At the Supreme Court in Jerusalem **LAA -20**

In the matter of:

1. **____ Abu Tir, ID No., _____**
2. **____ Belal, Brazilian Passport, _____**
3. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA 580163517**

All represented by counsel, Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Daniel Shenhar (Lic. No. 41065) and/or Tehila Meir (Lic. No. 71836) and/or Nadia Daqqa (Lic. No. 66713) and/or Aaron Miles Kurman (Lic. No. 78484) and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763)

Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Applicants

v.

Ministry of Interior Population and Immigration Authority

Represented by the Jerusalem District Attorney's Office
7 Mahal Street, Jerusalem
Tel: 02-5419555; Fax: 02-5419581

The Respondent

Application for Leave to Appeal

Application for leave to appeal is hereby filed against the judgment of the Court of Administrative Affairs in Jerusalem dated August 26, 2020, in AAA 38126-12-19, in which the honorable court denied the appeal filed by Applicants against the judgment of the Administrative Appeals Tribunal in Jerusalem dated October 28, 2019, in Administrative Appeal (Jerusalem) 3111-19.

The judgment in AAA 38126-12-19 is attached hereto and marked **LAA/1.**

The judgment in Administrative Appeal (Jerusalem) 3111-19 is attached hereto and marked **LAA/2.**

Preface

At the outset, Applicant 3 wishes to emphasize that the general position expressed by it in the petitions in HCJ 10650/03 **Abu Gwella v. Ministry of Interior** and HCJ 5030/07 **HaMoked**

Center for the Defence of the Individual v. Minister of Interior that the Citizenship and Entry into Israel Law (Temporary Order) 5763- 2003, is an offensive, unconstitutional and disproportionate law, which should be nullified, also stands in 2020, and even more forcefully. At the same time, since Applicant 3 is aware of the fact that the authorities do not intend to deviate from their long-standing practice and delete said draconian law from the book of laws, it is very important for Applicant 3 to use its best efforts to minimize the severe harm inflicted by said law to the greatest extent possible. We shall now proceed to discuss things in an orderly manner.

The legal issue underlying the Application for Leave to Appeal at hand raises a general question having far-reaching consequences affecting the civil status and rights of numerous individuals whose matter was subjected to the Citizenship and Entry into Israel Law (Temporary Order) 5763- 2003 (hereinafter: the **Temporary Order**), although they have never been registered in the population registry of the area. We shall explain.

The judgment being the subject matter of this application for leave to appeal discussed the residence in the area of an individual, who has been living in the area for many years, was not registered in the population registry of the area and severed his connections to the area years ago. Hence, the question is as follows: is the status of a person who was defined as a "resident of the area" according to the Temporary Order, static, eternal and irrevocable or is it a definition which reflects a certain reality of life that expires when said reality no longer exists.

In AAA 1621/08 **State of Israel v. Hatib** (hereinafter: **Hatib Judgment**) (reported in Nevo) it was held that the residence of an individual who lived in the area but was not registered in its population registry, shall be determined according to the "majority of ties" test. In addition, and directly following the Hatib Judgment, two judgments were given which have long become conclusive, the first by the court of administrative affairs in Jerusalem – AAA 20474-08-16 **Salahat et al. v. Ministry of Interior** (hereinafter: **Salahat**) – and the other by the administrative appeals tribunal in Jerusalem – Administrative Appeal (Jerusalem) 3412-17 **Seder et al. v. Ministry of Interior** (hereinafter: **Seder**) – a tribunal regarded as having expertise in matters relating to the Entry into Israeli Law. In these two judgments it was held that the residence in the area of a person not registered therein is not eternal and may expire if the person left the area and his connections thereto were severed.

