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

Before the Honorable Judge David Cheshin, President — AP 38885-05-14

August 3, 2015

The Petitioners:

1. **_____ Salem**
2. **_____ Salem**
3. **_____ Salem**
4. **_____ Salem**
5. **_____ Salem**
6. **_____ A.**
7. **_____ A.**
8. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

Represented by counsel Adv. Adi Lustigman

v.

The Respondent:

State of Israel: Minister of Interior
Represented by Jerusalem District Attorney's Office (Civil) by counsel Adv. Shani Yanai and Moran Braun

Judgment

1. The above captioned petition concerns respondent's decision to deny petitioners' family unification application which was submitted by petitioner 1 for petitioner 2.

Factual Background

2. Petitioner 1 (hereinafter: **petitioner 1**) is a permanent resident in Israel who resides in Jerusalem. Petitioner 2 (hereinafter: **petitioner 2**) is a resident of the Area who resides in Tulkarm and works as a manager in the Palestinian Water Authority. The spouses married on August 14, 1989. They have five children (petitioners 3-7), all permanent residents in Israel. Their youngest son, petitioner 7, was born in Jerusalem. All other children were born in Turkey and Cyprus.

3. On November 27, 2005, petitioner 1 submitted her first family unification application with petitioner 2. In the absence of response to her application she filed a petition with this court (**AP 820/06**). While the petition was pending, the position of the security agencies was received which objected to the application for security reasons, in view of information concerning contacts between petitioner 2 and his brother in law, a Hamas activist. Consequently, the respondent decided, on November 19, 2006, to deny the family unification application.

4. On December 10, 2006, a hearing in the petition was held before my colleague, the Honorable Judge Moshe Sobel. After the hearing, judgment was given with petitioners' consent, according to which the petition was deleted. The judgment noted that when the petition was filed a decision in petitioners' family unification application had not yet been given, but that after it was filed the respondent decided to deny it. It was also noted that following said developments the petitioners intended to appeal the denial, and to attach to their appeal data which have not yet been presented to the respondent.

5. Following the judgment the petitioners submitted an appeal against respondent's decision to deny their application. It was argued therein that petitioner 2 had no contact with his brother in law for a long time, with the exception of large family gatherings. In addition, petitioner 2 undertook to avoid meeting his brother in law to the maximum extent possible. On March 18, 2007, an additional petition (**AP 333/07**) was filed, in the context of which the petitioners requested that a hearing be held by the respondent to petitioner 2 before a decision is made in his matter. On May 16, 2007, the appeal was denied on the grounds of the same security reasons upon which the first denial was based. On May 29, 2007, the petition in AP 333/07 was deleted with the consent of the parties following a hearing which was held before the deputy president of this court (as then titled) the Honorable Judge Yehudit Tzur.

6. On June 3, 2009, petitioner 1 submitted a new family unification application with petitioner 2. The application was submitted together with a *curriculum vitae* form in the name of petitioner 2, which noted that petitioner 2 was a manager in the Palestinian Water Authority and has been working there since 2005. In the absence of any decision in the application, the petitioners sent to the respondent several reminder letters. On December 17, 2009, the respondent notified the petitioners that a decision has not yet been made in the application.

7. On January 4, 2010, the petitioners submitted an appeal to the Appellate Committee for Foreigners – Jerusalem District, in view of the failure to respond to their application (Appeal 4/10). They also requested an interim order "**not to expel the appellant (petitioner 2)… from Israel until 30 days after the date on which a final decision is made in this Appeal**." In view of respondent's failure to respond to the application, the chair of the committee ordered on January 24, 2010, not to expel petitioner 2 from Israel until another decision is made.

8. In his response to the appeal the respondent argued that for the purpose of processing of the family unification application, the petitioners should complete details in the *curriculum vitae* form which was attached thereto, and therefore requested that the appeal be deleted. The petitioners objected to the deletion of the appeal. The chair of the committee held that the appeal would remain pending until a decision is made in the family unification application on its merits.

