The Courts

The District Court in Jerusalem Sitting as the Court for Administrative Matters		A.P. 8568/08	
Before:	The Honorable Justice Judith Tsur - Deputy Chief Justice		**26 January 2009**

In the matter of:

1. _____ Hamadah, ID no._____
2. _____ Hamadah, ID no._____
   Jordanian Passport _____
3. _____ Hamadah, ID no._____ (minor, born in 28 November 1996)
4. _____ Hamadah, ID no._____ (minor, born in 28 November 1996)
5. _____ Hamadah, ID no._____ (minor, born in 6 January 1999)
6. _____ Hamadah, ID no._____ (minor, born in 13 November 2002)

Petitioners 3-6 through their parents, Petitioners 1 and 2
represented by Adv. Adi Lustigman

The Petitioners

-Versus-

The State of Israel – Ministry of the Interior

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

through the Jerusalem District Attorney's Office

The Respondents

Judgment

1. **Before me is a petition filed by _____ Hamada (Hereinafter: Petitioner 1), his wife _____ Hamada (Hereinafter: Petitioner 2), and their children _____, _____, _____ and _____ (Hereinafter: the Children, and jointly: Petitioners), against the Respondent's decision to refuse the application for family unification submitted by Petitioner 1 on behalf of Petitioner 2, asserting that he did not prove a center of life in Israel.**

Factual Background

2. **Petitioner 1 is a permanent resident in Israel, born in 1970. Petitioner 2 is a Jordanian citizen, born in 1974. Petitioners married in 1994 and they have four children. On 30 August 1994 Petitioners submitted their first application for family unification (Exhibit** R/1 **to the Reply). On 4 August 1998 a letter was sent to Petitioner 1 approving his application for family unification, and granting Petitioner 2 an A/5- type visa for 12 months (Exhibit** R/7 **to the Reply).**

3. **On 26 December 1999 Petitioner 1 submitted an application to extend Petitioner 2's A/5-type temporary permit (Exhibit R/8 to the Reply). On 10 January 2000 the Respondent sent a query to the National Insurance Institution (Hereinafter: the NII) for the purpose of receiving information on Petitioner 1's center of life. Following this query, two NII investigations concerning Petitioner 1, dated 21 August 1995 and 12 May 1996, were received, from which it transpired that he resides in Wadi Humus which is outside the territory of Jerusalem (Exhibits** R/9 **and** R/10 **to the Reply). On 18 June 2001 an interview was held with Petitioners regarding their center of life. In this interview Petitioners stated that they reside in a property belonging to Petitioner 1's father in the neighborhood of Sur Bahir (within the territory of Israel) and that they left the property in Wadi Humus as early as 1994 (Exhibit** R/15 **to the Reply). On 21 June 2001 an additional query was sent to the NII for the purpose of receiving information on Petitioners 1's center of life. Following this, the Respondent received from the NII a summary of an additional investigation dated 21 February 2001, according to which Petitioner 1 continues to reside in the property in Wadi Humus (Exhibit** R/16 **to the Reply). Therefore, on 21 June 2001, the Respondent notified Petitioner 1 that his application for family unification is refused (Exhibit** R/17 **to the Reply).**

4. **On 7 August 2006, Petitioner 1 submitted a new application for family unification on behalf of Petitioner 2, following a judgment by the Labor Court in Jerusalem (the Honorable Justice Sarah Shdeour) in N.I. 10177/05** *The Sur Bahir Village Committee v. The National Insurance Institution* **(Hereinafter:** *The Village Committee* **Case), in which it was ruled that the permanent residents of the Wadi Humus neighborhood are entitled to national insurance. On 11 June 2007 the Respondent sent another query to the NII for the purpose of receiving information on Petitioner 1's center of life. As a result, the NII sent to the Respondent the summaries of the three previous investigations and a summary of a fourth investigation dated 5 July 2004, according to which Petitioner 1 continues to reside in Wadi Humus neighborhood, which is outside the territory of Jerusalem (Exhibit** R/26 **to the Reply). On 3 December 2007 the Respondent notified Petitioners that their application for family unification was refused since their home is outside the territory of Israel (Exhibit** R/28 **to the Reply). On 13 December 2007, Petitioners filed an appeal on the refusal decision (Exhibit** R/29 **to the Reply). On 1 January 2008, the Respondent dismissed the appeal filed by Petitioners (Exhibit**