However, in the judgment being the subject matter of this application for leave to appeal, the honorable court has disregarded the conclusive rationales and holdings established in the Hatib Judgment and in Salahat and Seder regarding the residence in the area of a person who is not registered in the area and has not been living there for many years, and respectively, the expiration of the residence in the area of a person who is not registered therein, even if that person was considered a resident of the area in the past. The honorable court of first instance has oddly held in its judgment, *inter alia*, that the interpretation of the term "resident of the area" in a manner according to which the examination of appellant's center of life leads to the conclusion that currently the appellant is no longer a resident of the area and therefore the provisions of the Temporary Order should not be applied to him, renders the security purpose of Temporary Order meaningless. The court of first instance further concluded in its judgment, based on the judgment in HCJ 813/14 **A v. Ministry of Interior** (reported in Nevo) – that Applicant 3 was a party thereto and which has also mainly discussed persons registered in the population registry of the area – that a person's residence in the area never expires, even if he is not registered in the area and has severed his connections thereto long ago.

According to the applicants and pursuant to the rules established in LCA 103/02 **Haifa Parking Lot Ltd. v. Matzat Or**, in view of the broad and far reaching consequences of the issue the clarification of which is requested in the application, on the rights and legal-civil status of the applicants and many others, leave to appeal before a third instance should be granted and hence this application. The difficulty of the rule and the need to have the matter resolved by the honorable court also arise from the fact that the judgment contradicts another conclusive

judgment on the very same issue which had been given by the district court (in the above mentioned **Salahat**) and was implemented by the court of appeals (in the above mentioned **Seder**). The judgment at hand does not contradict said conclusive judgments unknowingly, since said judgments were mentioned in the factual part of the judgment as sources referred to by applicants' counsel at that time. Nevertheless, the judgment directs the respondent to act contrary to the judgment in Salahat without distinguishing it therefrom and without discussing the rule established therein on its merits.

A copy of the judgment in Salahat is attached hereto and marked **LAA/3.**

A copy of the judgment in Seder is attached hereto and marked **LAA/4.**

The grounds for the application are as follows:

A concise summary of the application for leave to appeal:

1. On June 23, 2019, an administrative appeal was filed with the administrative appeals tribunal in Jerusalem against respondent's decision dated May 22, 2019, which denied the application to upgrade the status of applicant 2, a Brazilian citizen who had been living several years in the area with his mother, a permanent resident of East Jerusalem, prior to living in Israel. In the administrative appeal it was argued that applicant 2 who has never been registered in the area and has been living in Israel for many years is not a resident of the area and is therefore entitled to have his status upgraded like any foreign citizen who is not a resident of the area.

2. It should already be emphasized that in the framework of the administrative appeal filed with the administrative appeals tribunal as well as in the framework of the appeal which was filed against the judgment of the administrative appeals tribunal with the court of first instance, the applicants at hand raised additional arguments which according to them justify the upgrade of applicant 2's status. However, the application for leave to appeal at hand focuses and discusses solely the general arguments relating to the application to upgrade applicant 2's status from 2018 onwards and the holdings of the court of first instance concerning the definition of a person who had been, *de facto*, a resident of the area in the past, was not registered in the area, left it and severed his connections thereto.

3. As specified above, on October 28, 2019, the judgment of the administrative appeals tribunal in Jerusalem was given, rejecting the applicants' administrative appeal. Among other things and in connection with the issue at hand, the tribunal distinguished in its judgment applicants' matter from the matter of Salahat and held that the application to upgrade appellant's status should be denied based on the argument that it was filed in delay.

4. On December 17, 2019, an appeal was filed with the honorable court of first instance – AAA 38126-12-19 against the judgment of the administrative appeals tribunal and on August 26, 2020 the court of first instance gave the judgment, against the principled rulings of which the application for leave to appeal at hand is filed.

