At the Supreme Court **HCJ 4047/13**
Sitting as the High Court of Justice **AAA 7212/12**

_____ Hadri et al.

represented by counsel, Adv. Noa Diamond et al.
Of HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
Telephone: 02-6283555; Fax: 02-6276317

The Petitioners

v.

The Prime Minister, Mr. Benjamin Netanyahu et al.

Represented by the State Attorney's Office,
29 Salah a-Din Street, Jerusalem
Telephone: 02-6466590; Fax: 02-6467011

The Respondents

Response and Notice on behalf of the Petitioners and the Appellants

According to the decision of the honorable court dated September 17, 2014, the petitioners and the appellants hereby respectfully submit a notice and response to respondents' notice dated September 15, 2014 (hereinafter: the **notice** or **respondents' notice**).

In addition the petitioners and the appellants request, in view of respondents' response, and the following response, that a hearing will be scheduled in the petition and in the appeal.

Notice

1. Firstly, the petitioners wish to regretfully notify, that appellant 2, Mr. _____ Ahmad, who had cancer, passed away on September 7, 2014. Before appellant 2's death, the appellant and the three children of the spouses were prevented from meeting him and living with him for several years.

2. The appellants, including appellant 6, HaMoked: Center for the Defence of the Individual as a public appellant, are of the opinion that the need to discuss the erroneous holdings of the court of first instance is of great importance. As will be specified below, the tragic case of the appellants

was affected by said holdings, and demonstrates the unreasonableness of the arrangement which was proposed by the respondents concerning the retroactive application.

Response

3. As is remembered, a petition for *order nisi* was filed, in which the petitioner requested that the respondents appear and show cause why they should not revoke government resolution 3598 of June 15, 2008, which instructed the Minister of Interior to deny family unification applications of persons registered in the population registry as residents of the Gaza Strip and anyone residing in the Gaza Strip even if he was not registered in the population registry as a resident of the Gaza Strip.

4. The appeal concerned the holding of the court of first instance, which approved respondent's policy concerning a retroactive application of government resolution 3598 to family unification applications which were submitted before said resolution was adopted, on the grounds that security examinations may not be conducted in applications of sponsored spouses from Gaza. The appeal explained, *inter alia*, that the state never argued that security examinations could not be conducted to Gaza Strip residents, and that such examinations could be conducted and were indeed conducted in many cases, including in family unification applications, which were submitted before the date of the government resolution and in other categories of applications to enter Israel which were submitted after the adoption of said resolution.

5. In a hearing in the petition and the appeal, which was held on May 21, 2014, the honorable court raised questions concerning possible exceptions to the government resolution. According to the decision of the honorable court which was given in the hearing, the respondents submitted a notice concerning said questions on September 15, 2014.

6. In their notice, the respondents refer to two cases, to which the provision set forth in the last part of section 3D of the Temporary Order (the "geographic risk") will not apply as a threshold criterion for the examination of a family unification application:

    a. The first case concerns Gaza Strip residents who lawfully relocated to the West Bank with "the approval of the competent authorities", lawfully reside in the West Bank and lawfully changed their address in the Population Register with the approval of the military commander.

    b. The other case concerns Gaza Strip residents whose family unification applications were submitted between August 1, 2005, and March 28, 2007 (the dates on which the Temporary Order was amended), and whose application was not denied due to a specific reason (cases which were referred to the honorable court in the hearing as "pipeline applications").

7. We shall refer to these two cases below.

<u>The first exception: change of address requirement</u>

8. It should already be emphasized in the outset: **Section 3D of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 makes no reference to a registered address, but only to "the domicile state or residency area" of the applicant**. As broadly specified in the

petition, the government resolution expanded the "geographic risk" and turned it into a "registration risk" **without any authority**. Hence, to be precise, the state's agreement to create such an exception should be regarded as a consent not to apply the **limitations of the government resolution** (rather than section 3D) to family unification applications of individuals who are registered as Gaza residents, but Gaza is not their "domicile state" or "residency area", in view of the fact that section 3D does not apply to these cases in the first place.

