The District Court in Jerusalem AP 8350/08
Sitting as a Court for Administrative Matters

Before: The Honorable Justice Noam Solberg **26 January 2009**

In the matter of:

1. _____ 'Attoun
2. _____ 'Attoun
3. _____ 'Attoun
4. HaMoked**: Center for the Defence of the Individual founded by Dr. Lotte Salzberger**

Represented by Adv. Yotam Ben-Hillel The Petitioners

- Versus -

1. Minister of the Interior
2. Director of the Population Administration
3. Director of the Population Administration Office in Eastern Jerusalem

Represented by Adv. Chen Gilad
Assistant to the Jerusalem District Attorney (Civil) The Respondents

Judgment

A petition to reverse the respondents' decision to refuse to register the petitioners 2 and 3 in the Israeli population registry, and to grant the status of permanent residents in Israel to them.

1. **Petitioner 1 is a permanent resident in Israel. He is married to two wives. One is a resident of Jerusalem. Seven children were born to the petitioner and this wife. All were recognized as Israeli residents. The other wife is a resident of the area. She and the petitioner had four children. Two daughters were registered as Israeli residents close after they were born in 1993 and 1994. The two sons - _____ and _____ - twins born in 1996, who are not registered in the**

area, asked to receive a status of permanent residents in Israel, like the other family members; their application was denied, hence their petition.

2. **The petitioners are residents of the village Sur Bahir. The village is included in the municipal territory of Jerusalem. After the Six Day War, the State's sovereignty was applied thereto. The border line of the municipal territory of Jerusalem was drawn to include the built-up area of the village, as the same was at the time, within the city's territory, however not all the village's lands were included in its territory. With the passage of time the village developed, and many houses were built on the lands beyond the border line of the city's municipal territory. The Wadi Humus neighborhood, where the petitioners' home is located, also lies outside the municipal territory.**

3. **In preparation for the construction of the separation fence, it was planned to run the same near the municipal border line. The residents of the village filed a petition with the Supreme Court of Justice on this matter (HCJ 9156/03** Daud Jabor v. The Border Administration**). Pursuant to the filing of the petition, the route of the fence was diverted, consensually, to the south-east, such that it includes all of the village's houses, and also the Wadi Humus neighborhood. The agreement was sanctioned as a judgment on 30 December 2003.**

4. **An additional proceeding was conducted between the residents of this part of the Sur Bahir village and the State's authorities, pertaining to their rights according to the National Insurance Law (NI 10177/05** The Sur Bahir Village, National Insurance Committee v. The National Insurance Institute**). On 11 April 2005, a judgment was issued in this case, based on the parties' agreement, and determining that those residents of the village to whom the National Insurance Law and the Medical Insurance Law apply will be the ones who fulfill two conditions: First, that "**he holds a permanent residence license according to the Entry into Israel Law, 5712-1952**"; and second, that "**he is a resident of the Sur Bahir village, including in the area of the village which is between the separation fence and the municipal territory of Jerusalem, and he is living in the village permanently and not temporarily**".**

5. **The petitioners filed an application to be registered as permanent residents, for the first time, in June 2000. The respondents forwarded a query to the National Insurance Institute for the purpose of receiving information about the petitioners, and also sent the petitioners an application form for the provision of documents for the purpose of examining the application. The petitioners did not provide the documents.**

   A while after the aforesaid judgment was issued on the issue of the entitlement according to the National Insurance and Medical laws, on 31 July 2005, the petitioners re-approached the respondents seeking to be registered as permanent residents. The respondents again filed a query with the National Insurance Institute, and an examination showed that the petitioners are living outside the territory of Israel. It seems that the respondents did not notify the petitioners on their decision in the application, and on 14 February 2007, an additional application was filed. The respondents' reply, based on an additional investigation of the National Insurance Institute which showed that the petitioners are living outside the territory of Israel, was issued on 23 July 2007.

In it, the petitioners were told that their application is denied, since they do not maintain a life center in Israel on a continuous and permanent basis: "your life center throughout the years is in Wadi Humus outside the territory of the State of Israel**" (Exhibit** p/6**).**

The petitioners appealed this decision. Then they were required to prove that their place of residence is within the territory of the State of Israel. On 13 February 2008 the appeal was denied, again due to the reason that the place of residence of the petitioners is outside the territory of the State of Israel.

