At the Supreme Court **HCJ /15**
Sitting as the High Court of Justice

In the matter of:

1. **_____ Abu Jamal, ID No. _____**
2. **_____ Abu Jamal, ID No. _____**
3. **_____ Abu Jamal, ID No. _____**
4. **_____ Abu Jamal, ID No. _____**
5. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel, Benjamin Agsteribbe (Lic. No. 58088) and/or Adv. Sigi Ben Ari (Lic. No. 37566) and/or Hava Matras-Irron (Lic. No. 35174) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Bilal Sbeihat (Lic. No. 49838) and/or Abir Joubran-Dakwar (Lic. No. 44346) and/or Nasser Odeh (Lic. No. 68398)

Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Minister of Interior**
2. **Interior Minister's Humanitarian Advisory Committee**

represented by the State Attorney's Office
29 Salah a-Din Street, Jerusalem
Tel: 02-6466590, Fax: 02-6466713

The Respondents

Amended Petition for Order Nisi against Deportation from Israel

In accordance with the decision of the Honorable Court dated April 12, 2015, an amended petition for an *Order Nisi* is hereby filed seeking the Honorable Court to instruct the Respondents to appear and show cause:

Why should the decision of Respondent 1 of November 11, 2014 to revoke the Israeli stay permit held by Petitioner 1, the mother of three minors who are residents of Israel (Petitioners 2-4) and why should the Respondent not allow her to remain in Israel with her children by way of renewable stay permits

Urgent Motion for Interim Order to Prevent Removal from Israel

As detailed below, Petitioner 1, the mother of three minor children who are permanent residents of Israel is facing immediate removal from Israel, following a decision, the second decision issued by Respondent 1 in her matter, whereby the stay permit Respondent 1 has lawfully held for a number of years is null and void. However, as detailed at length in the petition, the aforesaid decision made by Respondent 1, as the previous decision, is fundamentally flawed. It was begotten of sin, and had better not have been made. We stress that this decision was given upon termination of a fundamentally flawed procedure, without due consideration of the entire circumstances and without substantive consideration of the many, serious, arguments raised by the Petitioners against the Respondents' intention to revoke Petitioner 1's stay permit. **Thus, the Honorable Court, is hereby requested to instruct the Respondents, by order, to refrain from implementing their decision to remove the Petitioner from Israel, pending the exhaustion of her rights before this Honorable Court.** The requested order is required in order to preserve a status quo and prevent the occurrence of one of two alternatives, both injurious and unreasonable: tearing the Petitioner away from her young children who are residents of Israel, or deporting the children, permanent residents, to the Occupied Palestinian Territories (OPT) along with their mothers.

To the Petitioners' knowledge, no security allegations have ever been made against the Petitioner, nor is it argued today that her **mere presence** in Israel is a danger or risk to public safety. On the other hand, it is clear that the Petitioner's deportation from Israel would seriously violate the fundamental rights of all members of the Petitioners' family. We also stress, that not only did the Respondents themselves raised no objection to the previous motion for an interim injunction filed in the matter of Petitioner 1 in the first petition filed to this Honorable Court in HCJ 8134/14, but they have filed repeated requests to extend the deadline for submission of their response to the Court, thus, knowingly allowing the Petitioner's continued stay in Israel.

High Court of Justice Petition

1. On March 2, 2008, the Court for Administrative Order (Amendment to First Schedule to the Law), 5767-2007 came into effect (published on December 6, 2007, file number 6626) (hereinafter: **the Order**). The Order stipulates that petitions against decisions made by the authorities under the Entry into Israel Law 5712-1952 and the Temporary Order, **other than decisions under Section 3A1** (humanitarian committee decisions) and 3C (individuals who made a special contribution to Israel), will henceforth be reviewed by the Court for Administrative Affairs. This indicates that petitions regarding decisions made under sections 3A1 and 3C of the Temporary Order will be reviewed by the HCJ.

2. This petition concerns the refusal of a request heard by the committee for humanitarian affairs, filed under section 3A1 of the Temporary Order. Therefore this Honorable Court has jurisdiction in the matter.

The parties

3. **Petitioner 1** (hereinafter: **the Petitioner**), _____ Abu Jamal, originally a resident of the OPT, is the widow of _____ Abu Jamal, one of the perpetrators of the attack on the synagogue in Har Nof in November 2014, and the mother of three minor children, **Petitioners 2-4**, born in 2008, 2010 and 2012 respectively (hereinafter: also **the children**). The children are permanent residents of Israel and registered as such.

4. **Petitioner 5** is a registered non-profit association which has made it its goal, inter alia, to assist residents of East Jerusalem and their families in their affairs with state authorities, including to defend their rights in court, whether on its own behalf as a public petition or as counsel for victims of rights violations.

5. **Respondent 1** is the minister empowered to accept or reject the recommendations presented to him by **Respondent 2**, which was established pursuant to section 3A1 of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003.

The Facts and Exhaustion of Remedies

6. Petitioner 1 (hereinafter: the Petitioner), _____ Abu Jamal, originally a resident of the OPT, is the widow of _____ Abu Jamal, one of the perpetrators of the attack on the synagogue in Har Nof, and the mother of three minor children, Petitioners 2-4, born in 2008, 2010 and 2012 respectively (hereinafter: also the children). The children are permanent residents of Israel and registered as such.

7. The Petitioner had been under the family unification procedure with her husband since 2009. Her current permit is valid until May 2015.

   The Petitioner's current permit is attached hereto and marked **P/1**.

8. On November 26, 2014, shortly after the attack on the synagogue, the media reported that the Respondent had revoked the Petitioner's stay-permit. At the time, the Petitioner had received no notice in the matter.

9. Therefore, the undersigned urgently contacted the Respondent to inquire whether the reports were true and accurate. The undersigned noted that if the reports were indeed true, this conduct was unacceptable as it is inconceivable that a person should learn her fate from the media rather than the agency that makes the decision itself.

10. It was also argued that if the reports were indeed true, the procedure that preceded the decision to revoke the permit was grievously deficient as the decision was made without prior notice of the intent to make such a decision being given, without provision of an opportunity to argue in writing or orally and with legal counsel, and ostensibly, without the individual circumstances of the Petitioner's family being taken into account. Thus, for example, it is highly doubtful that any weight was given to the fact that two of the Petitioner's children suffer from chronic medical conditions. This conduct, it was argued, does not comply with good governance practices and with the jurisprudence of the Supreme Court.

