second family unification application for petitioner 2, application No. 1411/06.

9. On November 29, 2006, a letter of petitioners' counsel was received, which requested to urgently process petitioners' application, in view of a judgment which was given by the Labor Court and according to which it was decided to regard Wadi Hummus as a neighborhood located within the municipal boundaries of Jerusalem.

   A copy of the letter of petitioners' counsel is attached and marked Exhibit C.

   A copy of respondent's decision letter is attached and marked Exhibit D.

10. On December 13, 2007, petitioners' appeal was received which argued that Wadi Hummus constituted part of the Jerusalemite neighborhood Sur Bahir, and that its residents were Israeli residents.

11. On January 1, 2008, the appeal was denied.

12. On July 17, 2008, the petitioners filed an appeal against respondent's decision with the Jerusalem District Court, Administrative Petition 8568/08.

13. On January 26, 2009, judgment was given, according to which the petition was accepted.

   A copy of the judgment is attached and marked Exhibit E.

14. The respondent filed an appeal against the District Court's judgment with the Supreme Court, AAA No. 1895/09.

15. Within the framework of the appeal to the Supreme Court, the petitioners stated that they left their home in Wadi Hummus and moved to live in the house of petitioner 1's father in Sur Bahir, within Israel.

16. On December 17, 2009, the petitioners submitted a new family unification application numbered 743/09. The application was accompanied by an ancillary letter dated December 15, 2009, which stated that the petitioners moved on July 1, 2009, to the house of petitioner 1's parents in Sur Bahir, as well as by affidavits dated December 10, 2009.

   A copy of the application form and petitioners' affidavits is attached and marked Exhibit F.

17. On the application submission date, the petitioners were requested to furnish the water and electricity consumption data of their Wadi Hummus property.

18. On April 11, 2010, the state notified the Supreme Court that in view of the fact that the petitioners moved to reside in the Sur Bahir neighborhood within the municipal boundaries of Jerusalem, the petitioners would be entitled to submit a new application, and that until a decision was made in the application, petitioner 2 would receive B/2 visitation permits. In addition, the Supreme Court was requested to revoke the judgment which was given by the District Court in AP 8568/08.

19. On May 4, 2010, the petitioners were advised that petitioner 2 could apply to the respondent for the purpose of obtaining a B/2 visitation permit in Israel. Meanwhile, petitioner 2's B/2 visitation permits were extended until February 21, 2011.

20. On August 8, 2010, the petitioners were requested, once again, to furnish the water and electricity consumption data of the Wadi Hummus house.

21. On August 15, 2010, judgment was given in AAA 1895/09 which gave effect to the agreements of the parties and revoked the District Court judgment.

    A copy of the Supreme Court judgment is attached and marked Exhibit G.

22. On September 13, 2010, a letter dated September 5, 2010, was received, which stated tat the petitioners were residing in the house of petitioner 1's father in Sur Bahir, and that the electricity meter in petitioner 1's Wadi Hummus house was registered under the name of his brother. The letter was accompanied by affidavits dated August 30, 2010, and the Wadi Hummus electricity consumption data under the name of petitioner 1's brother, according to which, as of July 2009 the Wadi Hummus property electricity consumption data increased.

    A copy of the letter of petitioners' counsel and petitioners' affidavits is attached and marked Exhibit H.

23. On October 3, 2010, the petitioners were summoned for an interview which was scheduled for October 7, 2010. Petitioner 1 was requested to bring with him to the interview a confirmation from the electric company that no meter under his name was installed in the Wadi Hummus property. On October 7, 2010, an interview was held for the petitioners in which they stated that due to the petition, they left their Wadi Humus home and moved to the house of petitioner 1's parents in Sur Bahir about a year ago.

    The following are parts of the interview which was held for petitioner 2:

    Q: Until when did you live there? (the Wadi Hummus house)
    A: Until about a little more than a year.
    Q: Did you leave the house because of the trial?
    A: Yes.
    Q: Who lives in this house today?
    A: Nobody. The house is empty.
    …
    Q: Did you take anything from Wadi Hummus to Sur Bahir?
    A: Yes. We took everything with us.
    Q: What do you plan to do with the Wadi Hummus house?
    A: Nothing. We will just leave it as is.
    …
    Q: The electricity consumption in Wadi Hymmus from the day you left remained about the same in Wadi Hummus?
    A: No. Last month they received consumption of NIS 29.
    Q: From July 2009 the consumption in the house is almost consistent and there was no change since you left. The electricity consumption is even higher.
    A: I don't know. It's electricity consumption. Sometimes it's like this and sometimes like that.

