At the Supreme Court sitting as the Court of Appeals in Administrative Affairs

AAA 3268/14

Before:	**Honorable President M. Naor** **Honorable Justice U. Vogelman** **Honorable Justice M. Mazuz**
Appellant:	Al-Haq
	v.
Respondent:	Minister of Interior
	Appeal from judgment rendered by the Jerusalem Court for Administrative Affairs (Hon. Jus. Mintz) in AP 33956-09-13
Session dates:	February 29, 2016 January 2, 2017
Counsel for Appellant:	Adv. Adi Lustigman; Adv. Amir Hassan
Counsel for Respondent:	Adv. Yitzhak Bert

Judgment

Justice U. Vogelman

The appeal before us revolves around the decision rendered by the Jerusalem Court for Administrative Affairs (Hon. Jus. Mintz) rejecting a petition against the decision of the Minister of Interior (hereinafter: **Minister of Interior**, **the Minister** or **the Respondent**) not to restore the permit for permanent residency in Israel held by the Appellant, born in East Jerusalem, according to the provisions of the Entry into Israel Law 5712-1952 (hereinafter: **The Law,** or the **Entry into Israel Law**). As the basis for our deliberation on the appeal, we wish to briefly outline the normative framework relevant to the issue at hand.

The normative framework

The status of East Jerusalem residents

1. Prior to addressing the facts of the appeal before us, we shall begin with a brief review of the legal status of residents of East Jerusalem. As is known, Section 11b of the Law and Administration Ordinance 578-1948 stipulates that: "The law, administration and jurisdiction of the State shall apply to any part of the Land of Israel prescribed in an Order issued by the Government". On June 28, 1967, the Government exercised said power and prescribed in the Law and Administration Order (No. 1) 5727-1967, that the territories enumerated in the schedule to said order would be deemed territories wherein the law, administration and jurisdiction of the state apply. Concurrently, Section 8(a) of the Municipalities Ordinance [New Version], which empowers the Minister to expand the jurisdiction of any specific municipality according to his discretion was enacted and pursuant thereto, the Minister declared the jurisdiction of the Municipality of Jerusalem expanded to include further areas in the eastern part of the city (HCJ 256/11 **Rabah v. Court for Local Affairs in Jerusalem**, IsrSC 56((2) 930, 933 (2002)). This normative arrangement "created an integration of the area and its residents into the law, jurisdiction and administration system of the state. East Jerusalem was united with Jerusalem. This is the significance of the annexation of East Jerusalem to the state and its becoming part thereof." (HCJ 282/88 **'Awad v. Prime Minister**, IsrSC 42(2) 424, 429 (1988) (hereinafter: **'Awad**)). It has since been reinforced in Basic Law: Jerusalem Capital of Israel.

2. The legal status of East Jerusalem residents has not been directly addressed in statute. However, multiple judgements issued by this Court held that residents of East Jerusalem who were included in the census held in 1967 (hereinafter: the census), and who had not obtained citizenship, should be viewed as possessing a permit for permanent residency (AAA 9807/09 **Zarina v. Ministry of Interior**, para. 20 (August 1, 2011) (hereinafter: **Zarina**); AAA 5829/05 **Dari v. Ministry of Interior**, para. 6 (September 20, 2007) (hereinafter: **Dari**); **'Awad**, p. 431). To complete the picture, it is noted that the status of the children of East Jerusalem residents is provided for in a similar manner pursuant to the law (HCJ 48/89 **Issa v. Director of East Jerusalem Regional Population Administration Office**, IsrSC 43(4) 573, 574 (1989)).

   The premise for the review herein, therefore, is that the Entry into Israel Law governs the status of East Jerusalem residents who were included in the census. Pursuant to this law, such residents are considered to be in possession of permits for permanent residency.

Grant of status pursuant to the Entry into Israel Law

3. As stated, the status of East Jerusalem residents is determined by the Entry into Israel Law, which, in Section 2(a)(4) provides that the Minister of Interior may grant "a permit and visa for permanent residency". The Entry Israel into Regulations 5734-1974 were enacted pursuant to this Law (hereinafter: **The Entry into Israel Regulations**). Regulation 11(g) therein provides that a permit for permanent residency shall expire under the circumstances enumerated in Regulations 11(a)(4) and 11(a)(5), which are not relevant to the matter at hand, and if "the permit holder has left Israel and settled in a country outside of Israel". Following on this, Regulation 11a of the Entry into Israel Regulations provides that a person shall be considered as having settled in a country outside Israel if:

   (1) He has resided outside Israel for a period of at least seven years, or, with an A/1 visa and permit for temporary residency – at least three years;

   (2) He has received a permit for permanent residency in that country;

   (3) He received citizenship from that country by way of naturalization.

   The jurisprudence of this Court has emphasized that these regulations create a type of presumption, which can be refuted, that when present can attest to the transference of center-of-life outside of Israel

which does lead to the expiration of the permit (**Dari**, para. 7; HCJ 7023/94 **Shqaqi v. Minister of Interior** (June 6, 1995) (hereinafter: **Shqaqi**). To refute the presumption means that the permit holder has presented convincing evidence that despite the fulfilment of the aforesaid conditions, his center-of life remains in Israel (**'Awad**, p. 433). However, it has been established that settlement in a foreign country is not indicated solely by the conditions stipulated in the Regulations, and may be present – with the resultant expiration of the permit – even when said conditions for expiry are not met (**Zarina**, para. 20; **Shqaqi**). The expiration of a permit for permanent residency in Israel held by a person who has settled in another country emanates from the provisions of the Entry into Israel Law and it is not subject to the conditions stipulated in the aforesaid regulations. The Court addressed this in 'Awad, wherein it ruled:

> A permit for permanent residency, when granted, is based on a reality of permanent residency. Once this reality no longer exists, the permit expires of itself […] Once this reality disappears, the permit no longer has anything to which to attach, and is, therefore, revoked of itself, without any need for a formal act of revocation […] Indeed "permanent residency", in essence, is a reality of life.
> (**'Awad**, p. 433; See also, HCJ 7603/96 **Mal'abi v Population Registry Officer at the Ministry of Interior**, IsrSC 59(4) 337, 341 (2005)).

