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(Insignia of the State of Israel)
The Courts

The Jerusalem Court for Administrative Affairs

Adm. Pet. 752/03

Before: The Honorable Judge Yehonatan Adiel, Vice
President

16 November, 2008

Re: _____ Rajoub et al
Represented by Adv. Yotam Ben Hillel

Petitioners

versus

Minister of the Interior

Represented by the Jerusalem District Attorneys
Office

Respondent

Judgment

1. This petition is concerned with a family unification application which was filed by petitioner 1 for her husband – petitioner 2 (hereinafter: the “**petitioner**”)
2. In a judgment that was given on 27 May, 2008 the petition was dismissed. The reason for this was that per section 4(2) of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, it is not possible to upgrade the status of a person who has filed his application before the effective date (12 May, 2002), and by that date a decision had not yet been given in his case.
3. In the judgment given by the Supreme Court on 16 July, 2008 on an appeal which was filed by the petitioners against the abovementioned judgment, it was held, following the recommendation of the court, and with the consent of the parties, that the case be returned to this court in order that it be re-examined in light of the policy (which was formulated after the judgment of the court of first instance), which found expression in the approach which states that it is possible to upgrade an applicant’s status even if his status was not upgraded before the effective date. This applies if the non – upgrading emanated from an error, or there was a claim that there was an unjustified delay caused by the respondent. Under the Supreme Court judgment, this court must examine “whether the case at hand falls within the aforesaid criteria”.
4. In light of the Supreme Court judgment, the petitioners filed an amended petition. In their response to the amended petition the respondents announced that under the circumstances of this case, “since it would have been possible to

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upgrade the petitioner's status subject prior to the Government Decision to receiving the position of the security services; however, the position of the Israel Security Agency, which states that there was no objection to the application arrived only in June 2002, , and because of the special circumstances of the case, the respondent is prepared to upgrade the petitioner's status to a Class A/5 status". Under these circumstances, so argued the respondents, the petition has been rendered superfluous, and should therefore be dismissed without a costs order.

5. Since the respondents agreed to upgrade the petitioner's status and to grant him a Class A/5 permit, there is no longer a need to relate to this issue in this judgment. In these circumstances there are two questions that remain a subject of dispute between the parties. The first one concerns the date of the upgrade, while the second relates to the trial costs.
6. As to the date of the upgrade, counsel for the petitioner has argued that since the respondent also agrees that the petitioner was entitled to have his status upgraded to Class A/5 even before the effective date of May, 2002, it should be held that the A/5 status should be applied retroactively from that date. The retroactive upgrade, so argues counsel for the petitioners, is highly significant within the context of the petitioner's entitlement to health insurance and to additional rights. Counsel for the respondent is opposed to this request and argues that it is not possible to retroactively upgrade a person's status, and this was never argued, nor requested, in the petition.
7. In my view it is doubtful whether this dispute was forwarded by the Supreme Court for this court's determination. In the Supreme Court's judgment it was held that this court must only determine whether the petitioner's case "falls within the aforesaid criteria", namely whether the "non-upgrading emanated from an error or was the result of an unjustified delay". Even if this was the case, the respondent only agreed, in his heads of argument presented to the Supreme Court, that "it would [in the future tense] be possible to upgrade the applicant's status".
8. Even on the merits of the case, I have not been persuaded that I should order the retroactive upgrade of the petitioner's status. Counsel for the petitioners did not refer me to any ruling which allowed such an upgrade. In a similar case, in which petitioners petitioned the High Court of Justice to retroactively restore their citizenship (after they had renounced it) in order to avoid harm to their rights *vis-a-vis* the National Insurance Institute, the Supreme Court rejected this demand. In regard to the argument with respect to harm to social rights, the court referred the petitioners to the National Insurance Institute, and if that request was to be rejected, then they were to turn to the Labor Court (HCJ 2271/98 Dunya 'Abed v. Minister of the Interior *Piskei Din* 55(5) 778).

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9. With regard to the costs, *prima facie* when the petitioners were awarded their request as a result of filing the petition, they were entitled to a costs order in their favor. However counsel for the respondents argues that the Class A/5 status is being given to the petitioner beyond the letter of the law. Therefore there is no place for a costs order. It is his claim that even if there were no delays to the handling of the petitioners' application, the period of 27 months during which the petitioner would have been entitled to receive permits from the DCO would have terminated in April, 2002. Even assuming that the petitioners had filed their application for a status upgrade, as they are instructed to do by the respondents, three months before the termination of that period; in that case too the security services presumably would not have determined their position before the effective date. Indeed the respondent had in fact sent a questionnaire to the security services as early as January, 2002 but the position of the Israel Security Agency only arrived at the respondent's office in June, 2002 after the effective date.
10. In my opinion we should not deviate in this case from the general rule that states that when a petitioner succeeds in attaining the desired relief as a consequence of filing a petition, it is only appropriate that we render a costs order in his favor.
11. In conclusion the court rules that the petitioners' application to retroactively update his status is dismissed.

The respondents shall pay the petitioners their attorney fees in the amount of NIS 10,000 in addition to the VAT.

Given today, 18 Cheshvan, 5769 (16 November, 2008), in the absence of the parties.

The secretariat shall produce a copy of the judgment for counsel of the parties.

Y. Adiel, Vice President