5. As specified below, according to the applicants and with all due respect, the honorable court of first instance erred by holding in said judgment that the acceptance of the interpretation that the applicants wish to give to the definition "resident of the area", renders the security purpose of the Temporary Order meaningless. The honorable court has also erred in the manner by which it referred to the Hatib Judgment without thoroughly analyzing it and by holding that applicants' position did not reconcile with previous rulings made by the honorable court in its judgments. The honorable court of first instance has also erred by inferring from the holdings of this honorable court in HCJ 813/14 which concerned residents of the area who were living in the area and who were

registered therein, to persons who were defined as residents of the area although they were not registered therein, left it and had no actual connections thereto. Finally, the court erred in that it had disregarded the conclusive judgments in Salahat and Seder which although not binding precedents, have long outlined the manner by which persons who lived in the area but were not registered therein, left it and had no longer any connections thereto, should be treated. We shall discuss things in an orderly manner.

The Factual Part

The Parties

6. **Applicant 1** (hereinafter: **Applicant 1**) a permanent resident belonging to the indigenous population of East Jerusalem is the mother of **Applicant 2** (hereinafter: **Applicant 2** and together with Applicant 1: the **Applicants**).

7. **Applicant 3** (hereinafter also: HaMoked) is a not-for-profit association which has taken upon itself to assist, inter alia, residents of East Jerusalem and their family members, victims of abuse and deprivation by state authorities, including by protecting their rights before the courts.

8. The respondent is the Minister of Interior that the population and immigration authority which is responsible for the decision to regard Applicant 2 as a resident of the area forever is one of its arms.

Factual background and exhaustion of remedies

9. The following is the required factual background for discussing application for leave to appeal.

10. Applicant 1, a permanent resident belonging to the indigenous population of East Jerusalem, had married in 1991 a Brazilian citizen who was living in the area prior to the enactment of the Temporary Order, but was not registered therein.

11. By the end of that year applicant 1 and her spouse moved to Brazil where their three children were born, including applicant 2, who was born on August 19, 1992.

12. In 1997, when applicant 2 was about six years old, applicants' family returned from Brazil to Israel and approximately six months later applicant 1 filed with respondent's office a family unification application for her spouse and children.

13. Said application was denied by the respondent on February 8, 1998. After the denial of the application and until 2005 applicants' family lived in the area. It should also be noted that in 1999 the father of the family had returned to Brazil and in 2003 he divorced applicant 2. After applicant 2 had returned to Jerusalem with her children in 2005 she submitted two additional family unification applications for her children (family unification applications No. 153/07 and 46/08 respectively). After the 2007 application had been denied by the respondent based on the allegation that center of life was not substantiated, the 2008 application was eventually approved.

14. In short – and beyond the unlawful conduct of the respondent which endlessly extends, completely contrary to the law, tourist visas to a person who has been lawfully living in Israel for so many years, conduct which does not form part of this application for leave to appeal – applicant 2, who was born in 1992, lived in Brazil for approximately six years. He thereafter lived seven years in the area, four years of which prior to the enactment of the Temporary Order, and fifteen additional years in Jerusalem as a tourist, holding only a tourist visa.

15. On September 23, 2018, the applicants submitted an application to upgrade applicant 2's status in Israel since he was not a resident of the area, based, *inter alia*, on the fact that he has never been registered in the area, that he had left the area many years ago and had no connections to the area.

16. On February 19, 2019, the respondent denied the application to upgrade applicant 2's status on the grounds that due to the fact that he had been residing in the area between 1997-2005 he was also currently defined as a resident of the area.

    A copy of respondent's decision dated February 19, 2019, is attached and marked **LCA/5.**

17. An internal administrative appeal filed in that matter was also denied by the respondent on May 22, 2019.

    A copy of respondent's decision dated May 22, 2019, is attached and marked **LCA/6.**

18. On June 23, 2019, an administrative appeal in that matter was filed with the administrative appeals tribunal and on October 28, 2019 the administrative appeal was denied by the tribunal.

