At the Jerusalem District Court Sitting as the Court for Administrative Affairs
Before the Honorable Judge Yigal Marzel

AP 41294-05-11 Radwan et al. v. Ministry of the Interior

The Petitioners:

1. **_____ Radwan**
2. **_____ Radwan**
3. **_____ Radwan**
4. **_____ Radwan (minor)**
5. **_____ Radwan (minor)**
6. **_____ Radwan (minor)**
7. **_____ Radwan (minor)**
8. **_____ Radwan (minor)**
9. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

represented by counsel, Adv. Adi Lustigman
of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger

v.

The Respondent:

Ministry of the Interior
represented by counsel, Adv. Yaakov Finkelstein
Jerusalem District Attorney's Office (Civil)

Judgment

1. The above captioned petition – concerns the status and presence in Israel of petitioners 3 and 4 – Kifah Radwan and Hassan Radwan (respectively). The requested remedy in this petition is the arrangement of the status of said petitioners so that their status is established according to their age on the submission date of the original application for the arrangement of their status from 2006, rather than according to the submission date of their additional application from 2009 – as was done by the respondent.

Relevant Background

2. Petitioner 1, Mrs. _____ Radwan, is an Israeli resident who resides in Jerusalem. Petitioner 2, Mr. _____ Radwan, is the husband of petitioner 1. The spouses married in 1991 and have

six children – petitioners 3-8. Petitioners family unification application – was approved. Petitioner 3, _____ Radwan, was born in Israel on September 9, 1992. She resides in Israel by virtue of DCO permits (it should be noted that originally, the petition also consisted of remedies which pertained to petitioner 2 and petitioners 6-8, but they are no longer relevant and the petition concerns petitioners 3-4 only (page 1 line 10 of the minutes of the hearing before me)).

3. According to the petition, the spouses resided in the West Bank, and only in June 2006 they relocated to Jerusalem. Petitioner 1 has also been recognized as a resident by the National Insurance Institute as of said date. The petition further states that petitioner tried to arrange her status shortly after the family's relocation to Jerusalem, and a letter to that effect was sent by petitioners' attorney at that time – on September 20, 2006. On that date, petitioner 3 was fourteen years and two months old and petitioner 4 was twelve years and four months old (paragraph 22 of the petition). This application – was denied on October 28, 2007 (P/5). The denial letter stated, that petitioner 1 has been living within state limits only as of June 2006, according to her own statement to the National Insurance Institute investigator in an investigation which was conducted in March 2007. The explanation provided by Petitioner 1 to the above – was found unconvincing, in view of the fact that, as was stated in the above letter, an additional daughter of petitioner 5 was born in May 2005 in Ramallah. For these reasons the denial letter stated that the children should not be registered, due to the fact that when the application was submitted the requirement for a permanent and continuous center of life of two years in Israel was not satisfied.

4. On June 24, 2009, almost two years after the application for the registration of petitioners 3 and 4 was denied, petitioner 1 submitted another application for their registration in the population registry. In a letter dated October 20, 2009 (P/11) it was decided to approve the registration of the children, petitioner 3 and 4, and they received a referral to the DCO, for one year.

5. The petitioners appealed said decision. Their relevant argument to the issue before us was that the submission date of the first application from 2006 should be regarded as the effective date in their case. This appeal was rejected by the respondent (P/13). The denial stated that on the relevant application submission date – June 2009 – petitioners 3 and 4 were over 14 years of age and were therefore entitled to stay permits only.

6. Following the above, the petitioners filed an appeal with the Appellate Committee for Foreigners, and reiterated (*inter alia*) their argument concerning the relevant date according to which the ages of petitioners 3 and 4 should be "affixed". In a decision dated March 31, 2011, the appeal was denied. The Appellate Committee held that there was no dispute before it that the 2006 application was lawfully denied, in view of the fact that the petitioners moved to live in Israel only three months prior to its submission, and no appeal was filed against the above decision.

7. The Appellate Committee also discussed petitioners' argument, which was also discussed in the petition before me, according to which, in view of the judgment of this court in AP (Jerusalem) 8340/08 **Abu Gheit v. Minister of the Interior** (dated December 10, 2008; hereinafter: "**Abu Gheit**"), the respondent should have granted petitioners 3 and 4 temporary status as of the submission of the 2006 application despite the fact that at that time the two year requirement for center of life in Israel has not yet been satisfied. It was argued that petitioners' age for status purposes should have been affixed on the submission date of said application rather than on the submission date of the 2009 application. The Appellate Committee rejected this argument. It noted that the relevant application was the application which was submitted in 2009. The application which was denied in 2006 – was lawfully denied. It could not be regarded, it was so held, as an application which has not yet been decided or as a pending application. Moreover. The Appellate Committee held that it was not held in **Abu Gheit** that anyone who sought status in Israel should be registered in the population registry, even if he did not reside in Israel when the registration

application was submitted – even for a minimal period. This was the case before the Appellate Committee. The Appellate Committee held further that according to the circular of the director general of the Ministry of Education the status of the child for population registration purposes is not relevant to the right of education. Therefore, "the respondent acted according to the provisions of the law" when he refused to grant status immediately upon the submission of the application in 2006 (paragraph 9 of the decision). Hence the petition before me.