9. On December 30, 2010, security agencies transferred their position according to which they recommended to deny the application for security reasons, in view of the fact that they had in their possession information which indicated that petitioner 2 maintained contacts with Hamas activists. Consequently, the respondent turned to petitioners' counsel (on February 7, 2011) and notified her that following the security information the possibility to deny the family unification application was considered, and that she could respond to the above within 30 days.

10. On February 7, 2011, the respondent requested, once again, to have the appeal deleted, in view of the fact that the petitioners were given the opportunity to have a hearing in writing before a final decision is made in their matter. On April 7, 2011, despite petitioners' objection, a decision was made to delete the appeal. The decision to delete stated that a hearing would be held for the petitioners as aforesaid. It was also held that the interim order would remain in force for 45 days after the date on which respondent's decision be made following the hearing.

11. Following the deletion of the appeal the petitioners submitted to the respondent (on April 20, 2011) their arguments in writing, in the context of which they requested that the security preclusion against petitioner 2 be removed. Although several reminder letters were sent to the respondent, no decision was made in the application.

12. On January 18, 2012, the petitioners submitted another appeal (**appeal 73/12**), which stated that it was submitted "**against respondent's failure to respond to appellants' application and against the mere intention to deny the application, and the expected denial**." They also requested that the respondent be directed not to expel petitioner 2 from Israel, until after a decision in the appeal is made. In the appeal the petitioners referred to the security information against petitioner 2 and totally denied it. They also noted that **"… the appellant works in the Palestinian Water Authority, which is an independent body within the Palestinian Authority… Nevertheless, my client does not hold a political office. He is not subordinated in any way to Hamas or any other political organization in the territories. In his position he is in charge of the technical aspects of the water systems in the West Bank and has no connection to political meetings or decisions**" (paragraphs 37-38 to petitioners' appeal, which was attached as P/28). In the absence of respondent's response to the interim order, the chair of the appellate committee decided (on February 5, 2012) to order that petitioner 2 would not be expelled from Israel until another decision was made.

13. On August 6, 2012, after the appeal was submitted, the position of the security agencies changed, as they notified that they had "no comments" to petitioners' application. In other words, there was no longer security preclusion against petitioner 2.

14. Regardless of the decision of the chair of the appellate committee, the respondent still failed to respond to the application, until a request to delete the appeal was submitted by him on August 21, 2012. The request stated: "**After the appeal was reviewed it was decided to summon the appellants for a hearing according to respondent's procedures… under these circumstances, the need to resolve the appeal became redundant…**". The petitioners objected to the deletion of the appeal and requested that it would remain pending until after the hearing and a decision in the application, on its merits. At that stage the appeal was not deleted.

15. On October 18, 2012, a hearing was held for petitioner 2, in the framework of which he pointed out that he has been employed by the Palestinian Authority since 2001, and that until 2003 he engaged in the preparation of statistics for the Palestinian Authority. Thereafter he was employed on a temporary basis by the Palestinian Water Authority, and in 2005 he became a permanent employee as a manager in the planning division of the Palestinian Water Authority. Petitioner 2 stated that he had one employee under his supervision and that he was subordinated to two managers. He further noted that to date he was working directly *vis-à-vis* the Minister of the Palestinian Water Authority, Dr. Shaddad Al-Attili, with whom he was having work meetings on a bi-monthly basis which meetings were attended by about 20 additional participants, and with whom he was also corresponding on professional matters.

16. On July 21, 2013, the head of the northern desk at the Population and Immigration Administration, Ms. Hadas Drix (hereinafter: the **head of the desk**), decided to deny petitioners' family unification application, on the grounds of "conflict of interests", against the backdrop of the position held by petitioner 2 with the Palestinian Authority. Following said decision the respondent requested (on July 29, 2013) that the appeal be deleted in view of the fact that a decision was made in petitioners' application. The petitioners submitted (on October 6, 2013) their response to the request in the context of which they objected, again, to the deletion of the appeal and requested that the committee discuss it on its merits. In the absence of any decision in the appeal, the petitioners turned (on April 7, 2014) to the committee and requested that a decision be made therein.