    In his interview, petitioner 1 said as follows:

Q: Who lives now in the Wadi Hummus house?
A: Nobody.
Q: Where are all the articles which were in the Wadi Hummus house?
A: Some of them were left in Wadi Hummus and some of them were transferred to my family's house.
Q: What was left over there?
A: Living room, kitchen, beds.
Q: What will you do with the Wadi Hummus house?
A: It will stay closed. What can I do.

A copy of the transcript of the petitioners' interview is attached and marked Exhibit I.

24. On January 11, 2011, a confirmation from the electric company dated January 9, 2011, was received, which confirmed that no meter was registered under petitioner 1's name for the Wadi Hummus address.

A copy of the letter of petitioners' counsel is attached and marked J.

25. On February 20, 2011, notice was given to the petitioners that their family unification application was approved and the petitioners were summoned for February 23, 2011.

A copy of respondent's letter is attached and marked Exhibit K.

26. Accordingly, on February 23, 2011, petitioner 2 received a B/1 residency status for one year, until February 23, 2012.

27. On April 24, 2012, the petitioners submitted a request for extension. The request was accompanied, *inter alia*, by a letter dated February 9, 2012, and affidavit of petitioner 1, dated February 9, 2012. On April 22, 2012, notice was given that the request for extension was approved, and on April 24, 2012, petitioner 2's B/1 residency status was extended by one year until April 24, 2013.

28. On April 7, 2013, the petitioners submitted a request for extension. The request was accompanied, *inter alia*, by an undated letter from HaMoked and an affidavit signed by petitioner 1, dated April 3, 2013.

29. On April 18, 2013, telephone calls were made to the telephone numbers which were given by the petitioners. The petitioners were not located in the Sur Bahir house.

30. On May 7, 2013, another phone call was made to the number given by the petitioners. The call was answered by a woman who presented herself as petitioner 2, but the conversation held with her indicated that the speaker was not petitioner 2 and that the woman who answered the call knew nothing about petitioner 2's personal details.

A copy of a transcript of said conversation is attached and marked Exhibit L.

31. On May 20, 2013, a letter of petitioners' counsel dated May 7, 2013, was received, which requested to upgrade the status of petitioner 2 and grant her an A/5 temporary residency status.

A copy of the letter of petitioners' counsel is attached and marked Exhibit M.

32. On May 30, 2013, respondent's representatives conducted a visit of petitioners' Wadi Hummus house. The visit indicated that the Wadi Hummus house was a two story house. Petitioner 1's brother _____ and his wife _____ were living on the second floor, while the petitioners were living on the first floor. Petitioner 1's sister in law, _____, gave contradicting versions concerning the first floor apartment. She firstly said that the apartment was used as a storage house, then she said that the apartment was also used by her family, then she said that the apartment was used by her sister, and finally she said that the apartment was rented. Then, petitioner 1's brother and one of petitioners' sons arrived, and showed petitioners' first floor apartment to respondent's representatives. The apartment was found furnished with living signs such as food, clothes, text books, picture, toiletries, etc. Petitioner's 1 brother said that the petitioners used the apartment on weekends.

    A copy of the report of the visit which was conducted by respondent's representatives is attached and marked Exhibit N.

33. On June 24, 2013, an interview was held for the petitioners, in which they failed to refute the findings of the visit which indicated that they were, in fact, living in the Wadi Hummus house rather than in the house of petitioner 1's parents in Sur Bahir.

