The State of Israel

Appeal Tribunal under the Entry to Israel Law, 1952

Jerusalem Appeals Tribunal
Before Honorable Adjudicator Ilan Halvega

Appeal (J-m) 3285-18
Appeal (J-m) 3286-18
Appeal (J-m) 3289-18
Appeal (J-m) 3437-18
Appeal (J-m) 3440-18

Returned to Respondent

Appellants:	Appeal 3285-18	**1. Mashur**
		2. Mashur
		3. Ashur
	Appeal 3286-18	**4. ‘Aweisat**
		5. Kunbar
	Appeal 3289-18	**6. Kunbar**
		7. Kunbar
		7a. HaMoked: Center for the Defence of the Individual as Appellant in each of the above three appeals
		Appellants 1-7a by Adv. Agsteribbe
	Appeal 3437-18	**8. ‘Alan**
		9. ‘Alan
		Appellants 8 and 9 by Adv. Khatib
	Appeal 3440-18	**10. Kunbar**
		11. Kunbar
		12. Kunbar
		13. Kunbar
		14. Kunbar
		15. Kunbar
		16. Al-Kunbar
		17. Knbar
		18. Al-Kunbar
		19. Kunbar
		Appellants 10-19 by Adv. Shehadeh
		v.
Respondent:		**Ministry of Interior – Population and Immigration Authority**
		Represented by the legal department

Judgment

The appeals herein concern a challenge against the decision of the Minister of Interior (hereinafter: the Minister), ordering the termination of the process for family unification and child registration and the revocation of the stay permit or A/5 temporary residency license issued pursuant to these procedures to

the foreign spouse and their children, on the grounds of public deterrence (hereinafter: the decision). The decision relates to facts whereby the terrorist ____ Kunbar, a relative of the Appellants, as laid out in the section entitled Factual Background below, perpetrated a vehicular terrorist attack at Armon Hanatziv Promenade in Jerusalem on January 8, 2017, killing four soldiers and injuring 18 people (hereinafter: the vehicular attack). The perpetrator was shot and killed during the attack. Another related issue is that the Appellants' village, Jabal al-Mukabbar has a climate that is supportive of terrorism. Many local residents have expressed support for the terror attacks and sympathy for terrorists on social media, which has created a friendly atmosphere towards them. Consequently, the Respondent has reached a decision that the revocation of the permit will aid in deterring increased activity, an assessment based on security material.

The appeals herein concern an identical issue, as emerges from their written submissions, which focus on the same decision given in the cases of each of the relevant Appellants. Therefore, the same judgment will be handed down for all of them.

Factual Background

Appeal 3285-18

Appellant 1 is a resident of the Area; on July 14, 1990, he married Appellant 3, a permanent resident of Israel, and they have six children, including Appellant 2. On May 5, 1994, Appellant 3 applied for family unification for Appellant 1, which was rejected on the grounds of lack of center-of-life in Israel. On October 4, 2006, Appellant 3 applied to register her six children. On June 17, 2007, Appellant 3 applied a second time for family unification for Appellant 1. As stated above, on January 8, 2017, Appellant 3's half-brother, ____ Kunbar, perpetrated a vehicular terrorist attack. Following said attack, Appellants were informed that the Respondent was considering revoking the status of Appellants 1 and 2. After considering Appellants' arguments, the Respondent decided to revoke the stay permit given to Petitioner 1 by virtue of his marriage to Appellant 3, and the permit given to their son, Appellant 2, as part of the child registration application filed for him by Petitioner 3. The Appellants appealed this decision (Appeal 1400-17); the appeal was dismissed without prejudice with parties' consent according to a judgment delivered on December 12, 2017, due to a flaw in the procedure caused by the Respondent. The Respondent held another internal procedure on the matter, and according to a decision handed down on April 23, 2018, the Minister maintained his position that the family unification procedure, the procedure of settling the status of Appellant 1 and the registration of Appellant 2 were terminated and their residency permits in Israel were revoked on the grounds of public deterrence.