17. On May 1, 2014, the appeal was deleted. The decision stated, inter alia, as follows: **"There is no doubt that the committee failed in the execution of procedural efficiency. I am not trying to accuse anyone, as the entire responsibility is solely that of the committee but I regret the fact that the appellants caused the committee to fail by their demand that the appeal be given volume and force which it did not originally have** (paragraph 5 of the decision). It was also stated that although the petitioners objected to the deletion of the appeal, the correct procedure was "**firstly respondent's decision and thereafter an appeal before the committee. The respondent notified in August 2012 that requested to conduct a hearing for the appellant before a decision in their matter is made, in September 2012. The respondent added further – 'under these circumstances the need to make a decision became redundant'. What does this mean? In plain Hebrew, respondent's decision in the application has not yet been rendered, how will the decision of the appellate committee be made in a matter which has not yet "come into the world", in a matter with respect of which no decision has been made? The answer is clear to all and particularly to the appellants…**" (paragraph 4 of the decision).

    It should be noted that apparently the chair of the appellate committee was mistaken, since as indicated by the facts specified above, the family unification application which was submitted by the petitioners was denied on its merits on July 21, 2013 by the head of the desk.

18. Following said decision the petition at hand was filed, in which the petitioners request that the respondent be directed to accept their family unification application so as to enable petitioner 2 to receive a stay permit in Israel.

The events which occurred after the petition was filed

19. After the petition was filed the respondent submitted, on August 26, 2014, a "notice" in which he stated that according to the procedure on security agencies comments concerning family unification applications (number 5.2.0015) (hereinafter: **procedure on security agencies comments**), the relevant official with whom authority was vested to decide on the conflict of interests issue was the director general of the Population and Immigration Administration (hereinafter: the **director general**), and that such a decision would be given within one week. The respondent added that in view of the above "**the petition at hand became redundant, but the respondent will not object that in this preliminary stage the petition will remain in force until such decision is made as aforesaid.**" Thereafter, on September 29, 2014, the decision of the director general was given which denied petitioners' family unification application, for the same reasons which were specified in the decision of the head of the desk.

    Following the above, the respondent submitted a request for the deletion of the petition, on the grounds that an appeal against the decision, according to the respondent, should be submitted to the appellate tribunal. On October 1, 2014, a hearing was held before me. Upon the termination of the hearing I held that notwithstanding my decision (dated May 22, 2014), the respondent failed to submit a response in the file, but instead submitted a "notice" only. Under these circumstances I decided that respondent's arguments concerning the deletion of the petition should not be heard, and that he should be directed to submit a response, together with an affidavit which would attest to the correctness of the facts included therein. Costs were imposed on the respondent due to his above procedural conduct.

<u>The arguments of the parties</u>

20. The petitioners argue that their constitutional right to family life as well as the principle of the child's best interest "**are crushed by the respondent who treats petitioners' life in a condescending and abusive manner**" (paragraph 8 of the petition). The fact that the proceedings have been lingering

over so many years, and the refusal to arrange petitioner 2's status, thwart all normative aspects of family life. The violation of these rights, according to the petitioners, must be made only on the grounds of weighty considerations, based on solid evidentiary infrastructure.

21. The petitioners argue further that respondent's response is not proportionate. **Firstly,** it is unclear how the fact that petitioner 2 is prohibited from staying in Israel, while there is no security preclusion against him, serves the purpose of safeguarding state security and public safety, or the purpose of preventing conflict of interests. In this context it was argued that petitioner's employment with the Palestinian Authority had no political nature, but that it was merely a technical position involving the installation of water systems. Moreover. In recent years petitioner 2 has been residing in Israel by virtue of interim orders which were issued from time to time. Hence, it is unclear why the approval of a family unification application, in the context of which petitioner 2 will be granted a conditional and renewable military stay permit, will promote the purpose of conflict of interests' prevention. **Secondly**, by his refusal to approve the family unification application the respondent chose the most injurious measure, without having examined whether the purpose might be attained by a lesser injurious measure. **Thirdly**, there is no proper proportion between the nature of the injury inflicted on petitioner 2 and his family and the benefit which would arise from the denial of the application.

