At the Supreme Court
Sitting as the High Court of Justice

AAA 6483/14
Scheduled for July 6, 2015

HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger (RA)

Represented by counsel, Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Noa Diamond (Lic. No. 54665) and/or 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 Sbihat (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
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The Applicant

In the matter of:

1. _____ **Masharah, ID No. _____**
2. _____ **Masharah, ID No. _____**

Represented by counsel, Adv. Michel 'Odeh,
28 Sharet Street, P.O.Box 2966 Afula 18400
Tel: 04-6403671; Fax: 03-6403672

The Appellants

v.

1. **Minister of Interior**
2. **East Jerusalem Office of the Population Authority**

3. Attorney General

Represented by the State Attorney's Office
Ministry of Justice, Jerusalem

The Respondent

Application to Join as Amicus Curiae

The honorable court is requested to join the applicant to the court proceeding as *amicus curiae* for the reasons specified below.

Preface

1. This appeal concerns the "effective date" for the arrangement of the status of children of permanent residents, in view of the threshold requirement posed by the respondent as a condition for the approval of said applications, which is, maintaining a center of life in Israel for two years. The appeal concerns the question of whether the effective date (and the child's age on that date) is at the **beginning** of the counting of said two year period or only **thereafter**, namely, upon the submission of the application for the arrangement of status.

2. Particularly, the appeal concerns respondent's refusal to apply his amended policy – an amendment which chose the first option mentioned above – to applications which were submitted in the past as well. The respondent chose an arbitrary date, from which his amended policy applies, but many children – including the appellants at hand – cannot enjoy the fruits of said amendment, in view of the fact that their application had been submitted before said arbitrary date.

3. Respondent's previous policy was inappropriate and ran contrary to the explicit provisions of the law and case law. As a result of respondent's refusal to amend his policy in retrospect, the constitutional rights of many families continue to be severely and disproportionately breached.

4. Appellants' matter raises these aspects. The applicant wishes to join the proceeding and illuminate them.

Amicus Curiae – the Normative Framework

5. The applicant, HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (hereinafter also: **HaMoked**: **Center for the Defence of the Individual** or **HaMoked**), is a registered not-for-profit association which has been engaged, over two decades, in the promotion of human rights in the Gaza Strip, the West Bank and East Jerusalem. HaMoked assists East Jerusalem residents to fight against a wide range of human rights violations, which pertain to their civil status in Israel and their right to family life.

6. HaMoked has many years of experience in the handling of issues associated with the arrangement of the status of residents' children – the issue with which this appeal is concerned. It is a diverse experience which includes an individual handling of hundreds of cases *vis-à-vis* the authorities, and particularly the Ministry of Interior; individual reference to the cases of children in the framework

of general and constitutional proceedings[1]; submission of requests to the authorities pursuant to the **Freedom of Information Law, 5758-1998**[2]; participation in meetings of the Internal Affairs Committee of the Knesset[3]; submission of position papers and opinions to the relevant bodies[4]; publication of reports; publication of notices to the public regarding changes in the procedures of the Ministry of Interior[5]; etc. As will also be described below, over the years HaMoked accumulated vast knowledge and expertise on the arrangement of the status children, a matter which should not be taken lightly in view of the frequent changes made in the policy of the Ministry of Interior on this issue and the deficient publication of the Ministry of Interior's policy and procedures.

7. Throughout the years HaMoked handled hundreds of proceedings in matters of East Jerusalem residents. and their family members. It frequently serves as a public petitioner "on various issues of general public importance, related to the rule of law in its broad sense and to other matters of a constitutional nature" (HCJ 651/03**The Association for Civil Rights in Israel v. the Chairman of the Elections Committee for the Sixteenth Knesset** IsrSC 57(2) 62, 69 (2003)). HaMoked is often heard in issues having general aspects. Thus, for instance, HaMoked, together with the Association for Civil Rights in Israel (ACRI), have recently submitted an application to join as *"amicus curiae*" in AAA 1038/08 **State of Israel v. Ghabis** (judgment dated August 10, 2009), which concerned the grant of the right to be heard in family unification procedures of spouses, when the Ministry of Interior considers denying a family unification application based on security or criminal information. In AAA 5037/08 **Khalil v. Minister of Interior**, HaMoked also requested, together with ACRI, to join as *"amicus curiae*" for the purpose of contributing to the proceeding the knowledge and experience they have accumulated with respect to the denial of the permanent residency status of the Palestinian residents of East Jerusalem.

8. The specific dispute being the subject matter of this appeal also has public aspects, intrinsically related to the rule of law. Indeed, on more than one occasion, within the framework of a specific proceeding, a general issue arises, the ramification of which are much broader than the individual case at hand. In these cases a third party with relevant expertise – such as the applicant – can assist in the establishment of a judgment by providing the court a full and clear presentation of knowledge in the field of its expertise, which applies to the general issue. For this purpose the courts have recognized the importance of joining an *amicus curiae* in appropriate cases. As stated by President Barak:

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[1] See, for instance, HaMoked's petitions in HCJ 10650/03 **Abu Gwella v. Minister of Interior** and HCJ 5030/07 **HaMoked: Center for the Defence of the Individual v. Minister of Interior,** petitions against the Citizenship and Entry into Israel Law (Temporary Order) in which HaMoked raised the injury caused by the different versions of the law to residents' children. The petitions were heard together with HCJ 7052/03 and HCJ 466/07, respectively.

[2] See, for instance, a request from 2012 pursuant to the Freedom of Information Law regarding family unification and registration of children in East Jerusalem; http://www.hamoked.org.il/files/2012/1156920.pdf

[3] Accordingly, for instance, HaMoked's representatives participated in the discussions held in meetings of the Interior Affairs Committee of the Knesset regarding proposed amendments to the Temporary Order Law, and raised, inter alia, the unique issue of residents' children. See for instance protocol 466 of a meeting dated July 11, 2005, Internal Affairs and Environment Committee, the 16th Knesset.

[4] See, for instance, HaMoked's opinion which was submitted to the human rights committee of the United Nations in 2010: http://www.hamoked.org.il/Document.aspx?dID=Documents1239

[5] See, for instance, HaMoked's publication in "Al Quds" newspaper regarding changes in the procedures on the registration of children: http://www.hamoked.org.il/Document.aspx?dID=Documents2404

> The '*amicus curiae*' institution has been recognized in various legal theories for hundreds of years… its main purpose is to assist the court on any issue whatsoever, by someone who is not a direct party to the dispute in question. Originally this institution was a tool for presenting an exclusively neutral position in the proceedings, while rendering objective assistance to the court. Later on, however the *amicus curiae* institution developed into a party to the proceedings, which was not necessarily neutral or objective, but it rather presents – by virtue of its position or engagement – an interest or expertise that should be heard by the court in a specific dispute". (*Retrial* 7929/96 **Kozli v. The State of Israel**, IsrSC 53(1) 529, 533 (1999) (hereinafter: **Kozli**)).

9. Accordingly, the guiding principle is that the knowledge and expertise of the applicant wishing to join as *amicus curiae* provide an appropriate presentation and articulation of the general aspects of the specific dispute. As stated by President Barak:

> In those cases where there is a third party – who is not himself involved in the dispute – it may be possible to join him as an *amicus curiae*, if its presence in the proceedings contributes to the establishment of a judgment in a specific case, based on a full presentation of the relevant positions in the case in question and by providing eloquent and knowledgeable representation to representative and professional bodies." (**Kozli,** *ibid*.).