9. To the crux of the matter it should be noted, that the exception offered by the state, as drafted in its notice, is *de facto* a meaningless exception, in view of the fact that as of 2000, the State of Israel prevents individuals whose registered address is in Gaza but who reside in the West Bank, from changing their address (with the exception of cases of political gesture) and in general, Israel does not permit the relocation of Gaza residents to the West Bank. Moreover, to petitioners' best knowledge, persons whose addresses were changed were treated by the respondent throughout the years and after 2008, regardless of these proceedings, as ordinary West Bank residents.

10. In addition, there is a group of people who do not meet the terms of the exception as drafted by the respondents, but to whom the underlying rational of the exception applies. These are individuals who, in fact, reside in the West Bank, but whose registered address is in Gaza, who relocated from Gaza to the West Bank before September 12, 2005. With respect to this group a judgment was given by this honorable court in HCJ 4019/10 **HaMoked: Center for the Defence of the Individual v. The Military Commander of the West Bank Area**, based on the state's notice according to which "Gaza residents who entered the Judea and Samaria area before September 12, 2005, will not be expelled unless there is a specific security justification to expel them." Namely, it was held that their presence in the West Bank would be "validated" by the state, in the sense that they would be able to continue to manage their center of life in the West Bank and would not be expelled from the West Bank to the Gaza Strip, only due to their registered address. Hence, there is a group of individuals who **severed their relations with Gaza** a long time ago, against whom no specific security information exists, and who live in Gaza with the court's approval and the state's consent. It would be absurd to apply the rational of the government resolution to these individuals, and they should be included in the first exception.

11. Relevant to this issue are the words of the Honorable Justice Hayut in the hearing of this petition:

> … There are individuals who resided in the West Bank. We are talking about a person who, in fact, has not been in Gaza since 2000 (the intention is probably to petitioner 2, N.D.). He is here, in the West Bank. There was an HCJ which was resolved by us on this issue. There is case law which provides that the definition of a 'resident of the region' is made according to the registration and should be interpreted according to actual residency. This concerns the definition of a resident. When they speak of the opinion under section 3D the definition of resident according to registration does not apply. It stems from the difficulty to check people particularly after Hamas took over. **If there is a person whose examination is not problematic in view of the fact that, in practice, he resides in the West Bank, then said reasoning is not applicable to section 3D. If he passed the age of 35 why shouldn't he undergo the procedure**.

(lines 9-14 page 9 of the Protocol of the hearing dated May 21, 2014. Emphases added, N.D.).

It should be noted that the late appellant 2, relocated to the West Bank in the 1990s, and was expelled from Israel in 2006, about a decade after his relocation to the West Bank and despite the fact that at that time a preliminary family unification application was pending in his matter. According to respondents' notice, a person in appellant's position, who has been living in Israel or in the West Bank for many years and prior to 2005, will not be entitled to a specific examination of his case.

<u>The second exception: Family Unification Applications which were submitted between August 1, 2005 and March 28, 2007</u>

12. The respondents notified that they were willing to conduct specific examinations of Gaza residents whose family unification applications were submitted between August 1, 2005 and March 28, 2007. The "boundaries" of the period were determined according to the amendment dates of the Temporary Order.

13. The petitioners and the appellants appreciate respondent's willingness to acknowledge the fact that severe harm was caused as a result of the retroactive application of the government resolution, but will argue that the exception offered by the state with respect to this matter, provides a partial solution only. We shall explain.

14. Firstly, to fully prevent a retroactive injury, the "upper limit" of the period specified in the exception should be June 15, 2008, the date on which the government resolution was adopted, rather than March 28, 2007, the date on which the Temporary Order was amended and the last part of section 3D was added. As specified in the petition, the government resolution expanded the applicability of section 3D (according to the petitioners and the appellants, without authority). Therefore, the exception should also include individuals whose family unification applications were submitted between the date on which the second amendment was enacted, March 28, 2007, and the date on which the "geographic risk" was expanded, June 15, 2008. It should be noted, that an example for such a person is petitioner 2, whose family unification application was submitted on January 2, 2008. At that time, petitioner 2 has not been living in the Gaza Strip for about eight years. Therefore, *prima facie*, the criterion set forth in the last part of section 3D did not apply to him (because his residency area was not in the Strip) – and indeed, his family unification application was not summarily rejected for this reason. The family unification application was eventually rejected due to the government resolution (in view of the fact that his registered address was in Gaza) rather than due to section 3D.

