State of Israel
Appeals Tribunal Under the Entry into Israel Law, 5712-1952

At the Appeals Tribunal in Jerusalem
Before the Honorable Judge Ilan Halevga

Appeal (Jerusalem) 4484-20
Appeal (Jerusalem) 4485-20
Appeal (Jerusalem) 4464-20
Appeal (Jerusalem) 4522-20
Appeal (Jerusalem) 3201-21

The Appellants:	**Appeal 4484-20**	**1.**	**_____ Mashur**
		2.	**_____ Mashur**
		3.	**_____ Ashur**
	Appeal 4485-20	**4.**	**_____ 'Aweisat**
		5.	**_____ Qunbar**
	Appeal 4464-20	**6.**	**_____ Qunbar**
		7.	**_____ Qunbar**
	Appeal 3201-21	**8.**	**_____ Qunbar**
		9.	**_____ Qunbar**
		10.	**_____ Qunbar**
		11.	**_____ Qunbar**
		12.	**_____ Qunbar**
		13.	**_____ Qunbar**
		14.	**_____ Al-Qunbar**
		15.	**_____ Qunbar**
		16.	**_____ Al-Qunbar**
		17,	**_____ Qunbar**
		17a.	**HaMoked Center for the Defense of the Individual as appellant in each one of the above four appeals** By Adv. Shenhar
	Appeal 4522-20	**18.**	**_____ 'Alan** **_____ 'Alan** **By Adv. Khatib**

versus

The Respondents:	**1.**	**State of Israel – The Population and Immigration Authority (hereinafter: the "Respondent")** By the legal department
Acting as *amicus curiae* :	**1.**	**Merav Hajaj**

2. **Herzl Hajaj**
3. **Choosing Life Forum – Bereaved Families and Victims of Terrorism Acts (RA)**
By Adv. Haim Cohen

Judgment

The above-captioned appeals concern a decision dated December 22, 2020, given by the then-Minister of Interior Mr. Aryeh Machluf Deri (hereinafter: the "**Minister**") instructing that the family unification and child registration procedure shall be discontinued and that the stay permits or A/5 temporary residency visas which were given in the framework of said procedures, as the case may be, shall not be extended, for deterrence considerations (hereinafter: "**the Decision**"). The Decision was given after the perpetrator Fadi Qunbar (hereinafter: the "**Perpetrator**"), a relative of the Appellants as specified in the "factual background" below, had committed on January 8, 2017, a ramming attack at Armon Hanatziv Promenade in Jerusalem killing four IDF soldiers and injuring 18 persons (hereinafter: the "**ramming attack**"), during which he was shot and killed. In addition, data were provided in the statement of response according to the position of the security bodies whereby in the village in which the Appellants reside – Jabel Mukabar, there is an atmosphere that is supportive of terror attacks. According to said data, many of the residents of the neighborhood have expressed support of perpetrators on social networks and identified with their actions in a manner creating a conducive environment supportive of their actions. Accordingly, the Minister decided that a revocation of status would assist in creating deterrence against the escalation of the phenomenon, relying for this purpose on security information (hereinafter: "**deterrence considerations**").

The appeals concern a unified decision which was given with respect to all Appellants as specified below. Therefore, and according to the consent of the parties in the hearing which was held on July 6, 2021, a joint judgment shall be given herein.

In the framework of the proceedings at hand, an application was filed to join to the proceedings the parents of Shir Hajaj of blessed memory, who was killed in the ramming attack, and an association of bereaved families as Friends of the Tribunal (*amicus curiae)*. Having reviewed the position of the Appellants and the Respondent I decided to accept their *amicus* application and join them to the proceedings for the main reason stated in my decision dated February 9, 2022, whereby "the core issue of the appeals is the right to family life versus public safety and security, and in that regard the two main groups should be heard, the Appellants and the Applicants as "friends of the court". In addition, just as the list of Appellants includes a registered association as a party to the proceedings, there is no reason to prevent the Applicants from joining the other side as "friends of the court" to express their position and present their arguments."

Factual Background

Appeal 4484-20

Appellant 1 (hereinafter: "**Appellant 1**") is a resident of the Area. On July 14, 1990 he married Appellant 3, a permanent Israeli resident (hereinafter: "**Appellant 3**"). The spouses have 6

children including Appellant 2. Appellant 3 submitted on May 5, 1994, a family unification application for Appellant 1. The application was denied for failure to establish a center of life in Israel. On April 10, 2006, Appellant 3 submitted an application for the registration of her six children. On June 17, 2007, Appellant 3 submitted once again a family unification application for Appellant 1. Stay permits were issued to Appellants 1 and 2. As aforesaid, on January 8, 2017 the perpetrator – Appellant 3's half-brother committed the ramming attack. Consequently, notice was sent to the Appellants notifying them that the Respondent was considering cancelling the status of Appellants 1 and 2. Having considered Appellants' arguments, the Minister decided to revoke Appellant 1's stay permit which was given to him by virtue of his marriage to Appellant 3. It was also decided to revoke the stay permit of their son – Appellant 2 in the framework of a child registration application which was submitted for him by Appellant 3. The Appellants appealed said decision (appeal 1400-17). The appeal was consensually deleted pursuant to a judgment dated December 12, 2017 as a result of a flaw in the proceeding on behalf of the Respondent.

Having reconsidered Appellants' matter the Minister did not change his position and according to a decision dated April 23, 2018, the family unification procedure regulating the status of Appellant 1 and the registration procedure of Appellant 2 were halted and their stay permits in Israel were revoked for deterrence considerations.

