At the Supreme Court
Sitting as the High Court of Justice

HCJ 5135/14
HCJ 5136/14
HCJ 5498/14
HCJ 6209/14
HCJ 6211/14
HCJ 6404/14
HCJ 6713/14
HCJ 8408/14

In the matter of
HCJ 5135/15 et al:

_____ Nufal et al.

Represented by counsel, Adv. Benjamin Agsteribbe (Lic. No. 58088)
and/or Sigi Ben-Ari (Lic. No. 37566) et al.,

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And in the matter of
HCJ 8408/14:

_____ Mahamid et al.,

Represented by counsel, Adv. Adi Lustigman (Lic. No. 29189) et al.,

27 Shmuel Hanagid St., Jerusalem 94269
Tel: 02-6222808; Fax: 02-5214947

The Petitioners

v.

1. Israeli Knesset
2. Prime Minister
3. Minister of Interior
4. Attorney General

Represented by the State Attorney's Office
29 Salah A-din St., Jerusalem

Tel: 02-6466590; Fax: 02-6467011

The Respondents

Petitioners' Reply to Respondents' Notice

According to the decision of the honorable court dated April 11, 2016, the petitioners in HCJ 5135/14, HCJ 5136/14, HCJ 5498/14, HCJ 6209/14, HCJ 6211/14, HCJ 6404/14, HCJ 6713/14 and HCJ 8408/14 hereby respectfully submit a consolidated reply on their behalf to respondents' updating notices dated April 11, 2015, as follows:

1. The petitioners wish to open their reply by emphasizing the fact that they acknowledge the importance of respondent 3's decision which was attached to respondents' above captioned notice and welcome it. At the same time it should already be emphasized at the outset of the reply that a satisfactory solution was not provided to the general remedies which had been requested in the petitions and that the decision which was attached to the notice was not flawless, all as specified below.

2. On July 22, 2014, the petitioners in HCJ 5135/14 **Nufal et al. v. Israeli Knesset et al.,** filed a series of petitions against the sweeping prohibition which was established in section 2 of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the **Temporary Order**). Said prohibition prevents residents of the Area who have been living with their families in Israel for many years by virtue of stay permits, from upgrading their status. On December 10, 2014, the petitioners in HCJ 8408/14 filed a petition on their own behalf which also challenged the sweeping prohibition which was established in the Temporary Order.

3. It should be emphasized that the above captioned petitions – and additional petitions – were filed with the honorable court following the scathing comments of the court in the context of its judgment dated May 20, 2013, in AAA 6407/11 - **Dejani et al., v. Ministry of Interior – Population Authority** (May 20, 2013) and other judgments which were given thereafter (AAA 4014/11 **Abu 'Eid v. Minister of Interior**, AAA 9168/11 **A. v. Ministry of Interior**, AAA 6480/12 **Dahnus (Rajbi) v. Ministry of Interior** and AAA 9167/11 **Hassan v. Ministry of Interior**, 4324/11 **Muhammad v. Ministry of Interior**, 1145/13 **Abu Habaleh v. Ministry of Interior**) (hereinafter: **Dejani** and together with the additional judgments the **Dejani judgments**).

> Under these circumstances, it seems that the provision regarding the stay of status upgrade… is no longer necessary in view of the security purpose of the Temporary Order Law – a purpose which was emphasized by this court when it examined the constitutionality thereof**. Firstly, as far as the latter are concerned, not only that an individual examination may be conducted, but rather, such an examination is actually conducted once annually upon the renewal of the permit. Secondly, these individuals were subordinated, for over a decade, to the examination of the security agencies, in view of the fact that permits are renewed only in the absence of security preclusion. Thirdly, even after a person's status in Israel is upgraded –**

> **from residency under a DCO permit to residency under an A/5 temporary residency visa (and this is the category with which we are concerned) – he continues to be subordinated to security examination, in view of the provisions set forth in respondent's procedures within the framework of the graduated procedure.**
>
> (Paragraph 19 of the judgment of the Honorable Justice Vogelman in **Dejani**. Emphasis added, B.A.)

4. Hence, the comments of this honorable court are premised on **the passage of time rational, and its impact on the severe harm caused to the families, and the fact that these cases concern individuals who have been examined throughout many years with no security preclusion and who will continue to be examined after the status upgrade is granted as well**.