    The following are excerpts from the interview which was held to petitioner 1:

    Q: Who is the owner of the Wadi Hummus apartments?
    A: I am.
    Q: Who lives there today?
    A: Nobody.
    …
    Q: Why didn't you take the furniture?
    A: Because the house is 120 sq. meters and is loaded with furniture and the Sur Bahir house is 30 sq. meters.
    Q: So, there is no room for the furniture?
    A: No. It's my father's floor and there is no room to put things. It's his furniture.
    …
    Q: Do you go to the Wadi Hummus house?
    A: Rarely. I go to visit my brothers.
    Q: Who sleeps in the apartment?
    A: No one.
    Q: I show him the photographs from the visit. The house is fully furnished. Clothes in the closets, tooth brushes, toiletries, food in the refrigerator, bananas on the table. The house is filled with plenty and is clean?
    A: I have a son who has matriculation exams (Bagrut). He has exams. He goes for a few hours and comes back to my parents. This is the only reason. This is during the last 3 weeks until now.
    Q: How do you explain the books and copybooks?
    A: These are his books that he studies.
    Q: These are not old. These are from this year? And you read it yourself its of 'Udai and Qusai?
    A: What can I tell you
    Q: Explain it to me. I want to understand.
    A: They may be old.
    …
    Q: Who cleans the house?
    A: My brother's daughters sometimes go downstairs and clean the house.
    …

Q: **Qusai your son said that the books and copybooks belonged to him and to his brother and also the clothes in the closet?**
A: **Ok. These are their clothes. Not the neighbors'. It's clear.**
Q: **How come there is so much food in the refrigerator?**
A: **I told you. He has matriculation exams and he makes sandwiches. What lots of food? Isn't it allowed to have food in the house?**
Q: **Your brother told us that you were sleeping there during the weekends?**
A: **He can say what he wants. I don't sleep there at all. Other than visiting my family I don't…**
Q: **I asked him if nobody lives in the house why should the refrigerator be filled with food and then he told me that you were simply staying there over the weekend.**
A: **I tell you I don't stay there. Other than the boy nobody goes.**
Q: **How is it that the tooth brushes are wet?**
A: **Maybe they had some water over them. He used, took a shower.**
Q: **It is very strange that your brother says that his daughters don't clean the house?**
A: **Only his daughter go downstairs to clean the house.**
…

The following are excerpts of the interview which was held with petitioner 2:

Q: **When did you leave Wadi Hummus?**
A: **2008**
Q: **And since 2008 where do you live?**
A: **In Sur Bahir.**
…
Q: **Who lives in Wadi Hummus?**
A: **Nobody.**
Q: **Is it rented?**
A: **No.**
Q: **Do you occasionally live there?**
A: **No. There is nobody there.**
Q: **Does anyone sleep there?**
A: **No.**
Q: **Does anyone use the apartment?**
A: **No.**
…
Q: **You say that there is no room in Sur Bahir and therefore you did not take the furniture, and on the other hand you bought a double bed and beds for the children. Why didn't you take the furniture from Wadi Hummus to Sur Bahir?**
A: **We just bought.**
Q: **Why were the tooth brushes wet then?**
A: **No**
Q: **I saw that the tooth brushes were wet**
A: **I don't know.**
I have a boy who studies for his matriculation exams two three hours and he goes because it's quiet over there.
Q: **And that's why the brushes are wet?**
A: **Maybe he used them.**
…
Q: **And what do you say about the children's books and copybooks?**
A: **I told you that the boy is studying for his matriculation exams.**
Q: **What is his name?**

A: **'Udai**
Q: **There is a copybook of Qusai here.**
A: **Sometimes he goes with him to study and they go to the children of their uncle. They go to study and come back…**
Q: **Who cleans the house?**
A: **Nobody. The children who go clean**
Q: **The house is dusted**
A: **I tell you that they go and clean.**

A copy of the transcript of the interview which was held for the petitioners is attached and marked Exhibit O.

34. On July 28, 2013, a detailed and reasoned letter was sent to the petitioners which notified them that their family unification application was denied.

A copy of the letter with respondent's decision is attached and marked Exhibit P.

35. On August 15, 2013, a copy of the transcript of the visit which was conducted in petitioners' Wadi Hummus house on May 30, 2013, was sent to petitioners' counsel.

36. On October 7, 2013, an objection letter dated September 8, 2013, was received.

A copy of petitioners' objection letter is attached and marked Exhibit Q.

37. On October 14, 2013, the objection was rejected.

A copy respondent's decision is attached and marked Exhibit R.

38. On November 19, 2013, the appeal was submitted.

39. On September 9, 2014, the decision of the chair of the appellate committee which rejected the appeal was given. Hence the petition.