11. The letter also included a demand that the Respondent confirm whether various media reports were true and accurate, furnish Petitioner's counsel with a copy of the decision to revoke her permit, inasmuch as such a decision was made; if the permit had indeed been revoked, overturn the decision leading thereto and instead, follow a proper administrative procedure and furnish Petitioner's counsel with any further notifications regarding her matter.

    Urgent letter to the Respondent dated November 26, 2014, is attached hereto and marked **P/2**.

12. On the same day, it became known that the national medical insurance of Petitioners 2-4, the children, had been revoked. An urgent letter sent to the director of the National Insurance Institute (hereinafter: **NII**) as soon as the matter became known, was not answered.

    Urgent letter to the director of the NII, dated November 26, 2014 is attached hereto and marked **P/3**.

13. On November 28, 2014, before any response arrived from the Respondent, the Petitioner was informed that she was required to report to the Russian Compound police station on November 30, 2014, to receive an order for immediate removal from the country issued against her. Thus, the Respondent's decision is to be executed immediately.

14. On November 30, 2014, Petitioner's counsel, the undersigned, went to the Russian Compound police station to collect the order on behalf of the Petitioner. An officer by the name of Yigal Almaliah told the undersigned that he was requested to inform the Petitioner that her presence in Israel became illegal the moment notice of the revocation of her permit was received. The officer said he did not have a formal order to provide to the undersigned to take to the Petitioner, and that the summons to the police station had been in aid of explaining to her what was explained to the undersigned.

15. In the interim, when members of the family went to the mail distribution unit in their neighborhood on November 30, 2014, they discovered that on November 19, 2014, the East Jerusalem bureau of the Population and Immigration Administration (PIA) sent a letter reading:

    > Given the death of your spouse, the graduated procedure has ceased. I hereby inform you that **we are considering** the cessation of stay permits approved for you pursuant to the captioned application. Your file has been transferred to the Minister's professional advisory committee under Section 3A1 to the Citizenship and Entry into Israel Law (Temporary Order).
    >
    > (Emphasis added, B.A.)

    A notice from the East Jerusalem PIA bureau dated November 19, 2014, is attached hereto and marked **P/4**.

16. The Petitioner notified the undersigned immediately upon receipt of the aforesaid letter, and they immediately contacted the secretariat of Respondent 2 (hereinafter: also **the Committee**). Since no response was provided by the Committee's secretariat, the undersigned contacted Respondent's bureau to inquire whether the Committee had made its recommendation to the Respondent and whether the latter had made a final decision in the Petitioner's matter. Respondent's office referred the undersigned back to the Committee's secretariat. The Committee's secretary, Ms. Mazal, refused to provide Petitioner's counsel with documents and decisions regarding her matter without approval from Petitioner 2, Adv. Rosenthal, who was out of the country. Ms. Mazal also refused the

undersigned's request to contact Mdv. Rosenthal. Counsel for the Petitioner pleaded, arguing that Petitioner and her counsel were being put in an impossible position, with the Petitioner facing deportation – but to no avail. In another conversation with Respondent's office, with Ms. Mali, the undersigned were referred to the legal department of the PIA. The undersigned therefore contacted the secretary of the PIA Legal Advisor by telephone and by e-mail. The only answer received was that the matter was in processing.

17. At 2:40 P.M., Officer Yigal Almaliah arrived at the offices of Petitioner 5 and said that if the Petitioner did not come at the Russian Compound police station, he would "come to her".

18. It was only at 3:11 P.M., that Petitioner's counsel finally received Respondent's decision of November 25, 2014 with respect to the Petitioner. The grounds for the decision to revoke Petitioner's stay permit were: a) The family unit had "ceased to exist" after the husband's death; b) The Petitioner had "only" had a stay permit since 2010; c), "the committee has inquired and found" that "almost" all of the Petitioner's relatives were residents of the OPT, living in a-Sawahrah, such that there was no impediment to the Petitioner's returning to live there with her family; d) No further humanitarian grounds were found to justify the Petitioner's continued presence in Israel.

    The decision of the Respondent dated November 25, 2014, is attached hereto and marked **P/5**.

19. Given the Respondent's decision, on November 30, 2014, an urgent petition and motion to prevent the Petitioner's removal from Israel, pending exhaustion of her legal rights, was filed.

    A copy of the petition and the motion for an interim injunction, HCJ 8134/14, excluding enclosures, is attached hereto and marked **P/6**.

20. On that same day, the Court issued a decision that the Respondents would file a preliminary response to the petition and the motion for interim injunction by December 3, 2014. The Court's decision included an interim injunction, prohibiting the Petitioner's removal from Israel, pending further decision.

21. On December 3, 2014, the Respondents filed a motion by consent to extend the deadline for submission of their preliminary response, until December 8, 2014. The Honorable Court granted the motion the next day.

22. On December 8, 2014, the Respondents filed their response to the Court, indicating their position that inasmuch as the Petitioners had any further arguments, beyond those included in the Petitioner, which they believe should be considered by Respondent 1, they may submit such arguments in writing.

23. On December 9, 2014, the Honorable Court instructed the Petitioners to respond to the State's response within five days.

24. On the same day, the Petitioners filed their response to the State's response, in which they asked to receive documents that were inextricably related to the decision given in the Petitioner's matter, and were never furnished to them.

25. On December 10, 2014, the Honorable Court decided that the Respondents would respond to the Petitioners' response of December 8, 2014, within three days.

26. On December 14, 2014, the Respondents filed a response, again suggesting an outline of submission of written arguments, with follow-up notification to the State. On December 16, 2014, the Honorable

Court decided that the Petitioners would submit written arguments by December 25, 2014 and the State would submit its updating notice by January 6, 2015.

27. On December 25, 2014, the Petitioners filed written arguments to Respondent 1 and, at the same time, submitted an updating response to the Honorable Court.

    A copy of the written arguments is attached hereto and marked **P/7**.

