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

AP 57730-02-13

Before the Honorable Judge Nava Ben Or

In the matter of:

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

The Petitioners

v.

Chair of the Appellate Committee for Foreigners et al.,
all represented by Jerusalem District Attorney's Office
7 Mahal Street, Jerusalem
Tel: 02-5419555; Fax: 02-5419581

The Respondent

Application pursuant to the Contempt of Court Ordinance

The petitioners hereby file this application according to the Contempt of Court Ordinance and request the honorable court to enforce by order its judgment which was given **over four months ago**, on September 18, 2014.

The Petition

1. This petition concerned respondents' refusal to accept petitioner 1's application to grant her husband, petitioner 2, a DCO permit. The refusal was based on the argument that petitioner 2 was allegedly in a "conflict of interests" situation, in view of the position held by him with the Palestinian Authority.
2. The petition was filed on February 28, 2013. On May 7, 2013 a hearing was held in the petition. Upon the termination of the hearing a decision was given according to which the petitioners were given the opportunity to supplement their factual arguments concerning petitioner 2's occupation. On May 22, 2013, the undersigned sent to respondent's counsel relevant materials for the completion of the factual picture.

3. The respondents requested a considerable number of extensions for the purpose of submitting a notice regarding a new decision of the Minister of Interior in petitioner 2's matter. On May 14, 2014, the decision of the Minister of Interior was finally received, which – again – denied the family unification application.
4. In a response dated May 22, 2014, the petitioners argued that respondent 4's new decision failed to take into consideration the materials which were transferred to his legal counsel as well as the comments made by the court in the hearing dated May 7, 2013.

The decision – which was identical to the previous decision in petitioner 2's matter – had the same deficiencies which were specified by the petitioners in the petition, in their arguments and during the hearing.

5. On July 2, 2014, the respondent submitted his response, following several extensions, which were objected to by the petitioners.
6. On September 23, 2014, petitioners' counsel received the judgment which was given in the petition on September 18, 2014. The judgment ended by stating as follows:

The conclusion is that the decisions made in petitioner 2's matter were deficient, and that the accumulation of all such deficiencies provides sufficient basis for the revocation of the decisions and for remanding the matter to the administrative authority which should make a new decision in petitioner 2's application, taking into consideration all relevant circumstances, according to the host of reasons specified above.

7. It was further decided that a new decision in petitioner 2's matter will be made **within 60 days from the date of the judgment.**

Petitioners' applications to the respondent for the implementation of the judgment

8. On November 18, 2014, following the elapse of the 60 day period established in the judgment, petitioners' counsel wrote to the Population Authority's bureau in East Jerusalem, and requested to immediately receive the authority's new decision. A copy of said letter was sent to respondent's counsel from the District Attorney's Office.

A copy of the letter to respondent's bureau dated November 18, 2014, is attached and marked **P/60.**

9. On the same date respondent's counsel wrote that "the file was transferred for the handling of the bureau after a period during which the judgment was learnt and respondent's steps were considered. A response will be given soon."

E-mail correspondence dated November 18, 2014, is attached and marked **P/61.**

10. On December 15, 2014, the undersigned wrote to respondent's counsel to find out why a decision in petitioners' matter has not yet been received.

E-mail correspondence dated December 12, 2014, is attached and marked **P/62.**

11. The e-mail message dated December 15, 2014, was responded by an automatic notice which stated that respondent's counsel would be away from the office until March 12, 2015. Following the above notice, the undersigned turned to the secretariat of the District Attorney's Office, which in turn referred her to Ms. Adi Na'amet, the intern of the general manager of the administrative

department at the District Attorney's Office. The undersigned spoke with Ms. Na'amat on that very same day and gave her all the relevant details of the case. Ms. Na'amat said that she would handle the matter.

12. On December 21, 2014, Ms. Na'amat notified that a new decision in petitioner 2's matter would be given within a maximum period of 10 days.
13. On December 31, 2014, Ms. Na'amat informed by telephone that a decision was about to be given on the following week.
14. Despite Ms. Na'amat's sincere efforts, it seems that the relevant parties are not in a hurry to cooperate and make a decision in petitioners' matter, in view of the fact that while this application is drafted, a new decision in the matter has not yet been received.
15. Hence, the respondent does not uphold the judgment of this honorable court, in the sense that it does not make a new decision in petitioners' matter as it was directed to do by the judgment. It should be noted that this is not a new case which was submitted to the respondent, but rather a case with which the respondent, as well as the relevant security agencies and legal advisors are well familiar with. Therefore, respondent's procrastination is scandalous many times over.

