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

Before the Honorable Judge Dr. Yigal Marzel

December 25, 2014

AP 32869-10-14 Hamada et al., v. Population Immigration and Border Authority

In the matter of:

1. _____ **Hamadah**
2. _____ **Hamadah**
3. **HaMoked: Center for the Defence of the Individual**

by counsel, Adv. Benjamin Agsteribbe

The Petitioners

v.

Population Immigration and Border Authority

By counsel Adv. Gila Ashkenazi, Jerusalem District Attorney's Office

The Respondent

Judgment

Preface

1. Petitioner No. 1 (hereinafter: **petitioner 1**), an Israeli resident, and petitioner No. 2 (hereinafter: **petitioner 2**), a Jordanian citizen, were married in 1993. The spouses have five children, permanent residents of Israel. The spouses resided in Wadi Hummus, which is not included within the municipal boundaries of Jerusalem, but is separated from the territories by the separation fence and is adjacent to Sur Bahir which constitutes part of Jerusalem.
2. Over the years, the petitioners submitted a family unification application and an application for visa, which was given from time to time. In 2009, the petitioners and the respondent reached an understanding, in the framework of a proceeding which was heard by the Supreme Court (AAA 1895/09), according to which the petitioners would move to Sur Bahir, which is located within the territory of Israel, and their family unification application would be processed in the framework of the graduated procedure until a permanent residency status is granted.
3. As of 2009, the petitioners acted in the framework of the graduated procedure, and on February 20, 2011, a B/1 tourist visa was granted to petitioner 2. On April 24, 2012, the visa which was granted to petitioner 2 was extended for an additional year. On April 4, 2013, after the elapse of a 27

month period, during which petitioner 2 had a B/1 tourist status, she submitted an application for the upgrade of her status to a permanent resident status, holding an A/5 visa.

4. On May 30, 2013, a surprise visit was conducted by respondent's representatives in petitioners' Wadi Hummus house. Before the visit, a representative of the respondent had a telephone conversation with a woman who presented herself as petitioner 2. Thereafter, a hearing was held for the petitioners, following which their family unification application was denied and the graduated procedure was severed. An objection which was submitted by the petitioners against said decision was rejected, as well as an appeal which was filed by the petitioners with the Appellate Committee for Foreigners. Hence the petition before me, in which the petitioners request to revoke the decision to sever the graduated procedure and deny the application for the grant of status by virtue of family unification.
5. The respondent is of the opinion that there is no cause to interfere with the decision of the appellate committee, with the decision which was given in the objection, and with the original decision, which are all based on proper factual administrative infrastructure, according to which petitioner 2 does not maintain her center of life in Sur Bahir, which is located in Jerusalem, as was undertaken by the petitioners in the appeal which was heard by the Supreme Court, but rather, in Wadi Hummus which is located outside the municipal boundaries of Jerusalem.

The decision and the proceedings which followed it

6. The decision (Exhibit P/10 of the petition) was given, as aforesaid, after the hearing. The reason for the denial was "**failure to prove a center of life within the municipal boundaries of Jerusalem**". Among the reasons it was stated that according to the petitioners, as of 2009, they were living in the house of petitioner 1's father in Sur Bahir. However, following the visit of the Wadi Hummus property on May 30, 2013, and a hearing which was held on June 24, 2013, the respondent concluded that the petitioners were residing in Wadi Hummus rather than in Sur Bahir.
7. Said determination was based on the following reasons:
 - a. The attempts to locate the spouses, the petitioners, in the Sur Bahir residential apartment, at the phone number which was provided by them in support of their application, were unsuccessful.
 - b. The visit which was conducted in the Wadi Hummus house on May 30, 2013, indicated that the spouses were residing there. Indications that the apartment was used for residential purposes were found, including full furniture, books and copybooks of the children, pictures, clothes, toiletries, food. Petitioner 1's brother, Muhammad, said that petitioner 1, Riad, resided in the father's house in Sur Bahir and came to the Wadi Hummus property on weekends. His version did not reconcile with the findings of the visit which indicated that the family members resided in the house on a permanent basis.
 - c. In the hearing which was held on June 24, 2013, the spouses argued that they did not reside in the Wadi Hummus property, but rather in the house of petitioner 1's parents in Sur Bahir. When they were asked why the Wadi Hummus house was furnished, they said that the Sur Bahir apartment was too small for all the furniture in their possession and that they have therefore left it in Wadi Hummus. According to the respondent, this argument does not reconcile with the fact that the spouses acquired a double bed and beds for the children for the father's house in Sur Bahir. When the petitioners were asked about the large quantity of clothing which was found in the Wadi Hummus apartment, they said that these were old