    In their written arguments, the Petitioners repudiated the way in which the Respondents were conducting procedures against the Petitioner. The Petitioners stressed, inter alia, that the Respondents' conduct has resulted in the NII taking swift action to deny the status of the innocent children, which has since been restored thanks to intervention by Respondent 5. Two of these children suffer from medical conditions, which were never considered either in the summary review of the Petitioner's matter held by Respondent 2, or in the decision of Respondent 1 dated November 25, 2014. Additionally, the Petitioners argued that according to the Respondents' protocols, the Petitioner was entitled to have her matter examined by the Respondents fairly, according to existing practice and jurisprudence and without introducing extraneous considerations into the humanitarian procedure. In their written arguments the Petitioners also repudiated the Respondents' use of Respondent 2 to advance a goal that is entirely foreign to the purpose for which legislators established Respondent 2, all while severely harming young children, permanent residents of Israel, who have done nothing wrong.

28. On January 6, 2015, the Respondents filed a motion by consent for an extension of the deadline for submission of their updating notice, until February 6, 2015.

29. On February 8, 2015, the Respondents filed another motion by consent for an extension of the deadline for submission of their updating notice, this time until February 23, 2015.

30. On March 23, 2015, the Respondents filed another motion by consent for an extension of the deadline for submission of their updating notice, this time until February 25, 2015.

31. On February 26, 2015, the Respondents filed another motion by consent for an extension of the deadline for submission of their updating notice, this time until March 3, 2015.

32. On March 8, 2015, the Respondents filed another motion by consent for an extension of the deadline for submission of their updating notice, this time until March 23, 2015.

33. On March 23, 2015, the Respondents filed another motion by consent for an extension of the deadline for submission of their updating notice, this time until April 6, 2015.

34. On March 30, 2015, the Respondents filed an updating notice, which did not enclose the decision of Respondent 1 dated March 24, 2015 (hereinafter: also **the new decision**), which is the subject of this petition.

    A copy of the new decision, dated March 24, 2015, is attached hereto and marked **P/8**.

35. On the same day, the Honorable Court instructed the Petitioners to respond to the State's updating notice within seven days, including a reference to the question whether given the new decision made by Respondent 1, the petition, in its form at the time, had exhausted itself.

36. On April 5, 2015, the Petitioners filed their response to the Honorable Court, explaining, inter alia, that the petition had not exhausted itself even after the new decision in the Petitioner's matter. However, the Petitioners asked the Court, that if it thought differently, they would be granted the option of submitting an amended petition within 30 days.

37. As stated, on April 12, 2015, the Petitioners were granted seven days to file an amended petition, hence this petition.

The Legal Framework

38. Below, we argue, that the new decision is arbitrary and discriminatory, that it was the culmination of a wrongful procedure which included, inter alia, a hasty recommendation, given based on extraneous considerations and that it constitutes abuse of power for extraneous purposes. We also argue that the decision was made based on partial, tendentious, facts, while blatantly ignoring the Petitioners' written argument, filed, as recalled, in keeping with Respondent 1's requirement of December 12, 2014, in HCJ 8134/14. The conduct of Petitioner 1 in the case of the Petitioner indicates that the hearing was held for the sake of appearances only and therefore constitutes a severe violation of the duty to provide detailed reasoning and the right to a hearing. There is no doubt that even after the new decision was made, the decision and the administrative procedure remain improper and unreasonable, particularly given the severe violation the new decision causes to the rights of Petitioner's children, who are permanent residents of Israel. Since the Petitioner's right to a hearing was denied, the Respondent made his decision based on incomplete, biased, facts.

Decision Based on Extraneous Considerations

39. As the Petitioners emphasized in HCJ 8314/07, as far as is known, no security allegations were made against the Petitioner, nor was it alleged that her presence in Jerusalem is dangerous. It would have been expected therefore, that ministry level officials would act responsibly, employ professional discretion, consider the overall circumstances and avoid taking far reaching measures against innocents. However, as evinced by the recommendation and the new decision, which is once again based on the improper recommendation of Respondent 2, these flaws have, regrettably, not been corrected in this instance as well. We specify.

- **On Tuesday, November 18, 2014**, the Petitioner's husband took part in the attack on the synagogue in the Har Nof neighborhood in Jerusalem;

- **On Wednesday, November 19, 2014**, Respondent 1 sent a notice to the Petitioner that, given her husband's death, her matter has been transferred to Respondent 2 for a recommendation;

- **On Saturday, November 22, 2014**, the media widely reported that Respondent 1 instructed its staff to consider and make recommendations on how his powers as Minister of Interior may be extended for the purpose of denying the **permanent** residency and attendant social rights of residents of East Jerusalem who encourage terrorism and incite violence.

  Copies of the media reports dated November 22, 2014 are attached hereto and marked **P/9**.

- **On Sunday, November 23, 2014**, Respondent 2 held a so called hearing, during which members of the committee conveyed their positions over the telephone and a recommendation was made to Respondent 1;

Copies of the transcripts of the hearing held by Respondent 2 and the recommendation issued thereupon are attached hereto and marked **P/10 a-b** respectively.

- **On Tuesday, November 25, 2014**, Respondent 1 issued his first decision to discontinue approval for Petitioner's remainder in Israel;

- **On Wednesday, November 26, 2014**, the media reported that, following on Respondent's notification of November 22, 2014, he issued a decision in the Petitioner's matter;

  Copies of November 26, 2014 media reports are attached hereto and marked **P/11**.

- **On Wednesday, December 3, 2014**, the NII sent the Petitioners' family notice that the residency of Petitioner's children, Petitioners 2-4, had been revoked.

40. Put together, the above clearly indicate that the procedures conducted in the Petitioner's case, including the new decision made by Respondent 1, the recommendation made by Respondent 2, which underlies the decision, and the administrative procedure that preceded it at the Respondent's East Jerusalem bureau, were all motivated by the policy of deterrence and punishment publicly declared by Respondent 1 on November 22, 2014, whereby he instructed his staff to examine and recommend ways to extend his powers so that he would be able to take punitive and deterring measures against residents of East Jerusalem.