    A copy of the Statement of Administrative Appeal (Jerusalem) 3111-19 is attached and marked **LCA/7.**

19. The appeal which had been filed by the applicants with the honorable court of first instance against the decision of the administrative appeals tribunal was also denied as aforesaid. The application for leave to appeal at hand is filed against the general holdings of the honorable court of first instance in said judgment.

The Legal Argument

20. With all due respect, the judgment of the honorable court of first instance contains several errors all relating to how the term resident of the area should be interpreted in the context of the Temporary Order and with respect to the relevant point in time – is there one static relevant point in time or does said relevancy change along with the changing reality of life – with respect to persons who lived in the area, have never been registered therein and who, at a certain point, lost their connections thereto. According to the applicants, their arguments in the matter justify the grant of leave to appeal and the honorable court's discussion and resolution of the matter which has consequences reaching far beyond applicants' matter at hand. The applicants shall refer below to each one of the errors contained, according to them, in the general holdings of the court of first instance in said judgment.

Resident of the area in the context of the Temporary Order and Hatib Judgment

21. Section 1 of the Temporary Order which, as known, was amended in 2005, defines a resident of the area as:

> A person registered in the population registry of the area, **and a person residing in the area although not registered in the population registry of the area**, excluding a resident of an Israeli settlement in the area.
>
> (Emphasis added, B.A.).

22. However, while the definition of a person registered in the population registry of the area as a resident of the area was ostensibly easy, this honorable court discussed the definition of a person who was not registered in the population registry of the area in AAA 1621/08

State of Israel v. Hatib (hereinafter: **Hatib**). For the purpose of determining residence in the area of a person who is not registered in the population registry of the area it was held in Hatib that a substantial examination – according to the majority of ties test – shall naturally be required regarding a person's actual residence.

23. The meaning of the criterion established in the Hatib Judgment is that there may be situations in which a person who was not registered in the area but was living therein or had other connections thereto shall not be defined as a resident of the area.

24. According to applicants' position specified below, the interpretation which they wish to attribute to the definition of a 'resident of the area' for a person who is not registered in the area, does not live there for years and lost any actual connection thereto, reconciles with its alleged security purpose, while precisely the judgment of the court of first instance, should it remain in force, wishes to expand the Temporary Order beyond its designated scope according to its language and purpose, stating that a resident of the area is "a person registered in the population registry of the area, and a person **residing** in the area although not registered in the population registry of the area". According to the court of first instance a resident of the area also includes a person who is not registered in the area and **does not reside** in the area.

The judgment in HCJ 9794/02 Alabid v. Minister of Defense

25. In paragraph 44 of its judgment the court of first instance refers to the judgment in HCJ 9794/02 **Alabid v. Minister of Defense** (hereinafter: **Alabid**) concerning an Egyptian citizen who had been living for three years in the Gaza Strip before moving to Israel and before a family unification application was filed for him, to substantiate the holding that a person who was not registered in the area remained a resident of the area forever by virtue of his residence in the area.

26. However, according to the applicants no inference can be drawn from Alabid to the case at hand for several reasons. Firstly, the judgment in Alabid was given several years prior to the Hatib Judgment underlying this application for leave to appeal. The Hatib Judgment is the accepted rule in the framework of which the criterion of the 'majority of ties test' was established for the definition of a person who is not registered in the area as a resident of the area. It should be noted that in Salahat the honorable court referred in paragraph 15 of its judgment to Alabid and specifically clarified, *inter alia* – that in Alabid, the court did not apply the criterion which was established only later – in the Hatib Judgment.

The relevant point in time is not static and changes along with the reality of life

27. Another material difference between Alabid and applicants' case at hand and their general argument with respect to the issue in which a decision is requested, concerns the relevant point in time for the purpose of determining whether or not a person is a resident of the area. Is it possible that for the purpose of whether or not a person is a resident of the area, there is a single, static relevant point in time, a point of no-return even in the event that many years have passed, the person left the area and severed his ties thereto?