Appeal 3286-18

Appellant 4 is a permanent resident, born in 1979, who married _____ 'Aweisat, a resident of the Area; the couple have four children, including Appellant 5. On June 25, 2008, Appellant 4 applied to register her children. The application was rejected on the grounds of lack of center-of-life in Israel. Appellant 4 submitted a new application to register her children, and all of them, except for Appellant 5, received DCO permits. On October 23, 2011, Appellant 5's brother was apprehended en route to perpetrate a stabbing attack in Jerusalem's Nof Zion neighborhood. He was charged and convicted of attempted murder in a nationalistically motivated stabbing terrorist attack and possession of a knife. The Respondent informed the Appellants in a letter dated December 15, 2015, that it was considering rejecting the application to register Appellant 5 and that they had the opportunity to respond. However, they did not do so.

On January 8, 2017, the uncle of Appellant 5, ____ Kunbar, perpetrated a vehicular terrorist attack. Consequently, a letter was sent to the Appellants on January 10, 2017, informing them that the Respondent was considering revoking his status in Israel. Following a hearing on the matter, the

Respondent decided to revoke his stay in Israel. The Appellants appealed the decision (Appeal 1399-17), which was eventually dismissed due to a flaw in the procedure.

Following another internal procedure, during which another hearing was held for the Appellants, on April 23, 2018, the Minister issued a decision to revoke the residency permits on the grounds of public deterrence. With respect to the argument presented in the first part of the response concerning a security preclusion arising from the brother of Appellant 5, I have found no reference to this matter in the Respondent's decision, and it is, therefore, irrelevant to this appeal.

Appeal 3289-18

Appellant 6 is a resident of the Area. She married Appellant 7, a permanent resident of Israel, in 1996. The Appellants have eight children, all of whom, except for the youngest, are registered in the Israeli Population Registry as permanent residents. Appellant 7 applied for family unification on behalf of Appellant 7 on December 10, 1997, but the application was denied in the absence of center-of-life in Israel. On February 12, 2006, a second application was submitted, as part of which he was referred to obtain a DCO permit. On January 8, 2017, ____ Kunbar, the half-brother of Appellant 7, perpetrated a vehicular attack. On January 10, 2017, the Respondent informed the Appellants it was considering revoking Appellant 7's Israeli status. After hearing Appellants' arguments, the decision was made to cancel the stay permit. The Appellants appealed against the decision (Appeal 1401-17), which was deleted with parties' consent in a judgment dated December 2, 2017.

On April 23, 2018, in the context of an internal procedure and after Appellants' arguments were heard, the Minister decided to cancel the stay permit on the grounds of public deterrence.

Appeal 3437-18

Appellant 8 is a permanent resident, born in 1986. She married Appellant 9, a resident of the Area born in 1973, in 1986. The Appellants have four children with permanent resident status. On November 20, 2008, the Appellant applied for family unification for Appellant 9. The application was approved, and on September 9, 2009, he was given a referral for a DCO permit for a year, which was periodically extended. On January 8, 2017, ____ Kunbar, the uncle of Appellant 8, perpetrated a vehicular attack. On January 11, 2017, the Respondent informed the Appellants that it was considering revoking the Appellant's status in Israel. On January 25, 2017, the Respondent informed the Appellants of the decision to cancel Appellant 9's stay permit.

The Appellants appealed the Respondent's decision (Appeal 1439-17) and following the Respondent's consent to conduct another interview and issue a new decision in similar cases as discussed above; the appeal was deleted in a judgment dated December 28, 2017. Following the interview, the Minister maintained his position, and on April 23, 2018, the Appellant's stay permit was revoked.

Appeal 3440-18

Appellant 10 is a resident of the Area, born in 1950. He married Appellant 11, a permanent resident born in 1957. They have three children, all with permanent resident status. On July 10, 1994, Appellant 11 applied for family unification for Appellant 10, who was refused because of failure to prove that Israel was his center-of-life. After petitioning the High Court of Justice, parties agreed that the petition would be deleted and the Appellant would be given a referral for a DCO permit for a year. On February 15, 2011, the Appellants applied for a status upgrade, and on December 26, 2011, Appellant 10 received an A/5 temporary residency license for a year. On January 9, 2017, ____ Kunbar, Appellant 10's cousin, perpetrated a vehicular attack. After the Respondent's notification that it was considering revoking Appellant 10's temporary residency license, a hearing was held, and on January 25, 2017, a decision was handed down by the Minister revoking Appellant 10's temporary residency license.