B. <u>The Normative Framework</u>

40. Section 1(b) of the Entry into Israel Law, 5712-1952 (hereinafter: the "**Entry into Israel Law**") provides that a person who is not an Israeli citizen or who does not have an *Oleh* visa or an *Oleh* certificate does not have an inherent right to stay in Israel, and his stay in Israel is conditioned on a residency status which would be granted to him under this law. The power to grant residency status and the discretion to exercise said discretion, under the Entry into Israel Law, are vested with the Ministry of Interior, or anyone authorized by him for this purpose.

41. According to section 6 of the Entry into Israel Law, the Minister of Interior is empowered to grant various categories of visas and residency permits, and prescribe conditions for their issue and validity. According to the beginning of section14 of the Entry into Israel Law, the Minister of Interior is empowered to promulgate regulations for the implementation of the law. The Entry into Israel Regulations, 5734-1974, were promulgated pursuant to said section (hereinafter: the "**Entry into Israel Regulations**").

42. The rule is that the Minister of Interior has broad discretion in the exercise of his powers under the Entry into Israel Law, including concerning the question of whether or not an entry into Israel visa should be granted, and whether or not status in Israel should be given (see HCJ 758/88 **Kandel v. Minister of Interior**, IsrSC 46(4) 505 (1992) (hereinafter: "**Kandel**"); HCJ 4156/01 **Dimitrov v. Ministry of Interior**, IsrSC 56(6) 289 (2002)). Said rule is premised on the principle of sovereignty, by virtue of which the state has broad discretion to decide who will enter its gates, to prevent foreigners from entering its territory or remove them when they are no longer wanted (HCJ 482/71 **Clarck v. Minister of Interior**, IsrSC 27(1) 113, 117; **Kandel**, page 520; HCJ 1031/93 **Passero (Goldstein) v. Minister of Interior**, IsrSC 49(4) 661, 705; HCJ 4370/01 **Lepka v. Minister of Interior**, IsrSC 57(4) 920, 930).

43. The policy of the Ministry of Interior stems from state sovereignty and its exclusive discretion to decide who may stay in its territory. For this purpose, strict criteria were established, based on weighty humanitarian considerations. As a general rule, only an application for visa or residency status in Israel of an individual who complied with said criteria, would be examined. And it should be emphasized. The grant of status in Israel is not a matter that can be taken lightly, as it grants rights and creates status, particularly when the final objective is the grant of a permanent residency status in Israel.

C. <u>Proof of Center of Life</u>

44. Within the exercise of the discretion in the examination of a family unification application, the applicant's center of life is examined, among other things. This is a material condition for the approval of the application. It should be clarified that the applicant is required to prove center of life for two years prior to the submission of the application – a period which proves establishment of life in Israel.

45. According to respondent's procedures, the approval of an application for status is conditioned upon proof of a center of life in Israel for (at least) two years prior to application submission date. Said requirement is entrenched in respondent's procedures, concerning the examination of such applications, and was recognized by case law as a proper and reasonable requirement (see for instance: AP(Jerusalem) 742/06 **Abu Qweidar v. Ministry of Interior** (reported in Nevo, April 15, 2007); AP (Jerusalem) 8716/08 **Rajub v. Minister of Interior** (reported in Nevo, November 15, 2009)). This is a material, rather than a technical requirement.

46. It was further clarified by case law that the burden to prove a center of life in Israel lied on the applicant, namely, on the permanent resident. The respondent does not have to prove that the petitioners do not maintain a center of life in Israel. If the respondent was not convinced that the petitioners satisfied the burden imposed on them to prove that they maintain a center of life in Israel – it is sufficient to reject the application. (AP (Jerusalem) 622/07 **Nasrallah v. Minister of Interior** (reported in Nevo, May 11, 2008); AP (Jerusalem) 8028/08 **Jafer v. Ministry of Interior** (reported in Nevo, July 27, 2008); and more). The imposition of the burden of proof on the status applicant was also recognized as a reasonable condition (AP (Jerusalem) 10549-02-11 **Shweiki v. Ministry of Interior** (reported in Nevo, July 13, 2011), paragraphs 12 and 15 of the judgment)).

47. Thus, for instance, it was held in AP 157/07 **Qwamleh v. State of Israel – Ministry of Interior** (reported in Nevo, March 2,2008):

> **The premise of our case is that the burden to prove a center of life in Israel lies on the petitioners. In other words, it is not the**

respondent who must prove that the petitioners did not live during the relevant period in Israel, but rather, the petitioners must prove the existence of a center of life in Israel.