6. **In their petition, they argue that petitioners 2 and 3 are subject to regulation 12 of the Entry into Israel Regulations, 5734-1974, according to which a child shall receive the status of his parents in order to prevent a discrepancy between the status of the children and the status of their parents, and a violation of the integrity of the family unit.**

For purposes of applying the regulation, the petitioners argue that their life center is in Jerusalem, according to the majority of links**, since in receiving all their services they rely on Jerusalem. The petitioners 2 and 3 study in institutions in Jerusalem, the petitioner worked in Jerusalem most of his life, etc. According to their argument, the rules which were determined in the case law with regard to other laws which deal with the issue of the center of a person's life must be applied. The petitioners claim that the objective life center must be examined, which includes the place of residence, the place of work, the place of study, the place of residence of the relatives and friends; as well as the issue of the subjective life center, that is, which is the place where a person's heart is, in which he finds his place.**

The petitioners further argue that the State's aforesaid agreement pertaining to National Insurance demonstrates that the State itself deems them as the holders of material rights, like the other residents of Israel.

7. **According to Article 1(b) of the Entry into Israel Law, 5712-1952, anyone who is not an Israeli citizen can reside in Israel only according to a license that will be issued to him by the respondents. In the context of their authority, the respondents set forth criteria for the approval of applications to receive a visa or a license for residence in Israel.**

Regulation 12 of the Entry into Israel Regulations, 5734-1974, determines the following:

> **The status in Israel of a child that was born in Israel, and to whom Article 4 of the Law of Return, 5710-1950, does not apply, shall be like his parents' status; If his parents shall not have had the same status, the child shall receive the status of his father or his guardian, unless the other parent objects thereto in writing; If the other parent shall have objected, the child shall get the status of one of his parents, as determined by the Minister.**

8. **This regulation thus applies to a child** who was born in Israel**, and it determines that the status of such child shall be like his parents'. The purpose thereof, as has been ruled, is to prevent "**the creation of a disconnection or a discrepancy between the status of a parent whose residence in Israel is by virtue of the Entry into Israel Law, and the status of a child who was born in Israel, and that his mere birth in Israel does not grant him a legal standing therein**" (statements of the Honorable Justice D. Beinish (her former title) in HCJ 979/99** Pavaloayah Carlo (minor) v. The Minister of the Interior **(issued on 23 November 1999)). As was further ruled there, "**our legal system recognizes and respects the value of the integrity of the family unit and the interests of protecting the child's best interests**". The purpose of the regulation is to confer on a child born to parents who are Israeli residents, status that is identical to that of his parents, so that he will be able to live his life with his parents, without their being forced to relocate. Thus, this is a practical regulation that was intended to give an appropriate and immediate answer to a natural family need. At its basis are a person's natural rights to bear offspring, together with the "**independent rights of each minor to develop and grow up in a supportive and loving family unit**" (APA 5569/05** Ministry of the Interior v. Dalal Avisat **(paragraph 21; issued on 10 August 2008)). This regulation is one of the clear practical expressions of such rights, that is, giving a legal possibility to a family existence, together. The regulation seeks to spare the parents the burden of applying for a status for their offspring and receiving the same, in order to be able to raise them in their place of residence.**

9. **The regulation was intended for such purposes, and for them alone. The regulation was not intended to give children rights vis-à-vis the State in matters that are outside such family needs, also if their parents enjoy various such rights. Indeed, in the aforesaid** Carlo **matter it was also determined that when the purpose of the integrity of the family unit (with the parent with the license to reside in Israel) is not at the basis of the minor's application for a status in Israel, the Minister of the Interior is not obligated to give the minor a status solely because he was born in Israel to a parent with a license to reside in Israel. This regulation was not intended to give a status "**by virtue of birth**", since this is not the purpose of the Entry into Israel Law.**

10. **From the petitioners 1 and 2's date of birth until today, they are living outside the area of sovereignty of the State of Israel. Their parents too are not living in Israel. The house in which they live – there is no dispute over this – is not in the territory of Israel.**

    Thus, the circumstances of the case at bar do not provide the reasons which justify granting the status, the reasons which are at the basis of Regulation 12 as aforesaid. The children are growing up with their parents, living a complete family life with them, and the family unit is united. There is no justification, from the family aspect, and considering the reasons on which the regulation is based, to grant a status in Israel to them.

11. **Thus, Regulation 12 does not apply in the case of petitioners 2 and 3 and therefore the application of petitioner 1 to grant a permanent status to them like any application for family unification must be examined. By virtue of his authority according to the Entry into Israel Law, the Minister of the Interior formulated a procedure on this issue. Such procedure determines, first and**

foremost, that it is not enough that the inviting person will have the status of a permanent resident in Israel, but it should rather be examined whether the inviting person indeed is an actual Israeli resident**. Such 'residence' must be examined according to the question where his** life center **is.**

At the basis of this procedure also, like in the matter of regulation 12, there is a purpose. The purpose is humanitarian, to spare anyone residing in Israel, by virtue of his holding the status of permanent resident in Israel, the need to choose between a life with his family and life in the territory of the State of Israel. Thus, here it is also clear that when such a dilemma does not exist, because the family members are living together in their home, there is no justification for applying the procedure.