R/30 **to the Reply). It is with respect to these decisions that Petitioners filed the petition before me.**

Petitioners' Claims

5. **The Petitioners argue that the State acknowledged the fact that the area of Wadi Humus constitutes an integral part of the village of Sur Bahir and of the city of Jerusalem, and therefore agreed to shift the separation wall's route such that the area of Wadi Humus would be included on the Israeli side of the wall. In view of the fact that the wall creates an impassable obstacle between the "Israeli" territory and the remaining parts of the West bank, such that it thwarts the possibility of having a center of life in the West Bank, the State agreed that the essential rights of the residents of the neighborhood (and the Petitioners among them) are not to be violated, and granted them rights in accordance with the National Insurance Law [Consolidated Version], 5755-1995 (Hereinafter: the National Insurance Law). Petitioners argue that it is inconceivable that different branches of the State exercise a contradictory policy on the same subject, such that they will be recognized as residents for purposes of the National Insurance Law but not for purposes of the Entry into Israel Law, 5712-1952 (Hereinafter: the Entry into Israel Law).**

6. **The Petitioners argue that the center of life of Wadi Humus' residents is in the village of Sur Bahir, which belongs to Jerusalem, according to all links that connect a person to a certain place: a workplace, a place of access various services, a place where the children study, etc. The Petitioners further argue that in view of the existence of the separation wall, the neighborhood's residents have no realistic option of maintaining their center of life elsewhere, namely in the West Bank. The Petitioners argue that the boundary line which divides the village of Sur Bahir and separates its Israeli part from its Palestinian part is only virtual, and that when they (and others like them) decided to build their home in the area of Wadi Humus, they could not have known that it is a territory outside the boundary of Jerusalem's and that this will prevent them from realizing their constitutional right to family life. The Petitioners argue that the Respondent's decision violates their constitutional right to family life in Israel, as well as the basic principle of upholding the best interests of a child.**

7. **According to Petitioners they receive electricity and water from Jerusalem, are connected to Bezeq, and their children were born in hospitals in Jerusalem and are permanent residents of Israel who study in schools belonging to the Jerusalem municipality. According to them, Petitioner 1 works in Israel and pays taxes therein and his parents reside in the Israeli part of the village. The Petitioners emphasize that all of their social and familial ties are in the village of Sur Bahir, which is within the territory of Jerusalem, and the village is the only residential neighborhood that they are familiar with. In view of all the aforesaid, the Petitioners argue that their center of life is indeed in Israel and therefore,**

the Respondent's decision to refuse their application is erroneous and should be reversed.

The Respondent's Claims

8. **The Respondent argues that the petition should be summarily dismissed with prejudice due to laches. He states that his decision in the appeal filed by Petitioners was issued on 1 January 2008, whereas the petition was filed only six months later. According to the Respondent, the Petitioners provided no ground or justification for this delay.**

9. **The Respondent argues that the petition should be dismissed also on the merit. According to him, Wadi Humus, where the Petitioners reside, is outside the territory of the State of Israel. The Respondent further argues that the judgment in the Village Committee Case was in fact based on the NII's notice (Exhibit** R/31 **to the Reply) from which it distinctly transpires that the plaintiffs in that case are not deemed as residents for purposes of the National Insurance Law, and the fact that they were granted rights in accordance with that law was made *ex gratia* and in view of the special circumstances of the case. The Respondent emphasizes that this did not amount to consent to change the municipal border of Jerusalem and the borders of the State of Israel. Therefore, the Respondent argues that his decision does not exceed the bounds of reasonableness, nor has any administrative fault occurred therein which justifies the court's intervention, and that in view of the aforesaid the petition should be dismissed with prejudice.**