48. The examination of the condition of a center of life is based on administrative evidence. The administrative evidence is more flexible than the judicial evidence, and is any evidence which a reasonable person would have regarded as having an evidentiary value and would have relied on (HCJ 987/94 **Euronet Golden Lines v. Minister of Communication**, IsrSC 48(4) 412, 424-425; HCJ 1712/00 **Uri Orbanovitch v. Ministry of Interior, Population Administration**, IsrSC 58(2) 951, pages 957-958; HCJ 2394/95 **Muchnik v. Ministry of Interior**, IsrSC 49(3) 274; HCJ 442/71 **Lanski v. Minister of Interior**, IsrSC 26(2) 337, 357; HCJ 6163/92 **Eizenberg v. Minister of Housing and Construction**, IsrSC 47(2) 229, 268). The authority may also rely on administrative evidence which were gathered by other bodies **including the NII, to the extent the evidence meets the test of reasonableness of the administrative evidence** (AAA 9018/04 **Muna v. Ministry of Interior**)(My Emphases, G.A.)

49. The respondent must exercise its discretion and base its decision "on a proper and well founded factual infrastructure, which was established after data gathering and taking into consideration all facts relevant to the matter." (HCJ 3975/95 **Kaniel v. Government of Israel**, IsrSC 53(5) 459 (1999)). In this context, the credibility of the applicant is of great importance, as the provision of false or partial information to the authorities may affect the conclusions of the authority (AP (Jerusalem) 19605-07-12 **Al-Mazrawi v. Chair of the Appellate Committee for Foreigners** (Jerusalem Region), (reported in Nevo, October 29, 2012).

50. The requirement to prove a center of life during the two years which preceded the submission of the application was recognized by this honorable court in AP 14295-11-11 **Lama Abu Ghit** (Paragraphs 9-12 of the Judgment dated February 13, 2012), by the Honorable Judge, Dr. Marzel as follows: "9. (…) my conclusion is that the petition should be denied. There is no dispute before me, and it is not contested by the petitioners that the requirement for a two year center of life in Israel as a condition for the approval of the registration application, is a lawful and reasonable requirement. (…) In this dispute, I accept the position of the Appellate Committee for Foreigners, according to which the requirement to prove a two year center of life is a material and constitutive condition for the establishment of the registration right. (…) 10. The petitioners have indeed challenged respondent's decision to reject the application (…) – an application which was rejected in the absence of a center of life for two years in Israel at that time. Said challenge, in the administrative petition which was filed (…) did not succeed in the sense that petitioners' argument in that regard – was **rejected**. This means that the court held in the judgment that petitioners' application was duly denied in the absence of a center of life during the two years which preceded the submission of the application. Said denial which was lawful, also means that there was no room to approve the application when it was submitted, and that the required conditions for its approval were not upheld by the petitioners upon theirs submission of the application. Therefore, there was no room to approve it, until such time as the above two years shall have been completed. (…) Hence, the argument according to which the application submission date should be regarded as the relevant date – despite the fact that at that time the two year center of life condition was not met, cannot be accepted. (…). **11.** It should be emphasized that it is not a technical matter. The requirement to prove a two year center of life is a material requirement which was recognized by case law as a reasonable requirement.

51. It should be noted that the state of Israel must cope, *inter alia*, with the phenomenon of foreign residents who wish to abuse the various procedures according to which status in Israel may be obtained, for the purpose of receiving status in Israel unlawfully, and receive various social benefits the monetary value of which may amount to dozens of thousands of Shekels per year. All of the above, in addition to the opportunity to work and make a living in Israel.

D. <u>Delivery of false information</u>

52. According to case law, the fact that an application for a residency status in Israel is based on false data constitutes sufficient grounds for its rejection, and if status has already been given – the fact that the application was based on false data constitutes sufficient grounds for its revocation. In HCJ 9047/00 **Yigmor v. Minister of Interior**, TakSC 2003(1) 358, the Honorable Justice Mazza held that "**A license which was obtained by false means cannot grant its holder any actual rights**."

53. Thus, in AP 586/04 **Abu Khalifa Yusra v. Ministry of Interior** the honorable court (Honorable Judge Arad – as then titled), denied a petition in which the petitioner gave an NII investigator false information concerning her place of residence, which contradicted the details which were included in her affidavit which was given in the context of a family unification application, and held as follows:

> **Under these circumstances, in view of the fact that the petitioners based their application on false data, there is no room to intervene with respondent's decisions to reject their application**.