clothes. The respondent did not find this argument reasonable, as well as the argument concerning the toiletries including the wet tooth brushes. The answer which was given in that regard was that petitioners' son _____, was using the house to study for his matriculation exams (Bagrut) and that he has probably used them. The petitioners were also asked in the hearing about the food which was found in the refrigerator and said that the food was for their son _____ who came to the house. Said arguments did not reconcile with the statement of petitioner 1's brother, Muhammad, who said that the spouses came to the house on weekends.

8. The petitioners, through petitioner 3, submitted an objection to the director of the regional bureau of the Population Administration. In the objection they argued that the decision was a "miserable decision". According to them, all elements of the decision reconciled with petitioners' position according to which they continued to use the Wadi Hummus house along with their residence in the Sur Bahir house. The petitioners argued in the objection that the decision was made without a parallel visit of the Sur Bahir house, and therefore the respondent could not have reached the above conclusion. Petitioners' position was that the determination that they did not maintain a center of life in Jerusalem could not be upheld, unless made after a thorough examination, including that of the Sur Bahir property in which they resided. In addition, they note that when the visit of the Wadi Hummus house was conducted they were not there, but were rather requested to arrive to the house – a fact which supported the argument that they were not living there. The petitioners are also of the opinion that the interpretation given to the telephone conversations with petitioner 2, as well as to the statements made in the hearing, are incorrect.
9. The respondent rejected petitioners' objection and reiterated the grounds for the original decision. In its decision, the respondent pointed out that in the visit, clear signs were found which indicated that the Wadi Hummus apartment was used for residential purposes – a fully furnished house, the children's books and copybooks, clothes, toiletries and food were found in the apartment. Therefore, the respondent did not find any reason to visit the house of petitioner 1's father in Sur Bahir. The respondent also noted that petitioner 1 did not answer any of the phone calls which were made to the telephone number of the Sur Bahir house which was given by him. One of the calls, on May 7, 2013, was answered by a woman who identified herself as petitioner 2, but could not provide any personal details about her, as indicated by the summary of the conversation which was cited in the decision. Another call was not answered and a third call was answered and respondent's representative was told that the petitioners went to a doctor's appointment. According to the respondent, the summary of the conversations indicated that the petitioners were not residing in the house.
10. In addition, the respondent noted that the school materials which were found in the Wadi Hummus house did not belong only to the son _____, and that the large quantities of food which were found in the apartment seemed to have been prepared for more than one child who came to study in the house for a few hours.
11. Following the rejection of the objection, the petitioners filed an appeal with the Appellate Committee for Foreigners, in which they reiterated their arguments against the decision which denied their family unification application. The respondent responded to the appeal, following which a decision was given.

The decision of the appellate committee being the subject matter of this petition

12. The chair of the appellate committee reviewed in the decision the proceedings which took place and the arguments raised, and decided to reject the appeal. He concluded that the findings which were presented by the respondent clearly indicated that the latter has thoroughly investigated

petitioners' matter. He referred to a new detail which was in respondent's possession and which raised its suspicion, namely, the fact that the electricity consumption in the Wadi Hummus house from the date on which the family members left the house, remained the same as during the period which preceded their departure. In addition, suspicions were raised following the telephone conversation which was made with the Sur Bahir house which left the impression that the petitioners were trying to deceive the respondent and encumber a possible visit.