41. The transcripts of the hearing held by Respondent 2, the recommendation made by Respondent 2 to Respondent 1, the media reports and the decision made by Respondent 1 all indicate that the decision in the Petitioner's matter was motivated by a desire to deter and punish. The position of the Israel Security Agency (ISA), as quoted in the recommendation of Respondent 2, exposed the real motive for the revocation of Petitioner's permit (grammar mistakes appear in the original):

> That the handling of the murderers' families, the purpose of which is to create deterrence and send a message to the public that such terror attacks will not be tolerated without a complete and comprehensive response

42. In the new decision, using softer language, Respondent 1 repeats the real motivation for the decision and the recommendation, referring to the overall humanitarian considerations weighed in the humanitarian hearing:

> The hearing includes an overview of the circumstances and a single factor cannot, on its own, lead to the automatic granting of status. **Just as the overall circumstances are reviewed in the case of a woman who was widowed due to natural causes, so the overall circumstances will are reviewed in the case of a woman who was widowed due to unnatural causes**.
>
> … Humanitarian applications are inherently non-identical and there is no set list of circumstances that justify granting such applications.
>
> (Emphasis added, B.A.).

43. We emphasize, that while Petitioner's husband's death – a matter that has no relevance to the humanitarian question in the matter of the Petitioner and her children, and constitutes an extraneous consideration – was considered by the Respondents, as emerges particularly from the transcripts of the hearing held by Respondent 2, the Respondents never bothered to look into matters that are

entirely relevant to and inherently connected with the humanitarian circumstances of the Petitioners when making the new decision.

44. Among other matters, the Respondents never truly considered where the wretched children, effectively deported from their home by the Respondents, might live. They never sought a professional opinion about the ramifications removing the children and their mother from their home and natural environment might have. They never considered whether the Petitioner's mother and sibling, some of whom live in the West Bank are able or willing to take them in. Had the Respondents examined these issues thoroughly, they would have discovered, among other things, that the Petitioner's mother suffers from a mental illness and other chronic conditions. They would have found out that while Petitioner has some siblings in the West Bank, her father, who had divorced her mother, had married again, that he lawfully lives in Israel and that the Petitioner has siblings by her father who are Israeli citizens. The Petitioner also has a sister by both father and mother who has lawfully lived in Israel for about a decade, under the family unification procedure.

    Copies of medical documents attesting to the Petitioner's mother's medical condition attached hereto and marked **P/12**.

45. It is clear that considerations of deterrence and collective punishment have no place in the deliberations of Respondent 2, which was established solely for the purpose of examining and considering whether humanitarian reasons exist for granting a permit.

> An administrative authority is limited in the exercise of its discretion by the general rules of administrative law. It must act within the framework of its legal authority; it must take into account all **relevant considerations to attain the objective of the law** and refrain from taking into account extraneous considerations; **it must exercise its discretion equally and refrain from discrimination**; it must act fairly and honestly; and it must act according to a standard of conduct which is within the realm of reasonableness. This standard reflects, inter alia, the proper balance between the different relevant considerations. These general directives apply to all cases in which the administrative authorities have discretion.
>
> (HCJ 4422/92 Shlomo Ofran v. Israel Land Administration, reported in Nevo)
>
> (Emphases added, B.A.).

46. However, the extraneous considerations which were taken into account in the Petitioner's matter during the hearing held by Respondent 2, and which effectively underlie the new decision given in her matter, are part of the general purpose in our matter, which is to use the committee's deliberations for the attainment of improper objectives.

<u>Arbitrary, Discriminatory Decision</u>

47. In the fourth and ninth paragraphs of the new decision, Respondent 1 refers to just two of the many arguments raised by the Petitioners in their written arguments. However, in so doing, not only does the Respondent ignore the Petitioners' other arguments against the decision and the procedure that preceded it, but he deliberately subverts the arguments he does refer to. We specify.

48. Indeed, in paragraphs 16-23 of the written arguments submitted by the Petitioners, they addressed Respondent 1's protocol regarding the status of a foreign spouse in cases in which the marital

relationship expires due to the spouse's death. However, contrary to what is said in the new decision, the arguments raised by the Petitioners regarding the protocol were different:

> A review of the relevant procedure, which is procedure 5.1.0017, **indicates that the authority did not act according to its provisions in Petitioner's case**. Thus, the Petitioner **was not summoned** for a hearing prior to the cessation of the graduated procedure (section C of the procedure). The recommendation of the committee also seems to indicate that it did not regard the Israeli children as a special humanitarian consideration in Petitioner's case, despite the fact that the fact there are shared children constitutes an indication for humanitarian reasons according to the procedure (section D.2 of the procedure).
>
> (Emphases added, B.A.).

49. In paragraphs 5-6 of the new decision, the Respondent goes on to explain how, despite the fact that there is a protocol that governs the status of foreign spouses in cases in which the marriage expires due to the death of the spouse, the decision is still reasonable and how he reached the conclusion that there are no humanitarian grounds justifying approving the continued remainder of the Petitioner in Israel.

50. However, the Petitioners referred to the strong reasons justifying regulation of a foreign parent's remainder in Israel in cases in which there are children who are permanent residents, citing court judgments and the practices of Respondent 1. These judgments and practices clearly indicate wrongful, unjustified discrimination on the part of the Respondents in Petitioner's case, compared to the cases of other widows from the West Bank in similar, or even better, circumstances, to those of the Petitioner herein. As detailed below, two of the Petitioner's children are in poor health and her mother, who resides in the West Bank, is not well, and suffers from mental illness and other chronic medical conditions. And yet, in the new decision, the Respondent provided only a general explanation. Given the importance of these issues, the Petitioners once more direct the Court's attention to the judgements and practices cited in their written arguments, which indicate that the new decision and the recommendation on which it is based are arbitrary and improper.

<u>Grant of status to a parent of Israeli children</u>

51. The principle of the child's best interest is a well rooted and fundamental principle in Israeli law. In CA 2266/93 **A. v. A.**, IsSC 49(1) 221, Justice Shamgar ruled that the state should intervene for the purpose of protecting a child against a violation of his rights.