5. As aforesaid, the petitions at bar were filed based on said comments and therefore the remedies requested therein were directed at said comments and their underlying rational. Due to their importance we shall cite the general remedies as those were drafted in the petitions:

> Why an exception should not be established in section 2 of the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003, according to which residents of the Area living in Israel for a protracted period of time under stay permits within the framework of family unification procedures, be at least granted a temporary residency status (A/5 visa).
>
> (One of the remedies requested in the series of petitions filed together with HCJ 5135/14 **Nufal et al. v. Israeli Knesset et al**.)
>
> Why the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, should not be amended in a manner which will revoke the sweeping prohibition established in sections 2, 3A(2), 3A1(a) and 4 against the exercise of respondent's discretion **in connection with the upgrade of the status of sponsored spouses who undergo the procedure for many years, and grant them a temporary status** or permanent status.
>
> (One of the remedies requested in HCJ 8408/14 **Mahamid et al., v. Minister of Interior et al.**)
>
> (Emphases added, B.A.)

6. Furthermore. In the hearing which was held in the petitions at bar on June 8, 2015, the petitioners reiterated before the honorable court their arguments regarding the passage of time and requested that the court would limit the sweeping prohibition established in section 2 of the Temporary Order by reading the term "resident of the Area" which appears in the Temporary Order as <u>inapplicable to residents of the Area who have been staying in Israel more than five years, years which attest to the fact that their entire ties are to Israel</u>.

7. In the above hearing the court also discussed the passage of time rational:

> **Isn't it conceivable that the passage of time affects this provision in a manner that a certain group, it may be said that with respect thereto it is not proportionate given the passage of time. The constitutional review is made after the time has elapsed**. (The words of the Honorable Justice Baron in the hearing dated June 8, 2015, who joined, in this regard, the comments of

the Honorable Justice Amit page 12, lines 20-22 of the protocol of the hearing dated June 8, 2015(

(Emphasis added, B.A.)

8. Hence, petitioners' position is that the passage of time issue underlying the comments of the court in **Dejani** and the petitions at bar, still stands. In addition, the question why shouldn't it be held that residents of the Area who stayed in Israel a long enough period be excluded from the applicability of the Temporary Order in a manner which would enable them to receive temporary residency status in Israel, has not yet been answered. Therefore, and although respondents' notice is undoubtedly an important notice, it does not provide a satisfactory solution for the relief sought in the petitions. While the petitioners requested that the exclusion from the scope of the Temporary Order and the right for status upgrade would be granted based on the duration of time spent in Israel, the respondents decided that the exclusion would apply only to persons who submitted their applications until a certain date, namely, 2003. The above difference is crucial particularly in view of the fact that in respondents' notice, along the decision of the Minister of Interior, the notice opens with a statement according to which the Temporary Order, which is about to enter its 14th year, will be extended for an additional year. In other words, the group of residents of the Area with whose matter the above petitions are concerned, namely, individuals who have been living in Israel for many years, a population which currently continues to grow, will still remain after said decision, without a solution and remedy for its problem and without any outline which would eventually lead to its upgrade.

9. To conclude this part the petitioners wish to emphasize that according to their position there is no doubt that the passage of time rational – which underlies the comments of this honorable court and the petitions at bar – applies in the same manner and to the same extent to residents of the Area who married after the date on which the Temporary Order entered into effect due to the fact that on one hand, there is no doubt that no one thought at the time that the Temporary Order would become a permanent order which, thirteen years after the date of its enactment would still continue to be an inseparable part of the lives of so many families. On the other hand, it is clear that the same rationales which were discussed by the honorable court in **Dejani** as quoted above, apply to residents of the Area who have been living in Israel for many years, namely, an individual examination of their matter is conducted once annually, they are subordinated for many years to the examination of the security agencies and the permits in their possession are renewed only subject to the absence of a security preclusion. It should be emphasized again that also after their status is upgraded, they will continue to undergo a periodic security examination.

The Decision of the Minister

10. As aforesaid, in addition to the fact that the solution which was given to the relief that was requested in the petitions at bar was not satisfactory, the petitioners wish to refer to the decision which was attached to respondents' notice, since, despite its importance, the decision raises serious concerns. We shall discuss things in an orderly manner.

Limiting the age of the children who will benefit from the decision and tying the application for the child with the application of the sponsored spouse

11. The first flaw in respondent's decision which the petitioners wish to point at is that while sponsored spouses staying in Israel by virtue of stay permits who submitted their application by the end of 2003 will have their status upgraded, precisely with respect to their children – children who, as is recalled, one of whose parents is a permanent resident – the decision limits the right

for status upgrade, without any reason, only to children who were born after January 1, 1998, and only to children whose parent's status was upgraded.