28. According to the applicants the relevancy of the point in time, like time itself, is not static and changes as the circumstance of life change, such that a point in time which could have been relevant on a certain date can become irrelevant on another date.

29. From the general to the particular. As is known, Alabid concerned an adult who married an Israeli resident. The move from the area to the territory of Israel and the filing of the family unification application for him were conducted with the physical passage from the area. Therefore, at that time, the date on which the family unification application was

filed was relevant for the purpose of determining whether the petitioner was indeed a resident of the area.

30. On the other hand, in the case of applicant 2 at hand and contrary to the decision of the honorable court of first instance that referred to the date on which the family unification application was filed for him 13 years ago as the relevant point in time, we are concerned here with a person who has been living in Israel for many years without any connection to the area, with the relevant point in time in the case at hand being 2018, when the application to upgrade his status was filed based on the argument that he was no longer a resident of the area. In 2018, applicant 2 had been living in Israel continuously for about a decade and a half without any actual connection to the area.

Applicants' interpretation does not render the security purpose of the Temporary Order meaningless

31. The honorable court of first instance has also erred by holding in paragraph 46 of its judgment that applicants' interpretation of the term "resident of the area" in fact renders the security purpose of the Temporary Order meaningless.

32. On the contrary. Applicants' position according to which any person who was not registered in the area, left it and remained with no connections thereto ceased, at a certain point in time, from being a resident of the area, directly and necessarily arises from the language of the Temporary Order - and a person **residing** in the area – from the Hatib precedent and the judgments given in Salahat and Seder, all of which, it is needless to say, do not render the security purpose of the Temporary Order meaningless.

33. Does the Hatib Judgment pursuant to which a person residing in the area and is not registered therein is not a resident of the area in view of the fact that the majority of his ties are not to the area, render the security purpose of the Temporary Order meaningless? Clearly not. The Hatib Judgment in fact provides that to the extent the majority of a person's ties is not to the area, he poses no security risk, despite the fact that said person resided in the area or had ties thereto, but according to the criterion established by the court, it became evident that the majority of his ties are not to the area.

34. Hence, in the same manner that the Hatib Judgment – as well as the judgments given in Salahat and Seder – does not render the security purpose of the Temporary Order meaningless, but rather provides that a person the majority of whose ties are not to the area, does not pose a security threat and therefore there is no reason to subject him to the Temporary Order, the applicants in the case at hand argue that at a certain point in time – which in their particular case is 2018 when the application to upgrade applicant 2's status was filed – any person who is not registered in the area, left it and no longer maintains any actual connections thereto, ceased being a resident of the area poising a security risk, and therefore the Temporary Order no longer applies to him.

35. Moreover. In view of the security purpose of the Temporary Order on the one hand, and the violation of fundamental rights on the other, it was held in AAA 5718/09 **State of Israel v. Srur** (paragraph 31 of the judgment) that the Temporary Order should be implemented proportionately to the maximum extent possible, limiting the violation of human rights to the required minimum. As we know, the passage of time is an important aspect affecting the proportionality of the Temporary Order.

> My colleagues discussed at length the fact that the amended law had been enacted as a temporary order which was extended approximately twelve times. When this case was previously discussed in *Adalah*, my colleague, Deputy President E. Rivlin, was of the opinion that said classification of the law constituted a reason for refraining from

> interfering therewith. According to him in the case at hand, **the passage of a long period of time and the numerous extensions of the amended law not only fail to strengthen the state's position, but the contrary may be true. In my opinion, it suffices to say that the current legal situation does not assist the state's position**.
>
> The temporary is lengthy and does not change. The difficult climate accompanies us all year round, for many years. Sitting in this court we are also required, in the framework of our judicial review, to watch the clock. In my opinion as aforesaid, there is no room to nullify the law due to its non-constitutionality. However, it is advisable for the state to formulate a law which shall handle the issue of immigration in the current context and in general. According to the updating notice on behalf of the state, the competent bodies do indeed vigorously act in this manner. Indeed, if this is not the case, from the perspective of constitutional review, two things are expected. Firstly, that the discussion concerning the extension of the amended law shall be thorough and comprehensive – substantial rather than formal; Secondly, **that the legislative authority shall be attentive to the changing reality, to examine whether the harm is still justified**.
>
> (paragraph 7 of the judgment of the Honorable Justice Hendel in HCJ 466/07 **Galon v. Attorney General** (reported in Nevo)
>
> (Emphases added, B.A.)