22. The petitioners continue to argue that after the objection of the security agencies was lifted respondent's concern became "vague and not specific", and that the respondent failed to specify the possible ramifications that such conflict of interests might have. The above is relevant especially in view of the fact that there is no objection on the part of security agencies to the application, and that in any event, petitioner 2 will be given, at the most, to the extent the application is approved, a DCO permit.

23. According to the petitioners, although petitioner 2 is employed by the water authority of the Palestinian Authority, his position is not political but rather technical in nature. Petitioner 2's meetings with the appointed minister of the Palestinian Authority "**are few, include many participants and concern updates and reports regarding his work in the Palestinian Water Authority rather than the establishment of policy or any other aspect which veers from installation and technical maintenance of water systems**." (Paragraph 74 of the petition). The petitioners argue in this context that vague statements such as "conflict of interests" are not sufficient to pull the rug out from under the life of the petitioners who have been maintaining the center of their life in Jerusalem for over a decade.

24. The petitioners also raise arguments regarding the lingering of the proceedings and respondent's foot dragging. In this context the petitioners also complain that the chair of appellate committee failed to make a decision in their matter for a long period of time, has remanded their matter time and time again to the respondent for his decision, without having established a schedule for the decision, and has finally deleted the appeal despite their objection.

25. The respondent argues, on the other hand, that the petition should be deleted *in limine* for lack of subject matter jurisdiction. It was argued that the authority to judicially review the decision being the subject matter of this petition is vested with the appellate tribunal according to the **Entry into Israel (Amendment No. 22) Law, 5771-2011** (hereinafter: **Amendment No. 22**). Upon such time as Amendment No. 22 entered into effect, item 12 of the first addendum to the Administrative Affairs Courts Law, 5760-2000, was amended and it was stipulated that decisions made according to the Entry into Israel Law, 5712-1952, and other laws specified in the addendum, would be heard by the appellate tribunal rather than by the administrative affairs courts.

26. The respondent argues in the case at hand that the decision of the head of the desk should be disregarded as it was given without authority. According to the respondent, the authority to make a

decision in petitioners' matter is vested with the general director of the immigration administration (hereinafter: the **director general**), according to section 3.1.3 of the **Procedure on Security Agencies Comments** which states that in the event a negative recommendation was given by the security agencies on the grounds of conflict of interests, which was based on intelligence information, the decision will be transferred to the director general of the administration. The respondent argues that although the director general's decision is not premised on an intelligence position of security agencies, it does not mean that the authority to deny the family unification application is vested with the head of the desk, in view of the fact that it is an infrequent decision and the respondent is of the opinion that it should be made by the most senior official. It was also argued that the respondent should be allowed broad discretion in the definition of the competent office holders.

27. The respondent argues further that the petition should also be denied on its merits as there was no flaw in respondent's decision which justified judicial intervention. The respondent argues that petitioner 2 works directly *vis-à-vis* the "Minister in charge of the Palestinian Water Authority", which indicates that he holds a senior position with the Palestinian Authority. The respondent is of the opinion that petitioner 2 owes a duty of loyalty towards the Palestinian Authority. In view of the fact that there is a fundamental conflict between the latter and the state of Israel, petitioner 2 is in a conflict of interests situation. It is therefore clear, according to the respondent, that giving status to petitioner 2 in Israel may injure important and substantial interests of the state. Said position is reinforced in view of the fact that in the past a decision to deny the application was made for security reasons, despite the fact that said reasons were not related to petitioner 2's work. Moreover. The statements made by petitioner 2 himself and the documents submitted by him indicate that he has been holding office with the Palestinian Water Authority for about a decade.

28. It was also argued that a family unification application and the receipt of a stay permit in Israel should be balanced against the right of the state and its inhabitants to security, and that marriage with an Israeli spouse does not automatically entitle the other spouse to receive permanent status. The respondent argues that it is incumbent on him to refrain from giving a stay permit in Israel when he is of the opinion that danger to public safety, state security or impingement on the sovereignty of the state or other important interests thereof are embedded in the grant of such permit.