Appellant 12 is a resident of the Area, born in 1964. He married Appellant 13, who is a permanent resident born in 1967. They have six children, all of whom are permanent residents. In 1994, Appellant 13 applied for family unification for Appellant 12 but was turned down for failing to prove center-of-life in Israel. The Appellants petitioned the High Court of Justice, as a result of which parties agreed that the Appellant would receive a referral for a DCO permit for a year. On November 5, 2012, the Appellants applied to upgrade the status of Appellant 12. Following the vehicular attack perpetrated by ____ Kunbar, the cousin of Appellant 12, the Respondent notified the Appellants on January 10, 2017, that it was considering canceling Appellant 12's stay permit. After hearing Appellants' arguments, a decision was handed down by the Minister whereby Appellant 12's temporary residency license was revoked.

Appellant 14 is a resident of the Area. He was born in 1966 and married Appellant 15, born in 1973, who is a permanent resident. Appellant 15 applied for family unification for Appellant 14 but was turned down on the grounds of failure to prove center-of-life in Israel. Appellant 15 reapplied for family unification. On October 26, 2006, the application was approved, and Appellant 14 was given a referral for a DCO permit for one year. Following the vehicular attack perpetrated by ____ Kunbar, the cousin of Appellant 14, the Respondent notified the Appellants that it was considering revoking Appellant 14's DCO permit. After hearing Appellants' arguments, the Minister handed down a decision on January 25, 2017, canceling Appellant 14's DCO permit.

Appellant 16 is a resident of the Area, born in 1969. On May 12, 1997, he married Appellant 17, who is a permanent resident born in 1977. The Appellants have five children, all of them permanent residents of Israel. On December 19, 2005, Appellant 17 applied for family unification for the Appellant. The application was approved, and Appellant 16 was given a referral for a DCO permit for one year, which was periodically extended. On January 10, 2017, the Respondent notified the Appellants that it was considering revoking the DCO permit granted to Appellant 16 because of the vehicular attack perpetrated by ____ Kunbar, his cousin. After hearing Appellants' arguments, the Minister handed down a decision on January 25, 2017, revoking Appellant 16's status.

Petitioner 18 is a resident of the Area, born in 1952. On July 29, 1972, he married Appellant 19, a permanent resident born in 1956. The Appellants have nine children, all but two of whom are permanent residents. On May 4, 1994, Appellant 19 applied for family unification for Appellant 18. The application was approved, and Appellant 18 was given a referral for a DCO permit. Later, on July 26, 2016, Appellant 18 received an A/5 temporary residency license. Because of the vehicular attack perpetrated by ____ Kunbar, the Respondent notified the Appellants that it was considering revoking the status of Appellant 18. After hearing Appellants' arguments, the Respondent decided on January 25, 2017, to cancel the status of Appellant 18. The Appellants appealed (1463-17), and the parties reached an agreement as in other, similar appeals that the matter would be returned to the Respondent who would conduct another interview. After the interview, the Minister maintained his position and Appellant 18's temporary residency license was revoked.

Parties' arguments

Appellants' arguments

The appeals revolve primarily around the argument that the Respondent's decision to revoke the family unification procedure involving the Appellants, thereby leading to the withdrawal of stay permits or temporary residency licenses granted to them, due to the actions of a second- or third- degree relative and for the purpose of deterrence was fundamentally wrongful, unreasonable and disproportionate. The decision was given without proper authority, contrary to the provisions of the law, and, as such, constitutes an egregious violation of the fundamental rights of the Appellants and their families. According to the Appellants, the Respondent's decision lacks explicit authority because there is no such legal, explicit and specific legal authorization empowering the Respondent to terminate family unification procedures on the sole grounds of deterrence. As such, the process is unacceptable, as it is conducted with absolute lack of authority. According to Paragraph 3 of The Citizenship and Entry into

Israel Law (Temporary Order), 5763- 2003 (hereinafter: Temporary Order), the Minister of Interior has the authority to refuse or revoke permits and licenses when a resident of the Area or their first-degree relative also from the Area poses a substantial security or criminal risk; however, according to case law, a decision that infringes on the constitutional right to family life must meet the tests of proportionality. In our case, the Respondent's decision is logically flawed because the security risk involved does not emanate either directly or indirectly from the Appellants, but rather the benefit which the Respondent alleges can be reaped by removing the Appellants from Israel as a deterrent to potential future, unspecified assailants. The Appellants herein are innocents who do not pose any risk; the withdrawal of their status is meant to achieve a different end, which is extraneous to family unification. By its decision, the Respondent seeks to harm persons who pose no security threat whatsoever.