4. Some time later, the Minister of Interior set out to mitigate the situation of those whose residency had expired as a result of this normative concept, and, therefore, drafted criteria that allow reinstating the status of residents of East Jerusalem whose residency had expired. These criteria were enumerated in an affidavit submitted by the Minister of Interior at the time, Natan Sharansky, as part of the proceedings in HCJ 2227/98 **HaMoked: Center for the Defence of the Individual v. Minister of Interior**, and anchored in Procedure No. 5.2.0018 (Ministry of Interior Procedure 5.2.0018 Procedure regarding Expiration of Permanent Residency (January 3, 2008) (hereinafter: the **Sharansky Procedure** or **the Procedure**). The Procedure relates to permit reinstatement - subject to certain conditions - for persons whose residency permits had expired due to residency abroad for more than seven years. The provisions enumerated in Section 2 of the Procedure (attached to the appeal as AP/6) read as follows:

> 2.1 With respect to individuals who were deleted from the population registry beginning in 1995 – individuals who transferred their center-of-life outside Israel for more than seven years, and therefore, their visa for permanent residency in Israel expired as prescribed by law and they were notified by the Ministry of Interior of the expiration of their permanent residency permit, or were deleted from the population registry database as a result thereof and who visited Israel while the exit card in their possession was valid, and have lived in Israel for at least two years, will be considered by the Minister of Interior as having received a permit for permanent residency in Israel from the day of their return – inasmuch as such individuals request to be re-entered into the population registry.
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> 2.2 Individuals who transferred their center-of-life outside Israel for more than seven years, and therefore, their permit for permanent residency in Israel expired as prescribed by law and for some reason the Ministry of Interior has not informed them and/or they have not been deleted from the population registry database to date, will be considered by the Minister of Interior as having a valid permit for permanent residency in Israel, inasmuch as they visited Israel while the exit card in their

possession was valid. [Said exit card is a card that provides permission to enter and exit via Allenby Bridge for the purpose of travel to Jordan. An exit card is valid for three years. See Ministry of Interior Procedure 3.2.0009 **Procedure of Processing Exit Cards** (November 13, 2008) (hereinafter: **exit card**, U.V.].

2.3 The aforementioned does not detract from the provisions of the law on naturalization and obtaining a permit for permanent residency outside Israel or from the discretion the Ministry of Interior has with respect to the application thereof, given the personal circumstances and overall ties of the applicant.

2.4 With respect to persons who were minors at the time their parents transferred their center-of-life outside Israel, generally, the issue of their residency in Israel will be examined from the day on which they entered adulthood and the time preceding adulthood will not be taken into account for this purpose.

This is, therefore, the normative groundwork on which the legal status of East Jerusalem residents is founded. Its basis, as we have seen, is the Entry into Israel Law and the regulations enacted pursuant thereto, in which the Sharansky Procedure set out to introduce "mitigating factors" to allow even those who had remained outside of Israel for a period of seven years or more to regain a permit for permanent residency in the country. as detailed in the procedure, it does not negate the general powers vested in the Ministry of Interior under Section 2(a) of the Entry into Israel Law, as stated above, and said powers must be exercised according to accepted standards for use of administrative powers – a matter which I shall address at length below. Having presented the above, we shall now turn to reviewing the specific matter of the Appellant.

Background and previous proceedings

5. The Appellant, who lives in East Jerusalem with his wife and three minor children, was born in Jerusalem in 1959 and was included in the census held on August 16, 1968. Three years thereafter, on June 12, 1970, when the Appellant was roughly eleven years old, he left Israel for the USA, together with his parents, who are American citizens. At 15, on April 23, 1974, pursuant to his parents' citizenship, the Appellant also received US citizenship. As emerges from the document presented to me for review, in 1978, the Appellant completed his high school studies in the USA, and in 1984 he completed his undergraduate and graduate academic studies in the USA. On June 13, 1986, the Appellant married his first wife, a resident of the Area (whom he claims to have since divorced, hereinafter: **Appellant's first wife**). They had seven children who are registered as residents of the Area. The Appellant has stated that his first wife and their children have been living in Beit Hanina in East Jerusalem since the marriage and have never left Israel. This statement has not been disputed by the Ministry of Interior.

6. On April 16, 1989, Adv. Twig, counsel for the Appellant at the time (hereinafter: Adv. Twig), wrote a letter to the Minister of Interior wherein he noted that the Appellant "wishes to return to Israel permanently and join his parents and [first, U.V.] wife who permanently live in Beit Hanina", and therefore he should be granted a "returning resident visa" or a permit for permanent residency. On May 9, 1989, the Minister rejected the request, noting the Appellant "left the country before he received an ID card and there is no room to consider his request for a returning resident visa today". Five years thereafter, on July 25, 1994, then counsel for the Appellant contacted the Minister once more, asking the Appellant and his family members be given an ID card "so that he may continue to live in the country lawfully". A review of the request reveals it was dismissed without explanation on September 18, 1994. Following five more years, on August 10, 1999, the Respondent received a letter

from then counsel for the Appellant noting that the Appellant had made another application for an ID with the Respondent and asked "what is the reason for the delay in the issuance of the ID card". Shortly thereafter a Ministry of Interior official replied that the Appellant's file contained no application for a new ID card and that the Appellant was free to file such an application anew. On July 8, 2001, the Appellant married another woman, also a resident of the area (hereinafter: **Appellant's second wife**). In time, the couple had three children who are also residents of the Area. As emerges from the Appellant's statements, which have not been disputed by the Respondent, the Appellant's first wife and his second wife live together with their children in Beit Hanina.