52. In HCJFH 8916/02 **Dimitrov v. Ministry of Interior – Population Administration** (July 6, 2003), it was held that the principle of the child's best interest may justify the grant of the status of his parent, even contrary to the general presumption that a child follows the parents rather than vice versa:

> The principle of the child's best interest has long been recognized as a core value of our legal system, and its importance cannot be overstated. Indeed, as a general rule "It is impossible to examine the matter of minors without examining their best interest" (CA 7206/93 **Gabay v. Gabay**, IsrSC 51(2) 241, 251). Thus, in the formulation of his decision, which determines the status in Israel of a foreign parent, the Minister of Interior must consider, inter alia, the best interest of the child of that parent and the effect such decision

may have on said child. Respondent's position, as aforesaid, is that despite the fact that as a general rule, parenthood to an Israeli citizen, cannot, in and of itself, grant permanent status in Israel, he also agrees that each case should be examined on its merits, to ascertain whether there are special humanitarian needs which justify a deviation from the general rule. Taking into consideration special needs may also include the needs of the child of the foreign spouse. The child's best interest, therefore, constitutes a consideration which should be taken into account by the Respondent as part of the examination process." See also: AAA 10993/08 **A. v. State of Israel** (not reported, March 10, 2010) paragraph 4 of the judgment of Justice Hendel).

(Ibid, paragraph 8 of the judgment of Justice E. Mazza).

53. AP (Beer Sheba) 313/06 **Physicians for Human Rights – Israel v. Ministry of Interior**, concerned the application for the grant of the status to a mother, who divorced the father of her children and had previously never participated in the family unification procedure, due to polygamy. The humanitarian committee decided to deny the application notwithstanding the injury which would be inflicted on the minor girls. In that case, the inter-ministerial committee denied the mother's application for status, due to the proliferation of polygamy, due to the fact that an application to arrange her status in Israel was not submitted during her marriage (though this was not possible), due to the fact she had remained in Israel unlawfully ever since her marriage, and due to the fact that two children remained with the husband. Judge Y. Alon accepted the petition, and ordered to remit the case to the committee. The Court's ruling in that case is therefore also relevant to our case:

> The denial of Petitioner's application immediately raises the question of the fate of her four young daughters (the youngest of whom is five years old) who are in her custody. The removal of the mother of the four girls from Israel will leave the four minor and young girls without a parent to look after them and raise them. Neither the refusal nor Respondents' arguments in their response, clarify what will happen to these four young girls, who are all, as aforesaid, Israeli citizens. Is their father willing to raise them? And if this is the case – is he able to and capable of raising them? And if the father of the girls is not willing or is incapable of same – is there an institution that is able to do it? Is it at all appropriate to decide to remove the mother from Israel, placing the four minor girls in out-of-home care? **Is the authority which examines Petitioner's application for residency status not required to examine along with this decision, the ramifications and immediate implications of this decision on the life of her four young daughters, their fate, souls and future? Or perhaps, as Respondents' counsel suggested in her oral arguments, the proposed solution in this case is that the four young girls – Israeli citizens – would join their mother who is expelled from Israel to her home town of Hebron in the Palestinian Authority? The uniqueness of the situation at hand is the close and inevitable connection between the decision of the authority in the application of the Petitioner herself and its far reaching consequences on the fate, souls and best interest of her four minor and young daughters**. Had the Petitioner been alone, there would have been no room to doubt the legitimacy of the authority's decision to deny her application, based on each one of the reasons given by the Respondents in

> their response. However, in view of the fact that the decision has such far reaching ramifications on the future and wellbeing of Petitioner's four young daughters, it is my opinion that the decision of the committee as is it is cannot stand, without an examination of the ramifications of the application which was submitted to it on the girls' future, where they will grow-up, who will take care of them and how they will live when their mother, the Petitioner, is expelled from Israel.
>
> (Ibid., emphases added, B.A.).

54. The Honorable Court did not only remand the case to the committee, but also heavily criticized the manner in which the committee examined the issue, and outlined the conduct expected of the committee in humanitarian cases that have ramifications on minors:

> … showing the proper sensitivity to the special situation of the case at hand, the Respondents decided to enable the Petitioner to submit her application to the inter-ministerial committee, ex gratia. In their said decision the Respondents acted properly. However, once the Respondents opened before the Petitioner the gates of the inter-ministerial committee – the committee's decision making process in Petitioner's application should have been guided by the examination of the extremely harsh consequences of said decision on the wellbeing of the four young girls, their fate, future and souls. **The committee should have enabled the Petitioner, or her legal counsel, to appear before it and present to it the required opinion of the social and welfare authorities which are responsible for the fate and wellbeing of minor citizens of Israel. The committee is encouraged to examine the possibility of commissioning such an opinion from the competent authorities. And more than anything – the committee should have specified the grounds for its decision in a manner that reflects the examination of the above aspects of said special and unique application which was submitted to it**.
>
> (Ibid., emphases added, B.A.).

55. In AP (Tel Aviv) 39084-09-10 **(Minor) et al. v. Ministry of Interior**, a petition of an Israeli girl who requested to grant status to her mother was accepted. It was held that the mother would be given renewable temporary status which would be subsequently later to permanent status:

> This case concerns a girl who was born in Israel, and has lived in Israel her entire life, from the day she was born in 2002. She attends the Israeli education system. **There is no, nor can there be a dispute on the girl's right to remain in Israel**, and it is clear that under these circumstances she is entitled to have her mother, the only parent raising her, remain with her in Israel. Therefore I accept the petition as requested.
>
> (Ibid., sections 18-20, emphasis added, B.A.).

56. Also relevant to our case are the words of Honorable Judge Dr. Marzel, in his judgment in AP (Jerusalem) 37903-03-11 **A. v. Ministry of Interior**:

It is clear that under such circumstances, considerations of the child's best interests as well as considerations of the right to family life, should be taken into account. Although the child's status does not grant, in and of itself, status to his parent, case law recognizes the principle according to which certain humanitarian cases may justify, and even require, a deviation from the rule that a child does not create status for his parents (see for instance, HCJ 4156/01 **Dimitrov v. Ministry of Interior**, IsrSC 56(6) 289, 294 (2002); also see HCJFH 8916/02 **Dimitrov v. Ministry of Interior** (not reported, [reported in Nevo], July 6, 2003); AAA 10993/08 **A. v. State of Israel** (not reported, [reported in Nevo], March 10, 2010); see also, AP (Jerusalem) 529/02 **Burna v. Minister of Interior** [reported in Nevo] (August 26, 2002); AP (Tel Aviv) 1295/03 **Shabasof v. Minister of Interior** [reported in Nevo] (March 8, 2005)). Furthermore, the separation of a minor who is an Israeli citizen from his parent, involves, at least ostensibly, a certain violation of the minor's right to family life (see and compare, HCJ 7052/03 **Adalah - Legal Centre for Arab Minority Rights in Israel v. Minister of Interio**r (not reported, [reported in Nevo], May 14, 2006); see also, AP (Tel Aviv) 3111/08 **Salamovah v. State of Israel** [reported in Nevo] (June 4, 2010)). Hence, before making a decision concerning status or lack of status of a foreign parent of a minor who is an Israeli citizen, the entire circumstances of the case should be thoroughly examined, including the possible consequences of the minor's separation from his parent. This examination should be based on a professional and exhaustive factual inquiry (compare, AP (Jerusalem) 705/07 **Muskara v. Minister of Interior** [reported in Nevo] (December 21, 2009); AP (Tel Aviv) 3143/04 **Mariano v. Minister of Interior** [reported in Nevo] (May 22, 2005)).

57. In this context, the Petitioners stated in their written arguments that in other cases, in which the Israeli spouse passed away, and the spouses had children together, **the Minister of Interior has consistently decided that the mother would continue to receive stay permits in Israel**, even in the absence of other humanitarian reasons, unlike the case at hand wherein there are two sick children. To elucidate, the Petitioners referred to the matters of Mrs. ____ Ghazawi, ID No. _____, the mother of an Israeli girl who was three years old at the time of the husband's death; Mrs. _____ Mansour, ID No. _____, the mother of four Israeli girls who were minors at the time of the husband's death (Mrs. Mansour even received A/5 residency status after a petition was filed with the HCJ); Mrs. _____ Abu Kteish, ID No. _____, the mother of two Israeli children at the time of the husband's death.

58. In the cases of these widows, it was never argued – and rightly so – that they could relocate with the children to the West Bank, and that the status of the children would not be jeopardized. It was never argued that the mothers would be able to separate from their children and relocate to the West Bank, and conduct mutual visits with the children in view of the geographic proximity between the West Bank and Jerusalem, as the Respondents suggest in the case at hand. The pertinent response which was received in the above mentioned cases only emphasizes the arbitrariness of the decision in the matter of the Petitioner and her children, including the procedure which preceded said decision. As stated, in this case, there was a vacuous procedure, the sole purpose of which was to validate the Petitioner's expulsion from her home, in line with the above mentioned declarations made by Respondent 1 in the media.

59. The Petitioners maintain that had their matter been examined by the Respondents without extraneous considerations, in the same way other cases are examined and without discrimination, there is no doubt that the Petitioner's continued remainder in Israel would have been approved.

Abuse of Power (détournement de pouvoir)

60. Another argument raised by the Petitioners in their written arguments was that the Respondents misused their power in pursuit of extraneous goals.

61. An administrative authority may not use the power vested in it by the legislator for any purpose other than the purpose for which it was granted (see, for instance, HCJ 620/85 **Miari v. Knesset Speaker**, published in Nevo).

62. Relevant to our case are the words of the Court in HCJ 98/54 **Lazarovitch v. Food Controller** (IsrSC 10 40, 47):

> … this Court has the power to examine and review governmental acts not only as they appear in terms of the formal legal authority, but also on their merits, whether the power was exercised properly, namely, whether it was exercised – inter alia – in good faith based on proper considerations and for the purpose for which the power was granted… and will not validate actions which may appear to be valid but are not as they seem."
>
> (Emphases added, B.A.).

See also HCJ 491/86 **Tel Aviv Jaffa Municipality v. Minister of Interior** (published in Nevo).

63. In other words, there are situations in which formally, the administrative authority is vested with the power to take the actions that it takes, but a closer examination of the decision making process indicates that in fact, the actions were taken in bad faith and not for the purpose for which the power was granted to the authority.

64. Petitioners' position is that the decision making process in their matter, including the referral of their matter by the bureau of Respondent 1 for the examination of Respondent 2, and the issuance of the new decision itself, are, jointly and severally, actions which amount to misuse of power for extraneous purposes and abuse of power. We shall explain.

65. On March 20, 2007, prior to the second amendment to the Temporary Order, the Knesset Internal Affairs and Environmental Protection Committee held a meeting in which it discussed, inter alia, the establishment of a humanitarian committee under to the Temporary Order. As indicated by the transcripts of said meeting – as well as by the explanatory comments of the bill as published in the official Gazette – the only rationale underlying the establishment of the humanitarian committee was a more proportionate balance of the rigid arrangements set forth in the Temporary Order, arrangements which would reflect humanitarian aspects that were not included therein until that time:

> The committee is authorized to grant temporary residency status or a stay permit in Israel to two categories of persons. The considerations are humanitarian considerations which the committee should examine. In fact, it concerns the possibility of granting a stay permit in Israel which will be issued by the IDF Commander in the Area, to a person who, under the other provisions, would not have been entitled to it. The second possibility, is to

> grant a temporary residency status according to the Entry into Israel Law, which is accompanied by social rights, to a person who already holds a permit, and the humanitarian circumstances are such that require the grant of said status by the Minister of Interior. These are the two categories which can receive status for humanitarian reasons.
>
> (Statements made by legal of advisor of the Population and Immigration Authority, Adv. Daniel Solomon, in the committee session).

66. In response to a question posed by the Knesset Internal Affairs and Environmental Protection Chair, as to the humanitarian circumstances based on which status in Israel may be received and whether there was an intention to specify them as part of the proposed amendment, Deputy Attorney General, Adv. Mike Blass said:

> We are of the opinion that a specification limits the discretion. Once we have left it open we strengthened the humanitarian direction.
>
> (Emphases added, B.A.)

67. Hence, there is no doubt that the underlying rationale for the establishment of the humanitarian mechanism under the Temporary Order, **was not to prohibit, limit and expel residents of the Area from Israel, but rather the contrary**. The purpose of the legislator in the establishment of the humanitarian mechanism under the Temporary Order, was to **expand and enable** persons with special humanitarian circumstances to receive a permit or residency status in Israel, a possibility which did not exist until such mechanism was established.