Deliberation and Decision

10. **After reviewing the parties' claims, the legal and statutory situation and the various documents attached to the petition, I conclude that the petition should be accepted.**

11. **First of all, the Respondent's claim that the petition should be summarily dismissed with prejudice due to laches, since it was filed approximately seven months after the last decision was given in Petitioners' case, should be rejected. In this context, I have taken into account the result which I have reached in the petition itself, and the fact that the Respondent suffered no damage by the Petitioners' delay, which was not long, and especially, the fact that the Respondent himself significantly delayed his handling of Petitioners' applications. Thus, for example, it seems that the Respondents requested the NII's position (for the third time) only approximately ten months after Petitioners submitted to him their renewed application (the application on behalf of the Respondent to the NII was made on 11 June 2007, while the Petitioners submitted their application on 7 August 2006), and that six more months passed from the date when that NII's position was submitted to the Respondent (11 June 2007) and until the date when he notified the Petitioners of his decision to refuse their application (3 December 2007). Under these circumstances, it would not be justified to summarily dismiss the petition due to laches.**

12. **On the merit, it should be stated that the dispute to be decided in the case before me is narrow and focused and concerns the question of whether Petitioners residing in Wadi Humus should be deemed as maintaining a center of life in Israel, in view of the judgment in the Village Committee Case and the notice on behalf of the State on which this judgment relied (Exhibit** R/31 **to the Reply). This notice reads:**

> "A *contitio sine qua non* for recognizing a person as an Israeli resident is that he lawfully resides on a permanent basis within the State of Israel ….The plaintiffs, as aforesaid, reside outside the territory of the State of Israel and therefore they are not residents for purposes of the National Insurance Law. However, due to the everything mentioned above and due to the fact that is a single homogenous village, the Attorney General guided the defendant to announce that as long as the legal and political situation prevails and as long as the separation wall exists as planned, the defendant will deem anyone meeting all of the following as being subject to the National Insurance Law with respect to both the rights and the duties imposed according thereto, namely:
>
> A. He has a permanent residency permit according to the Entry into Israel Law, 5712-1952.
> B. He is a resident of the village of Sur Bahir, including the village territory between the separation wall and the municipal territory of Jerusalem, and he resides in the village on permanent basis and not temporarily."

13. **From this notice it transpires that the Attorney General agreed to deem anyone who resides on a permanent basis in the village of Sur Bahir, including in the territory between the boundary of the city of Jerusalem and the separation wall (which includes the Wadi Humus neighborhood) – as residing within the State of Israel. Therefore, if in addition to his residing in this territory he is also a permanent resident of Israel, then the National Insurance Law shall apply thereon, both to the matter of the duties and to the matter of the rights.**

14. **This decision by the Attorney General was given in view of the special circumstances that characterize the area in question, which lies in between the official borders of Jerusalem and Israel, and the separation wall which is located beyond that border. The separation wall created a concrete and unusual reality. It in fact constitutes an impassable physical barrier which prevents a resident who resides on the "Israeli" side of the wall from maintaining a center of life in the territories of the West Bank. Therefore, the residents of this area are caught in the middle and cannot in fact maintain a center of life anywhere other than in Israel. In addition, it should be remembered that the area in question constitutes a natural extension of the village of Sur Bahir (namely of Jerusalem), and there is no material border line (such as a fence or any other kind of marking) which separates the territory of Israel from this area, and thus, this is a**

single homogenous village. It seems that the village of Sur Bahir developed naturally also towards the east, such that its residents built their homes beyond the village territory which is also the territory of Jerusalem and the State of Israel. It is not needless to mention that it was precisely for that reason that the State previously decided to set the route of the separation wall not in accordance with the official border, but with a different outline, and thus the village of Sur Bahir remained a single homogenous unit (see the notice filed on behalf of Petitioners and the Respondents in HCJ 9156/03 *Da'ud v. Seam Area Administration*). **In view of all the aforesaid, the Attorney General deemed it fit to consider the Israeli permanent residents of this area as residents of Israel for purposes of the National Insurance Law.**