The grounds for an application pursuant to the Contempt of Court Ordinance

16. There is no indication that the respondent has any intention to uphold the judgment in a timely manner. It is not a mere forgetfulness or neglect. The respondent and his representatives are well aware of the passage of time. However, the respondent chooses not to uphold the judgment. In this context it should be remembered that the proceedings before this honorable court were preceded by an objection which was handled by the respondent for almost a year. The respondent also requested many extensions in the petition at hand and an entire year passed from the submission of the supplementary argument to the respondent and until his new decision which was made within the framework of the petition, was received. It would have been appropriate had the respondent ceased this tradition of foot-dragging.
17. Respondent's conduct undoubtedly constitutes a contempt of court and severely injures petitioners' family.
18. Relevant to this matter are the words of the court in H CJ 2732/05 **Head of the 'Azzun City Council et al. v. Government of Israel et al.** (October 5, 2009): "The judgments of this court are not mere recommendations and the state should comply with them and uphold them as promptly and efficiently as required under the circumstances of the matter."
19. The honorable court is also referred to the words of the court in H CJ 4805/07 **The Center for Jewish Pluralism v. Ministry of Education (July 27, 2008)**, *ibid.*, paragraph 34 and onwards:

The basic principles of the rule of law are that "when a judgment was given, it must be upheld in word and in spirit" (per President Shamgar in H CJ 5711/91 **Poraz v. Chairman of the Knesset**, IsrSC 46(1) 299, 308 (1991)). The obligation to uphold and comply with judgments them is one of the basic conditions upon which the rule of law in a democratic state is founded...

35. Non-compliance with the judgment of the court by a citizen is a grave manifestation of a violation of the rule of law. Infinitely more serious is the non-compliance with a judgment by a State organ. Indeed, "the

obligation to obey a judgment of a competent tribunal, which applies to every person, applies with greater force to the state authorities" (Directive 6.1003 of the Directives of the Attorney General (of June 15, 2003)). Noncompliance by a state authority with a judgment of a judicial tribunal is one of the most serious and most worrying of the dangers that threaten the rule of law in a democratic state (A. Rubinstein and B. Medina *Constitutional Law of the State of Israel* (Vol. 1, *Basic Principles*, 2005) pp 271-274)... In one case, in which the State refrained from complying with a judgment in a timely manner, the following was stated by the court, which is also appropriate for our case:

"This reality of non-compliance with a judgment for a period of 7 months is a harsh reality in a law-abiding State when the State, which is responsible for preserving the rule of law, is itself complicit in the non-observance of the law and case law..." (HCJ 7713/05 **Noah – Israeli Association of Organizations for the Protection of Animals v. Attorney General** (not reported, given on February 22, 2006)).

20. It should be reminded that this honorable court found several flaws in respondent's decisions – the decision being the subject matter of the petition as well as the decision which was given while the petition was pending. The flaws, in a nut shell, were as follows:
 - a. The decision to deny the family unification application was based on section 3D of the Temporary Order (the "security clause"). However, as it turned out in the hearing, the denial was not based on "security reasons" but rather on "conflict of interests, *per se*", and it was not argued that petitioner 2's presence in Israel posed any security threat. The respondent – and security agencies – did not point at any specific risk arising from petitioner 2. The fact that petitioner 2 stayed in Israel by virtue of interim orders, which were not objected to by the respondent, reflects on the strength of the arguments concerning the specific security risk which arises from the alleged conflict of interests argument raised against petitioner 2.
 - b. The strength of a denial due to "conflict of interests" should be examined taking into consideration additional factors, such as a specific concern or the delivery of false information. Such factors were not brought, were not proved and were not argued in petitioners' case.
 - c. The petitioners provided detailed explanations concerning the scope of petitioner 2's employment and position with the Palestinian Authority, as a position of a civilian-academic nature. The phrasing of the second decision of respondent 4 does not indicate that any weight was assigned to said details, despite the consent expressed in the hearing of respondent's willingness to examine them.
 - d. Respondent's position should be balanced against petitioners' right to family life. It is a family unit which is maintained in Israel for about 14 years. Respondent's decisions do not assign enough weight to this matter.
 - e. An administrative decision in cases of this sort should meet the proportionality requirement. The decisions made in petitioner 2's case do not address the proportionality tests in the sense that petitioner 2 repeatedly emphasizes that he does not request – and also cannot receive – permanent residency status in Israel.
21. In the closing paragraph of the judgment, following its decision to revoke respondent's previous decisions, the honorable court commented that the administrative authority had ostensibly

received an opportunity to reconsider the entire circumstances and comments by the court. However, in its judgment, the court gave the respondent **another opportunity** to make a new decision by himself on the grounds that "said new decision (the intention is to the new decision which was made while the petition was pending, N.D.) was made before the deficiencies of the decisions were specified and in any event, the new decision did not refer to them. Moreover, in view of the concise reasoning of the last decision, and in view of all of the above reasons and the discretion of the administrative authority to begin with, the proper relief under these circumstances is to remand the matter to the administrative authority for the purpose of making a new decision by assigning proper weight to all relevant considerations."

22. Hence, the court refrained from entering respondent's shoes and from making a decision *in lieu* of the administrative authority, and the respondent received a proper opportunity to consider his position according the comments made by the honorable court in the judgment. It is regretful – to say the least – that a period as twice as long as the period allocated in the judgment for making a new decision has already passed and no decision was made. The petitioners are at a loss in view of the fact that the respondent is in contempt of the court's judgment and fails to make a new decision in petitioners' matter according to the additional opportunity given to him by this honorable court.
23. In view of the above, the honorable court is requested to hold that the respondent is in contempt of the court's judgment and instruct him to make a decision in petitioners' matter, forthwith. In addition, the court is requested to impose payment of trial costs in favor of the petitioners in view of the delayed decision and the need to file this application.

Jerusalem, January 25, 2015.

Noa Diamond, Advocate
Counsel to the petitioner

(File No. 15645)