13. Thereafter, the chair of the appellate committee reviewed the findings of the visit conducted by respondent's representatives in the Wadi Hummus house. He held that said visit did not leave any room for a doubt that the petitioners maintained their center of life in that house, based on two details: the first one – the findings in the Wadi Hummus house did not indicate that it was left a while ago, but rather that it was currently used for residential purposes on a daily basis (a wet tooth brush, fresh bananas, full refrigerator with food for a family, etc.); the second one – the explanations given by the family members on scene – who refrained from giving simple answers and one clear and unequivocal version, and who gave, instead, three constantly changing versions: the house was not used at all, other than for storage purposes; the house was used for residential purposes on the weekends; and the house was used by the son when he was studying there. All details pointed at a lack of credibility, and it was therefore held "in order not be hard on the appellants" that even if the petitioners maintained a center of life in Sur Bahir – it was clear that their main center of life was maintained in Wadi Hummus. Therefore the appeal was denied.

The Arguments

14. The petitioners emphasize in their petition the geographic continuity between Sur Bahir neighborhood and Wadi Hummus neighborhood – two adjacent neighborhoods which are located on the Israeli side of the separation fence. Despite the fact that Wadi Hummus neighborhood is located in Palestinian territory, it is disconnected from all other West Bank areas, and therefore the ties of its inhabitants are to Israel. They are of the opinion that the decision does not rely on sufficient administrative evidence and is unreasonable.
15. According to the petitioners, the decision concerns, clearly and directly, human rights, and therefore the realm of reasonableness is relatively narrow. The purpose of the legislation is clear (protecting the family unit) and the effect it has on human rights is substantial. In the absence of a contradicting interest, the reasonable decision, according to them, is to let petitioner 2 continue with the family unification procedure.
16. Factually, the petitioners argue that their center of life is in Jerusalem – and that they live and sleep in their Sur Bahir apartment within the territory of Israel, their children attend schools in Israel, the family makes its living in Israel and receives services in Israel where it also makes its household shopping. The petitioners refer to the definitions of center of life as they appear in section 1 of the Income Tax Ordinance, the Disengagement Plan (Implementation) Law, 5765-2005, and a host of judgments in which the term "center of life" was defined.
17. According to the petitioners, the main test for determining their center of life is where they sleep – this issue was not examined by the respondent whose representatives satisfied them-selves by visiting the Wadi Hummus property which was found locked. Hence, the respondent failed to meet the heavy burden imposed on it while revoking a license which has already been granted. In addition, the petitioners are of the opinion that the new data on which the respondent relied, are incorrect:

- a. Electricity consumption – with respect to the electricity consumption the petitioners argue that a mistake occurred in the description of this issue in the decision, in view of the fact that the electricity consumption which was examined by the respondent pertained to petitioners' Sur Bahir apartment rather than to the Wadi Hummus property (as indicated by the decision of the appellate committee). The petitioners note that according to the transcript, the amount due under the electricity bills for the Sur Bahir apartment, which is registered in the name of petitioner 1's father, was low and unreasonable in view of the fact that petitioner 1's family consisted of 14 members. The stipulation which appears in the decision, according to which there was no change in the Wadi Hummus' electricity consumption, had no basis whatsoever, and therefore, a decision which is based on said erroneous information, cannot be upheld.
 - b. The telephone conversation with petitioners' Sur Bahir apartment – the petitioners argue that petitioner 2 answered the call and even called petitioner 3 immediately thereafter. It is further argued that an anonymous person, who claimed to have been calling from respondent's bureau, started to yell at her that he knew that she was lying. The conversation frightened her and she wanted to put an end to it. This explains why petitioner 2 refrained from conducting a sincere conversation and from responding to the questions asked.
 - c. The visit of the Wadi Hummus property by respondent's representatives and the hearing which was held for the petitioners – the petitioners argue that they have never concealed the fact that the Wadi Hummus property was used and maintained by them and that they occasionally stayed there. They use the property as a storeroom, to store their furniture and property. They use the apartment for their needs, but they do not use it for residential purposes and they do not sleep over there.
18. Due to respondent's incessant persecution, as they define it, the petitioners decided to add two additional rooms to their Sur Bahir apartment and transfer all their entire belongings thereto. Consequently, the Sur Bahir apartment is more spacious and at the same time, the petitioners removed all their belongings from the Wadi Hummus property and emptied it.
 19. The petitioners note that the separation fence created a physical barrier between Wadi Hummus and all other West Bank areas, and therefore they should be regarded, even if they were living in Wadi Hummus, or were living there at least partially, as having their center of life in Jerusalem. On this issue the petitioners refer to AAA 1966/09 '**Attoun v. Minister of Interior**' (November 22, 2011)(hereinafter: '**Attoun**').
 20. The respondent argues that the burden to prove center of life in Jerusalem is imposed on the petitioners who failed to satisfy it. The administrative evidence presented by the respondent was sufficient for the purpose of making the decision and therefore, there was no room for the petition. The respondent argues further that the petition should also be denied because false details were given.
 21. According to the respondent, petitioners' Wadi Hummus house was found to be functioning for all intents and purposes at the time of the visit. There was food in the house, it was clean, the children's text books were there and the findings indicated that the petitioners were residing in the house. The respondent argues that in the interview which was conducted following the visit, substantial contradictions were found between the petitioners' version and the version of petitioner 1's brother and his sister in law who were in the house. The petitioners were unable to provide explanations for the clear signs which indicated that the house was used for residential purposes, such as the wet tooth brushes and the current text books of the children.