15. Appellants' case also demonstrates the difficulties posed by respondents' current position, in view of the fact that the complete application in their matter (after prolonged proceedings within the framework of a preliminary application) was submitted on March 16, 2008, about three months before the adoption of the government resolution, and was rejected on its merits on May 27, 2009 (for criminal reasons, which were disqualified at a later stage), a long time after the government resolution and after a specific examination of the matter was conducted. Indeed, in the few cases which were heard by the court on this issue, it was held or agreed, that applications which were submitted before the government resolution, should undergo a specific examination. See AP 1891/09 **Nadi v. Minister of the Interior** (February 15, 2011); AP 1039/09 **Dabet v. Minister of the Interior** (February 15, 2011); AP 20638-02-11 **Abu Hamda v. Ministry of the Interior** (December 19, 2011). Other than the above mentioned cases and the cases referred to in these

proceedings, the petitioners and the appellants are not aware of any other cases in which this issue was discussed and decided on.

16. It seems that fixing the date of the government resolution as the "upper limit" was also the intention of the honorable court in the hearing of the petition. See for instance, the words of the Honorable Deputy President, who referred to "individuals who were in the pipeline **on the eve of the government resolution**" (lines 26-27 page 7 of the protocol of the hearing dated May 21, 2014. Emphasis added, N.D.).

17. Secondly, if the respondents approve an exception of a specific examination of family unification applications which **were submitted but have not yet been approved**, all the more so, the respondents should approve a specific examination of cases in which the family unification applications **were approved – after specific examinations – prior to the effective date** but for some reasons the family unification procedures were severed. This is the case, for instance, of petitioners 5 and 6, _____ and _____ Abu 'Adra. The spouses married in 2001, and after the marriage Mrs. Abu 'Adra submitted a family unification application for her husband, which was approved. Mr. Abu 'Adra received renewable stay permits by virtue of the family unification procedure until 2009. In 2009, when Mr. Abu 'Adra arrived to the Erez crossing to renew his stay permit, he was told that application for the renewal of the permit has not yet been approved and that he should stay in Gaza until the permit is renewed. Mr. Abu 'Adra tried to explain that he did not want to go to Gaza and that his entire family was in Israel. He requested to call his wife, but was told "you can already call her from Gaza". Eventually, Mr. Abu 'Adra's pleas were to no avail, and he was expelled to Gaza. The spouses were unable to renew the family unification application procedure in view of the government resolution.

<u>Conclusion</u>

18. The respondents were willing to follow the court's comments which were made in the hearing, and establish certain exceptions to the total and sweeping applicability of the government resolution. The petitioners and the appellants are of the opinion that for the purpose of making the exceptions effective, fair and compatible with the spirit of the court's comments in the hearing, certain amendments should be made in the exceptions. We shall summarize them shortly:

    a. A provision should be added according to which the government resolution will not apply to family unification applicants whose registered address is in Gaza, but who relocated to the West Bank before September 12, 2005, according to the agreements which were enshrined in the judgment in the above HCJ 4019/10.

    b. A provision should be added according to which the government resolution will not apply to Gaza Strip residents, whose family unification applications were submitted between August 1, 2005 and June 15, 2008.

    c. A provision should be added according to which the government resolution will not apply to Gaza Strip residents, whose family unification applications were approved before June 15, 2008 following a specific examination, but the procedure in their applications was severed for these or other reasons, and later on they were prevented from renewing the procedure due the government resolution.

19. As aforesaid, the petitioners and the appellants request the honorable court to schedule a hearing in the petition and in the appeal concerning the isues arising from respondens' notice and petitioners' response.

Today, September 29, 2014.

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Noa Diamond, Advocate	Adi Lustigman, Advocate
Counsel to the petitioners	Counsel to the appellants