10. The **Kozli** case provides a list of tests which should be satisfied for the purpose of granting any organization the status of *amicus curiae*:

> Indeed, before giving an organization or a person the right to express its/his position in a proceeding to which it/he is not an original party one must examine the potential contribution of the proposed position. One must examine the nature of the organization that applies to join. One must investigate its expertise, experience and the representation it provides to the interest for which it wishes to join the proceedings. One should clarify the type of the proceeding and the procedure implemented therein. One must examine the identity of the parties to the proceeding itself and the stage in which the application to join was filed. One must be aware of the nature of the issue to be decided. All of the above are not exhaustive criteria. They are insufficient to determine in advance when one should or should not be joined to the proceeding as *amicus curiae*. At the same time one must consider these criteria, amongst others, before making a decision in an application to join a proceeding as aforesaid. (*Ibid*. 555)

11. The rule established by the Supreme Court with respect to *amicus curiae* in the **Kozli** case, by virtue of which the joining of an *amicus curiae* was allowed in criminal proceedings, has been implemented in various types of proceedings, pending before different courts (**In constitutional and administrative proceedings** see for instance: HCJ 1119/01 **Zaritskiya v. Ministry of the Interior** (decision dated April 15, 2001); HCJ 2531/05 **"Recovery and Recuperation" Management and Services Netanya Ltd. v. State of Israel – Ministry of Health** (decision dated June 26, 2005); HCJ 2056/04 **Beit Surik Village Council v. The Government of Israel** IsrSC 58(5) 807, 824-826 (2004); HCJ 7803/06 **Abu Erpah v. Minister of Interior** (decision dated 25 December, 2006); AP (Tel Aviv) 1464/07 **Perach Hashaked Ltd. v. Bat Yam Municipality** (decision dated July 9, 2007). **In civil proceedings** see for instance: CA 11152/04 **Pardo v. Migdal Insurance Company Ltd**.

(decision dated April 4, 2005); CA 9165/02 **Clalit Health Services v. Minister of Health** (decision dated September 29, 2003); **In the Labor Courts** see for instance: LA 1233/01 **Orielli – Herzlyia Municipality** IsrLC 37 508, 519 (2001); MApp 3415/00 **Na`amat - Clal Insurance Company Ltd.** (decision dated September 11, 2001); Nat.Ins 1245/00 **Diwis – National Insurance Institute** (judgment dated November 3, 2005)).

12. As aforesaid, the courts are prepared under suitable circumstances to allow the joining of *amicus curiae*, if knowledge, which is within its field of expertise, is liable to assist the determination of the case at hand in an efficient and complete manner (see also on this matter: Michal Aharoni "The American Friend – A Sketch of the *Amicus Curiae*" [in Hebrew] ***HaMishpat*** 10 (5765) 255; Israel Doron, Manal Totry-Jubran "*Too Little, Too Late? An American Amicus In An Israeli Court*" 19 Temple (Int'l.&Comp. L. J. 105 (2005)).

13. In view of the general nature of the issue which is raised in this appeal, the relevant considerations for joining an *amicus curiae*, and the unique expertise and experience of the applicant, the honorable court is requested to order of the joining of applicant as *amicus curiae* to the proceeding.

14. The joining of the applicant is not expected to encumber the judicial hearing. Firstly, the applicant wishes to join as *amicus curiae* solely for the purpose of filing an opinion on its behalf, and solely for the purpose of arguing for the issues which appear in said opinion. Beyond that, the status and degree of involvement of the applicant in the proceedings shall be determined by the court, as it deems appropriate. In view of the fact that the applicant shall not intervene in the clarification of the factual questions between the parties, if any, and in view of the fact that its involvement will be limited to an opinion on the general questions addressed by it, its joining, then, will not jeopardize the efficiency of the hearing. In addition, the application is filed at a preliminary stage, before a hearing on the merits has been held, so as not to cause damage to any of the parties or delay in the hearing.

15. Therefore, the applicant requests that its position be heard in the context of this proceeding. The honorable court is requested to join the applicant as *amicus curiae* and summon it to the hearing in the appeal.

Detailed Arguments

> A minor is an individual, a human being, a person – even if small in size. And a person, even a small person, is equally entitled to all rights of a big person.
>
> (Justice M. Cheshin in CA 6106/92 **A. v. Attorney General**, TakSC 94(2), 1166, page 1168).

16. The applicant will describe below the developments which occurred in respondent's policy on the issue of the arrangement of the status of the children of residents of East Jerusalem, and particularly, the effect that the Temporary Order had on said policy. The applicant will refer specifically to respondent's policy being the subject matter of the appeal at hand, and will place it in a larger context – the factual context which deals with the condition of the children of residents of East Jerusalem, and the constitutional context – which deals with the impingement inflicted on the rights of the residents' children by said policy.

Background: Living Conditions in East Jerusalem[6]

17. It is no secret that East Jerusalem is one of the poorest and most neglected places in Israel. For many years, the state's authorities have refrained from investing in and developing the east side of the city. Consequently, the population suffers from poverty and deprivation, from grave defects in the supply of public services, from infrastructures in poor condition and from difficult living conditions.

18. It is not a decree of fate. Said neglect is only one aspect of an open policy of the governments of Israel throughout the decades, the main purpose of which is to obtain Jewish majority in Jerusalem and push the Palestinian residents of the city away. To obtain said objective, Israel has applied, throughout the years, a policy which deprived the residents of East Jerusalem from their civil rights (for instance, deprivation of residency status from residents of the city and the imposition of many limitations on family unification procedures and registration of children) and a deliberate discrimination policy in different areas. Hence, the residents of East Jerusalem are discriminated against in all matters pertaining to planning and construction policy, land expropriation policy, investments in physical infrastructures and in governmental and municipal services provided to them. Set forth below are several figures which demonstrate the gravity of the situation.

19. According to the figures of the Central Bureau of Statistics, 75.3% of the residents of East Jerusalem live below the poverty line; 82.2% of the children in East Jerusalem live below the poverty line.

20. Living conditions in East Jerusalem are crowded and difficult. Nevertheless, only 14% of the areas of East Jerusalem are designated for residential construction for Palestinians.

21. **The welfare area.** The discrimination in this area is manifested, among other things, in the manpower standards allocated for the rendering of services to the residents of East Jerusalem. Despite the fact that the East Jerusalem population comprises one third of the entire population of Jerusalem, the number of welfare offices in the eastern part of the city is lower by one third from the number of welfare offices in the other parts of the city (5 as opposed to 18). This fact makes it difficult to have an adequate distribution of welfare services and reduces their accessibility, as a result of which many of those who need the services are unable to obtain them. Consequently, the burden imposed upon the social workers is unbearable. Currently, one social worker in East Jerusalem handles about 120 cases while the social workers in the western part of the city handle about 90 cases on the average.

22. Another example - the **education area.** The **Compulsory Education Law, 5709-1949** applies to every school age child who lives in Israel, regardless of his status in the Populations Registry run by the Ministry of Interior [7]. Nevertheless, and despite HCJ

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[6] The figures in this chapter are taken from the report of the Association for Civil Rights in Israel of 2014,East Jerusalem in Figures". Available in http://www.acri.org.il/he/wp-content/uploads/2014/05/EJ2014.pdf

[7] Ministry of Education**, Circular of Director General 5760/10 (a): The Application of the Education Law on Children of Foreign Workers,** June 1, 2000).

judgment which held that children of compulsory school age in East Jerusalem should be given the opportunity to register for compulsory studies, as stated in the **Compulsory Education Law**[8]**.** The right of thousands of Palestinian children in East Jerusalem to education is being currently implemented only partially, and the education system in the eastern part of the city suffers severe problems, which require immediate and special treatment.

