At the Supreme Court **AdmPA /09**

Sitting as the Administrative Appeals Court

In the matter of: **The State of Israel – Ministry of the Interior**
represented by the State Attorney's Office
Ministry of Justice, Jerusalem
Tel: 02-6466513; Fax: 02-6467011

The Petitioners

- Versus -

1. **Hamadah**
2. **Hamadah**
3. **Hamadah**
4. **Hamadah**
5. **Hamadah**
6. **Hamadah**

represented by counsel, Att. Adi Lustigman
of 27 Shmuel Hanagid St., Jerusalem
Tel: 02-6222808; Fax: 02-5214947

The Respondent

Notice of Appeal and Motion to Delay Implementation of Judgment

1. An appeal from the judgment of the Jerusalem District Court sitting as the Court for Administrative Matters (the Honorable Judge Y. Tsur) dated 26 January in AdmPet 8568/08 (hereinafter: **the judgment**) and motion to delay implementation of the judgment are hereby filed.

   A copy of the judgment is attached and marked **AP/1**.

2. In the judgment, the Trial Court accepted the Respondents' petition against the decision of the Ministry of the Interior – the Population Administration Bureau in East Jerusalem to reject the application of Respondent 1 to grant a permit for residency in **Israel** pursuant to a family unification procedure to his wife, Respondent 2, and instructed the State to grant Respondent 2 a permit for residency in **Israel**. In addition, the Court ordered the State to pay costs in the amount of NIS 4,000.

3. The position of the State is that the judgment includes a number of substantive errors and that its reversal must be ordered. The grounds for the appeal shall be briefly listed below.

<u>The grounds for the appeal in brief</u>

4. The State will argue that the Trial Court erred in instructing the State to grant Respondent 2 a permanent for residency in **Israel** in the framework of a family unification procedure, despite the fact that Respondent 1, the husband of Respondent 2, the inviting person in the framework of the family unification procedure – **does not reside in Israel**, and despite the fact that Respondent 2 **does not reside and is not expected to reside in Israel**.

5. The State shall further claim that the Trial Court erred in deducing from the consent given by the National Insurance Institute before the Labor Court in NI 10177/05 **The Sur Bahir Village Committee v. The National Insurance Institute**), according to which persons **holding a permit for permanent residency in Israel** and residing in Wadi Humus, namely, outside the territory of the State of Israel, will continue to be entitled to rights and bound by duties **under the National Insurance Law** 5755-1955 (hereinafter: **the National Insurance**

Law), that such persons must be deemed as residing inside the territory of the State of Israel.

Subsequent to this, the Court erred in that following this erroneous conclusion it proceeded to draw another erroneous conclusion in ruling that persons residing, as stated, in Wadi Humus, **outside the boundaries**, are to be deemed as persons whose place of residence is inside the territory of the State of Israel also for purposes of **the Entry into Israel Law** 5712-1952 (hereinafter: **the Law** or **the Entry into Israel Law**); and that this was to justify granting a permit for residency in **Israel to a foreign national residing outside Israel**.

6. In this context, the State shall also argue that the Court erred in that it did not give any weight to the fact that the decision of the Ministry of the Interior not to grant Respondent 2 a permit for residency **in Israel**, did not harm the family unit, as she resides with her husband and children, on a permanent basis, **outside the territory of the State of Israel**.

7. Finally, the State shall argue that the Trial Court erred in rejecting the claim regarding laches with respect to the Respondents' petition, as the original decision of the Ministry of the Interior was made in **2001**. The State shall argue that the delay in the submission of the Petitioners' petition began on this date and not in 2007, when the Ministry of the Interior gave its decision in another application made by the Respondents on the very same matter.

   In this context, the State shall argue that the Trial Court erred in ruling that the claim regarding laches must be rejected on the grounds that the State's position was not prejudiced during the time of the delay. The State shall argue, that during the period of time from 2001 and up to the filing of the petition before the Trial Court, it gave its consent (following submission of a petition to this Honorable Court) to divert the planned route of the security fence in the area where the Respondents reside from a route passing between Wadi Humus, where the Petitioners live, and the village of Sur Bahir, to a route which includes Wadi Humus on the western – "Israeli" side of the fence.

   This consent might not have been given had the administrative petition which is the subject matter of this appeal been submitted within an appropriate timeframe following the handing

down of the decision in 2001 – if the State had known, while planning the route of the security fence, that it might be required to grant status in Israel to the foreign spouses of Israeli residents **residing in the Judea and Samaria Area**, due to the fact that the fence runs inside the Judea and Samaria Area (east of the village homes which are located in the Judea and Samaria Area), it might not have agreed at the time to change the route of the fence.