7. As emerges from the decision of the Court for Administrative Affairs, on June 22, 2006, the Appellant sought to enter Israel via Allenby Bridge, informing the Minister's representatives that the purpose of said entry was to visit his second wife, who, he claimed, was a permanent resident of Israel. His request was denied on grounds of concern that he intended to remain in Israel permanently. On May 16, 2007, the Appellant entered Israel and has since been living in Israel unlawfully. Pursuant thereto, on June 1, 2010, the Respondent received a letter from then counsel for the Appellant asking for a copy of the expiration notice and an explanation "why his [the Appellant's] residency was revoked". Shortly thereafter, on June 13, 2010, then counsel for the Appellant filed a new application for a visa and permit for permanent residency in Israel. The application was rejected in a letter dated August 5, 2010, noting that "[The Appellant's] permit for permanent residency expired back in 1989". The letter further noted that the Sharansky Procedure cannot be applied to the Appellant's case since, the letter states, the procedure applies only to persons who were removed from the population registry in 1995 or later, whereas the Appellant's permit expired back in 1989. The Appellant appealed the decision with the Head of the Residency Department at the Ministry of Interior, arguing he had never been notified that his permit for permanent residency in Israel had expired. In any event, he claimed, he was never provided with a copy of the Respondent's notice of permit expiration from 1989. The Appellant noted that it was only on September 28, 2005, as he was exiting the country, that he was provided with a notice of expiration of his residency, which also mentioned the residency expired at that time. Finally, the Appellant asked for a hearing before a final decision was made in his case. On September 19, 2010, the appeal was rejected, noting "On May 9, 1989, counsel [for the Appellant] at the time, Adv. Twig, was sent notice of the expiration of the permit for permanent residency […] due to a technical error in our office, the date of expiry was updated on September 28, 2005, whilst the expiration effectively occurred in 1989". An administrative petition the Appellant filed against this decision was deleted by the Court for Administrative Affairs in Jerusalem (Justice M. Sobel) on April 14, 2011 due to the availability of alternative remedy in the form of filing an appeal with the Appeals Committee for Foreign Nationals (hereinafter: the Committee). Such an appeal was indeed filed by the Appellant and removed from its docket by Chair of the Committee after the Minister agreed to re-examine the Appellant's case.

Re-examination of the Appellant's case

8. Following the aforesaid, the Appellant was given a hearing, after which, on January 18, 2012, the East Jerusalem Bureau of the Population and Immigration Administration (hereinafter: **PIA**) delivered its decision rejecting the Appellant's application for a permit for permanent residency. The decision notes the Appellant left Israel with his parents when he was a minor and before he received an ID card, and, therefore, there was no room to consider his application. The PIA noted that the fact that the Appellant was born in East Jerusalem had been taken into account, but did not constitute grounds for granting his request given that his permit for permanent residency in Israel expired back in 1989; that he did not appeal said expiration within the period of time available to him; that he continued to reside in the USA after the expiration of his Israeli residency and that there were no special humanitarian grounds. Therefore, it was determined that the Appellant, his first wife, his second wife and his children must leave Israel. On August 18, 2013, an appeal the Appellant filed with the Committee regarding this decision was rejected. It was found that from the time the

Appellant became an adult in 1977, until 2007, when he returned to Israel, though he did visit Israel and even got married and had ten children, "there is no significance to ties to Israel" [*sic, translator*], since "His wives are residents of the Area; his children are registered in the Area; he has never had an Israeli ID card, and certainly not an exit card; he works in the USA; most of his residency period was spent in the USA [sic., U.V.]" (Emphasis in original). It was further noted that the Appellant had unlawfully resided in Israel since 2007, while married to two women, in breach of the law. Finally, it was noted that the Appellant had failed to demonstrate any ties to the State of Israel and therefore there was no room to grant him status.

The judgment of the Court for Administrative Affairs

9. The Appellant challenged this decision in the Court for Administrative Affairs, asking also for an interim remedy preventing his removal from Israel pending a decision in the petition. On September 17, 2013, the Court for Administrative Affairs in Jerusalem (Hon. Jus. D. Minz) granted the request for interim remedy. On March 30, 2014, the Court dismissed the petition. First, the Court rejected the Appellant's argument that his permit for permanent residency did not expire as far back as 1989, and that he was not aware of it at the time. The Court held, based on a review of the correspondence between Adv. Twig and the Appellant, that statements made by Adv. Twig "clearly" indicate "that he [the Appellant] knew his residency had expired". It was further noted that the decision could not be appealed 25 years after it was given and that the Appellant could not avail himself of the argument that he was not given a hearing before the decision was made, particularly given the fact that Adv. Twig raised the Appellant's arguments in detail in a letter he sent to the Minister. At this point, the Court turned to examine the Appellant's argument that even if, as the Respondent's claim, it is found his residency had in fact expired back in 1989, the Minister should have reinstated his status pursuant to the Sharansky Procedure. The Court held that the procedure did not apply to the Appellant's matter as it applies only to persons deleted from the population registry from 1995 onwards, while, as noted, the Appellant's permit expired in 1989. It was further held that even if there had been reason to accept the Appellant's argument that his permit expired in 2005, as stated in the Respondent's records (which, the Minister alleges is the result of a technical error), there is no reason to reinstate his residency under the Sharansky procedure. The Court held that while the procedure was meant to allow individuals whose permits for permanent residency in Israel had expired because they had remained out of the country for seven years to regain a permit for permanent residency in Israel, the condition for same is that persons applying to have their permits reinstated had "visited Israel while the exit card in their possession was valid" (Section 2.1 of the Sharansky Procedure). In the circumstances of the particular case, the Court held that, "not only has the condition regarding visits to Israel while the [Appellant's] exit card was valid not been fulfilled in this case, as there is no dispute that [the Appellant] did not have an exit card, but, rather, in this case, the grounds for expiration of [the Appellant's] residency were not solely the acceptance of US citizenship, but the overall circumstances indicating that [the Appellant] had abandoned his Israeli residency entirely". Finally, the Court addressed the Appellant's argument that he was entitled to receive a permit for permanent residency pursuant to the general powers of the Ministry of Interior, holding there was no room to interfere in the Minister's decision to refrain from reinstating the Appellant's permit. The Court noted that where a resident of East Jerusalem, such as the Appellant, is concerned, the onus of persuading the authorities why the expired permit should be reinstated must be reduced. However, in the circumstances of the matter, it was found that the Minister had considered all the facets of the Appellant's case, including the fact that he was born in East Jerusalem, his argument that he had acquired American citizenship whilst a minor on his parents' initiative; the many years that went by until he returned to Israel; the circumstances of the Appellant's life and his ties to Israel; the legality of his presence in Israel at various times; the fact that his wives and children are residents of the Area; the fact that the Appellant had never had an Israeli ID card or an exit card; the absence of any significant assets in Israel and the fact that he has business in the USA; his marriage to two women at

the same time, which is contrary to Israeli law and more. The Court noted that different weight might have been given to any one of the aforesaid considerations, however, it cannot be said that the Minister's decision "is unreasonable in a manner justifying the intervention of this Court". Given all these, the Appellant's petition was dismissed and he was ordered to pay Respondent's costs in the sum of ILS 15,000.