23. At the center of the current problems in this field stands the problem of a serious shortage of classrooms. In the municipal educational system there is a shortage of 2,000 classrooms. Although Free Education Law should apply to children aged 3 and above, only 6% of East Jerusalem children aged 3-4 attend municipal kindergartens as a result of a shortage of about 400 classrooms. Finally, 36% of the students in East Jerusalem do not complete 12 school years.

24. **Additional areas**. The planning and building system suffers from continuous budgetary constraints, which created a huge gap between the needs of the population and the solutions provided to it. There are also serious deficiencies in the provision of a wide range of public services, such as employment services and postal services. Many infrastructures in East Jerusalem are in a bad state and suffer many deficiencies, such as the water and sewage infrastructures as well as the road infrastructures. The eastern part of the city also suffers from serious sanitation problems.

25. To sum up the above: the continued neglect and discrimination in budgets and services on the part of the authorities has brought about a situation of deep poverty and systemic problems in many fields. The situation also lead to a host of harsh social phenomena which include: impingement on the family system; a rise in the level of family violence; a decline in the functioning of the children in the family which is manifested in the dropout rate from high schools and their subsequent entry into the "black" labor market at a young age; a slide into delinquency and drugs; health and nutrition problems, and more.

26. And in the case at hand: it is only natural that the poverty, the deteriorating education and welfare systems and the lack of infrastructures, severely affect populations, which are, to begin with, more vulnerable – in our case, children and youth. The reality to which the Temporary Order was applied is a reality which *a priori* encumbers a proper development of children and youth. When said data of poverty and discrimination in services and infrastructures are coupled by a denial of social rights and welfare services from many of the children of East Jerusalem, as a result of the law, it is only obvious that the exposure to risk factors among these children increases. When the fact that these children belong to the Arab minority group, which is anyway discriminated against, is coupled by the fact that status is not granted to them – the sense of belonging of the children of East Jerusalem to their families and to society at large is weakened even further.

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[8] HCJ 3834/01 **Muhammad Hamdan and 27 others v. Jerusalem Municipality,** and HCJ 5185/01 **Phadi Baria (minor) and 911 others v. Jerusalem Municipality** (partial judgment given on August 29, 2001,

The arrangement of the status of children of East Jerusalem residents - general

27. According to Regulation 12 of the Entry into Israel Regulations, 5734 – 1974, a child who was born in Israel to parents who are both permanent Israeli residents, is entitled to have the same status as his parents. Regulation 12 provides that a child who was born in Israel to parents one of whom is a resident (but not a citizen) and the other has no status in Israel, is entitled to the status of the parent who is an Israeli resident. These children are not given an identification number in the hospital and the parents should go to the Ministry of Interior and submit an application for the registration of the child.

28. Israeli law does not regulate the arrangement of status in Israel for children who were born to Israeli residents outside Israel. Therefore, the registration of these children is made according to internal procedures established by the Ministry of Interior. Until 2001 the Ministry of Interior established a single procedure for the registration of children who were born in Israel and only one of whose parents is an Israeli resident and for the registration of children of Israeli residents who were born outside Israel; the status of all these children is considered in the framework of a procedure known as "application for the registration of children" and according to the "center of life" criterion. Hence, the principle according to which the status of a child who resides within the state of Israel with his Israeli resident parent is the same as the status of his parent - was maintained (see HCJ 979/99 **Carlo v. Minister of Interior et al**.).

29. In 2001, the Ministry of Interior changed its policy: firstly it imposed registration fees on the registration of children of East Jerusalem residents who were born outside Israel, and thereafter it notified that *in lieu* of permanent residency status these children would receive temporary residency status for two years, after the elapse of which their status would be upgraded. Before the ramifications of said policy became evident, the government resolution which froze the family unification procedure entered into force, along which a new interpretation of the children registration procedure was applied by the Minister of Interior.

30. In this context it is important to recall that the policy regarding the registration of children underwent constant changes in the past and has not been published (see AP (Jerusalem) 530/07 **Association for Civil Rights in Israel v. Ministry of Interior** (December 5, 2007)). Until the proceeding in AP 727/06 **Nofal v. Minister of Interior** (May 22, 2011), no regulated procedure existed which entrenched the criteria for the arrangement of the status of children. That, coupled with the severe conditions which existed at the Ministry of Interior encumbered parents' ability to turn to the office (see, for instance, HCJ 2783/03 **Raffoul Rofa Jabra v. Minister of Interior et al.**, (October 6, 2005); AP (Jerusalem) 754/04 **Badawi v. Director of the Population Administration Office** (October 10, 2004)).

    A collection of correspondences exchanged between the applicant and the respond throughout the years, in an attempt to understand his changing policy of which it learnt from sporadic answers which were given in specific cases, correspondences which were mostly unilateral, is attached and marked **AP/1**.

31. Hence, and as will be specified below, the policy being the subject matter of the above captioned appeal should not be regarded as a narrow and specific matter, taking place in a

legal vacuum. Conduct effected through undisclosed and hidden procedures, constantly changing policy and inaccessibility of the system constituted part of an overall approach, which should be taken into account while considering respondents' policy.

The arrangement of the status of children of residents from East Jerusalem in view of the Temporary Order

32. On May 12, 2002, government resolution 1813 was published concerning the cessation of family unification procedure with Palestinians, residents of the Occupied Palestinian Territories (OPT). The Ministry of Interior decided that the same resolution would also apply to the arrangement of the status of children of Israeli residents from East Jerusalem, who were registered with the Palestinian Registry or resided in the OPT, despite the fact that the arrangement of the status of children is not mentioned at all in the resolution which concerns family unification between spouses.

Government resolution 1813 is attached and marked **AP/2**.

33. In 2003 the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003 (hereinafter: the **Temporary Order**) was enacted which entrenched the government resolution. At this stage, children were mentioned for the first time and it was stipulated that children deemed OPT residents up to twelve years of age would be able to receive status; children over twelve years of age were, *de facto*, subject to expulsion, in the absence of status in Israel**.**

34. In September 2005 the law was amended, and among other things, the age of the children entitled to receive status was increased to fourteen. It was also stipulated that between the ages of fourteen-eighteen a stay permit issued by the military commander (**DCO permit**) may be received. Said amendment was enacted despite the government's position and proposal that children under twelve years of age would receive either residency status in Israel or stay permits and children over twelve years of age would receive stay permits.

The government bill for the amendment of the Temporary Order dated May 16, 2005, is attached and marked **AP/3**.

The amended law of September 2005 is attached and marked **AP/4**.

35. After the law was amended, the state explained to this honorable court in the framework of the hearing in HCJ 7052/03 **Adalah – Legal Centre for Arab Minority Rights in Israel et al., v. Minister of Interior** (hereinafter: **HCJ Adalah**) that all minors of all ages would not be separated from their parents.

36. At the same time, the definition of the term "Resident of the Area" in the law was amended, in a manner which consists of any person who is registered with OPT Registries even if he does not reside in the West Bank and Gaza. It should be noted that following this legal change, the Ministry of Interior itself instructed parents, on more than one occasion, to register their children in the OPT as a condition for handling the arrangement of their status in Israel – thus, condemning them to be defined and labeled as "residents of the Area", with all ensuing consequences.