Discussion and Decision

22. The question to be resolved in this petition, is whether respondent's decision, that petitioners' center of life was maintained in Wadi Hummus, which is located outside the municipal boundaries of Jerusalem, rather than in Sur Bahir, which is located within the boundaries of said area – was adequately based on sufficient administrative evidence, and what does it mean to have a "dual center of life". There is no dispute that the petitioners used the Wadi Hummus apartment until they have recently vacated it. It should therefore be examined, whether such use indeed leads to the conclusion that the petitioners maintained their center of life in the Wadi Hummus apartment.
23. The decision of the appellate committee, being the subject matter of this judicial review, was based on the following:
- a. **Electricity consumption data** of the Wadi Hummus house, which indicated that there was no change in electricity consumption after the petitioners left their Wadi Hummus apartment.
 - b. **The visit of the Wadi Hummus House by respondent's representatives and the telephone conversation that respondent's representatives had with the petitioners before the visit** – in this regard, the committee emphasized the fact that the family members who were on scene did not give respondent's representatives a cohesive explanation regarding their findings.
 - c. **An interview of the petitioners which was conducted in the framework of a hearing held after the visit** – based on the transcript of the hearing, the appellate committee emphasized the contradictions between the versions given by the petitioners regarding their presence in the Wadi Hummus apartment.
24. As will be specified below, I am of the opinion that the administrative evidence on which the respondent relied was not sufficient to lead to the conclusion that petitioners' center of life was in Wadi Hummus, in general, and particularly, in a situation in which, even according to the appellate committee, the possibility of having two centers of life was not ruled out.
25. The term "center of life" has two aspects – the objective aspect, that examines the physical ties of an individual to a specific place, and according to which the place having the vast majority of ties is the center of life of that individual; which is coupled by the subjective aspect – that examines the mental connection of an individual to a specific place, including his intention to live in a certain place in the future; the reasons for his presence or absence from a certain place, and even his sense of belonging to a certain place (see the comprehensive review committee (Jerusalem) 138/05 **Gavriel Sluk v. Entitlement Committee pursuant to the Disengagement Implementation Law** (August 28, 2006)(hereinafter: **Sluk**) and the references there). The objective test and the "reality of life which actually took place" was given preference (HCJ 282/88 **'Awad v. Yitzhak Shamir, Prime Minister and Minister of Interior**, IsrSC 42(2) 424,433 (2006) (hereinafter: **'Awad**). However, the term "center of life" is of a flexible nature, which accepts the existence of more than one center of life and connection to two different places (**'Awad**, page 433; **Sluk**, paragraph 10). In this regard it was held, for instance, that sleeping in Jerusalem during a defined period of one year, did not, in and of itself, disconnect petitioner's center of life from Nisanit, unless it was established that during said period "petitioner's ties to Jerusalem were more substantial and significant than the ties he had at the same time to Nisanit" (**Sluk**, paragraph 16), and that a distinction should be drawn between a "a mere temporary absence and an absence which disconnects the connection of permanent residence" (CA 4127/95

Zelkind v. Beit Zayit Moshav Ovdim LeHityashvut Shitufit Ltd. IsrSC 52(2) 307, 314-324 (1998) (hereinafter: **Zelkind**). An additional consideration is the geographic proximity between the two centers of life (see AP (Beer Sheva) 21231-11-13 **Muhammad Bahiz v. Minister of Interior** (February 6, 2014).