54. Said rule was reiterated the court in another judgment (the Honorable Judge Arad) (AP (Jerusalem) 742/06 **Abu Qweidar v. Minister of Interior**) in which it was held as follows:

> **The rule is that when an application for a residency status in Israel is based on false data, it may be rejected based on these grounds alone, and if status has already been given – the fact that the application was based on false data constitutes sufficient grounds for its revocation (HCJ 9047/00 Yigmor v. Minister of Interior, TakSC 2003(1) 358 (2003); AP (Jerusalem) 981/03 Samarah v. Ministry of Interior, not reported (2004)).**

55. Ad in AP (Jerusalem) 981/03 **Samarah v. Ministry of Interior** (not reported) the Honorable Judge Adiel held as follows:

> **As it was proved that petitioner's application was based on false affidavits and documents, and as petitioner's counsel was also unable to explain why the petitioner resorted to such lies if he indeed lived in Israel, the respondent was justified in making his decision. Under these circumstances respondent's decision falls within the realm of reasonableness and there is no reason for court's intervention in its discretion**.

56. Respondent's general and proper position is that an application which was based on false data should not be examined altogether, regardless of the material aspect and the

question of whether the applicant could have submitted his application had it been based on truthful data.

57. **The petitioners failed to meet the burden of proof imposed on them, and failed to comply with the agreement which was reached between the parties in AAA 1895/09, in which the petitioners undertook to move to Sur Bahir. The approval of their application was based on said undertaking**.

58. The petitioners argue that for the revocation of an existing license there is no need to examine where the petitioners sleep and where their effective center of life is, and that a partial examination of the property which is owned by them but was found locked, is sufficient.

59. The petitioners argue further that a broad interpretation should be given to the term "center of life", pursuant to its definition in the Income Tax Ordinance, the Disengagement Plan Implementation Law, and the Rabbinical Courts Jurisdiction Law

60. The petitioners also argue that the judgment of the Supreme Court in AAA 1966/09 **'Attoun v. Ministry of Interior** (hereinafter: **'Attoun**) should have been relied on.

61. Respondent's response to these arguments is as follows: As specified above, the condition of maintaining a center of life in Israel is a material condition, which was recognized by case law and the interpretation of which should be made according to the judgments of the courts for administrative affairs. The graduated procedure is premised on the substantiation of a center of life in Israel. As is known, the permanent residency status gives legal validity to a certain reality. In the absence of proof that the spouses maintain a center of life in Israel, the residency status has nothing to rely on and no humanitarian basis for the approval of the application exists (compare AAA 9018/04). The respondent relies on administrative evidence concerning the existence of a center of life, including NII decisions and findings of visits conducted in properties registered under petitioners' name. The argument that petitioners' actual center of life should not be examined and that the examination of their locked house is sufficient should be totally rejected. All the more so when it does not reconcile with the findings of the visit in petitioners' Wadi Hummus house, which indicated that the house was actively used for all intents and purposes. Food and the children's books were found in the house which was clean. As specified above, the findings of the visit indicated that the petitioners were residing in their Wadi Hummus house.

62. With respect to **'Attoun**, the respondent will argue that according to the majority opinion in this case it could not be held that the petitioners maintained a center of life in Israel in view of the fact that they lived in Wadi Hummus, beyond state boundaries, rather than in Sur Bahir, and therefore, the appeal was denied, contrary to the dissenting opinion of the Honorable President, as then titled, Beinisch..

63. As stated by the Honorable Justice Levy:

> **as my colleague proposes to rule (§21 of her judgment) – I am afraid that accepting the appeal would indeed have broad ramifications. I refer to the fact that there may be many more situations in which a person would conduct a center-of-life in Israel and establish his place of residence outside its territory. This is all the more the case in an age where means of transportation are such that make travel between communities**

> **simple (is it not conceivable that there are other cases of people who live on the outskirts of Jerusalem, but work in the city every day and use the services it offers?).**

And in the words of Justice, as then titled, Grunis:

> **However, one cannot ignore the issue of principle and the broad ramifications of a ruling that accepts their arguments, particularly considering that the relevant law, the Entry into Israel Law, 5712-1952 (hereinafter: the Law) and the regulations enacted pursuant thereto, seek to regulate a person's status in Israel, not outside it. As known, Appellants 2 and 3 live with their family outside the country. A Supreme Court ruling in favor of the Appellants cannot be reduced to the matter of Appellants 2 and 3 only. It is clear that in Wadi Hummus, where Appellants 1-3 reside, there are others in similar circumstances. Even if no court proceedings have taken place in the matter of these other individuals, it is incumbent upon us to foresee the possibility that the issue will resurface. In these circumstances, I join my colleague, Justice (retired) E.E. Levy.**

64. Even the judgment of Justice Beinisch refers specifically to petitioners' circumstances only, and does not sweepingly determine that Wadi Hummus is located within state boundaries. As specified above, this is a minority opinion which was not accepted.

65. **In view of all of the above – the petition should be denied in view of the fact that the petitioners do not maintain a center of life in Israel, but rather, outside state limits, and in view of the fact that the petitioners presented false representations – concerning their place of residency which is located outside state limits**.

E. <u>Appellate Committee for Foreigners</u>

66. On November 25, 2008, notice of the Minister of Interior dated November 13, 2008, was published in the collection of Government Notices, in the *Official Gazette* (Rashumot) (Government Notices 5870, page 439), according to which by virtue of his power pursuant to section 16(a) of the Entry into Israel Law, 5712-1952, the Minister of Interior delegated to the chair of the appellate committee for foreigners at the Ministry of Interior his powers pursuant to sections 2(a) and B, 3, 3A(a), (b) and (c), 4, 5, 6 concerning specific cases, and 11 of the law.

67. On December 11, 2008, the appellate committee for foreigners' procedure was published (procedure No. 1.5.0001), according to which the committee was established and operates. The procedure is published in the website of the Ministry of Interior. Said procedure was updated from time to time and on March 14, 2011 the "Appellate Committee for Foreigners' Procedure – Jerusalem and Tel Aviv Regions" was published.

68. The appellate committee for foreigners acts as an administrative appellate instance on the decisions of the population administration, on the issues which were specified in said procedure and on issues which were added thereto with the passage of time, as specified in the above mentioned collection of Government Notices, until such time as a court for foreigners is established by law.

69. According to section 3.2 of said procedure, the commissioner of foreigners' appeals (the chair of the appellate committee) may approve the decision with respect of which

an appeal is submitted, change it, revoke it, and adopt another decision *in lieu* thereof (within the powers vested with the deciding authority), or remand the case with instructions to the deciding authority. In fact, within the framework of the appeal, the matter is usually reconsidered in a manner which enables to adopt another decision *in lieu* of the decision which was adopted by the authority. The scope of the discretion vested with the appellate committee is wider than the scope of the judicial review. While within the framework of the judicial review, the court examines whether or not a mistake occurred in the administrative decision, the scope of intervention of the appellate committee is broader (compare: LCA 2425/99 **Raanana Municipality v. Y.H. Initiation and Investments Ltd**., IsrSC 54(4) 481, 495 (2000)).

70. Against the above legal backdrop, we shall now examine whether or not the discretion of the administrative authority in the case at hand meets the test of reasonableness. The respondent will argue that the case at hand is a clear case in which the administrative decision is well rooted within the realm of reasonableness, as will be clarified below.

F. <u>Respondent's Position</u>

71. **Petitioners' version was found to be incorrect. The petitioners made a false representation concerning their place of residence**.

72. **The respondent will argue that a visit which was conducted by respondent's representatives in petitioners' Wadi Hummus apartment indicates that the apartment is furnished, equipped and it seems that the petitioners live in this apartment. The petitioners underwent a comprehensive interview in which the petitioners were confronted with respondent's findings. <u>The respondent will argue that in the interview, material contradictions were found between petitioners' versions and the versions of petitioner 1's sister in law and brother who were present at petitioners' house at the time of the visit</u>. The petitioners were unable to provide a satisfactory explanation to the fact that clear evidence was found in the house which indicated that it was used for residential purposes: thus, for instance, the tooth brushes in the house were wet and seemed to have been used that day. In addition, no explanation was given to the food and current text books of petitioners' children which were found in the house**.