37. On August 1, 2005, the date of the amendment according to which the maximal age was raised from twelve to fourteen – as aforesaid, contrary to the position of the government in the discussions concerning the amendment of the law – the Ministry of Interior created a "table of decisions on the grant of status in Israel to minors having only one parent who is registered as a resident in Israel". According to the table, children under the age of fourteen

who were registered in the Area will be initially granted temporary residency status (A/5), and only two years later their status will be upgraded to a permanent residency status. It was also determined that "to the extent the minor passed the age of fourteen while still holding an A/5, he will continue to hold said status and will not be upgraded."

A copy of the table dated August 1, 2005, is attached and marked **AP/5**.

38. The above table has not been published in public and was entrenched in the procedure of the Ministry of Interior regarding the registration of children only on June 1, 2007. However, the timing of the decision, along the refusal of the Knesset to adopt the version of the Temporary Order as drafted by the government, speaks for itself. The decision not to upgrade the status of children, who passed the age of fourteen while holding an A/5 visa, was a clear attempt on the part of the Ministry of Interior to reduce the "effective age" once again from fourteen to twelve.

39. Said attempt on the part of the Ministry of Interior failed, and in the judgment which was given in AAA 5718/09 **State of Israel v. Srur** (April 27, 2011) it was held that an applicant who was under the age of fourteen when his application for the arrangement of status was submitted, is entitled to receive permanent residency status.

40. It should already be stated, as will be broadly discussed below, that the applicant's position is that the respondents used and continue to use – with respect to applications which were submitted before September 2013 – an additional measure to limit the group of the children who are entitled to an actual residency status in Israel: the demand to prove a center of life in Israel during a period of two years, prior to the submission of the application.

41. **Hence, respondents' position, which was entrenched in the judgment being the subject matter of the appeal at hand, constitutes part of a clear and unequivocal tendency: limitation of the group of entitled applicants, reducing the "effective age" and widening the injury caused by the Temporary Order**.

The demand to maintain a center of life of two years prior to the submission of the application and the amendment of the procedures which apply to the registration of children

42. Until recently, respondent's policy regarding the arrangement of the status of children having only one parent who is a permanent resident – whether the child was born within or without Israel – was entrenched in the same procedure, which was numbered 2.2.0010. In said procedure the respondent established different restrictions which limited the arrangement of the status of children, beyond the provisions of the law. Among said limitations, the respondent entrenched in the procedure his policy according to which an application may be submitted only after two years of residency in Israel (hereinafter: the **two year requirement**).

"Procedure for the registration and grant of status to a child having only one parent who is registered as a permanent resident I Israel" is attached and marked **AP/6**.

43. Said requirement was recognized by case law as a reasonable requirement. See, for instance, the words of the court in AP 742/06 **Abu Qweidar v. Minister of Interior** (reported in Nevo, judgment dated April 15, 2007):

> The purpose of the requirement being the subject matter of the discussion (the two year requirement, N.D.) is to ascertain that **it is the applicant's intention to settle down in Israel**. A decision concerning the center of a person's life normally requires a protracted examination… the rule is that this court does not replace the discretion of the authority with its discretion and it is authorized to intervene in the authority's decision only when it exceeds reasonableness. Respondent's decision that the examination of a center of life would pertain to a two year period does not exceed reasonableness and therefore there is no cause for the court's intervention.
>
> (*Ibid*., emphasis added, N.D.)

44. However, despite the fact that the courts have recognized the two year requirement as a reasonable requirement, they have criticized the manner by which it was applied, in the sense that according to the policy of the Ministry of Interior the ability to arrange the status of the child was postponed by two years (at least) until such requirement was satisfied. Accordingly, the judgments in AP 8340/08 **Abu Gheit v. Minister of Interior** (December 10, 2008) (hereinafter: **Abu Gheit**), as later confirmed in AP 727/06 Nofal v. Minister of Interior (May 22, 2011)(hereinafter: **Nofal**), and in AP 1140/06 Za'atra v. Minister of Interior (November 30, 2007)(hereinafter: **Za'atra**), judgment which followed the route outlined in HCJ 3648/97 **Stamka v. Minister of Interior**, IsrSC 53(2) 728 (May 4, 1999), judgments which held that a person who maintains his center of life in Israel should be allowed to submit an application, despite the fact that the final approval for the status arrangement would not be given before two years of residency in Israel shall have elapsed.

45. In Abu Ghit of 2008, it was held that parents should be allowed to submit an application for their children upon their relocation to Israel. After the submission of the application, the children should be granted stay permits in Israel which would be extended until a center of life over two years shall have been proven, at which time their permanent status may be arranged:

> **The court's words in Abu Qweidar should be very carefully examined and** it should be noted **that they referred to the requirement to prove a center of life as a "<u>fundamental condition for the approval of applications for the registration of children</u>",** namely, **<u>for the approval of their permanent residency status by virtue of Regulation 12</u>, and made no reference whatsoever to the issue of the "interim" status** (in respondents' words) which will be given to the children – before the applicant – the permanent resident parent – proved a center of life in Israel for two years. No explicit reference to this question may be found in the above mentioned procedures either.

(Ibid., emphases added, N.D.)

46. In other words, in **Abu Gheit** the court held that there was no preclusion for the examination of the center of life of the family over a period of two years, before **permanent** status is obtained by virtue of Regulation 12. However, the court also held that interim status should be given to the children in said period. In other words, the sensible position of the court in **Abu Gheit** was that the examination of applicants' satisfaction of the two year requirement should be **integrated** into the procedure for the arrangement of the status of the child, and that the examination stage should not be turned into an additional and preliminary stage.

47. The Ministry of Interior, on its part, established a procedure of residency under an A/5 visa for two years, following which the status would be upgraded to a permanent status – subject, obviously, to continued center of life in Israel. The Ministry of Interior disregarded the **Abu Gheit** judgment in the sense that it continued to demand that a center of life of two years in Israel be maintained **prior to the commencement of the procedure** – and have thus caused the children to be totally deprived of any status and rights whatsoever during said two years, instead of integrating the two year requirement **into** the procedure – namely, conducting the examination of the center of life **during the two year period of residency under an A/5 visa**.

48. Hence, in fact, the Ministry of Interior reduced the effective date. Only a child who started to satisfy the two year requirement before he was twelve years old could have undertaken the procedure upon the conclusion of which permanent residency status may be obtained. Only a child who started to satisfy the two year requirement before he was sixteen years old could have received a DCO permit and lawfully stay in Israel.

49. Said unreasonable policy was appealed against in **Radwan** (AAA 8630/11 **Radwan v. State of Israel – Minister of Interior**). In the framework of the appeal, in a decision dated June 12, 2013, the court accepted respondent's request to submit complementary arguments on the issue of "**whether respondent's demand that the application may be submitted only after the minor had a center of life in Israel for two years does not breach a primary statutory provision – section 3A of the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003, as amended**" (in 5765-2005, Amendment 1).

    The decision of the court dated June 12, 2013 in AAA **Radwan** is attached and marked **AP/7**.

50. On September 9, 2013, the respondent notified that "although it is not required by the Temporary Order" he is willing **from now on** to enable parents to submit applications for their children who are under fourteen years of age upon their relocation to Israel and should the application be approved, the respondent would refer to the age of the child on the application submission date and would be willing to give him a temporary residency status in Israel subject to the position of the security agencies. However, the respondent notified that his previous policy "was not flawed".

Respondent's notice dated September 9, 2013 in the framework of AAA **Radwan** is attached and marked **AP/8**.

51. On February 24, 2014, the appellants in **Radwan** submitted a response in which they objected to the application of respondent's new policy from now on only, and demanded that the amendment of the flawed policy, which breached the law as drafted, would be applied retroactively as well.