The Petition

8. The petition argues, that the circumstances of the case demonstrate the difficulty posed by respondent's policy which is, as alleged, a policy of "reduction and procrastination" (paragraph 2 of the petition). According to this argument there is an unjustified gap – both legally and humanely – between the application submission date and its approval, two years thereafter, while during the said period of time the applicant has no status, be it even a temporary status. It was further argued that the **Abu Gheit** judgment explicitly clarified that the required two year waiting period until the approval of the application for the arrangement of the status of a child, does not relate to the mere submission of the application but rather to its approval. Accordingly, in the circumstances of the case of the petition at hand, the relevant date for the examination of the status which should be granted to the petitioners is the submission date of the 2006 application rather than the submission date of the 2009 application. The petitioners argued further that although the **Abu Gheit** judgment was given only in 2008, the principles established therein have already been accepted by case law beforehand and should also be applied, under the circumstances, to the 2006 application. According to the petitioners, the above is also required in view of the right to family life and the obligation to protect the child's best interest. For these reasons it was requested to determine, that the relevant date for the establishment of petitioners 3 and 4's status would be the submission date of the 2006 application – and accordingly, that their status should be upgraded.

The Response

9. The respondent requested that the petition would be denied. The response emphasized that in view of the fact that petitioner 3 and 4 were residents of the Area, they were not entitled to be currently registered in the registry and that they were subject to the provisions of the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003. The response noted, that petitioners' 2006 application was lawfully denied, in view of the fact that on the date of its submission the petitioners had been living in Israel only three months, all in accordance with respondent's procedures which were approved by many judgments which determined that the requirement to prove a center of life in Israel prior to the registration date was reasonable. The relevant application therefore was the 2009 application. At that time respondents 3 and 4 were over fourteen years of age, and were therefore entitled to receive only DCO permits – which they received and continue to receive. As to **Abu Gheit**, it was argued that in that case the petitioners were granted the status of DCO permits – which is the type of permit that petitioners 3 and 4 already have. Furthermore, even according to **Abu Gheit**, petitioners 3 and 4 would have still been required to submit a new application after having lived in Israel for two years, and they would have been given status according to their age on the submission date of the new application. The respondent emphasized that the 2006 application was lawfully denied and that no appeal or any other application in that regard was filed with the court, and that it was therefore obvious that on the relevant date the petitioners agreed with decision of the Ministry of the Interior, and at least thought that said decision should not be challenged. Moreover. Although they could have already submitted an application in June 2008, after the elapse of two years, they waited and submitted the application only in 2009. As to **Abu Gheit**, the respondent argued further that the judgment which was given in December 2008 applied from the date it was given onwards and that it did not apply retrospectively in a manner which revoked decisions which were previously given by the respondent. Furthermore, the situation was

understood by the petitioners themselves in the same manner – otherwise they would not have submitted a new application in June 2009. Petitioners' 2006 application was also based on false documents. In addition it was argued that in **Abu Gheit** the purpose of the relief was to enable enrollment in school, and that the petitioners are not deprived of this right. It was also argued, that it was questionable whether **Abu Gheit** should be understood as imposing an obligation to give temporary status to any applicant – immediately upon his arrival to Israel. Anyway, and as specified above, this judgment would not have affected petitioners' matter, in view of the fact that even if the petitioners were granted status under DCO permits in 2006, they would have been required, as aforesaid, to submit a new application after two years of a center of life.

Discussion and Decision

10. After I have reviewed the material before me and heard the detailed arguments of the parties' counsels, I concluded that the petition should be denied. As held by the Appellate Committee, and in fact, this issue was not in dispute before me, the denial of the 2006 application for the registration of petitioners 3 and 4 was lawful, as it was not preceded by two years of center of life in Israel. Indeed, this decision was neither appealed nor challenged. This is significant, since the outcome arising there-from is that the application which was submitted by the petitioners in 2009 was in any event a new application. It did not state that it constituted part of the previous application and it did not claim that the previous application was still pending (P/7). This case therefore concerns a situation in which one application was submitted and lawfully denied – according to the legal situation applicable at that time; and a second, new application, which was submitted after the elapse of a substantial period of time (beyond the required two years) – and which was approved. Under the circumstances of the case, petitioners' argument according to which the relevant date which should be examined is the 2006 application submission date, should not be accepted. As the application was denied at that time and no appeal or petition were filed, said denial should be regarded as conclusive in the same that it terminated the handling thereof. Petitioners' age on the submission date of the first application (in 2006) should not be attributed to a new application which was submitted by the petitioners only in 2009.