36. As years go by, the proportionality that the legislator ostensibly wanted to give to the draconian law by enacting it as a "Temporary Order" rather than as a permanent law, keeps eroding. In addition it is clear that with respect to the person in whose matter this application is filed, namely, a person who entered the area for a number of years, in the case at hand as a minor and not by choice, has never been registered therein, left it years ago and lay down roots in Israel, the proportionality that the legislator wanted to give to the Temporary Order loses its power altogether. As a result of changes in the reality of life which is not static, at a certain point in time, a person who has never been registered in the area, left it and his ties thereto no longer exist, lost any actual connection to the area. Therefore, his status in the area which ostensibly attests to a reality of life which no longer exists also loses its validity.

37. For these reasons the applicants are of the opinion that the honorable court of first instance erred by holding that their interpretation of the term resident of the area, interpretation arising directly from the language of the law, the Hatib Judgment and the conclusive judgments in Salahat and Seder, renders the security purpose of the Temporary Order meaningless. As aforesaid, the implementation of the court's current ruling does not render the law meaningless, but rather attempts to interpret it within the limits of its security purpose – while precisely the judgment given by the court of first instance, should it remain in force, wishes to expand the Temporary Order beyond its realms dictated by its language and purpose, according to which a resident of the area is "a person registered in the population registry of the area, and a person residing in the area although not registered in the population registry of the area". According to the court of first instance a resident of the area also includes a person who is not registered and does not reside in the area. Said position does not reconcile with the language of the law expressly stating that we are concerned with a person who resides in the area, nor does it reconcile with the need to act proportionately and limit the great harm caused by this law to the maximum extent possible, and with the criterion established in the Hatib Judgment and the other judgments in Salahat and Seder.

HCJ 813/14 A v. Minister of Interior

38. The court of first instance has also erred by inferring from the judgment in HCJ 813/14 **A v. Minister of Interior** to the applicants' case.

39. However, according to the applicants and with all due respect, no such inference may be drawn. The matter discussed therein was totally different. In said case the petitioners – which applicant 3 was one of them – requested to recognize the right of residents of the area **who were registered in the population registry of the area** and who were living in Israel for many years, to upgrade their status. Alternatively, the petitioners in said case requested to add an exclusion to section 2 of the Citizenship and Entry into Israel Law (Temporary Order, 5763-2003, which would enable residents of the area who were registered in the area and were residing in Israel for a long period of time by virtue of stay permit in Israel in the framework of family unification, to receive at least temporary residency status (A/5 visa). At a certain point, petitioners' counsels in the series of said petitions were requested to clarify to the honorable court what was requested by them from the court. Applicant 3 herein made it clear to the honorable court that as far as it was concerned no constitutional remedy was required and that the matter could be solved by adopting the blue pencil principle and the interpretation according to which, after a number of years a person shall no longer be considered a resident of the area **even if registered in the population registry of the area**.

40. However, in its judgment in said case the court rejected, inter alia, the position of applicant 3 in the case at hand, concerning the interpretation of the Temporary Order:

> In my view, the arguments concerning the interpretation of the Law should be rejected. In the oral hearing before us, an argument was made that The Citizenship Law (Temporary Order) can be interpreted such that persons lawfully residing in Israel for many years (some of the Petitioners suggested five years as a general rule), will no longer be considered a resident of the Area to whom the Law applies. **However, the Law expressly prescribes that a "resident of the Area" is a person who "is registered in the population registry of the Area**,… In other words, the Law does not define a resident of the Area based on the actual ties to the Area **but based on registration in the population registry**.
>
> (Emphases added, B.A.)