Appeal 4485-20

Appellant 4 (hereinafter: **"Appellant 4"**) born in 1979 is a permanent resident. Appellant 4 and _____ 'Aweisat, a resident of the Area are married and have 4 children including Appellant 5. On June 25, 2008, Appellant 4 submitted an application for the registration of her children which was denied for failure to establish a center of life in Israel. Appellant 4 submitted a new application following which referrals for DCO permits were given to all children with the exception of Appellant 5. Appellant 5's brother – _____ was caught on October 23, 2011, on his way to commit a stabbing attack in Nof Zion neighborhood in Jerusalem. Consequently, an indictment was filed against him and in the framework of this proceeding he was convicted of attempted murder and possession of a knife. The Respondent notified the Appellants by letter dated December 15, 2015 that it was considering denying the application for the registration of Appellant 3 *[sic]* and that they had the right to respond, but they have failed to do so.

As aforesaid, on January 8, 2017, the perpetrator – the uncle of Appellant 5 committed the ramming attack. Consequently, on January 10, 2017, notice was sent to the Appellants whereby they were informed that the Respondent was considering revoking his status in Israel. Following a hearing which was held in his matter the Respondent decided to revoke his stay permit. The Appellants appealed said decision (appeal 1399-17). The appeal was eventually deleted due to a flaw in the proceeding.

After the matter was re-examined, another hearing was held for the Appellants and on April 23, 2018 the Minister decided to revoke Appellant 5's stay permit for deterrence considerations and due to an indirect security preclusion.

Appeal 4464-20

Appellant 6 is a resident of the Area. In 1996 she married Appellant 7, a permanent Israeli resident. Appellants 6 and 7 have 8 children. All children, other than the youngest one, are registered in the Israeli population registry as permanent residents. Appellant 7 submitted on

December 10, 1997, a family unification application for Appellant 6. The application was denied for failure to establish a center of life in Israel. Another application was submitted on February 12, 2006, in which Appellant 6 received a referral for a DCO permit. On January 8, 2017, the perpetrator – Appellant 7's half-brother – committed the ramming attack as aforesaid. On January 10, 2017, the Respondent notified the Appellants that it was considering revoking the status of Appellant 6 in Israel. Having heard their arguments a decision was given whereby Appellant 6's stay permit was revoked. The Appellants appealed said decision (appeal 1401-17) which appeal was consensually deleted according to a judgment dated December 2, 2017.

Following the judgment and after Appellants 6 and 7's matter was re-examined, the Minister decided on April 23, 2018 to revoke Appellant 6's stay permit for public deterrence considerations.

Appeal 3201-21

Appellant 8, born in 1950, is a resident of the Area. He is married to Appellant 9, born in 1957, who is a permanent resident. The spouses have 3 children. All children are permanent residents. Appellant 9 submitted on July 10, 1994, a family unification application for Appellant 8 which was denied for failure to establish a center of life in Israel. After a petition had been filed with the Supreme Court, an agreement was reached between the parties pursuant to which the petition would be deleted and Appellant 8 would receive a referral for a stay permit for one year. On February 15, 2011, an application to upgrade the status of Appellant 8 was submitted and on December 26, 2011, Appellant 8 received an A/5 temporary residency visa for one year. As aforesaid, on January 9, 2017, the perpetrator – the cousin of Appellant 12 *[sic]* committed the ramming attack. Following Respondent's notice that the revocation of his temporary residency visa was being considered, a hearing was held in their matter and on January 25, 2017, the Minister decided to revoke Appellant 8's temporary residency visa.

Appellant 10, born in 1964, is a resident of the Area. He is married to Appellant 11, born in 1967, who is a permanent resident. The Appellants have 6 children. All children are permanent residents. During 1994 Appellant 11 submitted a family unification application for Appellant 10. The application was denied for failure to establish a center of life in Israel. The Appellants filed a petition (HCJ 3589/98), in which an agreement was reached between the parties whereby Appellant 10 shall be issued a referral for a stay permit for one year. On November 5, 2012, an application to upgrade the status of Appellant 10 was submitted. On September 4, 2016, the status of Appellant 10 was upgraded and he was given an A/5 temporary residency visa. Following the ramming attack which was committed by the perpetrator – the cousin of Appellant 10, the Respondent notified the Appellants on January 10, 2017 that it was considering revoking Appellant 10's temporary residency visa. Having heard Appellants' arguments, the Minister decided on January 25, 2017 to revoke Appellant 10's A/5 temporary residency visa.

Appellant 12, born in 1966 is a resident of the Area. He is married to Appellant 13, born in 1967, who is a permanent resident. On July 7, 1994, Appellant 13 submitted a family unification application for Appellant 12. The application was denied for failure to establish a center of life in Israel. Appellant 13 submitted another family unification application which was approved, and on October 26, 2006, Appellant 12 received a stay permit for one year. Following the ramming attack which was committed by the perpetrator - the cousin of Appellant 12, the Respondent notified the Appellants that it was considering revoking the DCO permit which

was issued to Appellant 12. Following a hearing held in their matter by the Respondent, the Minister decided on January 25, 2017 to revoke Appellant 12's stay permit.

Appellant 14, born in 1969, is a resident of the Area. On May 12, 1997 he married Appellant 15, born in 1977, who is a permanent resident. The Appellants have 5 children. All children have permanent residency in Israel. Appellant 15 submitted on December 19, 2005 a family unification application for Appellant 14. Following the approval of the application Appellant 14 received a referral for a DCO stay permit for one year which was extended from time to time. On January 10, 2017, the Respondent notified the Appellants that it was considering revoking Appellant's stay permit following the ramming attack which had been committed by the perpetrator – his cousin. After Appellants' arguments were heard, the Minister decided on January 25, 2017 to revoke the status of Appellant 14.

Appellant 16, born in 1952, is a resident of the Area. On July 29, 1972 he married Appellant 17, born in 1956, who is a permanent resident. The Appellants have 9 children who are permanent residents, other than two children. Appellant 17 submitted on May 4, 1994, a family unification application for Appellant 16. Following the approval of the application he was given a stay permit, and following a status upgrade application Appellant 16 received on July 26, 2016, an A/5 temporary residency visa. Following the ramming attack which had been committed by the perpetrator, the Respondent notified the Appellants that it was considering revoking the status which had been given to Appellant 16. After a hearing which was held in Appellants' matter the Respondent decided on January 25, 2017 to revoke the status of Appellant 16.