52. On June 11, 2014, a hearing was held in the petition and judgment was given which gave effect to the parties' agreement. It was agreed that the status of the specific appellants in the appeal would be arranged as per respondent's procedure, according to which they would receive an A/5 visa for two years and thereafter their status would be upgraded into a permanent status. In view of the fact that the procedure was amended and the specific matter was solved, all as entrenched in the judgment, the appeal was deleted. However, it was agreed that the arguments of the parties – including HaMoked's arguments regarding the obligation to apply the new policy also in retrospect - would not be prejudiced.

The judgment in AAA 8630/11 **Radwan v. State of Israel – Minister of Interior** is attached and marked **AP/9**.

53. The matter of the appellants in the appeal at hand demonstrates the inappropriateness embedded in the application of respondent's new policy from September 2013 and onwards only. It is not only an arbitrary and random application, but rather – and most importantly – it is a refusal to amend the severe and flawed consequences of an non-constitutional policy which runs contrary to the law and its objective. We shall specify.

The previous policy of the respondent is flawed and inappropriate; his refusal to amend it retroactively is arbitrary and discriminating

54. The manner by which respondent's policy was changed following the appeal in the **Radwan** case is self-contradictory. On the one hand, the respondent acknowledged the fact that under normal circumstances, any parent should be allowed to submit an application for the arrangement of the status of his child upon his return to Israel. It is, in fact, indicated by the judgments in **Abu Gheit** and **Za'atra**, according to which a situation whereby children reside in Israel unlawfully for a protracted period of time as a result of respondent's policy, is not acceptable, in view of the need to examine a center of life which as recalled, may be easily realized in a manner which would not harm the child. By changing his policy, following the court's query regarding its constitutionality (the decision of the court in **Radwan** dated June 12, 2013), the respondent has, in fact, acknowledged that its previous policy was problematic and amended it in a manner which would enable an application that reconciles with the Temporary Order Law as of the first amendment of the Law.

55. On the other hand, the respondent stipulated that its policy would apply "from now on", and refused to apply it to children who returned to Israel before they were 14 years old, but who passed the critical age established by the legislator when they have completed the two year requirement, if their application had been submitted before September 2013. These children

are condemned to eternal dependence on the respondent in the form of annual renewal of their DCO permits, living in Israel without a real status, in eternal temporariness – despite the fact that the policy was amended due to its unreasonableness and dis-proportionality and the difficulty to reconcile it with the law as drafted.

56. Similarly, and even more forcefully, respondent's refusal to apply its amended policy retroactively impinges on children who returned to Israel before they turned 18 years old, but passed the age of 18 when they have completed the two year requirement, and were, *de facto*, condemned to expulsion, in view of the fact that according to the Temporary Order they are not even entitled to DCO permits.

57. The story of the appellants at hand very well demonstrates the fate to which many are doomed as a result of respondent's decision to set an arbitrary date, prior to which his offensive policy would continue to apply whereas, following which applicants would finally enjoy a policy which reasonably reconciles with the provisions of the Law.

58. In conclusion: with respect to all applications submitted prior to September 2013, the policy of the Ministry of Interior is that the parent should have postponed by two years the submission of the application for the arrangement of the status of his child. A child who was twelve years and one month old when his parents had fully relocated to Jerusalem, will not receive status in Israel – since his parents could submit an application on his behalf only when he reached the age of fourteen years and one month, at which time – according to the Law – he will no longer be entitled to receive status but rather, at the utmost, a military stay permit. A child who was sixteen years and one month old when he relocated with his family to Jerusalem, is not entitled to any status or permit whatsoever, in view of the fact that after two years shall have elapsed from the date on which the family relocated to Israel, he will no longer be a minor.

59. With respect to applications which were handled and which are currently handled according to the previous policy, it is important to note that in fact, parents were directed by the respondent not to submit applications for their children before the elapse of two years in which a center of life in Israel had been maintained, or else they would be charged with high fees for an application that would be immediately denied. However, once an application was **approved**, the approval constituted recognition of the fact that the family lived in Israel for at least two years prior to the date of its submission (and in most cases even more than that).

60. Having realized that a center of life may be examined so simply in a manner which does not cause the children any harm, the question which must be asked is what is the objective for which the arrangement of status is denied from children like the children in the case at hand, who returned with their family to Israel when they were under fourteen years of age, in view of the fact that the Temporary Order Law, which has a security objective, was amended so that it would not apply to children up to the age of fourteen, as it has been clarified that there was no security justification for a sweeping refusal to arrange their status. In addition, the Law was amended in a manner which enables the arrangement of the stay in Israel of children up to the age of eighteen for the purpose of preventing their severance from the family unit, as it was found that there was no security justification for such denial.

61. Respondent's previous policy, the amended procedure of which still applies to many children, has many flaws. As will be clarified below, said policy breaches the law and runs contrary to respondent's statements before the court, the objective of the legislation and the court's interpretation. In view of said flaws the policy must be disqualified and the children, whose status has not been arranged contrary to the law, should be given the opportunity to arrange their status and at the same time an opportunity should be given to submit an application for temporary status for the child, by virtue of which he would stay in Israel until a decision in his application is given, after the elapse of two years (**Abu Gheit** and **Za'atra**). A similar holding was made in AAA 8849/03 **Dufash v. Population Administration in East Jerusalem** (June 2, 2008).

Respondent's policy according to which the application may be submitted only after the elapse of two years of a center of life breaches primary legislation

62. Already in HCJ 7052/03 **Adalah et al., v. Minister of Interior** (TakSC 1754(2) 2006), the Honorable Justice (as then titled) M. Naor, expressed her dissatisfaction of the manner by which the Temporary Order Law was applied to minors. In paragraph 24 of her judgment Justice Naor stressed that should the Law be extended:

> … it would be appropriate, in my opinion, to also examine the possibility to significantly increase the age of minors to whom the prohibition established by the Law would not apply.
>
> (*Ibid*., page 1908).

63. In paragraph of his judgment in **Adalah** the Deputy President, as then titled, the Honorable Justice M. Cheshin, describes the relaxations made in the Law, according to him, when the Amendment No. 1 was adopted in August 2005. In that regard he states as follows:

> We all know and agree: the Citizenship and Entry into Israel Law has originally caused considerable harm to children who were prevented from living with their custodial parent in Israel. However, after the amendment of the law – by adding thereto the arrangement in section 3A – the situation has considerably improved: with respect to minors under the age of fourteen as well as with respect to minors over the age of fourteen. According to the law as currently drafted there is no adequate justification for the revocation thereof from this angle.

64. The Honorable Justice Cheshin held further in paragraph 67 of his judgment:

> The law does not apply at all to a child born in Israel to an Israeli parent in view of the fact that such a child receives the same status as his Israeli parent.

65. The Deputy President, as then titled, the Honorable Justice M. Naor, described in 466/07 **Galon v. Attorney General** (January 11, 2012) the amendments to the Temporary Order Law regarding children, based on which, *inter alia*, it was determined that the Law was proportionate:

> As explained in the judgment of the Deputy President Cheshin in the previous petitions – **minors up to the age of fourteen are entitled to receive status in Israel** for the purpose of preventing their separation from the custodial parent who lawfully resides in Israel, and therefore their right to live with the custodial parent is not harmed at all, whereas **minors over the age of fourteen can receive stay permit in Israel for the purpose of preventing their separation from the custodial parent**. Said permit will be extended only if the minor resides in Israel permanently. The Deputy President noted in the previous judgment that said arrangement was satisfactory and that the legislator did well when it established an exception which enabled children to stay with at least one of their parents in Israel. Indeed, it was so emphasized over there that the original law caused considerable harm to children who were prevented from living with the custodial parent, however, when the previous petitions were heard the harm caused was limited (see pages 414-416 of the judgment of the Deputy President in the previous petitions).
>
> (*Ibid.*, paragraph 18 of the judgment of the then Deputy President, Honorable Justice Naor. Emphases added, N.D.).