68. The explanatory notes of the amending bill dated December 18, 2006 also clearly refers to the ground for establishing the humanitarian mechanism that is Respondent 2:

> On Iyar 16, 5766 (May 14, 2006), a judgment was given by the High Court of Justice in the above mentioned petitions concerning the Temporary Order in its amended version… the court addressed the need to establish other arrangements which would balance, in a more proportionate manner, the arrangements set forth in the Temporary Order in its amended version and which would reflect humanitarian aspects.

Copies of the relevant sections of the Internal Affairs Committee session of March 20, 2007 and the bill explanatory notes of December 15, 2006 are attached hereto and marked **P/13a-b** respectively.

69. Hence, similar to the spirit of the statements which appear in the transcripts of Knesset Internal Affairs and Environmental Protection Committee session, the explanatory notes of the bill also unequivocally indicate that the mechanism that is Respondent 2 was established for one purpose only: to **balance** the severe restrictions entrenched in the arrangements set forth in the Temporary Order and **enable** persons who have humanitarian reasons to stay in Israel lawfully. In other words, it is not a mechanism which was established for the purpose of expelling people from Israel, but rather, a mechanism the purpose of which is to enable more people to receive a permit or residency status in Israel.

70. However, while the aforementioned indicates that Respondent 2 was established for the single purpose of enabling more people to receive a permit or residency status in Israel, The Respondents'

conduct in Petitioner's matter – including Respondent 1's statements in the media, the publicity given to the procedures in Petitioner's matter, the urgency with which Petitioner's matter was transferred from Respondent 1's bureau for recommendation by Respondent 2, the summary hearing which included receiving committee members' positions over the telephone – paint an entirely different picture. It appears that the Respondents have used the humanitarian mechanism stipulated by the Temporary Order cynically and arbitrarily in order to further a cause that is entirely foreign to the purpose for which the mechanism was established – the Petitioner's removal from Israel.

Decision based on incomplete, tendentious facts

71. Another argument raised in the written arguments is that the decision was based on incomplete, tendentious facts, all with a view to legitimizing the Petitioner's removal from Israel. A clear example of this misconduct can be found in the new decision, which states, inter alia, that **most of the Petitioner's extended family resides in the West Bank, including the Petitioner's mother, her six full siblings and their families.**

72. We note that it appears that this perplexing and extended review of the Petitioner's family in the West Bank was included in the new decision given the arguments included in the Petitioners' written arguments, denouncing the assertion made in the previous decision that almost all of the Petitioner's relatives reside in the West Bank. The Petitioners noted that the Respondents were deliberately ignoring the fact that Petitioner's father resides in Israel, undergoing family unification with his second wife, that the Petitioner has three brothers by her father's second marriage who are Israeli citizens and reside in Israel, and that the Petitioner has a sister who has been holding stay permits since 2005.

73. It appears that the Petitioners simply counted the number of the Petitioners' relatives living in the OPT (7) and the number of relatives living in Israel besides her and her children (5). Another point they assiduously emphasized was that these were full siblings, by both mother and father.

74. Thus, presenting the facts in a manner that is entirely intended to show that the Petitioner has more ties to the West Bank than to Israel, while omitting the fact that other than the Petitioner and her children, who have lived in the country with her ever since they were born, the Petitioner has more than a few immediate relatives who lawfully live in Israel is undoubtedly an incomplete and prejudicial presentation of the situation and as such – unacceptable.

75. Another example of the incomplete and tendentious presentation of the facts pertaining to the Petitioner's matter is the claim, made in the new decision, that the status of Petitioners 2-4 will not be compromised as a result of her deportation from Israel. Respondent 1 claims this is the case given current policy whereby residency of individuals who were minors at the time their parents transferred their center-of-life outside Israel is determined beginning in adulthood.

76. However, Respondent 1 is well aware that the children's forced relocation to the West Bank would harm them directly and gravely. First, it is clear that once the children are forcibly relocated out of Israel and as a direct result of the Petitioner's removal from the country, the children's Israeli residency status with the NII will be revoked. As noted above, immediately after the media reports and Respondent 1's previous decision in the Petitioner's matter, the NII wasted no time in revoking the status of Petitioners 2-4. It was only after Petitioner 5 intervened that the children's status in Israel was reinstated, for the time being. It is therefore clear that once they are forcibly relocated to the West Bank and lose their NII status, their social rights, primarily the right to health, will be denied. We note, to complete the picture, that two of the Petitioner's children suffer from chronic medical

conditions. Petitioner 2 suffers from a congenital heart defect and is losing his hearing, as a result of which, he requires monitoring by a cardiologist and an otorhinolaryngologist. Petitioner 4 suffers from vomiting spouts and very low weight for his age (percentile 15). The physicians have not yet found the cause of the vomiting but there is concern that he may be suffering from Epilepsy. He must remain under monitoring by a pediatric gastroenterologist. Respondent 2 clearly neglected to consider these facts.

Copies of medical reports and referrals for Petitioners 2-4 are attached hereto and marked **P/14**.

77. In addition to the direct implications the forced relocation of Petitioners 2-4 along with their mother to the West Bank have for their rights in Israel under the National Insurance Law, there is concern that said relocation would require the children to obtain status and get registered in the OPT. Should they not, it is unclear how they might enroll in educational facilities, how they might receive medical services and the like. Registration in the West Bank per se puts their permanent status in Israel at risk.

78. Furthermore, the Respondent's assertion that the children's status would not be revoked if they are deported to the West Bank stems from the policy that is currently in place. However, policy, by nature, is apt to change, and therefore, it is not inconceivable that the policy will change in the future, and the children will be denied status. We note, on this issue, that this concern is not simply theoretical. Even under current policy, under certain conditions, Respondent 1 revokes the status of minors whose permanent resident parents had transferred their center-of-life outside of Israel, while the children were minors. This emerges clearly from the responses Respondent 1 provides to Freedom of Information Application made yearly by Petitioner 5 with respect to revocation of status of East Jerusalem residents. Each year, Respondent 1 denies the status of a substantial number of minors. Thus, contrary to the situation Respondent 1 presents in his new decision, the deportation of the mother of Petitioners 2-4 does in fact pose real danger that Petitioners 2-4, who have done nothing wrong, would lose their status in Israel.

Copies of Respondent 1's responses on status revocation in East Jerusalem between 2011 and 2014 are attached and marked **P/15**.