12. According to petitioners' position, limiting the right of children as compared to their parents does not stand to reason, to say the least. It is inconceivable that a sponsored spouse who satisfies the conditions which were established in the decision, will be entitled to have his status upgraded, as such, while his child – who is also as aforesaid the child of a permanent resident, and in many cases the sibling of permanent residents – will not have the benefit of the same conditions.

13. In addition, there are a considerable number of cases of children over the age of 14 whose family unification applications were approved and who consequently receive stay permits in Israel over a long period of time, while for this reason or another, the application of their parent had not been approved. This is the case, for instance, in the event of divorce, death, criminal preclusion etc. Accordingly, cases may exist in which a parent's application which had been submitted prior to 2003 was not approved for any reason, or in which no application had been submitted for the spouse, while the child's application had been submitted prior to 2003 and was approved. Petitioners' position is therefore that the upgrade of the parent's status should not be tied to the upgrade of the child's status and that status upgrade applications of children should be examined separately and independently, subject to security diagnosis and maintenance of center of life. In view of the above, petitioners' position is that the age of the children who will be entitled to status upgrade should not be limited and that any child who satisfies the conditions which will be established, regardless of the date of his birth and regardless of whether his foreign parent is entitled to have a status upgrade, including whether he became an adult and/or married.

The correct emphasis regarding the update – the date of marriage and the duration of time within the procedure rather than the date on which the application was submitted

14. In addition, the petitioners wish to point at an erroneous distinction drawn by the respondent in his decision between applicants who **submitted** their family unification applications by the end of 2003 and applicants who submitted their applications thereafter.

15. The second paragraph of section 5 in respondent's letter commences with the following words:

> As to the distinction between those who **established** their families prior to the change which occurred in the legal situation and those who did that thereafter, see and compare the words of the Honorable Justice (as then titled) Naor in HCJ 466/07 **Galon v. Attorney General**…

16. And indeed, in his notice the respondent refers to the distinction drawn by the Honorable President Naor in HCJ 466/07 **Galon v. Attorney General** (hereinafter: **Galon**) between those who married before the date on which the Temporary Order entered into force and those who married thereafter. Hence, even according to the respondent – who wishes to limit to the maximum extent possible the group of those who can benefit from his decision by using the distinction drawn in the past within the context of the **Galon** hearing – the implementation of said distinction is erroneous, in view of the fact that the distinction, as aforesaid, is not between applicants who **submitted** an application before and after the date on which the Temporary Order entered into force, but rather, between applicants who **married** before the date on which the Temporary Order entered into force, and thereafter.

17. It should be emphasized that the difference between a person who married or submitted an application by the end of 2003 is substantial, in view of the fact that as the respondents know, prior to the submission of a family unification application, the sponsoring party must prove a

center of life of two years in Israel. Namely, many of the families which married prior to the date on which the Temporary Order entered into force, the matter referred to by the Honorable President in her above distinction, were unable to submit an application to the respondent even if they had married prior to the date on which the Temporary Order entered into force.

18. It should also be remembered that in those years respondent's requirement were not entrenched in procedures (see AAA **Abu 'Eid v. Ministry of Interior** (January 1, 2014), AAA 4324/11 **Muhammad v. Ministry of Interior** (February 14, 2014)) and the procedures of the Ministry of Interior which had already been established were not published and were not translated into Arabic (see AP (Jerusalem) 530/07 **Association for Civil Rights in Israel v. Ministry of Interior** (December 5, 2007)). With respect to the arrangement of the status of children no procedures existed at all (see AP (Jerusalem) **Nufal v. Minister of Interior** (May 22, 2011)). Access to respondent's bureau in East Jerusalem was almost totally blocked. See HCJ 2783/03 **Raful Rofe Jabra v. Minister of Interior et al.,** (October 6, 2005); AP (Jerusalem) 754/04 **Badawi v. Head of the Population Administration Office** (October 10, 2004). The above hindrances prevented and delayed the ability to apply to the respondent in many cases including by those who married before the enactment of the law and with respect to children who were previously born.