26. Petitioners' Wadi Hummus house is located only a few hundred meters away from their Sur Bahir apartment and the two neighborhoods are both located on the "Israeli side" of the separation fence. It is therefore obvious that the "legal" separation between the two neighborhoods is somewhat artificial, as they are adjacent to one another without any physical barrier, and their inhabitants actually maintain a joint center of life in Israel (see '**Attoun** above, paragraph 1 of the judgment of Justice E. Levy; and see also *Ibid*, paragraphs 22, 25 of the judgment of the President D. Beinisch).

27. Against the above backdrop, it seems that the appellate committee was willing to accept petitioners' position that the Sur Bahir house constituted a "sort of a center of life" for them. However, according to the committee, it was only a "secondary" center while the "primary" one was maintained in Wadi Hummus:

At least, the appellants do not maintain their main center of life in Sur Bahir. The appellants may possibly maintain a sort of a center of life in the house of appellant 1's father, but it is clear that the main center of life of appellants' family is maintained in Wadi Hummus village (*Ibid*, page 3 of the appellate committee's decision).

28. Said assumption, that the petitioners had a primary center of life and a secondary center of life, required a factual examination of their "secondary" Sur Bahir center of life as well, which would have made it possible to determine whether it was indeed a secondary center of life, but the decisions which were given were based on a visit which was conducted in only one of these centers of life, without any data that made it possible to compare between the use of each one of the centers of life, which existed even according to the appellate committee.

29. One cannot dismiss respondent's position that when presented with an unequivocal factual situation which indicated that the petitioners were actually living in the Wadi Hummus apartment, the respondent had sufficient basis to determine that this was petitioners' "primary" center of life. However, a review of the findings and the administrative evidence on which the respondent based its determination concerning petitioners' "primary" center of life, reveals that this is not the situation and that there are cracks in the strength of the administrative evidence which supports the above assumption.

30. Firstly, the findings underlying respondent's decision are based on a single visit of its representatives during daytime and on telephone conversations which preceded it. When respondent's representatives came to the house the petitioners were not there. Indeed, the conclusions of respondent's representatives were based on the large quantity of furniture which was found in the apartment and on the questioning of petitioners' family members that raised their suspicions, but under the circumstances of the case at hand, and in view of the ramifications of their conclusions, respondent's representatives should have gathered additional indications, mainly in view of the various possible available ways for the conduct of a more thorough examination of such a matter (see 32995-07-12 **Hassan Shu'amra v. Ministry of Interior** (January 1, 2013). In addition, no weight was given to the fact that the petitioners were not in the house.