29. The respondent argues further that as indicated by the judgments of the Supreme Court, there is no room for intervention in respondent's policy concerning "conflict of interests". In this context it was argued that there was no need to prove the actual existence of a conflict of interests, and that it was sufficient to show that a person was in a situation in which "a conflict of interests could exist" (paragraph 95 of the response), and in any event respondent is vested with broad authority, at his discretion.

Discussion and Decision

30. Before I discuss the petition on its merits, I must resolve the question of whether or not the head of the desk was vested with authority to deny petitioners' application. As recalled, the respondent is of the opinion that the director general is vested with the authority to make decisions in cases in which "conflict of interests" issues arise, whereas the petitioners disagree with him (in the specific circumstances of the petition at hand). In this controversy I accept petitioners' position. I shall explain.

Section 3.1.3 of the Procedure on Security Agencies Comments states as follows: "**When a negative recommendation of the agencies is based on intelligence information concerning conflict of interests, the application will be transferred to the director general of the Population, Immigration and Borders Authority, for his decision.**"

Hence, the director general of the Authority will be vested with the exclusive power to make a decision on this issue, provided that two cumulative conditions were satisfied: the first one, negative recommendation of security agencies; and the other, the recommendation was made based on intelligence information concerning conflict of interests. In the case at hand the above conditions are not satisfied, and therefore there was no preclusion which prevented the head of the desk from making the decision which was given by her. The respondent argued that his position regarding the office holders who may make different decisions should be respected and that a decision concerning a "conflict of interests" should be made by the most senior office holder.

I cannot accept these arguments. According to respondent's procedures there is a certain route which must be followed. This route was not outlined only for the respondent but also for the petitioners who wish to rely on it, and certainly in a case in which there was unreasonable delay on respondent's part in the handling of petitioners' application.

31. I shall now discuss respondent's argument concerning the lack of subject matter jurisdiction of this court to hear the petition. The respondent is of the opinion that to the extent the petitioners wish to challenge the decision of the director general dated September 29, 2014, they should file an appeal with the appellate tribunal, according to Amendment No. 22. The respondent also argues that even if the decision of the head of the desk should have been reviewed in the framework of this petition (rather than the decision of the director general), the petitioners should have also turned to the appellate tribunal, in view of the fact that the petitioners' appeal has not been examined on its merits.

32. I concluded that these arguments should be denied as well. The fact that the appeal was deleted and was not examined on its merits cannot assist the respondent in his arguments. Section 4(b) of the Entry into Israel Order (Amendment 22) Commencement and Gradual Implementation), 5774-2014, provides that the amendment will not apply to a decision of the Appellate Committee for Foreigners which was appointed according to the procedure of the Ministry of Interior. In other words, whenever the appellate committee discussed a certain matter, its decision will be challenged by filing a petition with the court for administrative affairs rather than by filing an appeal with the appellate tribunal. In the case at hand, the petitioners have already requested in the appeal that the respondent be directed to respond to the family unification application, and that a decision be made in the appeal on its merits. The fact that eventually the appellate committee did not grant the second remedy and ordered that the appeal be deleted and the matter be remanded to the respondent, does not nullify the jurisdiction of this court to review the decision to delete the appeal.

I shall now discuss the petition on its merits.

33. The right for permanent residency and stay permits in Israel is not a vested right, but is rather subject to the discretion of the Minister of Interior. It is a broad discretion, but nevertheless not an absolute one, as it is subject to the review of the court in the framework of the recognized principles of administrative review (see for instance AAA 812/13 **Bautista v. Ministry of Interior** (January 21, 2014)). This decision, like any other administrative decision, must be in the scope of reasonableness (see for instance AP 326/04 **Al-Razem et al., v. Minister of Interior et al**., (February 21, 2005)(hereinafter: **Al-Razem**).