Following an appeal (1463-17) which was filed against Respondent's decisions as aforesaid, it was agreed between the parties that the decisions would be cancelled and that the Respondent would reconsider their matter and make a new decision. Following a hearing which was held in their matter by the Respondent, the Minister's position remained unchanged.

Appeal 4522-20

Appellant 18, born in 1986 is a permanent resident. On July 16, 2002 she married Appellant 19, born in 1973, who is a resident of the Area. The Appellants have 4 children who have permanent residency in Israel. Appellant 18 submitted on November 20, 2008 a family unification application for Appellant 19.The application was approved and on September 9, 2009 Appellant 19 received a referral for a DCO permit for one year which was extended from time to time. As aforesaid, on January 8, 2017 the perpetrator – the uncle of Appellant 18 – committed the ramming attack. On January 11, 2017 the Respondent notified the Appellants that it was considering revoking the status of Appellant 19 in Israel. On January 25, 2017 the Respondent notified the Appellants of the Minister's decision to revoke Appellant 19's stay permit. The Appellants appealed Respondent's decision (appeal 1439-17) and following Respondent's consent to hold another hearing and give a new decision, similar to other appeals in the same matter, the above appeal was deleted pursuant to a judgment dated December 28, 2017. Following a hearing which was held in their matter the Minister's position remained unchanged and according to a decision dated April 23, 2018, Appellant 19's stay permit was revoked for public deterrence reasons.

The main data which are required for the case at hand are that according to the Minister's decision Appellants' family unification and child registration procedures were stopped

and their applications to extend the validity of the stay permits which were issued to Appellants 1, 2, 4, 6, 12, 14, and 19 and the A/5 temporary residency visas which were issued to Appellants 8, 10 and 16, who are spouses and children of the perpetrator's family members, were denied, the above for deterrence considerations. Said decisions stand at the center of all of the above appeals.

Previous Proceedings

As aforesaid, in the framework of an agreement which was reached between the parties in all of the above appeals (1399-17, 1400-17, 1401-17 and 1463-17) in the "first round" as specified above, the Minister's decisions dated January 25, 2017 were cancelled and the Respondent has re-considered their matter. After the matter has been reconsidered, the Minister did not change his position in all of the appeals as stated in the decisions dated April 23, 2018. Appeals were filed against said decisions (3285-18, 3286-18, 3289-18, 3437-18, 3440-18) in the "second round" and in a judgment dated August 2, 2020 I instructed to return the matter to the Respondent for further consideration on its part of the discontinuation of the family unification and child registration procedures for deterrence considerations in view of the judgment in AAA 11930-07-18 **State of Israel v. Khatib** (hereinafter: "**Khatib**") and the rules and principles of interpretation which should be applied while interpreting Section 11(a)(2) of the Entry into Israel Law, 5712-1952 (hereinafter: the "**Entry into Israel Law**").

Again, the Minister's position remained unchanged as stated in the decisions which were given on December 22, 2020 in the matters of all Appellants. Said decisions which as aforesaid are identical in their results and reasons, other than the decision which is the subject matter of appeal 4485-20, which also included the allegation of indirect security preclusion, stand at the center of the appeal at hand.

The Arguments of the Parties

Appellants' Arguments

The main argument of the appeals is that the Respondent did not act according to the judgment dated August 2, 2020. It is also argued that Respondent's decision to discontinue the family unification and child registration procedures involving the Appellants and the refusal to extend the validity of the stay permits or temporary residency visas which were issued to them as a result of an attack committed by a second or third degree family member for deterrence reasons is fundamentally unlawful, unreasonable and disproportionate. The decision was given without authority and is contrary to the provisions of the law, critically violating the fundamental human rights of the Appellants and their family members. According to the Appellants, Respondent's decision was made without an express authorization, namely, there is no express and detailed legal authorization empowering the Respondent to revoke family unification procedures for mere deterrence reasons, and therefore it is a fundamentally unlawful decision which was made without any authority. According to Section 3D of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the "**Temporary Order Law**") the Minister of Interior is vested with the authority to deny or revoke visas and permits when a real security or criminal preclusion arises from a resident of the Area or their first degree relative. However, according to case law, a decision violating the constitutional right to family life should comply with the proportionality tests. In the case at hand, Respondent's decision is tainted by a deep logical fallacy since it does not concern the security threat which arises from the Appellants,

neither directly nor indirectly, but rather the benefit which the Respondent claims can be derived from distancing the Appellants from Israel in order to deter future potential and undefined perpetrators. The Appellants are innocent people posing no threat and it is a tool that is meant to achieve a purpose which is different from and foreign to the family unification procedure. In its decision, the Respondent wishes to harm persons posing no security risk.

According to the Appellants, Section 11(a)(2) of the Entry into Israel Law gives the Minister of Interior broad authority to revoke status, an authority which is however subject to two cumulative conditions. The first condition is that we are concerned with a residency status; and the other condition is that the residency status was given to a person pursuant to the Entry into Israel Law. In the case at hand, since the Appellants were issued a stay permit pursuant to the Temporary Order Law, the authorization granted to the Minister of Interior by virtue of the Entry into Israel Law cannot constitute a source of authority for the revocation of family unification procedures involving residents of the Area. In addition, inference cannot be drawn from the provisions of Regulation 119 of the Defense (Emergency) Regulations, 1945 authorizing the commander of the Area to seize and demolish houses whose residents or any of them were accused or suspected of committing a hostile action, in the absence of an explicit provision of law in the case at hand. Respondent's decision critically and severely violates the right of all family members of the Appellants to dignity and family life and the principle of the child's best interest. The Appellants base their arguments on **Khatib** in which it was held, *inter alia*, that the concept underlying the Temporary Order Law is that of a concrete risk, direct or indirect, arising from a certain person, and that the Temporary Order Law did not establish grounds which are based on general deterrence considerations. Therefore, the Tribunal is requested to accept the appeal and instruct the Respondent to immediately cancel its decision and obligate it to pay costs.