Parties' arguments in the appeal

10. Hence the appeal at bar, and the Appellant's attendant motion for interim remedy prohibiting his removal from Israel. As for the latter motion, on July 6, 2014, this Court (Hon. Jus. D. Barak-Erez) granted the temporary remedy preventing the Appellant's removal from Israel pending resolution of the appeal – with the Respondent's consent. The Appellant focuses his appeal on the three elements that form the basis for the judgment of the Court for Administrative Affairs. **First**, it is argued that the Appellant's permit never expired, let alone in 1989, and that in any event, the Appellant was unaware, in real time, of the letter from the Minister of Interior regarding the expiration of his residency, and discovered it only 15 years later. According to the Appellant, he does not know Adv. Twig, had never empowered him to take care of his affairs and has not seen any correspondence between him and the Minister's representatives with respect to his [the Appellant's] status in Israel. The Appellant contends it was apparently his parents who had hired the services of Adv. Twig to arrange for his ID card, as he had left the country when he was 11 years old, before he received an ID card and an exit card. The Appellant stresses that given that the Appellant's parents' permits never expired as they had returned to live in Israel in the 1980s, he did not think his permit had expired. In support of these claims, the Appellant argues that the language of his later communications to the Minister, from 1994 and 1999 demonstrates that he was not aware that his permit for permanent residency had expired back in 1989. The Appellant also raises several allegations with respect to the manner in which Adv. Twig was notified of the residency expiration. It was argued that no grounds were provided, as required by law, and that the Appellant was not given a right to argue against it. On the merits of the decision to revoke the residency, the Appellant maintains that the presumptions prescribed in Regulation A11 of the Entry into Israel Regulations, which are meant to prove "permanent settlement in a foreign country", had been refuted. As for the presumption prescribed in Regulation 11A(1) of the Entry into Israel Regulations, relating to remainder out of Israel for seven consecutive years, the Appellant contends that he did not remain outside of Israel for seven consecutive years. The Appellant contends that during his studies in the USA, he visited Israel yearly, and since 1986, he spent most of his time in Israel and visited the country very frequently (in support of this claim, the Appellant presented a table showing the durations of his stays in Israel from 1985 to 2014). He argued that the time he spent in school in the USA as a minor must not serve to his detriment, nor should the time spent in academic studies. As for the presumption prescribed in Regulation 11(A)3 of the Entry into Israel Regulations regarding acquisition of citizenship in a different country, it was argued that the Appellant did not acquire citizenship through a naturalization process he entered into by choice as an adult, and therefore, said presumption cannot be used to his detriment. In any event, it was argued that the Appellant acquired American citizenship in 1974, before the Entry into Israel Regulations and the presumption entered therein had been enacted.

11. **Second**, the Appellant contends that the Court for Administrative Affairs erred when it ruled the Sharansky Procedure should not be applied to his matter. As stated, the Ministry of Interior records (which, the Respondent claims are the result of an error), his permit expired only in 2005. The Appellant adds that the language of Section 2.2 of the Procedure also supports the interpretation that the Procedure does not apply only to persons whose residency expired beginning in 1995, but also to "Individuals who transferred their center-of-life outside Israel for more than seven years, and therefore, their permit for permanent residency in Israel expired as prescribed by law and for some reason the Ministry of Interior has not informed them and/or they have not been deleted from the population registry database to date […] inasmuch as they visited Israel while the exit card in their

possession was valid" (Section 2.2 of the Sharansky Procedure). The Appellant notes that these conditions apply to his case, since, even if his permit did expire back in 1989, the Minister failed to inform him thereof until 2005. It was noted that the Court for Administrative Affairs had not ascribed sufficient weight to the Appellant's annual visits to Israel. The Appellant does not dispute the fact that he does not possess an exit card but contends that this is the result of his early departure from the country. The Appellant contends that in any event, possession of an exit card is not a conditio sine qua non for receiving status as "the presence of an exit card is included in the Procedure's tests as a tool for assessing the connection to Israel rather than as a purpose by its own right".

12. **Third**, the Appellant argues that even if the Sharansky Procedure does not apply to his matter, the Minister should have reinstated his permit for permanent residency pursuant to his general powers. It is argued that the trend seen in the jurisprudence of this Court is that permits held by residents of East Jerusalem whose residency had expired should be reinstated even when they resided outside Israel for durations longer than seven years and may have acquired status outside the country when the circumstances reveal the permit applicant had not severed his ties to Israel. In the case at hand, the Appellant argues that, partly based on the chart listing his entries into the country, he should not be considered as having severed his ties with Israel. it was further argued that the Appellant, who, had over the years sought to acquire status in Israel, should not be deemed to have been residing in the country unlawfully in a manner that should result in the rejection of his aforesaid application. The Appellant further raises several arguments relating to violations of international law in this context and to interference with his right to family life in Israel; his right to freedom of movement, liberty and security and his right to freedom of occupation. The Appellant also disputes the Minister's arguments whereby he should be denied status given his marriage to two women at the same time. The Appellant states he separated from his first wife back in 2001, though he did not formally divorce her for many years due to "familial and cultural pressure not to impair his [and his firs wife's U.V.] daughters' marriage prospects". Finally, the Appellant asked to reduce the costs ordered against him by the Court for Administrative Affairs. To complete the picture, it is noted, that in the appeal at bar, a motion to join proceedings as amicus curiae by HaMoked: Center for the Defence of the Individual and the Association for Civil Rights in Israel (hereinafter: **the Applicants**). Since we have found that the Petitioner's matter can be resolved without revisiting the rules set forth in **'Awad**, we found no need to address the general issues raised by the Applicants.