34. A family unification application may be denied on the grounds of security risk. This authority derives, *inter alia*, from the general power granted to the Minister of Interior in section 3D of the **Citizenship and Entry into Israel Law (Temporary Order) 5763-2003**. According to this section the Minister of Interior may determine that a resident of the Area, who applies for a stay permit in Israel, constitutes a security risk:

> **The Minister of Interior may determine that a resident of the Area or any other applicant is liable to constitute a security risk to the State of Israel, among other things on the basis of an opinion of the competent security agencies according to which within the domiciled state or residential area of the resident of the Area or of any other applicant, activity was carried out which is liable to put at risk the security of the State of Israel or of its citizens**.

35. In recent years case law took a hard line on applicants with respect of whom negative opinion of security agencies was given, so that if that was the issue before me, the decision in this petition would have most probably been different. However, in the case at hand, the security preclusion against petitioner 2 has already been lifted a while ago, and the petition focuses on another issue – whether, under the circumstances of the matter, the magnitude of the inherent "conflict of interests" of an employee of the Palestinian Authority is strong enough to justify the denial of the application.

36. It has been held more than once in case law that the Minister of Interior may deny a family unification application on the grounds of a conflict of interests (HCJ 3373/96 **Za'atra v. Minister of Interior** (October 16, 1996)(hereinafter: **Za'atra**); HCJ 2898/97 **Atiya v. Minister of Interior** (May 3, 1998)hereinafter: **Atiya**)). There is no dispute that in the framework of the broad discretion vested with the Minister of Interior, he may also take into account, among all other considerations, the fact that the applicant is an employee of the Palestinian Authority, in the context of the "conflict of interests" issue (see for instance: HCJ 1447/07 **Rashed v. Minister of Interior** (May 15, 2008), and **Al-Razem**). In this context it was held in HCJ 5702/07 **Sabag v. Minister of Interior** (May 4, 2010)(hereinafter: **Sabag**): .

> **This fact [petitioner's employment with the Palestinian Authority in different positions] is relevant and carries weight in the framework of the considerations of the competent authority while considering a family unification application… to the extent it becomes evident that he has been engaged for a protracted period of time with an administration that acts in the Area and which is hostile to the state of Israel, it may raise a concern for a conflict of interests, and under certain circumstances even a concern for state security, which the authorized official may take into account in the context of his broad discretion whether to approve a family unification in a given case**.

Along the above it was held by case law that the weightier the violated right is and the greater the violation thereof is, the opposing public interest must be of such magnitude which may justify the violation. Otherwise, the violation may be disproportionate (see JCJ 7444/03 **Dakah v. Minister of Interior** (February 22, 2010)). The above also applies when the consideration which opposes public interest is legitimate, in view of the fact that in such cases there is a "manifold" obligation to prefer a solution which impinges on the constitutional right to family life in Israel to the minimum extent possible, while proper proportion is maintained between this injury and its contribution to the prevention of conflict of interests (AP 310/07 **Mugrabi v. Minister of Interior** (December 13, 2007)).

As is known, proportionality is examined by three sub-tests: the rational connection test, the least injurious measure test and the test of proportionality in its narrow sense (see for instance HCJ 5239/11 **Avneri v. The Knesset** (April 15, 2015)). In the specific context of the approval of family unification application and the grant of DCO permits it was held that a rational connection must exist between the protection of state security and the refusal to grant a stay permit. In addition, the Minister of Interior must ascertain that the measure taken falls under the definition of the "least injurious

measure" and that proper proportion is maintained between the injury and the benefit arising therefrom to state security and public safety (HCJ 2028/05 **Amarah v. Minister of Interior** (July 10, 2006). In **Sabag** it was held that in the examination of a permit application submitted by an applicant employed by a public body in the Area, the type and nature of the position held by the applicant are significant for the purpose of evaluating the risk embedded in the grant of the requested permit to the applicant, as opposed to the importance of the implementation of the right to family life and that "**between a total denial of the permit application and its complete approval for family unification purposes there are various possible interim levels which may be considered, including permits on a graduated basis, for the purpose of reconciling between the opposing interests**" (*Ibid*., paragraph 13).