Respondent's Arguments

According to the Respondent, Appellants' family unification application was approved according to the Temporary Order Law which has a security purpose. The starting point is that none of the sponsored Appellants has a vested right or any other right to stay in Israel and that the alleged entitlement itself derives from the broad discretion vested with the Minister of Interior. Against Appellants' family unification application stands the State's right to its safety and to the safety of its residents. The Appellant *[sic]* supports its decision by the position of the security bodies and all data collected by them whereby as of 2013 there has been a continuous increase in the number of attacks in general and in the number of grassroots terror attacks including the number of Israeli perpetrators as a result of terror activity. It was noted that recently terror activity has and continues to be mainly performed by local organizations and perpetrators answering the profile of a "sole perpetrator". It emerges from the data that as of the beginning of 2014 and until the submission of the statement of response there has been a substantial increase in terror attacks. The security bodies are the ones which are vested with the authority to formulate an opinion concerning the security risks threatening the state of Israel and the same applies to the creation of deterrence which shall prevent future attacks and said bodies have the expertise to determine which measures can effectively create deterrence. In the case at hand, the security bodies have presented to the Respondent their position in view of murderous attacks which had been committed, and the actual need to take deterring actions to deter potential perpetrators from committing attacks such as the ramming attack which was committed by a family member of the above Appellants in which four IDF soldiers were killed and 18 persons were injured. Therefore, the Respondent argues that there is no cause to interfere

with Respondent's decision which was given by virtue of the authority vested in the Minister of Interior according to primary legislation and which is intended to achieve a proper purpose, namely, deterring potential perpetrators from committing additional terror attacks.

With respect to the Appellants' argument that there is no explicit statutory provision authorizing the Minister of Interior to revoke a family unification procedure, the Respondent argues that we cannot learn from the provisions of Section 3D of the Temporary Order Law that the Minister of Interior is not authorized to deny an application to extend a stay permit in Israel for other security reasons which do not directly concern the resident of the Area holding a stay permit or their family member, or for any other reason, including bigamy, center of life or an application which was approved on the basis of false details. In addition, the Temporary Order Law does not establish and does not grant the Minister authority, and therefore the authority does not stem from said law. The general authority vested with the Minister of Interior is vested in him by virtue of the Entry into Israel Law.

The Respondent argues further that it emerges from an examination conducted by the security bodies after the attack that the members of the perpetrator's extended family had expressed support for the terror attack. With respect to the argument concerning the right to family life, the Appellants are not deprived of said right and they can exercise said right not necessarily in Israel. The Respondent emphasizes that it is not a collective punishment measure but rather a measure the purpose of which is to achieve deterrence, and as aforesaid, it emerges from the examination by the security bodies that the members of the perpetrator's extended family expressed support for his action. In conclusion, the Respondent argues that the realm of judicial review of its decisions is narrower than usual and that its decision was given according to the law, on the basis of the opinion of security bodies whereby the revocation of the stay permits of the foreign Appellants can assist in the creation of a significant deterrence which shall prevent terror attacks. It is a reasonable decision which should not be interfered with and the Tribunal is requested to dismiss the appeals and obligate the Appellants to pay costs.

The Arguments of Respondents 1-3 (as Friends of the Tribunal) (hereinafter: the "Respondents")

The Respondents open with the normative framework which applies to the case at hand which according to them is based on the Citizenship Law, 5712-1952, the Entry into Israel Law and the Temporary Order Law in the framework of which the Minister of Interior is vested with broad discretion. According to their position, the Minister of Interior is vested with the authority to act according to the Entry into Israel Law and among other things to revoke the Appellants' stay permits in the absence of a vested right to stay in Israel. According to them, the Temporary Order Law is the result of judicial intervention in the Entry into Israel Law. The Respondents disagree with the use of an objective purpose as a tool to interpret the law, since legislation reflects the will of the people which is the sovereign and therefore the subjective rather than the objective purpose should be applied. The Respondents argue further with respect to this matter that the term objective purpose is not defined or referred to in the law. The leading principle pursuant to which the issues arising from the appeals should be examined is the principle of protecting public safety and security. It is the duty of the state, through the military, the police, the judicial system and the security bodies to protect the safety and security of its citizens. The perpetrator grew in an "inciting and toxic" family and environment, as stated in their response, that did not try to dissuade him from his actions. Therefore, the Minister has exercised his authority lawfully, and has correctly balanced the two main principles of protecting public

safety and security and the right of a permanent resident to family life. Therefore, they argue that the appeals should be dismissed.

In the hearing which was held on July 19, 2022, the court has also heard Mrs. Meirav Hajaj and Mr. Herzel Hajaj, who have lost their daughter, the late Shir Hajaj of blessed memory, in the ramming attack while on tour in the area with her friends during her mandatory IDF military service. They have elaborated on the difficulty and pain suffered by the parents and the family on a daily basis. On the other hand, I heard the Appellant, Mr. Riad Mashur, a dentist, who stated that he did not know the perpetrator and that the only thing he wanted was to make a living for his family and maintain peaceful family life. In his statement he emphasized that he was innocent and had no connection to the perpetrator's actions.

Review of the Privileged Information *Ex Parte*

In its response the state notified that it had in its possession privileged information which it wanted to present to the Tribunal *ex parte*. In the hearing which was held on July 6, 2021, Appellants' counsels gave their consent to the above. On July 19, 2022, an *ex parte* hearing was held by me wherein the privileged information was presented for my review and I have also heard the security bodies. Reference to these things shall be made later on in the judgment and under the existing limitations which apply to privileged information.

Deliberation and Decision

The main issue in dispute between the parties concerns the question of the Minister of Interior's authority to cancel family unification and child registration procedures for deterrence considerations. To the extent it is found that the Minister is vested with said authority then the reasonableness and proportionality of the decisions which are the subject matter of the appeals at hand should be examined.