66. In AAA 5718/09 **State of Israel v. Srur** (April 27, 2011) referred to by the Honorable Justice Naor in her **Galon** Judgment, the court explained the intention of the legislator to equate the status of children up to the age of fourteen with the status of their parents:

> A study of the protocols documenting the Committee's sessions reveals the rationales behind these changes. The protocols mention the need to grant children under 14 years of age status which is identical to the status of their parents who live in Israel, not immediately, but rather after a probationary period of a number of years, during which the child would be granted temporary status in order to ensure that these children indeed live in Israel on a permanent basis (see: Protocol, 466th Session, 16th Knesset, 17-19, 23, 25 (July 11, 2005) (hereinafter: protocol 466) which refers to granting permanent status following a graduated procedure. See also Protocol, 486th Session, 16th Knesset, 12 (July 25, 2005) (hereinafter: protocol 486) which addresses raising the cut off age from 12 to 14).
>
> (Ibid., paragraph 32 of the judgment of the Honorable Justice Vogelman)

67. While defending the constitutionality of the Law in the **Adalah** and **Galon** cases, the respondent explained to the court that children up to fourteen years of age would receive the same status as their parents and that each child up to eighteen years of age would be entitled to status. In **Galon** it was clarified that the status would be extended also after the child became an adult. The state's statements were entrenched in **Adalah** (for instance, the comment of the Deputy President as then titled, the

Honorable Justice Cheshin, paragraph 65 of his judgment) and **Galon** (for instance, paragraph 18 of the judgment of the Deputy President, the Honorable Justice Naor).

68. However, as described above, at the same time, the respondent established arrangements, contrary to the Law, its statements, the court's interpretation, the intent of the legislator and the purpose of the legislation, the meaning of which is that only children who returned to Israel when they were under twelve years of age would be entitled to status. In addition the respondent reduced the age of the children entitled to permits for the purpose of preventing their separation from their parents to the sixteen. All of the above for the examination of a center of life, an examination which may also be conducted in a manner which would not cause harm to the child and would not prevent him from receiving status or permit, as the case may be. (See and compare, **Natalia Sandzuk v. Ministry of Interior** (December 24, 2008)).

69. The impingement of children as a result of respondent's policy to reduce the number of children who are entitled to status and to push forward the age based on which the application is examined, does not serve a proper purpose and does not befit the values of the state, and is obviously beyond need.

70. In **Srur** it was held that the subjective purpose of section 3A of the Temporary Order Law was to realize the security purpose of the Law in a proportionate manner, limiting to the maximum extent possible the violation of human rights, so that a minor up to fourteen years of age, would be able to receive, to the maximum extent possible, the same status of his custodial parent. The court also discussed the objective purpose of the law and held:

> We now proceed to examine the objective purpose which concerns the fundamental values of the legal system in a modern, democratic society (see Barak, pages 201-204). The objective purpose is examined, *inter alia*, against the backdrop of the nature of the statute, the entire statutory arrangement and the fundamental principles of the legal system (see Barak, pages 249-251). The fundamental values of the legal system include the protection of human rights and the interpretation rules applicable in our legal system require that a statute be interpreted in a manner which is consistent with the protection of these rights whilst reducing the infringement upon them, to the extent possible (see: Hatib, paragraphs 5, 10). […] As already mentioned, Section 3A proclaims itself as meant to prevent the separation of a child who is a resident of the Area from his parent who lawfully resides in Israel. Thus, one of the objective purposes of this arrangement is protecting the constitutional right to family life…
>
> … on the issue of the parent's right to raise his child and the child's right to grow up with his parent in other contexts see: LCA 3009/02 A v. B, IsrSC 56(4) 872, 893-894 (2002); CFH 6041/02 A v. B, IsrSC 58(6) 246 (2004); HCJ 11437/05 Kav LaOved v. Ministry of Interior (reported in Nevo, April 13, 2011) paragraphs 38-39 of the judgment of Justice A. Procaccia (hereinafter: Kav LaOved)).
>
> Another fundamental value of our legal system, which runs like a golden thread throughout the judgments of this court, is the principle of the child's best interest. This principle guides the court in any proceeding which substantially pertains to minors, even when the case concerns the exercise of administrative power (see: AAA 10993/08 A v. Ministry of Interior (reported in Nevo, March 10, 2010), paragraph 4 of the judgment of my colleague, Justice N. Hendel. On the applicability of this principle in other contexts see: CrimA 49/09 State of Israel v. A (reported in Nevo, March 8, 2009), paragraph 20 of the judgment of Justice Y. Danziger; see also Article 3 of the Convention on the Rights of the Child (signed in 1990). […]

(*Ibid*., paragraphs 33-35 of the judgment of the Honorable Justice Vogelman).

71. Thereafter, the Honorable Justice Vogelman discusses in **Srur** the importance of equating the civil status of a child with the status of his custodial parent, taking into consideration the security purpose of the Temporary Order Law:

> **From the combination of the right to family life and the principle of the child's best interest stems the importance of equating the civil status of a child with the status of his custodial parent**:
>
> Israeli law recognizes the importance of equating the civil status of the parent with the status of his child. Accordingly, section 4 of the Citizenship Law provides that a child of an Israeli citizen shall also be an Israeli citizen, whether born in Israel (section 4A(1)) or outside Israel (section 4A(2)). Similarly, Regulation 12 of the Entry into Israel Regulations, 5734-1974, provides that 'A child born in Israel, to whom section 4 of the Law of Return, 5710-1950, does not apply, shall have the same status in Israel as his parents. (**Adalah**, paragraph 28 of the judgment of President A. Barak). […]
>
> As aforesaid, Section 3A limits the application of Regulation 12 to residents of the Area and does not directly refer to the principle concerning the equation of the status of a minor to the status of his custodial parent, but rather only to the desire to prevent the separation of a child from his parent who is present in Israel. However, according to accepted rules of interpretation, this section must be interpreted in light of this guiding principle to the maximum extent possible. **Another objective purpose underlying Section 3A is the realization of the general security purpose of the Temporary Order Law which requires the imposition of certain restrictions on human rights for the purpose of maintaining the security of the citizens of the State of Israel. As aforesaid, setting a cut-off age below which a minor is to be given a residency status in Israel and above which he will be given a stay-permit only is based on these security considerations** (see also Section 3D of the Temporary Order Law which concerns security preclusions for granting status to residents of the Area).
>
> (*Ibid*., paragraph 36. Emphases added, N.D.)

72. Also relevant are the words of the Honorable Justice, as then titled, Procaccia in HCJ 7444/04 **Dakah v. Minister of Interior** (February 22, 2010), which concerned family unification between spouses, under the shadow of a security preclusion:

> In view of this reality, in which a fundamental right of spouses, Israeli citizens and residents, to unite with their spouses from the Area, is violated, **a purposive interpretation of the Temporary Order Law is required, which restricts the scope of said violation only to such extent which is required for the realization of the security interest**.
>
> (*Ibid*., paragraph 20. Emphasis added, N.D.).