37. We shall refer now to the case at hand. The petitioners are married since 1989. They have five children, the youngest of whom was born in Jerusalem. Petitioner 2 has been trying to receive DCO permits since 2005. However, his family relation to a Hamas activist caused the security agencies to object to the application for security reasons. Only on August 6, 2012 the security preclusion was lifted. However, this did not put an end to petitioners' excursion, in view of the fact that on July 21, 2013, a decision was made to deny the application on the grounds of "conflict of interests" arising from respondent's *[sic]* employment with the Palestinian Authority. After I have reviewed the arguments of the parties I came to the conclusion that the decision is neither reasonable nor proportionate.

Firstly, as indicated by the factual circumstances described above in length, the security preclusion which was fed against petitioner 2 has been lifted a long time ago. This fact, which is not in dispute, attests that in fact no security risk is posed by petitioner 2. Moreover. Case law shows security agencies did not limit themselves to the security issue alone, and where there was a concern that a conflict of interests existed it was also included in their comments (AP (Jerusalem) 57730-02-13 **Hamidat v. Chair of the Appellate Committee for Foreigners (Jerusalem District)** (September 18, 2014)(hereinafter: **Hamidat**). Hence, the complete removal of the security agencies' objection weakens respondent's argument that a conflict of interest exists in the case at hand in a magnitude which justifies the denial of the family unification application in its entirety.

Secondly, throughout the years in which petitioners' applications were handled, petitioner 2 stayed in Israel, mostly by virtue of interim orders which were issued in his matter. During all that time, despite the fact that the respondent had the opportunity to do so (in the framework of the proceedings before the appellate committee), he did not deign to respond to petitioners' application for interim orders which would enable petitioner 2 to continue to stay in Israel. The above conduct is unclear since had the respondent thought that a concrete danger was posed to public interests, he would have obviously taken all steps available to him to expedite the proceeding, and at least to respond to petitioners' applications. It is clear that this fact alone is not sufficient to resolve the case, but it certainly reduces the force of the arguments concerning a conflict of interests (see **Hamidat**, paragraph 12).

Thirdly, I do not think that the office held by petitioner 2 with the Palestinian Authority is "senior enough" to justify the denial of the family unification application, and it certainly does not justify choosing the "far end" of the scale. Multi participants meetings with the Water Minister of the Palestinian Authority, acting as deputy secretary general of the Authority who left, do not necessarily point at his "seniority" and dominance in the Palestinian Authority.

Fourthly, the judgments referred to by the respondent in his response concern cases which are not similar to the case at hand. Thus, for instance, **Za'atra** concerned an applicant who was employed by the security agencies of the Palestinian Authority, and **Atiya** concerned a more senior-level

position which was held by the applicant who acted as the deputy chair person of the Palestinian Red Cross and as the director general of the Palestinian Ministry of Health.

Fifthly, the decisions which were given in petitioner 2's matter do not take into account the entire considerations which should be considered in the matter, as specified above. They do not take into consideration any possibility other than a total denial of the application.

Sixthly, and as has already been noted above, as a result of the approval of the family unification application petitioner 2 will not be granted permanent residency status, but rather temporary stay permits only. In this context the respondent will be able to examine from time to time petitioner 2's conduct, including whether he is in a conflict of interests situation or not. Said arrangement provides a more proportionate result, which ascertains that public interest is maintained, on the one hand, and that petitioners' fundamental right to family life is protected, on the other.

38. Finally, I found it necessary to comment on the unacceptable conduct in petitioners' matter which was characterized by unreasonable procrastination. The petitioners waited time and time again for respondent's replies to the applications and appeals submitted by them. It was at least expected of the appellate committee to examine petitioners' arguments on their merits, a thing which was not done.

39. In conclusion: the petition is accepted, respondent's decision is revoked and petitioner 2 will be granted a temporary stay permit in Israel, not later than July 2, 1015.

The respondent will pay petitioners' costs in the sum of 10,000 (then thousand) ILS.

The Secretariat will urgently send this judgment to the parties by facsimile.

Given today, Tamuz 1, 5775, June 18, 2015, in the absence of the parties.

(signed)

David Cheshin, President