The decision of the Minister of Interior is premised on the data whereby the ramming attack forms part of a trend which had commenced in 2013. It is an aggravated terror activity which commenced in the beginning of 2013. The ramming attack committed by the perpetrator forms part of a string of attacks committed in the framework of said terror activity. The terror activity is led in most part by perpetrators acting in the format of a "sole perpetrator" and examinations conducted by security bodies indicate that it stems, *inter alia*, from the existence of family ties in Judea and Samaria. Professional security bodies estimate that status revocation would assist in creating substantial deterrence against an increase in the phenomenon.

It should be reminded that on March 15, 2022 the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2022 entered into effect. However, since in our matter the decisions which are the subject matter of the appeals at hand were given when the Temporary Order Law in its previous format was in force, the appeals at hand shall be obviously discussed in accordance therewith.

With respect to the general legal framework which applies to the case at hand the following words of the court in AAA 9168/11 **A v. Ministry of Interior** are noteworthy:

> "With respect to a foreign spouse who is a **resident of the Area**, namely, who resides in Judea and Samaria or in the Gaza Strip and is not an Israeli resident (see an exact definition in Section 1 of the Temporary Order Law), who is

married to a **permanent Israeli resident**, several stages were established in the graduated procedure and only after they were complied with the foreign spouse obtained a permanent status in Israel. At the **preliminary stage**, the spouses submitted to the Ministry of the Interior a status application for the foreign spouse by virtue of family unification. If the application was approved, the applicant entered the realm of the graduated procedure. At the **first stage** of the graduated procedure the applicant received a stay permit issued by the District Coordination Office (hereinafter: **DCO Permit**) valid for 12 months. By the end of this period the spouse should have submitted an application to extend the permit for an additional period of 15 months, and in total, at this stage, a DCO permit was granted for 27 months. At the **second stage**, the applicant could upgrade his/her status to temporary residency and receive an A/5 temporary residency visa for one year. Thereafter the visa could be extended twice for one year at a time. At the **third stage**, after the elapse of five years and three months, the applicant's status could be upgraded to the status of a permanent Israeli resident.

It should be emphasized that in the decisions to extend the permits and issue the visas, and in the examination of the upgrade applications between the stages, several factors are examined with respect to the application, including: the sincerity of the marital connection, whether any criminal or security preclusion exists and whether the spouses have a center of life in Israel. In this context it is also required that the spouses maintain a center of life in Israel for two years prior to embarking on the graduated procedure, as a condition for approving the application and embarking on the procedure (see: AP (Jerusalem) 742/06 **Abu Qweidar v. Minister of Interior** (April 15, 2007)).

4. On May 12, 2002 (hereinafter: the **Effective Date**) the Government of Israel decided that residents of the Area would no longer be entitled to submit applications for citizenship or permanent residency in Israel by virtue of family unification (resolution 1813 of the 29th government "Handling illegal aliens and family unification policy concerning residents of the Palestinian Authority and foreigners of a Palestinian descent" (May 12, 2002) (hereinafter: the **Government Resolution**)). A year thereafter the resolution was entrenched in the Temporary Order Law, the validity of which has ever since been extended each year. Section 4 of the Law enables residents of the Area holding a DCO permit or a residency status by virtue of a family unification application prior to the Effective Date, to keep receiving a permit or residency status of the same type, but they cannot upgrade their status to the next stage which they could have reached in the framework of the graduated procedure. This court by an expanded panel has dismissed several petitions which had been filed against the Temporary Order Law 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 3D of the Temporary Order Law states as follows:

"3D A permit to stay in Israel shall not be given to a resident of the territories pursuant to Sections 3, 3A(2), 3B(2) and (3) and 4(2), nor shall a visa to reside

> in Israel be granted to any other applicant who is not a resident of the territories, if the Minister of Interior or the area commander, as applicable, determines, in accordance with an opinion from the competent security bodies, that the resident of the area or the other applicant or the family member of these are likely to constitute a security risk to the State of Israel; in this section, 'family member' shall mean a spouse, parent, child, brother, sister and their spouses. For this purpose, the Minister of Interior may determine that the resident of the territories or the other applicant is liable to constitute a security risk to the State of Israel, on the basis of, *inter alia*, an opinion by the security personnel that, within the country of residence or in the area in which the resident of the territories or the other applicant resides, activity is carried out which is liable to threaten the security of the State of Israel or of its citizens".

According to the provisions of Section 3D of the Temporary Order Law the examination of the security risk is made by the Respondent on a personal basis (see HCJ 2028/05 **'Amara v. Minister of Interior**). According to case law, the security risk is not only of a direct nature but also includes an indirect risk, namely, a risk arising from the close family members of the permit applicant as the term "family member" is defined in the Temporary Order Law (HCJ 7444/03 **Dakka v. Minister of Interior**). The question arises whether grounds are established by the Temporary Order Law to deny a family unification and child registration application for public deterrence reasons. The court in **Khatib** expressly answers this question in the negative as follows:

> "Indeed, the Temporary Order Law is based on a concrete risk, direct or indirect, arising from a specific person. The law does not establish grounds which are based on general deterrence considerations. It emerges from the opinion that a concrete risk as aforesaid does not arise from the Respondent. Moreover, the opinion does not include an evaluation by the professional body whereby the denial of Respondent's application has any security added value, not even on the general deterrence level. Hence, the opinion does not actually support the decision of the Ministry of Interior."

According to the Appellants, since stay permits and visas were issued to them according to the Temporary Order Law, this law and this law alone should apply. According to them, the authority of the Minister of Interior is vested in him by virtue of Section 3D of the Temporary Order Law and according **Khatib** said Section did not establish grounds which are based on deterrence considerations.