13. The Respondent affirms the judgment of the Court for Administrative Affairs. **First**, with respect to the Appellant's arguments regarding the expiration of his permit for permanent residency in Israel, the Minister contends that the Appellant's permit expired back in 1989 and that notice thereof was given at that time to his then counsel, Adv. Twig. It was also argued that later submissions made by the Appellant indicate that he was aware of his legal status in Israel. it was further argued that the Appellant's arguments with respect to the propriety of the administrative procedure conducted in his matter should be rejected given the great delay reflected in the fact that they are raised at present. On the merits of the Appellant's arguments, it was claimed that he had failed to prove his contention that he had not severed his ties to Israel. It was argued that the Appellant left the country as a minor along with his family in order to live abroad; that some four years after his departure from the country he received American citizenship and that his siblings still reside in the USA and lead their lives in the country. It was noted that the Appellant himself had admitted that he had been living in the USA on a permanent basis until 1990, that it was only in 1994 that he decided to settle in Israel for good and that the table listing his entries into the country indicates that up until 2007, the Appellant spend only half his time in Israel and his center-of-life was not in the country. The Minister contends these facts indicate that the Appellant left Israel back in 1970 and hence, the expiration of his residency was lawfully declared. **Second**, the Minister contends the Sharansky Procedure does not apply to the Appellant's matter, since the Appellant himself admits he does not possess an Exit Card, as required in the Procedure, regardless, as per the Minister, of the significance of possessing an Exit Card, since

the overall circumstances, as detailed above, indicate the Appellant had not maintained ties to Israel. In this context, it was added that the Appellant's residency expired in 1989 rather than in or later than 1995, as required in the Procedure and that the fact that the Appellant acquired American citizenship attests to his ties to that country, even if not pursued by way of naturalization. **Third**, the Minister believes there was no flaw in the decision not to grant the Appellant residency pursuant to the Minister's general powers. According to the Minister, the Appellant's matter was reviewed by the Ministry of Interior and the review revealed the Appellant had remained in Israel unlawfully, his significant ties are to the West Bank, he is married to two women which contravenes Israeli law. Lastly, it was argued that the matter of the Appellant, who left Israel as a minor, is not akin to the matter of a person who had lived in Israel for years, left the country and then sough to have his residency reinstated.

14. On February 29, 2016, this Court (President M. Naor and Justices Z. Zylbertal and M. Mazuz) held a hearing in the appeal, at the conclusion of which the Respondent agreed to reconsider, without committing to anything, the Appellant's matter with attention to his specific circumstances. On July 7, 2016, the Minister notified that a decision had been made not to grant the Appellant a permit for residency in the country. The decision noted that the Appellant had been living in Israel unlawfully since 2007; that he was not employed and that he supported his family with the help of his siblings, who live abroad, and through renting out apartments in a building he owns. It was noted that the Appellant was summoned for an interview along with his two wives and was asked to provide documents regarding the property he owns as part of his application reconsideration process. However, the Appellant's first wife failed to appear to the interview held on May 24, 2016 and the requisite documents relating to the apartment she occupies were not presented. The representative of the Authority noted that the interview held with the Appellant indicated that his wives live in adjacent apartments in the building he owns – despite the Appellant's contention that he had divorced his first wife. It was further argued that the Appellant did not provide the water, electricity and municipal tax bills for the apartment occupied by his first wife, but related he did own the apartment. The conclusion of the decision notes that no room was found to alter the decision to withhold a permit for residency in the country from the Appellant since:

> A review of the individual in question indicates that he has married two women who are residents of the West Bank and all ten of his children are residents of the West Bank. The fact that the aforesaid individual's wives and children have been living and continue to live in Israel unlawfully does not bolster his ties […] to Israel. The argument that the aforesaid individual has maintained ties to Israel partly through his family's unlawful presence in the country cannot be accepted. To that, one must add the fact that [the Appellant] continues to disrespect the laws of the country where he seeks status and lives, in practice, with two women".

Given this position, we held a hearing in the appeal on January 2, 2017, following which we allowed the Respondent to file a supplementary notice indicating "what status the Appellant could be given, considering accepted procedures, were a decision made to grant his request".

15. In the notice, filed on February 7, 2017, the Respondents repeated his arguments that the appeal must be denied. It was noted that the Minister had recently instituted an expansive policy regarding issuance of permanent residency permits to residents of East Jerusalem whose residency had expired. Pursuant to said policy, where the permit applicant had maintained his ties to the country, even if he did receive permanent residency or citizenship in a foreign country, as a rule, the applicant would be granted an Israeli residency permit (having proven center-of-life and settlement) subject to two exceptions: **First**, where there is a criminal, security or other impediment; **Second**, where the

applicant's residency expired without the applicant having been a resident of Israel in practice for a significant period of time, for instance, "if the applicant left Israel immediately after receiving his permit for permanent residency". According to the Minister, the Appellant's matter falls within the second noted exception, since the Appellant left Israel when he was eleven years old, only three years after having become a resident of Israel. He never had an Israeli ID card, and never practically enjoyed the rights given to Israeli residents, nor borne any obligations as a resident. It was argued that the decision made by the Minister in the Appellant's matter was at least reasonable, given the lack of past ties between the Appellant and Israel. According to the Minister, accepting the Appellant's appeal would mean "a complete negation of the laws on residency expiration", and contradict the findings made by this Court in **'Awad**. Finally, it was noted that the Appellant's matter does not present any special humanitarian circumstances justifying granting the application. As for the question of what status the Appellant would have received had his application been accepted, the Minister noted that "The status that would have been given to the Appellant […] would have been an A/1 permit for temporary residency for two years, followed by a permit for permanent residency subject to proof of center-of-life in Israel and the absence of preclusions".