The Appellants argue that (Section (11(a)02) of the Entry into Israel Law (1952) (hereinafter: the Entry into Israel Law) grants the Minister of Interior broad authority to cancel a person's status. However, this discretion is subject to two cumulative conditions. Firstly, the matter must concern a residency license, and, secondly, said residency license must have been granted pursuant to the Entry into Israel Law. In the matter herein, however, given that the Appellants had been given stay permits pursuant to the Temporary Order, the authority granted the Minister under the Entry into Israel Law cannot constitute the source of authority for the termination of family unification procedures. As for Regulation 119 of the Defence Emergency Regulations, 1945, which grants the Commander of the Area the power to confiscate and demolish houses some or all of whose occupants have been accused or suspected of perpetrating hostile acts on the grounds of deterrence, despite the fact that uninvolved individuals may be hurt, one cannot draw from this an equivalence to the situation herein, as the confiscation and demolition of houses are explicitly prescribed in law, which is not so in the case at hand. Furthermore, in the matter of house confiscations or demolitions as well, case law has put in place rules and limitations with respect to implementation. In addition, the Respondent's decision constitutes an egregious violation of the rights of all members of the Appellants' families to dignity and family life as well as the principle of the child's best interest. The Appellants rely on the judgment handed down in Administrative Appeal 11930-07-18 State of Israel v. Khatib et al., where it was determined, inter alia, that the concept contained within the Temporary Order is that of a concrete threat, direct or indirect, posed by a specific person; the law does not establish grounds related to considerations of general deterrence. For these reasons, the tribunal is asked to accept the appeal and order the Respondent to immediately revoke its decision and issue a costs order against the Respondent.

Respondent's arguments

The Respondents argue that the Appellants' family unification application was approved pursuant to the Temporary Order, whose aim is security. The premise is that none of the Appellants have a vested or another right to enter and remain in Israel, and the entitlement they claim stems from the broad discretion granted the Minister of Interior. Weighed against the Appellants' application for family unification is the right of the State to protect the security and safety of its residents. The Respondent supports its decision with the opinion of the security officials and the overall data they collected, according to which, starting in 2013, there has been a clear upward trend in the overall number of terrorist attacks and unorganized attacks as well as the number of Israeli terrorists as a result of the terrorist activity. In this context, it has been noted that the primary terrorist activity of late has been and continues to be by local groups, as well as attackers fitting the "lone wolf assailant" profile. The data indicates that from 2014 until the submission of this response, there has been a steep rise in the number of serious attacks. Security officials are the competent authority with respect to assessing the security threats facing the State of Israel as well as deterrence against future attacks. These officials have the expertise to determine which means are effective in creating deterrence. In our case, security officials presented their position to the Respondent in view of the murderous attacks that had been perpetrated and the urgent need to take action to deter potential assailants from committing attacks such as the vehicular attack perpetrated by the Appellant's relative during which four IDF soldiers were killed, and 18 people were wounded. In these circumstances, the Respondent argues that there are no grounds for the Court to intervene in its decision, which was made in accordance with the power vested in the

Minister of Interior by virtue of primary legislation and in pursuit of a proper purpose, namely, deterring potential assailants from perpetrating more terrorist attacks. Given the frequency of such attacks, in particular, the Respondent's decision is in keeping with the requirement of proportionality and reasonableness.

Regarding the Appellant's argument to the effect that there is no specific law that empowers the Minister of Interior to terminate a family unification procedure, the Respondent maintains that one cannot deduce from Paragraph 3 of the Temporary Order that the Minister lacks the authority to deny the right to remain in Israel for other security reasons that do not emanate directly from the resident of the Area who has a stay permit or their relative, or any other reasons such as bigamy, lack of center-of-life in Israel or an application found to have been approved based on false information. The Temporary Order does not stipulate powers or give rise to the power of the Minister; therefore, the source of the authority does not arise from this law. General authority is given to the Minister on the basis of the Entry into Israel Law. The Respondents base their argument on AAA 8844/04 Shaaban v. Ministry of Interior, in which a permanent residency license was revoked – without explicit authority in regulations - because it had been obtained fraudulently and on the basis of false information.