11. Indeed. The argument according to which the 2006 application submission date should be regarded as the relevant date despite the above said, is mostly based on the **Abu Gheit** judgment and on a more general argument, according to which an applicant who wishes to arrange his status and is required to prove two years center of life, should not be left without status. It should be firstly noted that the scope of the effectiveness and applicability of the Abu Gheit judgment is questionable (see and note, AP (Jerusalem) 727/06 **Nofal v. Minister of the Interior** (May 22, 2011, paragraph 11 of the judgment). However, this issue should not be resolved in this case in view of the fact that I did not accept the argument which arises from petitioners' position, according to which said judgment, in fact, revokes final decisions which were made in applications which preceded it. In addition, there is nothing in **Abu Gheit** which can change the circumstances of the case before me in which the 2006 application was lawfully denied (in the absence of center of life), which decision was not challenged at any point.

12. Beyond need, *prima facie*, there is a difference between the **Abu Gheit** situation to which a specific solution was given in that case, and the argument which was raised in the petition before me. It should be remembered, that in **Abu Gheit** it was explicitly held that the requirement for two years center of life was within the realm of reasonableness (paragraph 1 of the judgment of the honorable judge (as then titled) D. Cheshin). Indeed, the judgment held that the general position according to which the children whose registration was requested, were not entitled to any status whatsoever during the waiting period, exceeded reasonableness. The court held further, that " as a general rule and in the absence of special reasons not to do so, the respondent should grant the child, during the interim period until the center of life requirement shall have been fulfilled, a

temporary residency permit in Israel which would enable the child to lawfully live therein with his parent, and also enroll in school in Israel (paragraph 12 of the judgment). However, no operational order was issued in said judgment, and under the circumstances of that case the grant of DCO permits to the children was sufficient. The judgment does not include any determination according to which the relevant date for the examination of the children's age after the elapse of the two year center of life requirement, should specifically be the submission date of the application which was submitted before the center of life was proved, as opposed to the application which was submitted thereafter. There is also no determination in said judgment according to which there is no need to submit a new application after the elapse of said two years.

13. Indeed, the respondent argued before me that following the **Abu Gheit** judgment, the policy is that when there is no center of life upon the submission of the application, DCO permit is granted according to the **Abu Gheit** judgment. However, according to the respondent, after the elapse of two years a new application should be submitted and the date which would be examined for the purpose of determining the type of status which would be granted to the children, is the submission date of the new application (page 5, lines 16-25). Ostensibly, this position is reasonable. It is based on the distinction between the question of the status until the arrangement of the status – the "interim status" (this is the question in which the above position was expressed in the **Abu Gheit** judgment), and the question concerning the point of time for the examination of the age of the children upon the approval of the application. The **Abu Gheit** holding (which was not required under the circumstances of said case for operational purposes, as stated in the judgment itself), referred to the issue of the status between the application submission date and the fulfillment of the center of life requirement. DCO permits were sufficient in that case. However, for as long as there is no dispute that the law requires a center of life of two years prior to the approval of the application, the application may not be approved beforehand, and ostensibly there is no room to waive the submission of a new application after the termination of the period – an application which would be discussed and resolved according to the age of the children on the date it was resubmitted.

14. Nevertheless, the establishment of iron-clad rules in this question is not necessary under the circumstances and may be left under advisement, the reason being, as aforesaid, that factually, the circumstances of the case before me are such that the 2006 application – was denied, without any deviation from respondent's procedures (see the above **Nofal**). In any event, on the date of its denial, no argument was raised by the petitioners and there was no binding legal authority which obligated the respondent to grant petitioners 3 and 4 any status (and it is also questionable whether, to begin with, as far as petitioner 3 is concerned, such an argument could have helped in view of the fact that the written application was submitted in 2006 after she was already over fourteen years old), and thereafter no status was granted on that date in 2006. Consequently, the 2009 application was, as aforesaid, a new application, and was so regarded by the petitioners as well. Hence, under the circumstances of the matter, respondent's decision to regard the submission date of the new application, in 2009, as the relevant date and to accordingly grant petitioners 3 and 4 DCO permits according to their age on that date, does not exceed reasonableness. All, subject to the provisions of the Citizenship and Entry into Israel (Temporary Order) Law.

15. The petition is therefore denied. Under the circumstance no order for expenses is issued.

The Secretariat will send this judgment to the parties' legal counsels.

Given today, 25 Tishrei 5772, October 23, 2011, in the absence of the parties.

(signed)

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Yigal Marzel