41. Hence, the honorable court of first instance erred by inferring from the judgment in HCJ 813/14 A v. Minister of Interior which discussed persons who were registered in the population registry of the area, to the case of applicant 2 at hand discussing a person who is not registered in the area, left it and severed his ties thereto.

42. As was also noted by the honorable court of first instance in its judgment being challenged in the application at hand, in the above petition the honorable court held that the interpretation that the petitioners had requested the court to adopt did not reconcile with the language of the law and its purpose. However, said case was completely different from the case at hand. As aforesaid, in as much as we are concerned with persons who are not registered in the population registry of the area, the language of the Temporary Order makes it clear that it refers to **persons residing** in the area rather than persons who left it and had no ties thereto. For this reason, according to the applicants, it is precisely the interpretation that the honorable court of first instance wishes to adopt which does not reconcile with the language of the law and its purpose, nor does it reconcile with the Hatib Judgment and later holdings which followed said judgment in Salahat and Seder.

Applicants' position reconciles with the language of the Temporary Order, its purpose and with case law

43. In view of all of the above, the applicants are of the opinion that the holding of the honorable court of first instance in section 48 of its judgment according to which their position does not reconcile with the language of the Temporary Order, its purpose and case law, is erroneous.

44. As was clarified by the applicants, the language of the law refers to a person residing in the area rather than to a person who had been residing in the area many years ago, lost his ties thereto, and according to the Hatib Judgment, the majority of his ties if not the entirety of his ties are not to the area. In addition and as aforesaid, in HCJ 813/14 A v. Ministry of Interior, from which the honorable court of first instance wishes to infer to the case at hand, a completely different situation was discussed mainly relating to persons registered in the population registry of the area with all ensuing consequences.

45. The language of the law and the Hatib Judgment on the other hand, referring to the residency in the area of a person who is not registered therein such as applicant 2 at hand, clearly state how the term "resident of the area" in the Temporary Order should be interpreted with respect to a person who is not registered in the area and who has not been living there for many years.

46. In Salahat and Seder, the court and the administrative appeals tribunal have respectively clarified that indeed, as a direct result of the law and the Hatib Judgment, at a certain point and subject to the satisfaction of certain conditions, the Temporary Order would cease to apply to persons who are not registered in the area, left it and lost their ties thereto.

HCJ 282/88 'Awad v. Prime Minister et al.

> **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.** (HCJ 282/88 'Awad v. Prime Minister et al.)
>
> (Emphases added, B.A.)

47. As is known, the judgment in HCJ 282/88 **'Awad v. Prime Minister et al.** (hereinafter: **'Awad Judgment**) from which the above quote is taken, discussed the civil status of the indigenous population of East Jerusalem to which the petitioner belongs.

48. Indeed, applicant 3 does not agree with the 'Awad Judgment. Applicant 3's general and consistent position is that the status of the indigenous population of East Jerusalem is deep and special and cannot be revoked, similar to citizenship which does not expire when a citizen leaves the country of his citizenship and never returns thereto. However,

respondent's own logic requires that the applicants refer to the 'Awad Judgment in direct relation to the judgment of the honorable court of first instance.

49. The petitioner in 'Awad, a native of this country, was a permanent resident who was born in Jerusalem and lived there his entire life. He was registered in the population registry and attained the high status of permanent residency. On the other hand, applicant 2 in the case at hand was not born in the area, did not live there for many years, was not registered therein and clearly not only did he fail to attain a high status like the petitioner in 'Awad, but rather, he attained no status whatsoever. Finally similar to 'Awad, the applicants at hand have also moved from the area and laid down roots in Jerusalem.