On the other hand, the Respondent argues that the Minister of Interior is also vested with the authority to discontinue a family unification and child registration procedure by virtue of Section 11(a)(2) of the Entry into Israel Law. Although the Temporary Order Law does indeed impose limitations on the issuance of status, it does not grant powers. The Appellants' response to this argument is that since this section concerns revocation of permits and visas which were issued according to the Entry into Israel Law, said law should not be applied to the case at hand, in which the stay permits and visas were not issued to the Appellants by virtue of the Entry into Israel Law but rather, as aforesaid, by virtue of the Temporary Order Law.

I cannot accept Appellants' position since the Minister of Interior can exercise the powers vested in him by virtue of any other relevant statute according to Section 19 of the Interpretation Law,

5741-1981 stating that "Power conferred or duty imposed by any specific enactment shall not by itself derogate from any power conferred or duty imposed by another enactment". Moreover, Appellants' argument as if the power of the Minister of Interior to discontinue family unification and child registration procedures is vested in him only by virtue of Section 3D of the Temporary Order Law cannot stand since it derives therefrom that the Minister of Interior does not have the authority to discontinue a family unification procedure for bigamy which is prohibited by the Penal Law, 5737-1977, or for lack of sincerity in the marital connection or joint center of life underlying any application seeking to regulate the status of a spouse, and therefore, for this reason also Appellants' argument should be rejected.

The following issue is – whether Section 11(a)(2) of the Entry into Israel Law grants the power to discontinue a family unification and child registration procedure for deterrence considerations.

Section 11(a)(2) of the Entry into Israel Law provides as follows:

> "The Minister of Interior may, at his discretion – revoke a residency visa which was issued according to this law."

A review of the provisions of this Section shows that it is a general section which requires interpretation. The interpretation model was established by rich case law of many years concerning statutory interpretation (see HCJ 7803/06 **Abu Arafe et al. v. Minister of Interior** (hereinafter "**Abu Arafe**"). According to said case law, this interpretive question should be examined according to the language of the law, the subjective purpose arising from the legislative history and the objective purpose pursuant to which balancing should be made between the different relevant interests and principles, and eventually all of the above three stages should undergo a weighing process.

Statutory interpretation commences with the examination of the language of the law, and where there are several options the alternative which optimally realizes the purpose of the law should be examined (**Abu Arafe**, paragraph 29). The term "at his discretion" is at the center of the case at hand. According to the Respondent this term gives the Minister very broad discretion; however, it does not mean that he may do whatever he wants. The starting point in the case at hand is that we are not concerned with verbal interpretation but rather, the legal message arising from this term should be deciphered. The purpose of the interpretation is to determine which option realizes in the most optimal manner the purpose of the law. If no solution is found in the language of the section itself, there is no alternative but to proceed and examine the purpose of the law.

The purpose of the law is composed of a subjective purpose and of an objective purpose. The subjective purpose of the law includes the purposes and values that the legislature wanted to realize through it. It is the intention that the legislator had when enacting the provisions of the law. The objective purpose includes the purposes, values and principles that the law is intended to realize in a modern democratic society (**Abu Arafe**, paragraph 30). These values include the desire and the need to realize values of justice, morality, human rights, the principle of the rule of law and the governmental obligation to act fairly (HCJ 4562/92 **Zandberg v. Broadcasting Authority**, IsrSC 50(2), 793).

This examination process of the subjective and objective purpose includes the exercise of judicial discretion. In this interpretive process, balancing should be made between the different

purposes and the law should be interpreted in view of the basic principles of our legal system, and on the basis of all of the above Section 11(a)(2) of the Entry into Israel Law should be interpreted.

With respect to the subjective purpose of Section 11(a)(2) of the Entry into Israel, the Honorable Justice Vogelman reviewed and examined this issue in **Abu Arafe** (paragraph 43), in view of the deliberations of the members of the Knesset which took place before the enactment of the Entry into Israel Law and the positions expressed by them therein, as follows:

> "Hence, the legislative history shows that through the enactment at hand the legislator wanted to vest in the Respondent the power to grant or deny residency status in Israel to individuals whose connection to Israel is weaker – foreigners and tourists wishing to enter the country. The subjective purpose of the law which emerges from the Legislator's overt intention was therefore not to apply it to those who are already in the country, but rather, to those wishing to enter it. Namely: the intention of the legislator was that the law shall not apply to the category at hand. This is how those who created the law have understood the text enacted by them (Barak, page 152)."

Since in the case at hand we are concerned with foreigners the regulation of whose status is requested in a family unification and child registration procedure, they fall within the category to which the Entry into Israel Law applies. From here I shall proceed to examine the objective purpose.

As aforesaid, while examining the objective purpose, the fundamental principles of the system which are relevant to the case at hand that should be considered include: the sovereignty of the state, state security and public safety, promotion of human rights and the requirement for explicit and detailed authorization particularly when violation of human rights is concerned.

With respect to the principle of state sovereignty "the fundamental principle is that a sovereign state has the right to determine who shall enter its gates and under which conditions, to enable it to operate in an orderly manner and to protect the rights of its citizens" (**Abu Arafe**, paragraph 44) and "the fundamental premise is that a person who is not a resident does not have a vested right to enter the state and even if he/she was permitted to enter, the State's obligations towards him/her are weaker" (**Abu Arafe**, paragraph 44). In the case at hand we are concerned with Appellants some holding temporary stay permits granting no rights, other than the possibility to stay in the territory of the state of Israel in the framework of a family unification procedure, and some holding A/5 temporary residency visas granting a host of rights, including employment and social rights, however, in their matter too it is a status of a temporary nature which is renewed from time to time according to Respondent's examination and decision. In conclusion, we are concerned with permits and licenses of a temporary nature, a fact which nullifies the argument that their holders have the rightful expectation to continue staying within the territory of the state of Israel.