79. Thus, the Respondents' assertion that even if Petitioners 2-4 relocate to the West Bank with their mother, their status remains safe and sound, is both wrong and misleading. Aside from the fact that they are expelled from their home and removed their natural, familiar environment and that their right to health insurance will be immediately revoked, their status in Israel is also in peril.

Violation of the right to family life and the child's best interests

80. As is known, the right to family life is a constitutional right in Israel, included within the right to human dignity. This position was sweepingly endorsed by eight of justices sitting in the panel of 11 in the judgment issued in HCJ 7052/03 **Adalah v. Minister of Interior** (TakSC 2006(2) 1754, English translation appears on Judiciary website) (hereinafter: **Adalah**). In paragraph 34 of his opinion, President Barak held:

> [F]rom human dignity, which is based on the autonomy of the individual to shape his life, we derive the derivative right of establishing the family unit and continuing to live together as one unit. Does this imply also the conclusion that realizing the constitutional right to live together also means the constitutional right to realize this in Israel? My answer to this question is that

> **the constitutional right to establish a family unit means the right to establish the family unit in Israel. Indeed, the Israeli spouse has a constitutional right, which is derived from human dignity, to live with his foreign spouse in Israel and to raise his children in Israel. The constitutional right of a spouse to realize his family unit is, first and foremost, <u>his right to do so in his own country. The right of an Israeli to family life means his right to realize it in Israel</u>**.
>
> (Emphases added, B.A.).

81. Establishing the right to family life as a constitutional right leads to the determination that any violation of this right must be congruent with Basic Law: Human Dignity and Liberty, and only for **weighty** considerations, based on **solid evidence** which evinces such considerations.

82. In her own opinion in **Adalah**, Justice Procaccia held:

> The requirement of proportionality in the limitations clause is based on the principle of balancing between the violated human right and the conflicting value with which it contends. It involves an examination, *inter alia*, of whether the benefit achieved from the conflicting value is commensurate with the violation of the human right. The balance is affected by the relative weight of the values; in assessing the weight of the right, **one should take into account its nature and its status on the scale of human rights. One should take into account the degree and scope of the violation thereto**. With regard to the conflicting public interest, one should consider its importance, its weight and the benefit that accrues from it to society. There is a reciprocal relationship between the weight of the human right and the degree of importance of the conflicting public interest. **The weightier the human right and the more severe the violation thereof, the more it is necessary, for the purpose of satisfying the test of proportionality, that the conflicting public interest will be of special importance and essentiality. A violation of a human right will be recognized only where it is essential for realizing a public interest of such strength that it justifies, from a constitutional viewpoint, a proportionate reduction in the right** (*Levy v. Government of Israel* [99], at p. 890; *Beit Sourik Village Council v. Government of Israel* [2], at p. 850 {309}). According to the tests of the limitations clause, both the violated right and the public interest are examined in accordance with their relative weight, where the basic premise is: 'The more important the violated right, and the more serious the violation of the right, the stronger the public interest must be in order to justify the violation. A serious violation of an important right, which is merely intended to protect a weak public interest, may be deemed to be a violation that is excessive' (*per* Justice I. Zamir in *Tzemah v. Minister of Defence* [9], at p. 273 {672}).

83. The assertion that children must be allowed to grow up in a loving, stable family unit, is meant to serve a wider principle recognized in Israel and international law, the principle of the child's best interests. According to this principle, in any actions relating to children, whether by the courts, administrative authorities or legislative bodies, the child's best interest shall be a paramount

consideration. So long as the child is a minor and so long as the parent is functioning properly, the child's best interest demands that he is raised in a supportive family unit.

84. The principle of the child's best interest is well rooted in international law. So for example, In CA 2266/93 **A. v. A.**, IsSC 49(1) 221, Justice Shamgar ruled that the state should intervene for the purpose of protecting a child against a violation of his rights.

85. Furthermore, the child's best interest has been recognized in many judgments as a guiding principle wherever rights must be balanced against one another. As held in Civil Administration 549/75 **A. v. Attorney General** IsrSC 30(1) 459 pp. 465-466, "There is no judicial matter that relates to minors in which the minors' best interest is not the primary, main consideration".

86. The principle of the child's best interest enjoys primacy also under international law. This is expressed, inter alia, in the formulation of the Convention on the Rights of the Child. The Convention, which was ratified by Israel on August 4, 1991, stipulates a number of provisions that mandate protection for the child's family unit (see: introduction to the Convention and Articles 3(1) and 9(1) thereof). In particular, Article 3 of the Convention stipulates that the best interest of the child should be taken into consideration in every governmental act. This indicates that any piece of legislation or policy should be interpreted in a manner that allows safeguarding minors' rights.

87. Thus, in addition to the deficiencies in the Respondents' conduct in the Petitioner's matter, listed by the Petitioners thus far, the Respondents violated the Petitioners' family's right to family life and the principle of the child's best interest throughout the decision making process leading up to the new decision. The Petitioner herein is the sole guardian of her three children, permanent resident of Israel, who, like their mother, have indisputably done nothing wrong. As stated, as far as the Petitioners are aware, no security or criminal allegations were ever made against the Petitioner herself, nor was it alleged that she constitutes a threat to public safety. Therefore, the fact that the Petitioner, the mother of minor children who are permanent residents of Israel finds herself forced into this reality after years in which she had taken part in the graduated procedure renders the decision of Respondent 1 in her matter a severe violation of her and her children's right to family life in their home in Israel – this certainly constitutes excessive harm.

88. Thus, Respondent 1's decision in the matter of the Petitioner has injurious, direct and far reaching ramifications on the status of the young children in Israel.

Conclusion

89. The Respondent did issue a new decision in the Petitioner's matter, but this too, is revealed to be an unreasonable decision, marred by extraneous considerations and abuse of power. Additionally, jurisprudence and practice indicate that this decision is arbitrary and discriminatory, and that contrary to the Respondents' arguments in the recommendation and the new decision, the decision directly harms the Petitioner and her children, certainly without justification.

90. Thus, the Honorable Court is moved to accept the petition as detailed in the introduction.

Jerusalem, April 16, 2015.

[signed]

Benjaim Agsteribbe, Adv.