50. It stands to reason that the rationale which applied to the holdings in the 'Awad Judgment would even more forcefully apply to applicants' case at hand. The respondent cannot possibly argue on the one hand that permanent residency in Israel reflects a reality of life which expires after a few years, and argue at the same time that the status of a person who has never been registered in the area is eternal and static, which does not reflect a reality of life and that such person is still considered by it as a resident of area although he has not been residing in the area for many years and laid down roots in Jerusalem. Indeed, reference to 'Awad precisely on this issue is made by the honorable court in paragraph 11 of its judgment in Salahat.

51. Hence, applicants' position not only reconciles with the language of the Temporary Order and its purpose, it also reconciles with the Hatib Judgment, the holdings of the court of first instance and the administrative appeals tribunal in Salahat and Seder as well as with the rational underlying the 'Awad Judgment. The holdings of the court of first instance in its judgment against which this application for leave to appeal is filed, on the other hand, do not reconcile, according to applicants' position, with the language of the law and its purpose, with the Hatib Judgment and in later holdings made following the Hatib Judgment in Salahat and Seder.

The court of first instance disregarded the holdings in Salahat and Seder

52. According to the applicants, the court of first instance has also erred by having totally disregarded the judgments in Salahat and Seder. We shall explain.

53. Indeed, the above judgments do not constitute judicial precedent and ostensibly are not binding upon the court of first instance. However, precisely when such a sensitive issue is discussed, the court should not have disregarded said judgments and should have clarified why it had decided to deviate from the holdings made therein. Particularly, and more forcefully, in view of the fact that the honorable court of first instance was aware of the judgments in Salahat and Seder, which formed part of applicants' arguments in the appeal as reflected in paragraph 12 of its judgment. In addition, the honorable court should have referred to these judgments in its judgment in view of the fact that they directly follow accepted case law established by this honorable court.

54. Regretfully, instead of discussing Salahat and Seder, the honorable court of first instance preferred to give a judgment which, according to the applicants, disregards and contradicts the judgments given in Salahat and Seder and which does not reconcile with the language of the Temporary Order and its purpose.

Conclusion

55. According to applicants' understanding of the judgment given by the court of first instance, it disregards the meaning of the holdings in the Hatib judgement, as well as the judgments given by the court of first instance and by the administrative appeals tribunal in Salahat and Seder and in fact, the language of the law and its security purpose. The judgment of the honorable court of first instance contains several holdings which

according to the applicants cannot stand. The issue at hand has far reaching ramifications and boils down to the question of whether a person who is not registered in the area, lived therein, left it and lost his ties thereto shall be considered forever as "resident of the area" in the context of the Temporary Order. The Hatib Judgment and the conclusive judgments in Salahat and Seder have simply clarified that according to the language of the law and its purpose, the answer to this question is negative, and that the definition of the term resident of the area in the context of the Temporary Order with respect to persons not registered in the population registry of the area and not residing therein is not static but rather, depends on the reality of life of said persons.

56. More than 17 years after the enactment of the Temporary Order and its severe consequences and as it became clear that it is not a temporary law as was firstly presented, it seems that the importance of a decision in the matter of persons who have never been registered in the area, resided therein for a while a long time ago and lost their actual ties thereto, cannot be overstated. The legislator and the language of the law may provide a clear answer with respect to the residency of a person who is registered in the population registry of the area, but with respect to a person not registered therein, and the language of the law is clear, it cannot possibly be expanded to eternal residency. The language of the law and its purpose as they relate to persons not registered in the population registry of the area, the passage of time, and the existence of judgments to the contrary which were not discussed by the honorable court of first instance in its judgment, all justify and warrant that leave to appeal be granted, such that this issue shall be properly clarified.

57. Therefore, the honorable court is hereby requested to accept the application for leave to appeal and to obligate the respondent to pay attorneys' fees and costs of trial.

Jerusalem, October 16, 2020

_____

Benjamin Agsteribbe , Advocate
Counsel for the applicants