12. **Hence, where the inviting person sometimes lives in the territory of Israel and sometimes outside of it, or there is doubt, for a different reason, where he lives his life, then a real need arises to apply links tests to him, to examine and decide whether or not he is an Israeli resident. In such a condition, because of the desire to enable his family members to live their lives with him, there is indeed a need to examine where he lives his life. However, when the place of residence of the inviting person is clear and there are no question marks with regard thereto, there is lessened justification to examine the residence according to various links tests, as the petitioners argue, whilst ignoring the question of the inviting person's actual place of residence. What is most important is the united family life, and not the granting of various rights; the judgments which the petitioners seek to rely on do not discuss the issue of the inviting person's life center, but rather the issue of the life center of the family members, for the purpose of examining the question whether or not the** temporary order **applies to them, because they are residents of the area – a question which is irrelevant here.**

13. **We know where the petitioner at bar is living. It is also known that his children are living with him under the same roof. Therefore, there is no room for applying the procedure for both of the reasons together. First, because the inviting person does not live in the territory of Israel. Second, because the humanitarian need at the basis of the procedure does not exist. In this state of affairs, the respondents' position is reasonable, there is no place to grant the petition and I decided to deny the same.**

14. **As may be recalled, the petitioners also sought to rely on the aforesaid judgment which applied the national Insurance and Medical laws. Based thereon, the petitioners argued that that the institutions of the State already acknowledged that the life center of the residents of the Wadi Humus neighborhood is in the territory of Israel. This is an argument which cannot be accepted, since in the judgment, that was issued consensually, it was determined that for purposes of National Insurance and Health Laws a status will be issued** only to a person who holds a license for permanent residence, and is also a resident of the village**. Only upon the fulfillment of both such conditions, cumulatively, will a status be granted for purposes of the aforementioned laws. Thus, the judgment teaches** the opposite **of that which the petitioners seek to learn from it. It** distinguishes **between a person holding permanent residence in Israel and a person who does not. The existence of such a distinction is at the basis thereof, and based thereon, the National Insurance Institute went a long way towards the petitioners in that**

case. Also the plaintiffs in that case, including petitioner 1 in the case at bar, agreed that anyone who does not hold Israeli residence, is not entitled to such conditions (petitioner 1 and his seven children from his first wife were amongst the claimants there, unlike the petitioners 2 and 3 at bar, which were not joined to the suit there). This means that they themselves recognized the distinction between a person holding Israeli residence and a person who does not. The attempt to now rely on the judgment there, in order to argue that all of the residents in this neighborhood are entitled to Israeli residence, borders on bad faith and lacks logic. The argument is tautological, in other words, because the Legal Advisor for the Government determined that amongst the residents of the Wadi Humus neighborhood, anyone having the status of a permanent resident will be entitled to the application of the National Insurance Law, it should be determined that all of the neighborhood's residents are entitled to the status of permanent residence. Accepting this argument is thus illogical, and it will also unduly prejudice the respondents who gave their consent to the arrangement pertaining to the National Insurance based on the existence of a distinction between those who are permanent residents and those who are not.

15. **Finally, the petitioners are complaining about the situation in which they have found themselves with the separation fence bounding them from the east, and the only place to which they can turn for all of their affairs is Jerusalem, where they have no status. Indeed, this condition is complicated and burdensome. The separation fence created legal and humanitarian difficulties. It should be kept in mind that it is the village's residents who insisted that it be moved south east, in order that all of the village's houses will be to its west. An accusing finger should not be pointed in their direction, but nor should their argument be accepted that in view of the condition which was created, the State of Israel is obligated to treat them as if they were residents thereof. Shifting the route of the separation fence, in different places throughout its length and breadth, does not, in itself, constitute an acknowledgement of the status of those included therein as Israeli residents.**

16. **Such is the nature of borders and bordering lines, they distinguish, sometimes also arbitrarily, between those located on either side of them. However, there is nothing the court can do. Once the State of Israel did not apply the sovereignty thereof on the area east of the municipal territory of the city Jerusalem, according to the border that was determined therefore; because the members of the family are living together under one roof; since they live and sleep permanently in their home outside of Israel, the petitioners 1 and 2 do not fulfill the requirement of a** life center in Israel**. Under such circumstances, the respondents' position is reasonable and I saw no justification for getting involved and changing the same.**

17. **The petition is denied.**

The petitioners shall bear the costs of the petition and shall also pay the respondents legal fees in the sum of NIS 3,000.

Issued today, 1 Shevat 5769 (26 January 2009) in the absence of the parties.

The Office of the Court's Clerk shall dispatch a copy of the judgment to the parties' attorneys.

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Justice Noam Solberg