The Respondent adds that the investigation by security personnel after the attack revealed that the terrorist's extended family expressed support for it. As for the argument made with respect to the right to family life, this right has not been denied to the Appellants; they may exercise this right not necessarily in Israel. The Appellants' argument whereby they are presumed innocent and were unaware of the intentions of the terrorist, ____ Kunbar, has been rejected by the Supreme Court. The Respondent stresses that this case is not a question of collective punishment. The aim of the measure is deterrence and, as already stated, the investigation revealed that the extended family of the terrorist expressed support for his actions. In conclusion, the Respondent claims that the scope of judicial review over its decisions is narrower than usual and that the decision was made lawfully, based on the opinion of security officials, according to which the revocation of the foreign Appellants' stay permit can contribute to the creation of meaningful deterrence that will prevent terrorist attacks. This is a reasonable decision that warrants no intervention. The Court is requested to dismiss the appeal and issue a costs order against the Appellants.

Deliberation and decision

The central issue in dispute between the parties revolves around the question of the Minister's authority to terminate a family unification or a child registration procedure and, as a result, to cancel the stay permits or A/5 temporary residency licenses on the grounds of public deterrence.

The Minister's decision was given in view of information according to which the atmosphere in Jabal al-Mukabbar, home to the assailant ____ Kunbar and the Appellants, is one of support for terror attacks and of hero-worshipping assailants. Many village residents express support for terrorists on social media. The Respondent believes that the glorification of terror attacks and terrorists encourages more youths to carry out such attacks. Furthermore, security officials estimate that revoking the Appellants' status can contribute significantly to deterring the growth of the phenomenon. The decision is also based on data regarding the growing severity of terrorist activity since the beginning of 2013. The vehicular attack perpetrated by the assailant ____ Kunbar belongs to this series of attacks. The brunt of the terrorist activity is led by assailants fitting the "lone wolf assailant" profile. Research carried out by security officials reveals that this is partly due to family connections in the Judea and Samaria Area.

Regarding the overall, relevant normative framework as the context for the matter at hand, the following remarks made in AAA 9168/11 A. v. Ministry of Interior are relevant:

> Regarding a foreign spouse who is a *resident of the Area*, that is, Judea and Samaria or the Gaza Strip and is not a resident of Israel (see exact definition in Section 1 of the Temporary Order) who is married to a *permanent resident* of Israel, the graduated procedure puts in place a number of stages only after completion of which

> can the foreign spouse obtain permanent status in Israel. In the *preliminary stage*, the couple applies for status for the foreign spouse pursuant to family unification. If the application is approved, the applicant becomes eligible for the graduated procedure. In the *first stage* of the graduated procedure, the applicant receives a stay permit issued by the District Coordination Office (hereinafter: DCO) for 12 months. At the end of this period, the spouse must apply for an extension for an additional 15 months, so that altogether at this point, they have DCO permits for 27 months. In the *second stage*, the spouse would be eligible for a status upgrade to temporary resident and receive an A/5 residency license for one year. Thereafter, the license could be extended twice more for one year each time. In the *third stage*, after five years and three months, the applicant's status could be upgraded to that of permanent resident of Israel.

It should be stressed that at the point at which decisions are made to extend permits and grant licenses and when applications for status upgrades are considered at the transition point between the stages of the process, several factors related to the application are examined. These include the genuineness of the marital relationship, whether there is a criminal or security disqualification and whether the couple's center-of-life is in Israel. Regarding the latter, the requirement is that Israel must have already been the couple's center-of-life for two years prior to entering the graduated procedure as a condition for approving their application and beginning the process (See AAA (Jerusalem) 742/06 Abu Kweidar v. the Minister of Interior (April 15, 2007).

> 4. On May 12, 2002, (hereinafter: the determining date), the Government of Israel decided that Area residents would no longer be able to apply for Israeli citizenship or permanent status on the basis of family unification (Resolution 1813 of the 29th Government regarding the treatment of illegal aliens and the family unification policy on residents of the Palestinian Authority and foreigners of Palestinian origin (May 12, 2002) (hereinafter: the Government Resolution). About a year later, the resolution was enshrined in a Temporary Order, which has been extended each year since. Section 4 of the law allows residents of the Area who were in possession of a DCO permit or a residency license given pursuant to a family unification application before the determining date to continue receiving a stay permit or residency license of the same kind; however, they cannot upgrade their status to the next stage for which they would have been eligible under the graduated procedure. An expanded panel of this Court dismissed several petitions filed against the Temporary Order over the years (HCJ 7052/03 Adalah – Legal Center for Arab Minority Rights in Israel v. Minister of Interior (IsrSC 61(2) 202 (2006); HCJ 466/07 Galon v. Attorney General (January 11, 2012)).