15. **The Attorney General's determination, which refers to the National Insurance Law, should also be applied with respect to the Entry into Israel Law. First of all, the Respondent did not present any substantive reason for a distinction between the two laws, and did not demonstrate why the Attorney General's decision to consider the residents of the Wadi Humus neighborhood as residents of the State of Israel for the purposes of applying the National Insurance Law, should not also be applied with respect to the Entry into Israel Law. And indeed it seems that there is no substantive justification to determine that in the matter of granting economical and social rights given by virtue of the National Insurance Law the residents of the area should be deemed as residents of the State of Israel, while in the matter of granting the right to family life they should be deemed as residing outside the State's territory. Secondly, the Respondent himself commonly appeals to the NII in order to clarify the question of the applicants' center of life, and he relies in his decisions on the NII's investigations and its opinion (see for example the Respondent's decision to deny the appeal submitted by the Petitioners who are the subject matter of this petition, Exhibit** R/30 **to the Reply). Also in the case before us, the Respondent approached the NII not less than three times to examine this issue, and received the summaries of four different investigations made by the NII with respect to Petitioners' place of residence and center of life. It is not justified for the Respondent to rely on factual determinations arising from the NII's investigation, but to completely renounce the legal significance resulting therefrom with respect to the law for which it is responsible. Once the Respondent chose to factually rely on the NII's determinations, he must also to consider the legal consequences arising from such determinations, and in this case, the consequence that the residents of Wadi Humus who are permanent residents in Israel should be deemed as residing within the State of Israel.**

16. **The Respondent's claim according to which applying the Attorney General determination to the Entry into Israel Law constitutes in fact an annexation of the Wadi Humus area to the State of Israel, should be rejected. As the Attorney General's decision referring to the National Insurance Law did not lead to the annexation of the said area to Israel, thus applying the same decision to the Entry into Israel Law does not lead to such annexation. It is a decision which is made in accordance with the**

reality and the special circumstances which have been created, and which have led to the fact that permanent residents of Israel are living in an area that does not formally belong to Israel, but is linked thereto in all other aspects, and they are unable to live their lives in an area which is subject to another legal regime. In this context it should be emphasized that the Attorney General's decision refers only to permanent residents of Israel and not to all residents of the said area and it seems that this decision has no bearing on any annexation whatsoever.

17. **Indeed, the Petitioners' place of residence is formally situated outside the territory of the State of Israel, but in the special reality that was created, there is a room to rule that the center of their lives is within Israel. In this context, it should be stated that Petitioner 1 works in Israel and the Petitioners' children study and receive medical treatment therein. In addition, the Petitioners receive all services and infrastructures from Israel and their social and familial life are therein. This reality is a result of the situation that the separation wall created, and as long as this situation exists, it should be ruled that Petitioners' center of life is within the territory of the State of Israel for the purposes of the Entry into Israel Law, and the Respondents' decision which refuses their application should be reversed. The Respondents are required to grant Petitioner 2 temporary status in Israel as long as the current legal and political situation persists.**

18. **There is no need to state that the result of this judgment is valid as long as the reality created by the separation wall persists. If, and insofar as in the future this reality should change, the Respondent will be entitled to consider the new reality that will be created and its implications on Petitioners' status.**
The Respondent shall bear Petitioners' expenses and fees in the amount of NIS 4,000.
The office of the court's clerk shall forward the judgment to the parties.

Issued today 1 Sh'vat 5769 (26 January 2009) in the absence of the parties.

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Judith Tsur, Deputy Chief Justice