On the other hand, the case at hand concerns not only the rights of the foreign spouse but also the right of the Israeli spouse who is a permanent resident, to realize their right to family life with their foreign spouse. There is no dispute that the right to family life is a fundamental right in Israeli jurisprudence of which it was said "it is a right of great strength and strong radiation" (HCJ 7052/03 **Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of**

Interior (hereinafter: "**Adalah**"). However, against this right stands the right of all residents to life and security. It is an additional fundamental principle of Israeli jurisprudence, namely, the principle of public safety and security. "The starting point in a democratic society is that the democracy has the right and even the obligation to take measures to protect itself. When a risk threatens the state or the security of its residents using the democratic system for that purpose, the rights and liberties granted by it cannot be effectively exercised…" (**Abu Arafe**, paragraph 45). Hence, the question arises – is an Israeli spouse vested with a constitutional right to exercise family life with a foreign spouse particularly in Israel? The opinions over this issue were divided in **Adalah**. According to Justice (retired) Miriam Naor "… the right to family life is a constitutional right deriving from the constitutional right to human dignity. However, it does not include the additional derivative right – the right to exercise family life particularly in Israel". It emerges from a review of different approaches on this issue that according to the European court a general obligation should not be imposed on a state to enable "family unification", and that in the balancing of the relevant interests to the case at hand "the state should be provided latitude" (**Adalah**, Justice (retired) Naor – paragraph 5).

One of the main interpretive rules is the rule of the explicit authorization constituting an additional principle alongside the above mentioned principles. According to this principle a legislative act should not be interpreted as authorizing the violation of fundamental rights unless the authorization is clear, unequivocal and explicit (HCJ 333/85 **Aviel v. Minister of Labor and Welfare**, IsrSC 45(4) 581). In addition, when the action violates fundamental rights "… an explicit authorization in the law which is vague, general and sweeping is insufficient and a clear authorization should be pointed at "establishing general criteria for the substantial characteristics of the permitted violation by secondary legislation…" (HCJ 10203/03 **"National Census" Ltd. v. Attorney General**, IsrSC 62(4) 715). The rule is that the more important the right and the more severe its violation, a stricter enforcement by the court of the "authorization requirement" is required "and it should be narrowly interpreted" (**Abu Arafe**, paragraph 52). The rationale underlying this demand stems from the separation of powers principle requiring that the legislative authority rather than the executive authority shall establish the administrative authority to violate fundamental rights and the criteria therefore. In this context it was noted that "the provisions of the law in our jurisprudence are enacted and interpreted against the backdrop of the regime of human rights in our country. The presumption is that any legislation intends to promote human rights and does not intend to violate them. Recognition of human rights constitutes the objective purpose of all legislation…" (**Abu Arafe**, paragraph 46).

On the other hand, the state of Israel deals with a reality of numerous acts of terror and their severe consequences including against innocent civilians. Terror bodies operate in more sophisticated ways and in recent years a significant portion of the terror attacks are committed in the format of a "sole perpetrator", which makes it difficult for the security bodies to locate the individual perpetrators in a bid to prevent terror attacks. Against the backdrop of this reality, the law is required to deal with complex questions concerning the legitimate means that the state should take in its fight against terror. The reality is that the law lags behind terror. Terror sews destruction, violence and fear without any distinction. This reality requires us to give the laws a new meaning, while maintaining the balance between the security needs and human rights.

In their arguments the Appellants resorted to Hebrew law and cited the following verses: "The soul that sins, it shall die; a son shall not bear the iniquity of the father, and a father shall not bear the iniquity of the son; the righteousness of the righteous shall be upon himself, and the wickedness of the wicked shall be upon himself". (Ezekiel 18, 20), and "the fathers shall not be

put to death for the children, neither shall the children be put to death for the fathers" (Deuteronomy 24, 16). It emerges from a review of the above verses that they refer to death penalty situations which are materially different from the case at hand which concerns the revocation of status that is temporary in nature and whose consequences are mostly economic since the right to family life can be exercised elsewhere and not particularly in Israel. To complete the picture it should be added that although these cases are rare, Hebrew Law decided in different contexts, as described in HCJ 8091/14 **HaMoked Center for the Defence of the Individual v. Minister of Defense** (hereinafter: "**HaMoked**", paragraph 22) to punish the family members of the offender, for instance, by taking a child out of school as a sanction against his father or with respect to a man refusing to give his wife a divorce the sages also permitted to impose sanctions on his family members, to free the woman of her chains. The rationale underlying these measures is that a person's actions should not be disconnected from their environment and family.

Conclusion: Interpreting Section 11(a)(2) of the Entry into Israel Law in view of the above purposes and principles

As stated above, Section 11(a)(2) which uses the words "at his discretion" requires interpretation. The language of the law alone does not provide a solution since it does not specify the grounds authorizing the Minister of Interior to discontinue a family unification and child registration procedure. I have subsequently discussed the subjective purpose and objective purpose of the legislative act. It emerges from the deliberation which preceded the enactment of the law that the intent of the legislator was to regulate thereby the status of the foreigners wishing to enter Israel and stay therein rather than the status of those who were born in the country and had resided therein before the law was applied to them and whose connection to the state is stronger. In the case at hand, the Appellants who are sponsored spouses are residents of the Area. They are members of the category of foreigners wishing to enter Israel, and hence, they are subordinated to the Entry into Israel Law which applies to them. I have thereafter examined the objective purpose in the framework of which I have specified the purposes and the fundamental principles which are manifested in the Entry into Israel Law. These fundamental principles include, on the one hand, the principle of the sovereignty of the state, whereby the state is vested with the authority to determine who shall enter its gates and the principle of state security and public safety. On the other hand, I discussed the rule of explicit authorization constituting another principle alongside the principles specified above, whereby the legislative act should not be interpreted as authorizing a violation of fundamental rights unless the authorization is clear, unequivocal and explicit and the more important the right and the more severe its violation, a stricter enforcement by the court of the authorization requirement is required and accordingly such enactment should be interpreted in a limited manner.