73. The petitioners have no explanation for the contradictions between their versions, other than the explanation which reflects things as they really are, namely, that the petitioners are trying to present themselves as having a center of life in Israel, in Sur Bahir, while, in fact, petitioners' center of life is in Wadi Hummus, outside Israel.

<u>What is it all about</u>?

74. The respondent will argue that the petition should be denied because the petitioners neither reside nor maintain a center of life in Israel.

75. A specified above, on May 30, 2013, respondent's representatives conducted a visit in petitioners' Wadi Hummus house. The findings of visit have unequivocally indicated that the petitioners reside in Wadi Hummus rather in the house of petitioner 1's father in Sur Bahir. The report of the visit indicates that the house is fully furnished and equipped, fresh food was found in the kitchen and text books of the current school year of petitioners' children were found in the house.

76. On the date of the visit, respondent's representatives spoke with petitioner 1's sister in law who firstly said that the first floor was not used for residential purposes but rather as a storage room. Thereafter, she changed her version and claimed that the apartment was used for residential purposes and that it was occasionally rented. On the other hand, petitioner 1's brother claimed that the petitioners were residing in Sur Bahir and that they came to the Wadi Hummus house n weekends and holidays. When the petitioners were confronted with the findings of the visit which was conducted by respondent's representatives,, in an interview which was held for the petitioners on June 24, 2013, the petitioners presented a different version, according to which the house was furnished because petitioners' children were studying in the Wadi Hummus house. Needless to point out that this version does not reconcile with the versions of the family members as well as with respondent's findings.

77. **On this issue the respondent will argue that in view of the fact that the petitioners can neither argue nor do they argue that they reside in both apartments contemporaneously, and in view of the fact that respondent's findings prove that the petitioners live in Wadi Hummus, they cannot reside at the same time in Sur Bahir as well**.

78. The interview which was conducted on October 7, 2010, indicated that the petitioners were living in the Wadi Hummus house and that the house was not locked as they argued. Thus, when petitioner 2 was asked whether the petitioners transferred the furniture from their Wadi Hummus house to Sur Bahir, petitioner 2 said "Yes. We took everything." And when she was asked what they intended to do with the Wadi Hummus house she said "nothing, We will just leave it as is."

79. The respondent will argue further that telephone calls made by the respondent also indicate that the petitioners do not live in the house of petitioner 1's father in Sur Bahir. It will be further argued that the electricity bills also prove that the electricity consumption in the Wadi Hummus house did not decrease, but rather increased. The petitioners did not provide any documents to prove their allegation that they did reside, during the relevant period, within the territory of Israel.

80. **In view of all of the above, this petition should be denied as there can be no dispute that the application was based on false information – and in view of the fact that the petitioners gave contradicting versions and failed to prove a center of life in Israel during the two years which preceded the submission of the application**.

G. Respondent's decision is reasonable and proportionate

81. The respondent will argue that the petition should be denied because the petitioners failed to prove that they resided within Israel during the two years which preceded the submission of the family unification application. Worse than that, while their application was under respondent's review, they presented false details and contradicting versions to support their application. For these reasons the petition should be denied and the decision of the appellate committee should be remain in force.

82. The court for administrative affairs exercises judicial review over the administrative decision and examines its reasonableness, but does not replace the discretion of the competent authority with its own discretion. The reasonableness of the action of the administrative authority is not examined according to the question what would have been decided by the court *in lieu* of the competent authority, and only if the action of the administrative authority exceeds reasonableness in a material and extreme manner,

the court will intervene in said action (see for instance: HCJ 376/81 **Lugasi v. Minister of Communication**, IsrSC 36(2) 449 (1981).

83. In view of all of the above, the honorable court is requested to leave the decision of the appellate committee in force, and deny petitioners' application in view of the factual description which was presented. The respondent exercised its power properly and reasonably, taking into consideration the entire facts and data presented to it, and the petitioners have certainly failed to show any cause for a judicial intervention in its decision.

84. An affidavit which will certify the contents of this statement of response will be filed shortly before the hearing.

In view of all of the above, the honorable is requested to deny the petition, summarily and on its merits, and obligate the petitioners to pay costs of trial and attorneys' fees under the law.

(signed)
Gila Ashkenazi, Advocate
Jerusalem District Attorney's Office (Civil)

Jerusalem, Kislev 12, 5775
December 4, 2014