31. Secondly, the determination of the appellate committee according to which respondent's decision to change the status granted to petitioner 2 derived from "a new meaningful piece of information" which was found in the electricity consumption data of the Wadi Hummus house, is not accurate. Indeed, the issue of the electricity consumption in Wadi Hummus came up in an interview conducted by respondent's representatives to petitioner 2 on October 7, 2010, in which the petitioners were asked why the electricity consumption did not decrease after they have allegedly left the property, according to their own declaration. However, a review of the file indicates that a confirmation of the electric company submitted by the petitioners, according to which the electricity meter in the Wadi Hummus property was not registered under petitioner 1's name, satisfied respondent's representatives. The family unification application of petitioner 2 was approved on February 20, 2011, and she was granted a B/1 visa for one year. Thereafter, on April 24, 2012, an additional visa was granted for one more year. Said conduct indicates that the respondent did not think that the data concerning the electricity consumption in the Wadi Hummus house could justifiably negate the recognition of petitioners' residence in Sur Bahir (see and compare: **Sluk**, paragraph 15). It should be noted that in petitioners' hearing held on June 24, 2013, after the visit of the property, it was specifically petitioners' counsel who wanted to present the water and electricity bills of the Wadi Hummus house but he was told that "the electricity meter was in the name of his brother Muhammad and was not relevant. In addition, the electricity consumption of the father in Sur Bahir can be examined" (see RS/1 Exhibit O, page 2 of the transcript). However, the data concerning the electricity consumption in the Sur Bahir house were not requested at all by respondent's representatives and were not mentioned in the decision of the appellate committee.
32. Thirdly, a review of the decision of the appellate committee and of the other findings in the file indicates that precisely the findings which were found in the Wadi Hummus house, and indicated of "current daily routine", were not mentioned in the property visit report dated May 30, 2013. Thus, for instance, while the respondent and the appellate committee give considerable weight to the "wet" tooth brushes which were found in the house and regard them as a "smoking gun", this has no trace in the report which summarizes the visit of the house, and the allegation was made for the first time by respondent's representative in the hearing which was conducted to petitioner 2 about a month later, on June 24, 2013, during which she was asked: "Why then were the tooth brushes wet?" (RS/1 Exhibit O, page 1 of the transcript of petitioner 2's interview). The same applies to the finding of the "fresh bananas" which are mentioned in the decision of the appellate committee, a finding which did not appear in the visit report. It should be noted that in the hearing, respondent's representative told petitioner 1 that in the apartment "bananas were found on the table", however, even she did not claim that "fresh bananas" were found (*Ibid.*, page 1 of the transcript). The lack of factual infrastructure that supports said findings, on which the decision of the appellate committee is based, reduces the weight which should be attributed to the facts underlying the decision.
33. Fourthly, as to the large quantity of furniture which was found in the apartment, it seems that it cannot sufficiently justify the conclusion that petitioners' "primary" center of life is in Wadi Hummus. In this context it was held that "the mere existence of an apartment in the Area, even if it is fully and luxuriously furnished, does not constitute, in and of itself, proof of absence of center of life", and that "even if it is occasionally being used". (see and compare AP (Jerusalem) 497/07 **Dima Aldejani v. State of Israel – Population Administration Office** (February 10, 2008) (hereinafter: **Aldejani**).
34. In **Aldejani** the court held that the mere fact that the vast majority of the furniture owned by the family remained in the apartment in the Area, whereas in the apartment in Israel poor furniture or scarce clothing were found, "even if it raises suspicion, it does not sufficiently prove, that the

argument concerning a center of life in Israel was made based on false evidence." (*Ibid.*, paragraphs 5-6). It should be noted that despite the fact that their allegation, according to which they were living at the same time in the apartment in Israel was not refuted, the petitioners did not deny that they continued to occasionally use the Wadi Hummus apartment owned by them and gave a reasonable explanation for the fact that the furniture were left in the apartment, due to the absence of room in their Sur Bahir apartment.

35. In view of all of the above, I did not find, against the backdrop of the existence of two centers of life, that sufficient infrastructure was established for the determination that the primary center of life was maintained in Wadi Hummus rather than in Sur Bahir, and therefore there is no alternative but to revoke the decision which rejects petitioners' application for family unification and for an A/5 visa.

Conclusion

36. I accept the petition and revoke the decision of the appellate committee dated September 9, 2014, and consequently, respondent's decision dated July 28, 2013 and the decision in the objection dated October 14, 2013, to reject petitioner 2's family unification application and to severe the graduated procedure.
37. The respondent will reconsider petitioners' application for the resumption of the graduated procedure and for the grant of an A/5 visa based on this judgment and will give a new decision in their application within 30 days from the delivery of this judgment to the Attorney General's Office.
38. Despite the fact that the petition was accepted, and given the doubts raised by petitioners' conduct – I did not find room to issue an order for costs in their favor.

Given today, Tevet 3, 5775, December 25, 2014, in the absence of the parties.

(Signature)

Arnon Darel, Judge