73. The decision to examine the existence of a center of life over a two year period was made without taking into consideration the severe consequences that said examination will have on children, in view of the provisions of the Law. The respondent in fact agreed that according to the Law parents should be allowed to submit applications immediately upon their relocation to Israel and that the submission date of said applications should be regarded as the effective date for the purpose of determining the children's age. Nevertheless, the respondent decided to apply said policy in a future facing manner only. Consequently, all those children who were injured as a result of the policy which runs contrary to the purpose and language of the Temporary Order Law will not have their status upgraded according to their age upon their relocation to Israel with their families.

<u>The Courts' directive regarding a lenient implementation of the Temporary Order Law due to the fact that it causes a severe violation of rights and in view of the fact that it has been in force for a long period of time, also in cases in which a decision was given years ago</u>

74. In AAA 8849/03 **Dufash v. East Jerusalem Civil Administration** (June 2, 2008) and in many judgments which followed it, the courts have leniently addressed the upgrade of the status of adults in order to reduce the damage caused as a result of the Temporary Order Law. Thus, for instance, in AP 35406-01-12 **Sa'ada v. Minister of the Interior** (March 22, 2012), it was unthinkable to argue that the **Dufash** rational should not be implemented because it was given many years after the specific refusal to upgrade the status of the petitioner, a refusal which was clearly unjustified, as was clarified in the **Dufash** judgment. And see also, AP 8436/08 **'Aweisat Sabah et al. v. Ministry of the Interior** (September 14, 20080, AP 422-05-10 **Nassrin Abu Qalabin v. Ministry of the Interior – Population, Immigration and Border Authority** (October 17, 2010), AP 1953- 05-11 **Natsheh et al. v. Ministry of the Interior** (July 28, 2011, AP 27661-11-11 **Aharam et al. v. Ministry of the Interior** (February 2, 2012, AP 4469-04-11 **Bader et al. v. Ministry of the Interior et al.** (February 27, 2012) – in all of the above cases and in many others upgrade applications were denied according to respondent's previous policy and were reconsidered years later following the **Dufash** judgment. Thus, for instance, issues which were considered prior to AAA 55669/05 **State of Israel v. 'Aweisat** are also decided according to said judgment.

75. Recently, the court stated again, that in view of protracted period during which the Temporary Order Law has been in force, the removal of the limitations imposed on the grant of a temporary status should be considered, also in "ordinary" cases of family unification applications between adults, whose status upgrade is restricted by the language of the Law (See sections 4(1) and (2) of the Temporary Order Law) and also where no mistake or unreasonable delay occurred in the handling of the family unification application. In AAA 6407/11 **Dejani v. Minister of the Interior** (May 20, 2013) which concerned status upgrade, following the **Dufash** judgment, of a person who was allegedly entitled to an upgrade before the restrictions which were imposed by the Temporary Order Law, the Deputy President, as then titled, the Honorable Justice Naor, commented that following an additional extension of the Law:

> The condition of those who do not receive an upgrade despite the fact that they have commenced the graduated procedure so long ago, should be considered…
>
> (*Ibid.*, paragraph 6 of the judgment of the Honorable Justice Naor).

76. The Honorable Justice Vogelman joined the above opinion and held:

> Under these circumstances, it seems that the provision concerning the freezing of the upgrade of those who fall under the transitional provisions is no longer

> necessary in view of the security purpose of the Temporary Order Law – a purpose which was noted by the court when it examined its constitutionality. Firstly, in the case of the latter, not only that an individual examination may be conducted, but rather, such an examination is indeed conducted, in practice, each year on the permit's renewal date. Secondly, this concerns people who are subordinated to an examination by the security agencies for over a decade, since the permits are renewed only in the absence of security preclusion. Thirdly, even after a person's status is upgraded in Israel – from residency under a DCO permit to residency under an A/5 temporary residency visa (which is the relevant category to which we refer) - he continues to be subordinated to security examination, according to the provisions established in respondent's procedures within the framework of the graduated procedure
>
> (*Ibid.*, paragraph 19 of the judgment of the Honorable Justice Vogelman).

77. And see AAA 9168/11 **A. v. Ministry of Interior** (November 25, 2013), paragraph 23 of the judgment of the Honorable Justice Zylbertal; AAA 4014/11 **Kafayeh Abu 'Eid v. Ministry of Interior, Population Authority** (January 1, 2014); AAA 6480/12 **Dahnus (Rajbi) v. Ministry of Interior** (November 28, 2013); AAA 9167/11 **Hassan v. Ministry of Interior** (May 8, 2014).

78. Until the date hereof, the court has also exercised broad, lenient an sensitive interpretation concerning the issue of the upgrade of the status of children. See for instance, the judgment of the Honorable Judge Sobel in AP 311/06 **Munir v. Minister of Interior** (August 21, 2008); paragraphs 10 and 11 of the judgment of the Honorable Judge Marzel in AP 24885-09-10 **Halabiyeh v. Minister of Interior** (July 28, 2011); the judgment of the Honorable President, as then titled, Judge Arad, in AP 1238/04 **Joubran v. Minister of Interior** (August 19, 2009); the judgment of the Honorable Judge, Deputy President, as then titled, Tzur, in AP 8386/08 **Arab al-Swahreh v. Minister of Interior** (December 14, 2009).

79. In the **Dakah** judgment which concerned an adult spouse, it was held:

> The proper balancing between a fundamental human right and the security value is required not only for the examination of the constitutionality of the Temporary Order Law. It is also required, to the same extent, for the actual interpretation of the Law and the implementation of its provisions.
> Indeed, "A violation of a human right will be recognized only where it is essential for the realization of a public interest of such strength that it justifies, from a constitutional viewpoint, a proportionate infringement on the right (**Adalah**, my judgment, paragraph 4). (paragraph 13).

80. The above holdings are even more relevant when children that have no security background are concerned and where there is no need to use the sanction of denial of status for the examination of a center of life. Unlike **Dejani, Abu 'Eid, Hassan, Dahnus** and **A**., there is no need in the case at hand to amend the Law, in view of the fact that the Law has already been amended in 2005, after it has been clarified that there was no security justification for the denial of status upgrade of children up to the age of fourteen. In the case hand too, the children who are entitled to enjoy Amendment 1 and respondent's new policy, have already been residing in Israel for years by virtue of stay permits and annual examinations. Accordingly, for instance, the appellants at hand have been receiving over the course of

many years stay permits with no rights, instead of the status which should have been given to them pursuant to the provisions of the Law.

81. Why, then, regardless of the directive of this honorable court that the Temporary Order Law be applied narrowly,[9] the Law has been applied in such a broad manner which does not befit its security objective, precisely to children, the most vulnerable group the best interests of which should be considered by the state as a primary consideration? And why also to date the respondent applies its new, praiseworthy decision, which provides such a simple solution for the examination of a center of life, in a forward looking manner only? It is hard to understand. Why a child who returned to Israel with his parents at this time after having lived in the Area for several years while he is twelve years and a half, is entitled to status, whereas a child who returned with his parents to reside in Israel three years ago, also at the age of twelve years and a half, will never be entitled to receive status? Why should the latter child, whose circumstances are the same as those of the first child, remain without status and without rights, unlike his younger siblings, when the Law does not restrict and has never restricted the grant of status, and when there are no security considerations due to which the arrangement of status should be denied?

