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At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

HCJ 634/91

In the matter of:

S. Abu Hassan
resident of Batir

represented by attorney Andre Rosenthal,
License No. 11864,
whose address for the purpose of service of court documents
is HaMoked: Center for the Defence of the Individual,
founded by Dr, Lotte Salzberger (Reg. Assoc.)
4 Abu Obeidah Street, Jerusalem 97200
Tel: 6283555

The Petitioner

v.

**Commander of the IDF Forces in the West
Bank**

The Respondent

Petition for Order Nisi

The Honourable Court is hereby requested to order the Respondent to appear and show cause, if he wishes to do so, why he does not allow the Petitioner to enter Israel to engage in his work laying floors.

Because of the importance of the petition, the Honourable Court is requested to set a hearing date on the petition as soon as possible.

The grounds for the petition

The facts

1. The Petitioner is a resident of Batir, Bethlehem District. He is married and the father of four children, aged one, four, five, and six.
2. The Petitioner lays floors for a living, and works in that occupation in Jerusalem for the company Aloni.
3. From 15 January 1991, the day on which Batir was placed under curfew, the Petitioner has not gone to work in Israel. In normal circumstances, the Petitioner

works in Israel with a permit issued by the Ministry of Labour, which acts on behalf of the Civil Administration.

4. The Petitioner has no savings, and in his affidavit of 3 February 1991, given at the time his counsel visited Batir, he stated, in Par. 4 of the affidavit, that

I have no money left.

A copy of the Petitioner's affidavit is attached hereto and marked P/1.

5. The Petitioner's employer requested the [Israeli] administration in Bethlehem allow the Petitioner to enter Jerusalem to enable him to return to work. The request was unproductive.
6. On 11 February 1991, counsel for the Petitioner sent a fax to the assistant to the legal advisor in Beit El urgently requesting that the Petitioner be given a permit to enter Israel. A copy of this request is attached hereto and marked P/2.
7. Since the said written request, the Petitioner's counsel has contacted the legal advisor daily to learn the decision reached on the said request. To date, no response has been received. The last request was made on 14 February 1991, at 1:30 P.M.

The law

8. Batir, a village situated within Bethlehem District, was declared as far back as 1967 as a closed area in accordance with the Order Regarding Closed Areas (West Bank Region) (No. 34), 5727 – 1967. The Petitioner enters Israel with a general permit, pursuant to a General Exit Permit (No. 5) (West Bank), 5732-1972. This general permit was suspended, thus suspending the Petitioner's permit to enter his work place in Jerusalem.
9. The media has recently reported that entry permits are given to construction workers and farm workers when transportation is provided by the employer, in instances in which the workers are brought in a group from a central gathering point in the Occupied Territories and are returned to that point. The Petitioner has no such arrangement; he is employed by an employer who does not employ several employees from the Occupied Territories.
10. The Petitioner will argue that, although his entry into Israel is not a right granted to him, the fact that his entry is suspended for an indefinite period turns it into an administrative act that is unreasonable. Support for this argument is found in the judgment given in HCJ 660/88, *Inesh al Usra Society et al. v. Commander of IDF Forces in Judea and Samaria*, Piskei Din 43 (3) 673. That case involved the closure

of the Petitioner, a charitable organization in El Bireh, for two years. The Court stated:

It is hard not to get the impression that the decision to close the society for such a long period of two years deviates from the said purposes.

11. The Petitioner will argue that, in issuing the entry permits to certain construction workers and certain farm workers, the Respondent is discriminating against the Petitioner. It was recently held that the Respondent is forbidden to discriminate between residents. In this matter, support is found in the judgment given in HCJ 168/91, *Morkus v. Minister of Defence et al.* (not yet published), in which the Honourable Justice Barak stated:

Indeed, the military commander must exercise equality in his actions in the region. It is forbidden for him to discriminate between residents.

To foresee the contention that the Respondent may make, whereby these are not normal times, we repeat the comments of the Honourable Justice Barak, from *Morkus*, in which he stated:

The military commander's duty to treat equally all residents of the region does not expire *when security tension increases* (emphasis added).

12. The Petitioner will argue that, pursuant to Article 43 of the Hague Regulations and Article 55 of the Fourth Geneva Convention, the Respondent has the duty to ensure the welfare of the Petitioner in that he is a member of the civilian population of the occupied territory. When the Respondent suspended the right of the Petitioner to earn a proper living, there arises a duty, which is also a moral duty, to restore life to the way it was earlier, including his source of livelihood.
13. In light of the above, the Honourable Court is requested to grant the order requested and to make it absolute.

Jerusalem, today, 14 February 1991

Andre Rosenthal, Attorney
Counsel for Petitioner