Given that this is the situation and that the Minister had not found room to grant the Appellant's application considering his circumstances, we are required to make a ruling in the appeal.

Deliberation and ruling

16. As noted, the Appellant focused his appeal on three issues. **One**, whether his residency did expire back in 1989; **Two**, whether the Sharansky Procedure applies to the Appellant's matter such that he should be granted a permit pursuant thereto; **Three**, arising should the answer to the second question is negative, relates to the decision of the Minister of Interior not to grant the Appellant a permit pursuant to his general powers and the discretion afforded to the Minister. I shall begin with the conclusion by noting that in my view, the appeal should be granted.

    As for the first question, which, as stated, relates to the expiration of the Appellant's permanent residency permit back in 1989. As recalled, the Court for Administrative Affairs found that the Respondent's finding that the Appellant's permit expired in that year was lawful. I see no cause to make any conclusive findings on whether the Appellant's specific circumstances are sufficient to substantiate the finding that his residency expired on that date. The Court for Administrative Affairs ruled that the Appellant was aware, as far back as in 1989, of the correspondence between Adv. Twig and the Respondent indicating the Respondent's position that the Appellant's permit for permanent residency had expired. The Appellant did not take action to challenge this finding in real time and, in the circumstances, the Court for Administrative Affairs found his action were tainted by extreme delay. I found no cause to intervene in this last finding, particularly given the course available for regulating the Appellant's status in Israel as detailed below.

17. Given this conclusion, we must proceed to examine *whether the Appellant's permit for permanent residency should have been reinstated*. On this point, I shall comment that I see no reason to make conclusive findings on whether the Sharansky Procedure applies in the case at hand having reached the conclusion that the Minister should have granted the Appellant status in Israel pursuant to his general powers. As stated, the Court for Administrative Affairs found that the Minister's decision not to reinstate the Appellant's permanent residency status fell within the bounds of reasonableness even if "some weight" could have been given "to some of the elements" considered by the Respondent. I do not share this conclusion. In my view, an examination of the circumstances of the Appellant's matter would lead to a different conclusion, whereby the Appellant should have received status in Israel under legal provisions and policy in practice. I shall specify.

18. As recalled, the status of residents of East Jerusalem who were listed in the census is regulated under the Entry into Israel Law under which such residents are deemed as possessing a permit for permanent residency in Israel. In the opening, we addressed the fact that the residency of East Jerusalem residents relies on a "reality of life" which points to ties to their area of residence. Therefore, where such ties no longer exist, a permanent residency permit might expire. However, this does not suffice to preclude residents of East Jerusalem from regaining their status, whether pursuant to the Sharansky Procedure (where it applies), or pursuant to the general powers of the Minister of interior. As recalled, the Law empowers the Minister, in Section 2(a), to make decisions with respect to the grant of permanent residency permits. Within the scope of these powers, the Minister has broad discretion stemming from the nature of these powers and the state's sovereignty to decide who may enter it (HCJ 758/88 **Kendal v. Minister of Interior** IsrSC 46(4) 505, 520 (1992)). The Shransky Procedure also expressly clarifies that it, "does not detract from the provisions of the law on naturalization and obtaining a permit for permanent residency outside Israel or from the discretion the Ministry of Interior has with respect to the application thereof, given the personal circumstances and overall ties of the applicant". The above considered together indicate that even when a permanent residency permit held by a resident of East Jerusalem had expired and even when the Sharansky Procedure does not apply, the individual in question may still file an application for status pursuant to the Minister's general powers and the latter is obligated to consider the application according to the rules of administrative law.

19. As is known, the Minister must exercise his discretion in good faith, based on pertinent considerations and in an equitable, proportionate and reasonable manner (HCJ 1905/03 **Akel v. Minister of Interior**, para. 11 (December 5, 2010) (hereinafter: **Akel**)). **Discretion** relating to the grant of permits subject to the Entry into Israel Law – like any discretion vested in an administrative authority – is subject to the scrutiny of this Court (AAA 9993/03 **Hamdan v. Government of Israel**, IsrSC 59(4) 134, 140 (2005); HCJ 2828/00 **Kowalsky v. Minister of Interior**, IsrSC 57(2) 21, 28 (2003)), and it is self-evident that this discretion is not unlimited. In this context, the Court examines whether the discretion was exercised in keeping with the rules of administrative law. It has already been ruled that the judicial review also covers: "the internal balance between the considerations weighed by the administrative authority. Administrative discretion 'that does not give adequate weight to the various interests the administrative authority must take into consideration in reaching its decision' will be rejected due to lack of reasonableness […] An administrative decision would, therefore, be deemed reasonable 'if it is the result of a balance struck between various considerations that are relevant to the matter and if these considerations were accorded adequate weight given the circumstances" (**Akel**, para. 17). In my view, one weighty consideration the Minister should make when making a decision is the source for the residency of the person applying to have a permit reinstated. Our jurisprudence has emphasized that, for the purpose of reinstating a permit for permanent residency, there may be room to distinguish "between a person who received permanent residency status because he was born in Israel (or in a territory that became part of Israel) and was raised there and a person who received permanent residency status after migrating to Israel" (**'Akel**; see also **Zarina**, para. 21; **Dari**, para. 12; see also in the jurisprudence of the Court of Administrative Affairs (Administrative Jerusalem) 720/06 **Kamel v. Ministry of Interior** (Feburary 17, 2013); AP (Administrative Jerusalem) 1760/09 **Siwana v. Minister of Interior**, para. 13 (April 4, 2011). On the view that where the Sharansky Procedure does not apply, the person applying to have a permit reinstated bears the burden of proving why the permit should be reinstated see AP (Administrative Jerusalem) 1630/09 **Husseini v. Minister of Interior**, para. 12 (August 24, 2010)). When the Minister is required to consider an application for reinstatement of a permanent residency permit for a resident of East Jerusalem, he must take into account the unique situation of these residents, who, unlike persons who immigrated to Israel and seek status in the country, have strong ties to their place of residence, as persons born there, and, in some cases, whose parents and grandparents were born there as well, and have maintained family and community life there over many years.