Children registration policy in the past – secretive and unstable

82. The unreasonableness and harm caused by respondent's decision to arrange the status of children according to the date of their relocation to Israel only from now on, are intensified given the fact that children registration policy had constantly changed in the past and was not published (see AP (Jerusalem) 530/07 **Association for Civil Rights in Israel v. Ministry of Interior** (December 5, 2007)). Until AP 727/06 **Nofal v. Minister of Interior** (May 22, 2011), no orderly procedure existed which entrenched the criteria for the arrangement of the status of children. This should be coupled with the difficult conditions which existed in the Ministry of Interior and encumbered parents' ability to turn to the office (see, for instance, HCJ 2783/03 **Raffoul Rofa Jabra v. Minister of Interior et al.**, (October 6, 2005); AP (Jerusalem) 754/04 **Badawi v. Director of the Population Administration Office** (October 10, 2004)).

83. As described above, in the **Abu Gheit** judgment of 2008, it was held that parents should be allowed to submit applications for their children upon their relocation to Israel. Once the applications are submitted, the children should be given stay permits in Israel which would be extended until a center of life over a two year period shall have been substantiated, at which time their permanent status may be arranged.

84. In the AP **Nofal** judgment which was given in May 2011, the court directed the respondent to amend the procedure for the registration of children in a manner which would entrench the determinations made in **Abu Gheit** (see *ibid*., paragraph 11), which has not been done until this day. Even when the procedure was published at a later stage, according to

[9] See also HCJ 466/07 **Galon v. Attorney General** (January 11, 2012), paragraph 48 of the judgment of the Honorable Justice Rubinstein; paragraph 5 of the judgment of the Honorable Justice Hendel; paragraphs 2 and 16 of the judgment of the Honorable President as then titled Beinisch; paragraph 26 of the judgment of the Honorable Justice Arbel; paragraph 7 of the judgment of the Honorable Justice E. Levy.

paragraph 10 of the Abu Gheit judgment, no reference was made to the status which would be given while the two year requirement is fulfilled.[10] In this regard it should be noted that according to respondent's procedures, an application for a child of a foreigner who is married to an Israeli citizen may be submitted **when the child is abroad or immediately upon his arrival**, when the effective date for the examination of his age id the application submission date (see procedure 5.2.0008).

85. Only since the procedure for the arrangement of the status of children had been published in the context of AP **Nofal**, respondent's policy on this issue was partially clarified, in a manner which made it easier for parents to comply with the intricate and expensive procedure associated therewith.[11]

86. However, to date, according to respondent's decision, **specifically the children whose applications were processed when the criteria and application procedures for the arrangement of the status of children were not made publicly known– are the ones who will be prejudiced**. Relevant to this matter are the words of the court in AAA 4014/11 **Kafayeh Abu 'Eid v. Ministry of Interior Population Authority** (January 1, 2014):

> […] A rigid implementation of the requirement for a "center of life" in Israel for a period of at least two years is problematic **in view of the fact that said criterion was not properly published in the procedures of the Ministry of Interior** (information which was presented to us on in respondent's response dated September 8, 2013).
>
> […]
>
> The first detail which should be taken into consideration as aforesaid, is **the source of the requirement for a "center of life" in Israel for a period of at least two years as a condition for the commencement of the processing of the family unification application and the manner by which said requirement is published**. As aforesaid, in respondent's notice which was filed after the judgment of the court of first instance was given and even after the hearing before us, it was clarified that in fact, family unification applications were not approved in the absence of proof regarding the existence of a "center of life" of two years, despite the fact that said requirement appears neither in 2007 procedure nor in the updated version of the procedure, as a formal condition. The respondent has

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[10] Procedure 2.2.0010 The Arrangement of the Status of Children which was published following AP **Nofal**, may be found at http://www.piba.gov.il/Regulations/7.pdf. Only recently the procedure was divided into two procedures.

[11] For demonstration purposes, in the current clearer situation, following the publication of the procedure – (which has not yet been published in Arabic) the registration fee of a child who was born outside Israel amounts to NIS 750. In addition, upon the approval of the application the family must pay twice, year after year, fee in the amount of NIS 180 for each child who receives an A/5 temporary status. Children who receive DCO permits should appear before the bureau in Jerusalem, and in addition, before the District Coordination Office in the OPT, many times more than once, on each annual renewal, to actually receive the permit. The lines are long, many documents and affidavits should be attached. In most cases the annual stay permits are consecutive, and the period of six months which was required for the approval of applications from the date of their submission, currently extends far beyond that. The above is not intended to challenge this state of affairs in this context, but rather to shed some light on the nature of the procedure and the situation in which the children of Israeli residents find themselves also after the publication of the procedure.

> neither mentioned any other publication of said demand, despite the fact that it has already been held by this court that a condition precedent for the application of internal directives which have a bearing on the rights of the individual is their publication in a reasonable manner (HCJ 5537/91 Efrati v. Ostfeld, IsrSC 46(3) 501, 513 (1992)), and currently this requirement also applies by virtue of the explicit provision of section 6 of the Freedom of Information Act, 5758-1998 (See further: Daphna Barak-Erez Administrative Law A 346-347 (2010) (hereinafter: Barak-Erez)). **Needless to say, that proof of a "center of life" of two years is a condition which pertains directly to the rights of those who apply for status in Israel by virtue of family unification. Being aware of the entire conditions for obtaining permanent status in Israel is essential for those who seek status and is required to enable them to plan their steps. As is known, the above was repeatedly said specifically in connection with the procedures of the Ministry of the Interior in matters concerning receipt of status in Israel** (See: HCJ 355/98 **Stamka v. Minister of Interior**, IsrSC 53(2) 728, 768 (1999); HCJ 7139/02 **Bassa v. Minister of Interior**, IsrSC 57(3) 481, 490 (2003))
>
> (*Ibid*., judgment of the Honorable Justice Barak-Erez, paragraphs 27 and 28. Emphases were added, N.D.).

87. Hence, in view of the above, respondent's position is that children who returned to live in Israel before the dates set forth in the Law, but whose applications were dismissed *in limine*; delayed in the absence of a published procedure or due to the conditions in the bureau; or whose applications were not submitted at all following respondent's directive not to submit applications before the requirement for a center of life of two years shall have been fulfilled – are all entitled under the Law to obtain status or permit in Israel, as the case may be, according to the date of their relocation to Israel.

88. And it should be emphasized once again that the manner by which such applications may be examined in retrospect is simple – given the fact that by his approval of an application for the arrangement of the status of a child, the respondent has, in fact, recognized the family's satisfaction of the two year requirement **prior to the application submission date**. Therefore, the only thing which should be done is to determine that the status should have been given according to the age of the child upon the commencement of the two year period, rather than upon its termination.

89. Accordingly, for instance, in the case of the appellant at hand, the respondent should have arranged his status according to his age in February 2007 – two years prior to the submission of the application and the commencement of the required examination period for the purpose of proving a center of life. Given the fact that the appellant was born in 1994, and that the proper and appropriate effective date befalls in 2007, when he was thirteen years old, the respondent should have given the appellant residency visa, rather than a DCO permit only.

90. Evidently: the solution is simple and effective. On the one hand, it will not encumber the respondent (given the fact that it is very easy to establish the effective date – two years prior to the application submission date), while implementing in a fair, justifiable and more coherent manner the comments of this honorable court in **Radwan**, on the other.

The litigants' position concerning applicants' application to join as amicus curiae.

91. Counsel to the appellants, Adv. Michel 'Odeh, gave his consent for the filing of the application.

92. The position of respondent's counsel, Adv. Run Rosenberg, was requested but has not been received.

February 12, 2015

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Noa Diamond, Advocate
Counsel to the applicant