I am of the opinion that in the case at hand the balancing of all of the considerations leads to the conclusion that Section 11(a)(2) of the Entry into Israel Law grants the Minister of Interior the authority to deny a family unification procedure for deterrence considerations. Both subjective and objective purposes which were discussed above, lead to this conclusion. As stated above, the subjective purpose supports the interpretation whereby the Entry into Israel Law applies to foreigners, such as the Appellants who are spouses of permanent residents. In the examination of the objective purpose a host of relevant fundamental principles were examined including, on the one hand, the principle of the state's sovereignty and security, and the right to family life constituting a fundamental right and the explicit authorization requirement, on the other. Since we are concerned with foreigners partly holding stay permits and partly holding A/5 temporary

residency visas, all of which grant status of a temporary nature, and since the right to family life of the spouse who is a permanent resident was not denied and they can all exercise their right to family life jointly elsewhere and not particularly in Israel, and in view of the principle of state sovereignty and the principle of public safety and security which was referred to by case law as "the most important in the realm of rights of the individual" (**Adalah**, paragraph 120), and since I have not disregarded the rule of explicit authorization, the balancing of all of the above principles requires a broad interpretation of the Entry into Israel Law which leads to the above conclusion.

Based on all of the above, I have reached the conclusion that the relative weight of the considerations as specified above lead to a broad interpretation of the authority of the Minister of Interior established in Section 11(a)(2) of the Entry into Israel Law, namely, that the Minister of Interior is authorized to discontinue a family unification and child registration procedure for deterrence considerations.

Reasonableness and Proportionality

The fact that there is authority does not end the discussion and the question which remains to be decided is – proportionality, reasonableness and discretion.

In Israeli jurisprudence it was decided that proportionality depends on compliance with the following three sub-tests: "the rational connection test (or the compliance test); the test of the least injurious means (or the necessity test); the test of the proportionate means (or the proportionality test in it narrow sense)" (**Adalah**, paragraph 65). With respect to the first test, absolute certainty that the means shall realize the purpose is not required and substantial probability that the purpose shall be realized suffices, which shall be determined according to the importance of the violated right (**Adalah**, paragraph 66) and "often the social reality that the law wishes to change should be examined" (**Adalah**, paragraph 67). With respect to the second test, "the obligation is to choose among the reasonable options available to it, the least injurious one. Accordingly, the rational options should be examined and the option, which in the concrete circumstances can realize the proper purposes causing as little harm as possible to human rights, should be chosen (**Adalah**, paragraph 68). The third test examines the proper relation between the benefit arising from the appropriate policy and the harm caused to the constitutional right.

From the general to the particular

With respect to the rational test, in the context of the demolition of a perpetrator's home according to the authority vested in the commander of the Area by virtue of Regulation 119 of the Defence (Emergency) Regulations, 1945, it was stated in case law that deterrence was intended not only to affect the perpetrator's way of thinking but to dissuade them from their actions through their family members (**HaMoked**, paragraph 14) while deterring the public at large. It is plausible that the same rational applies to the case at hand. With respect to the second test, whereby from the reasonable options, the least injurious one should be chosen which can realize the appropriate purposes causing as little harm as possible to human rights, I am of the opinion that the criterion which should be applied in the framework of this test is the lowering of Appellants' status and for this purpose the situation of the Appellants who were holding stay permits is different from the situation of the Appellants who were holding A/5 temporary residency visas. The implementation of this test leads to the result whereby the Minister's decision not to extend the validity of Appellants' stay permits and consequently to discontinue

the family unification and child registration procedure in their matter is lawful in view of the fact that this permit is at the bottom of the hierarchy of visas. With respect to the Appellants who were holding A/5 temporary residency visas, according to said criterion, their status shall be lowered such that they shall be granted a stay permit instead of the A/5 temporary residency visas which were held by them. I am of the opinion that this can lead to the realization of the above purpose. With respect to the third test, the magnitude of the security risk justifies the harm caused to the right of the Appellants who are permanent residents to realize their family life in Israel, not to mention the fact that as aforesaid they can maintain family life in the Area.

Having reviewed the privileged information presented to me by the security bodies and having heard their arguments I was convinced that the decision of the Minister was made on the basis of appropriate evidentiary infrastructure and that it met the required criteria subject to the exception relating to the Appellants who were holding an A/5 temporary residency status. Namely, in the required balancing between the concern that public security would be harmed and Appellants' right to the realization of family life, I am satisfied that the decision of the Minister relied on firm and up-to-date administrative evidence which, for obvious reasons, I shall not be able to specify, and all of the above as aforesaid is subject to the above stated exception.

I am well aware of the fact that the result to the Appellants is harsh. This was elaborated on by Justice (retired) Rubinstein in **HaMoked** who discussed the demolition of the homes of suspects involved in hostile activity against the state of Israel by virtue of Regulation 119 of the Defence (Emergency) Regulations, 1945, and emphasized, *inter alia*, the moral dilemma whereby the family members of the perpetrator are the ones paying the price of his actions although they have no involvement in his deeds. However, as aforesaid, on the other hand stands the principle of the sanctity of life which I have discussed above in the context of the principle of protecting public safety and security, which makes it possible to maintain normal living and social systems and is the glue which holds human society together. Terror creates a dangerous and harsh reality leading to harsh legal results.

In conclusion, appeals 4484-20, 4485-20, 4464-20 and 4522-20 are dismissed. With respect to appeal 3201-2, the appeal concerning the Appellants holding stay permits is dismissed. As far as the Appellants holding A/5 temporary residency visa are concerned, their status shall be lowered such that they shall be granted a stay permit *in lieu* of the temporary residency visa.

Last but not least. I am of the opinion that the Respondent should conduct from time to time an examination concerning the measure of discontinuing a family unification and child registration procedure for deterrence purposes and its benefits, and on the basis of the findings re-visit Appellants' matter.

Each party shall bear its own costs.

Right of appeal before the district court in Jerusalem, sitting as the Court of Administrative Affairs, within 45 days.

Given today, September 20, 2022, 24 Tishrei 5783, in the absence of the parties.

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Ilan Halevga, Judge
Appeals Tribunal