19. In addition, from March 1, 2002, a general stay was imposed on the submission of family unification applications to the respondent and on their processing by him, according to an announcement made by the Minister of Interior. Thereafter, government resolution 1813 dated May 12, 2002, was entrenched. Furthermore. After the publication of the government resolution and after the enactment of the law in September 2003, new family unification applications for spouses could not be submitted and only applications which had already been submitted could be approved. Only in the framework of the first amendment to the Temporary Order from 2005 the age related option to consider applications of spouses was added and it status could be given to children up to the age of 14 (while previously only children up to the age of 12 were entitled to status). It is important to remember that did not submit applications at that time due to respondent's directive and announcement that applications which would be submitted would be denied. Applications submitted at that time, were denied. Some applicants whose applications had been denied turned to this honorable court, but also in said cases, to the extent the applicants failed to satisfy the age requirement which enabled them to undertake the procedure according to the 2005 amendment, their petitions were dismissed and they were directed to submit new applications once they reach the proper age – namely, said spouses and children also fail to meet the conditions set forth in respondent's notice dated April 11, 2016, which pertains to applicants who had submitted applications by the end of 2003 and whose applications were approved – even if they married prior to the enactment of the Temporary Order and even if their applications were submitted to the respondent beforehand.

20. To teach us that while respondent's decision indicates that ostensibly any applicant who had submitted an application prior to 2003 and whose application was approved may be entitled to have his status upgraded, in fact, applications could not be submitted as of March 2002 (as opposed to applications for the renewal of the processing of applications which had been previously submitted) and until the amendment of the Temporary Order, and even if applications had been submitted during said period contrary to the Ministry of Interior's directive according to the statutory prohibition, the applications were denied and such applicants also fail to satisfy the conditions of the decision.

21. Moreover. It is petitioners' position that with the passage of time granting status upgrade only to applicants who submitted applications prior to 2003does not stand to reason, since considering the reliance aspect it is clear that the law was presented as a temporary order for a "limited" period

of time, and no one could have anticipated that eventually it would become a permanent order, which remained in force for 13 years and may probably continue to be in force.

22. It should be emphasized that with respect to children, who have no control over the timing and reality into which they were born let alone the date on which the application was submitted by their parents on their behalf, it is all the more so unreasonable to limit their right for upgrade based on the application submission date. It would be more reasonable and fair had the respondent determined the status upgrade of children based on the period of time during which the child's status had been renewed by virtue of stay permits without any security preclusion.

23. In an event, the distinction drawn by the respondent based on the distinction drawn by the Honorable President in **Galon**, which pertains to the date of marriage rather than to the application submission date, has no basis. Particularly in view of the fact that the period of time during which applications could have been submitted was in fact significantly limited.

Residents of the Area staying in Israel by virtue of tourist visas

24. Moreover. Respondent's decision which was attached to the notice refers solely to residents of the Area staying in Israel by virtue of stay permits while, as is known, the population which stays in Israel lawfully consists also of individuals who are defined as residents of the Area due to the fact that in the past they lived in the Occupied Palestinian Territories (OPT) although they have never been registered there, such as Jordanian nationals who married Israeli permanent residents. Stay permits are obviously not granted to this group and therefore, the respondent continues to extend the tourist visas in their possession with no upgrading prospects. Hence, respondent's decision in the matter of residents of the Area who are registered in the Area is all the more so applicable to those who were defined as residents of the Area only because they stayed in the OPT a certain period in their past, and were therefore subjected to the Temporary Order. In view of the above respondent's decision should apply to them as well.

Applicants in Humanitarian Applications

25. The petitioners wish to conclude their reply by pointing at another difficulty which arises from the decision. The respondent notes that his decision will be implemented in the framework of section 3A1 of the Temporary Order, namely, through the advisory committee. However, the respondent ties the status upgrade with a pending graduated procedure. However, a considerable number of applications are pending before the humanitarian committee which were submitted before 2003 by applicants who, over the years, failed to meet the conditions of the graduated procedure for instance because they were widowed, divorced, were victims of violence etc.

26. Therefore, the petitioners are of the opinion that the criterion for status upgrade should be uniform and simple and should also encompass OPT residents staying in Israel by virtue of stay permits or tourist visas which were given to them in the framework of a humanitarian procedure, provided that the conditions established by the respondent in the context of the ordinary procedure are satisfied or, if humanitarian applications are concerned, subject to the conditions which were established for that purpose. A situation in which only applicants who submitted applications 13 years ago and even years earlier will be entitled to a status upgrade does not reconcile with the rational of the court's comments and is unreasonable given the passage of time during which the Temporary Order was in force.

Conclusion

27. In view of the above the petitioners reiterate their petitions and the remedies sought therein, which, as specified in this reply, did not receive any satisfactory solution whatsoever. The

petitioners reiterate their request as specified in the petitions that *order nisi* be issued by the honorable court.

April 19, 2016

(Signature)

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(Signature)

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