Section 3 of the Citizenship and Entry into Israel Law (Temporary Order), which is the section directly concerning this case, states as follows:

> A permit to stay in Israel or a license to reside in Israel shall not be granted to a resident of the region, in accordance with sections 3, 3A1, 3A(2), 3B(2) and (3) and 4(2) and license to reside in Israel shall not be granted to any other applicant who is not a resident of the region, if the Minister of the Interior or region commander, as the case may be, has determined, pursuant to the opinion of authorized security personnel that the resident of the region or other applicant or family member are liable to constitute a security risk to the State of Israel; in this section, "family member" – spouse, parent, child, brother and sister and their spouses. In this case, the Minister of the Interior may determine that a resident of the region or any other applicant is liable to constitute a security risk to the State of Israel, inter alia on the basis of an opinion by the security personnel in terms of which within the domiciled State or residential region of the resident of the region or of any other applicant, activity was carried out which is liable to endanger the security of the State of Israel or of its citizens.

According to Section 3 of the Temporary Order, the Respondent determines the security threat in each individual case (see HCJ 2028/05 Amara v. Minister of Interior). According to case law, the nature of the security threat is not only the direct threat but also the indirect threat, that is, the threat which arises from the close relatives of the person seeking the permit, as "relative" is defined in the Temporary Order (see HCJ 7444/03 Daqa v. Minister of Interior.) The question that arises is whether the Temporary Order provides cause for rejecting an application for family unification and child registration on the grounds of public deterrence. To that, the Court responds negatively in Administrative Appeal 11930-07-18 State of Israel v. Khatib et al. (hereinafter: "*Khatib*") in these words:

> Indeed, the concept reflected in the Temporary Order is one of concrete risk, direct or indirect, emanating from a specific individual. The law does not set forth a cause grounded in considerations of general deterrence. The report does not indicate such a concrete threat emanating from the Respondent. Moreover, the assessment report does not indicate that rejecting the Respondent's application offers any added security value, not even as a general deterrent. Consequently, the report does not substantively support the decision made by the Ministry of Interior.

The judgment in *Khatib* was handed down at a date later than the decisions which are the subjects of the appeals herein. Nevertheless, it was the center of the deliberations that took place in that procedure. This is a peremptory judgment which explicitly determined the Temporary Order does not establish grounds based on a deterrence consideration.

According to the Respondent, the Minister of Interior also has the authority to stop a family unification and child registration procedure based on Section 11(a)(2) of the Entry into Israel Law. A review of this section reveals that it is a general clause requiring interpretation. The rules of interpretation include, inter alia, the rule of explicit authorization and the rule of primary arrangements. Exercising a power in these circumstances must be in keeping with the rules as detailed here:

Section 11a of the Entry into Israel Law states:

> 11(a)(2). The Minister of Interior may, at his discretion, cancel any permit of residence granted under this law.

As stated, the issue of the power vested in the Minister of Interior in the matter at hand is a matter of interpretation. It will be examined below in accordance with the outline provided in HCJ 7803/06 Abu 'Arafeh et al. v. the Minister of Interior (hereinafter: *Abu 'Aarfeh*). This question of interpretation must be examined in view of the language of the law, its subjective purpose, which is gleaned from the legislative history, as well as the objective purpose of the law whereby a balance must be struck between the various interests at stake. Finally, these three elements will be given their proper weight.

Statutory interpretation begins with an examination of the language component. Where there are several alternatives, the one that optimally achieves the purpose of the law is chosen (*Abu 'Arafeh*, Paragraph 29). The purpose of the law is composed of its subjective and objective purposes. The subjective purpose includes the objects and values the legislator seeks to attain, that is, the legislator's intent when enacting the law. The objective purpose includes the objects, values and principles legislation is meant to achieve in a modern, democratic society (*Abu 'Arafeh*, Paragraph 30). These values include the desire and the obligation to fulfill the values of justice, morality, human rights, as well as the principle of the rule of law and the obligation of fair governance. (HCJ 4562/92 Zandberg v. Israel Broadcasting Authority, IsrSC 50(2), 793).