20. During the hearing of this appeal, counsel for the State has clarified that, pursuant to the broad discretion vested in him, the Minister has recently decided, "to <u>further mitigate</u> the provision of permits for permanent residency permits to residents of East Jerusalem whose residency had expired". Therefore, "The Minister has instituted an **<u>expansive policy</u>** with respect to the grant of residency permits in such circumstances even if the applicant has received a permit for permanent residency or citizenship in a foreign country" (emphases in the original, U.V.; hereinafter: **the expansive policy**). It appears that the expansive policy employed by the Respondent, like the Shransky Procedure, which I addressed above indicate that the Minister acknowledges the unique status of East Jerusalem residents and the weight to be given to their unique circumstances. Due to the significance of the matter, we present the statements made by the Respondent in this context verbatim:

> In accordance with this policy, if the applicant has maintained his ties to Israel, he will, as a rule, be given a permit for residency in Israel (after proving center-of-life and settlement in Israel). The Minister of Defense has instituted two main exceptions to this expansive policy (other than cases in which the applicant has not maintained ties to Israel: (1) Cases in which there is a criminal, security or other preclusion; (2) When residency expired without the applicant having been a resident of Israel in practice for a significant amount of time, for instance, if the applicant left Israel immediately after receiving his permit or permanent residency".

Hence, this policy is added to the normative framework that regulates the status of East Jerusalem residents, and its application is clearly subject to judicial review by this Court.

From the general to the particular

I shall begin at the end: In my view, the decision made in the Appellant's matter exceeds the bounds of reasonableness and therefore, must be revoked.

21. In the specific case at bar, the Respondent's position is that the Appellant's matter falls within the terms of the second exception to his expansive policy, as the Appellant does not have ties to Israel nor has had such in the past, partly given his age at the time his family relocated to the USA, the time of his return to the country and his simultaneous marriage to two residents of the Area who reside in Israel unlawfully in a home to which he has rights. In my view, this decision cannot stand. Indeed "distinguishing between a situation in which a resident of Israel has ties to another country and one in which these ties have reached the level of severing residency ties to Israel is not always simple" (**Deri**, para. 11). Yet, I believe that in the case at hand, the Appellant's center-of-life is in Israel and close ties to Israel that can justify regularizing his status have been proven. As stated, the Appellant was born in Israel and was registered in the Census of 1967. While he did leave the country in 1970 – and, as stated above, I found it unnecessary to rule on the issue of his residency expiring in 1989 – but it appears that from that time onward, he preserved his ties to the country and has even intensified them. A review of the chart listing the Appellant's entries into Israel, which was not contested by the Respondent, reveals that the Appellant has not left the country since 2007. Even prior to this, beginning in 1997, the Appellant remained in Israel for significant periods of time, totalling more than six months, every year and that in some years, he remained in the country for the entire year (for instance, in 1997-1998). A similar situation occurred in 1990-1996, wherein the Appellant remained in Israel for significant periods of time amounting to more than half the year (with the exception of 1996). The Appellant's frequent entries into the country, for long periods of time and, on occasion, for a year, carry significant weight and indicate that the Appellant has maintained strong ties to Israel, at least since the 1990s.

22. Other than his entries to Israel and the long periods of time he remained in the country, one cannot ignore the fact that the Appellant's first wife, as well as his second wife, and his children, lived throughout those years in Beit Hanina, East Jerusalem, and lived in a property (partly) owned by the Appellant. In support of this claim, the Appellant produced various documents attesting to the strong ties his children have to Israel, including diplomas from Israeli schools; copies of the children's Ministry of Health immunization records; copies of water, electricity, telephone and municipal tax bills or the property where his children live; as well as a copy of the records kept in the office of the supervisor for the plot on which the property is located. All of these support the conclusion that the Appellant had established himself in Israel and that the majority of his ties have been to Israel for some time. I am aware of the fact that the Appellant had been unlawfully married to two women for a protracted period of time, and that both wives are residents of the Area – a matter the Respondent claims could indicate the Appellant in fact has ties to the Area. However, given that the Appellant is the person seeking status pursuant to his own ties to Israel, based on the information presented above (as opposed to a case in which status is sought pursuant to marriage), I do not believe this fact or the fact that the spouses are registered as residents of the Area – albeit there is no dispute that they reside within the State of Israel – tips the balance in favor of dismissing his own application for status in Israel.

23. To that I add that, contrary to the position taken by the Respondent, I do not believe that the fact that the Appellant left Israel just three years after being registered in the Census should be held against the Appellant when assessing his ties to Israel. As I noted above, the Appellant left Israel for the USA, along with his parents, as an eleven-year-old minor. He acquired citizenship in the USA in a manner that is inconsistent with the provision of Regulation 11a(3) of the Entry into Israel Regulations (i.e., not by naturalization by choice as an adult). This fact should not be held against him when considering his application for status. True, the Appellant did not have an Israeli ID card and returned to live in Israel on a permanent basis only years after reaching adulthood. However, on this issue, I accept the explanation provided by Appellant for not having and Israeli ID card, namely, in brief, that he left the country when he was a minor, before he would have had to apply for an ID card. Moreover, as recalled, the Appellant submitted an application for an ID card to the Respondent in 1994 – which was denied; and he once again made inquiries into the subject with the Respondent in 1999. To this I shall add that although the Appellant made his final return to the country only years after reaching adulthood – throughout his adulthood – as emerges from the table of entries into Israel he has submitted – he has entered the country often and remained in it for considerable periods of time.