As stated above, a legal provision must be interpreted according to the subjective and objective purposes it is meant to achieve using judicial discretion. As part of the interpretive process, a balance must be struck between the various purposes, and the law must be interpreted taking into account the fundamental tenets of our judicial system. Section 11(a)(2) of the Entry into Israel Law, 1952 must be interpreted in light of all the above.

Regarding the subjective purpose of Section 11a of the Entry into Israel Law, Honorable Justice Vogelman reviewed this question in *Abu 'Arafeh* (Paragraph 43), examining it in light of the debates and positions expressed by Members of Knesset in advance of the passing of the law, as follows:

> And so, we learn from the legislative history that with regard to the law which is the focus of our deliberation, the legislator wished to bestow upon the Respondent the authority to grant or withdraw Israeli residency permits regarding those with weaker connections to the country, i.e., foreign nationals and tourists seeking entry into the country. The subjective aim of the law, which is gleaned from the overt intent of the legislator, was, therefore, not to apply it to persons already in the country, but rather to those seeking entry. In other words, the legislator's intent was that the law would not apply to the category relevant to the case at hand. This is how the initiators of the law understood the language of the text they legislated. (Barak, p. 152).

Since our case concerns foreign nationals for whom a request for status has been made, it is conceivable that the interpretation whereby the power to terminate a family unification or child registration procedure on the grounds of deterrence fulfills the subjective purpose of Section 11a of the Entry into Israel Law. However, the objective element raises questions which I do not believe have been fully examined.

In the context of the objective purpose of the law, we must consider those fundamental tenets of our system, which pertain to the question at hand. These include state sovereignty, national security and public safety, the promotion of human rights and the requirement for explicit and detailed authorization where an impingement on human rights is concerned. Regarding the principle of state sovereignty, the fundamental principle is that a sovereign state has the right to decide who will enter its borders and under what conditions, in a manner enabling it to function properly and protect the rights of its citizen, with the premise being that anyone who is not a citizen does not have a vested right to enter the borders of the country and even if entry has been granted, the State has a lesser obligation towards such persons. In the circumstances, I do not find that in the overall assessment, consideration was given to the right of the Israeli spouse to realize family life with the foreign spouse in Israel, when this is at the core of the right to dignity ((HCJ 7052/03 Adalah – Legal Center for Arab Minority Rights in Israel v. Minister of Interior).

An additional rule to the principles listed above is the interpretive rule of explicit authorization. According to this principle, a statute should not be interpreted as authorizing a violation of fundamental rights unless the authorization is clear, incontrovertible and explicit (HCJ 333/85 Aviel v. Minister of Labor and Welfare, IsrSC 45(4) 581). Furthermore, where an act violates basic rights, "... The presence of explicit but vague, general and sweeping authorization in law is insufficient. It is necessary to point to clearly worded permission which establishes general standards for the substantive characteristics of the impingement permissible through secondary legislation." (HCJ 10203/03 "The National Census" Inc. v. Attorney General, IsrSC 62(4) 715). The rule is that the more important the right and the graver its violation, the more assiduous the Court's insistence on "the requirement for authorization" and the narrower its interpretation of it must be (*Abu 'Aarfeh*, Paragraph 52). The rationale for this requirement is that the separation of powers requires that the legislative rather than the executive branch determine the administrative power to violate basic rights and the standards for doing so.

In the circumstances of the matter at hand, I do not find that all the considerations discussed above regarding the question of the Minister's power to terminate a family unification and child registration procedure on the grounds of deterrence have been addressed. Therefore, I order the Appellant's matter returned to the Respondent for further consideration in view of the *Khatib* case, the rules of interpretation as discussed above and Appellants' arguments. A detailed judgment will be given within 90 days. Each party will be responsible for its own costs.

Prior to concluding, I will say the judgment is delivered at this time due to the exceptional backlog at this time and the complexity of the issues addressed by the tribunal.

The tribunal secretariat will provide a copy of this judgment to Adv. Adoram as well.

Leave to appeal to the Jerusalem District Court, sitting as the Court of Administrative Affairs, is granted for 45 days.

Given today, August 2, 2020, in parties' absence.

_____[signed]_____
Ilan Halvega,
Appeal Tribunal