24. In my view, the circumstances of the Appellant's life, which I have addressed above, and all the more so their cumulative weight, in conjunction with the fact that he is a native of East Jerusalem, were not accorded their due weight in the Respondent's decision to deny the Appellant's application to have his permit for permanent residency in Israel reinstated, and as such the decision must be revoked. As I noted above, the fact that the Minister has taken into account all the relevant considerations is insufficient. In striking a balance, the Minister must give due weight to the various considerations. Indeed, in the interview held with the Appellant on May 24, 2016, the relevant officials did address the circumstances of his life, including the fact that he had left the country when he was a minor; the fact that his children and both first and second wife live in East Jerusalem; and the Appellant's entries into the countries and exits out of it. However, as noted, it is my view that these factors were not given sufficient weight in the Respondent's decision, and hence, the decision exceeds the limits of reasonableness and its revocation must be ordered (compare, **Akel**, para. 17).

25. Finally, it cannot be denied that the Appellant had remained in Israel illegally for lengthy periods of time. According to the Minister, this fact should be considered as reason to deny his application for a permit for permanent residency in the country. Without making conclusive findings on the relevance

of illegal stay in Israel, I do not believe that in the circumstances herein, this is a decisive fact in determining status. This is particularly true given that, at least for some of the time, interim decisions prohibiting the Appellant's removal from Israel pending exhaustion of legal proceedings, were issued in the Appellant's matter, and given the Appellant's "basis for residency" as noted above. Given all these, I believe the appeal should be admitted, the ruling of the Court for Administrative Affairs should be overturned and the petition accepted. In other words, it should be ruled that the Appellant should be granted status in Israel pursuant to the authority vested in the Ministry of Interior under the Entry into Israel Law.

On the issue of determining the type of status, I believe the same course followed by the Respondent in similar cases should be followed here. In other words, a permit for temporary residency type A/5 should be granted under the Entry into Israel Regulations for two years. Thereafter, subject to proof of center-of-life and the absence of preclusions, a permit for permanent residency shall be granted.

Conclusion

Should my opinion be heard, I would suggest to my colleagues to accept the appeal, overturn the ruling issued by the Court for Administrative Affairs and accept the petition, as stated in paragraph 25. It follows that the costs order for proceedings in the court of first instance is revoked as well. The Respondent shall pay for the Appellant's costs in both instances to a sum of ILS 10,000.

Justice

Justice M. Mazuz

26. I concur with my colleague's conclusion and the outcome he proposes.

27. The case at bar is, in my view, a case with unique and exceptional circumstances. The Petitioner left Israel for the USA in 1970, when he was an 11-year-old minor, along with his parents who are American citizens. Several years thereafter, he too received American citizenship and remained in the USA for numerous years, including into adulthood. In these circumstances, there is no doubt, in my view, that the Petitioner's status as a permanent resident of Israel as a result of his inclusion in the 1967 census **automatically expired** upon the Appellant's parting from Israel for many years and his acquisition of foreign citizenship. As ruled in the instructive judgment in the matter of Mubarak **'Awad** (HCJ 282/88 **'Awad v. Prime Minister**, IsrSC 42(2) 424, 429 (1988)):

> Can a permit for permanent residency expire "of itself" without an act of revocation by the Minister of Interior? I believe the answer to this is affirmative. A permit for permanent residency, when granted, is based on a reality of permanent residency. Once this reality no longer exists, the permit expires of itself. Indeed, a permit for permanent residency – as opposed to the act of naturalization – is a hybrid. On one hand, it has a constituting nature, creating the right to permanent residency; on the other hand, it is of a declarative nature, expressing the reality of permanent residency. Once this reality disappears, the permit no longer has anything to which to attach, and is, therefore, revoked of itself, without any need for a formal act of revocation (compare HCJ 81/62 [6]). Indeed "permanent residency", in essence, is a reality of life. The permit, once given, serves to provide legal validity to this reality. Yet, once the reality is gone, the permit no longer has any significance and it is therefore revoked of itself.
>
> [T]he Petitioner uprooted himself from the country and rooted himself in the USA. His center-of-life is no longer the country but the USA. It is

> superfluous to note that it is often difficult to point to a specific point in time at which a person ceased from permanently residing in the country and that there is certainly a span of time in which a person's center-of-life seemingly hovers between his previous place of residence and his new place of residence […] It may be that in his heart of hearts he aspired to return to the country. Yet, the decisive test is reality of life as it transpires in practice. According to this test, the Petitioner transferred his center-of-life to the USA at some point, and he is no longer to be considered as permanently residing in Israel.
> (**'Awad**, paras. 14-15).

28. Indeed, with respect to the stage at which Israeli residency status was lost, the case herein is considerably similar to **'Awad**. However, the case herein did not conclude at that stage, as, beginning In the 1980s, the Petitioner renewed his ties to Israel (East Jerusalem). He visited Israel frequently and remained in the country for lengthy periods of time each year. He married a resident of the Area, with whom he resided in Beit Haina in East Jerusalem, and, in fact, beginning in the early 1990s, the Petitioner spent most of the year in Israel, and in a significant number of years – the entire year. Ever since 2008, the Petitioner has remained in Israel permanently and never left the country.

    In these circumstances, the Petitioner should be deemed to have **renewed** his ties to Israel, and given the special status of East Jerusalem residents as native residents – contrary to persons who acquired the right to permanent residency by permit after having immigrated to Israel – there are sufficient grounds and justification for his application for renewed recognition of his status as a permanent residency according to the route proposed by my colleague in the final section of his opinion.

    In these circumstances, the Petitioner should be deemed to have **renewed** his ties to Israel, and given the special status of East Jerusalem residents as native residents – as distinct from those who acquired a right to permanent residency pursuant to a permit and following immigration to Israel – there are grounds and justification for granting his application for renewed recognition of his status as a permanent residents in the format my colleague proposes in the final section of his opinion.

Justice

President M. Naor

I concur with the ruling of my colleague Justice U. Vogelman and the remarks of my colleague M. Mazuz. This outcome stems from the application, in the unique circumstances of the case at hand, of the current policy instituted by the Respondent with respect to the grant of permits for permanent residency to East Jerusalem residents whose residency expired. It is understood that this should not lead to the conclusion that this shall be the outcome in each and every matter, rather the outcome depends on the facts of the case.

President

Decided as stated in the judgment of Justice U. Vogelman.

Given today, March 14, 2017.

President Justice Justice