The relevant facts

8. Respondent 1 has held a permit for permanent residency in Israel from the day of his birth, 20 March 1970, and is the son of two parents who have held a permit for permanent residency from 1967. The parents of Respondent 1 are registered in the Israeli population registry as residing in the village of Sur Bahir, inside the territory of the State of Israel. Respondent 2 is a Jordanian citizen who entered Israel with a visa and a B/2 visitation permit under the Entry into Israel Law on 3 May 1994. The couple married in 1994 and had four children – Respondents 3-6.

9. In 1994, Respondents 1 and 2 filed a family unification application, and in 1998 Respondent 2 was granted a permit for temporary residency in Israel (visa and A/5 permit) for 12 months. In the first application submitted by the Respondents **they expressly specified** that they resided in Jerusalem, Sur Bahir, despite the fact that they were living in Wadi Humus, which is near the village of Sur Bahir, but **outside the municipal border of Jerusalem and the national border of the State of Israel**. The Respondents also submitted signed affidavits according to which Respondent 1 was living at his parents' home in the village of Sur Bahir, inside the territory of Jerusalem. The same was noted by the Respondents in all the applications they subsequently filed.

   The Respondents' applications were attached as Exhibits R/1-R/5 to the Response filed on behalf of the State to the Trial Court. All the exhibits attached to the State's response in the petition before the Trial Court will be filed in the exhibit file in this appeal.

10. **In 1999**, Respondent 1 requested the extension of the residency permit of Respondent 2 (R/8 to the State's Response to the petition before the Trial Court). In this application too, the Respondents marked the Respondents' address as **Sur Bahir, Jerusalem**.

    In the framework of examining this request, the State, through the Population Administration Bureau, conducted an examination with the National Insurance Institute which yielded that the Respondent has lived, on a permanent basis, from the day of his marriage, in a home located in an area named Wadi Humus, which is geographically adjacent to the village of Sur Bahir, but unlike Sur Bahir, it is located **outside the municipal boundary of Jerusalem**, outside the borders of the State of Israel, namely – in the **Judea and Samaria Area**.

11. **In 2001**, subsequent to a hearing held for the Respondents, another examination was conducted with the National Insurance Institute, which also yielded that the Respondents and the members of their household resided in Wadi Humus. Therefore, on 21 June 2001, the State notified Respondent 1 that his request to grant his wife, Respondent 2, a permit for residency in Israel in the framework of a family unification application was denied.

    In view of the findings before the Ministry of the Interior, and once it became clear that the Respondents permanently resided outside the State of Israel in their own residential unit, the permit for temporary residency in Israel was not granted to Respondent 2 and not extended.

    The aforesaid indicates that since the permit for temporary residency expired in 1999, Respondent 2 has not held a valid permit for residency in Israel.

    The notification of the Ministry of the Interior to Respondent 1 dated 21 June 2001 was attached to the Response at the Trial Court as Exhibit R/17.

12. In the interim, construction of the security fence in the Respondents' area of residence began. In the framework of building the security fence, the route of the fence was planned to run near the municipal border of Jerusalem (which is also the national border of the State of Israel in that area) between the village of Sur Bahir (located inside the State of Israel) and

Wadi Humus, where the Respondents reside, such that the home of the Respondents (and many like them) was to remain on the eastern – "Judean and Samarian" – side of the fence.

However, following the submission of the petition before the Honorable Court in HCJ 9156/03 **Jabur v. Seamline Administration**, the State consented to change the fence's route such that it include, among others, the homes built in Wadi Humus, which is in the Judea and Samaria Area on the western – "Israeli" side of the fence.

13. In 2006, Respondent 1 filed another family unification application for Respondent 2, this following the judgment of the Labor Court in NI 10177/05 **The Sur Bahir Village Committee v. The National Insurance Institution** (hereinafter: the **National Insurance** case), which concerned the issue of the continued entitlement of **holders of permits for permanent residency** in Israel who had moved to Wadi Humus, which is located **in the Judea and Samaria Area**, but on the western side of the security fence, to payments under the National Insurance Law.

14. In the framework of examining the application submitted to the Ministry of the Interior in 2006, the Ministry of the Interior conducted a third examination with the National Insurance Institute, which again yielded that Respondent 1 and the members of his household continued to reside in Wadi Humus, namely, **outside the State of Israel, in the Judea and Samaria Area**. In light of this, on 3 December 2007, the Ministry of the Interior again notified Respondent 1 that the application for a permit for residency in Israel for Respondent 2 was denied, since, **as already noted in the decision of the Ministry of the Interior from 2001, the Respondents did not reside in the State of Israel**. The Respondents filed an objection to this decision, and the same was denied by the Ministry of the Interior on 1 January 2008.

The notices of the Ministry of the Interior were attached to the Response on behalf of the State at the Trial Court as Exhibits R/28 and R/30 respectively.

Against these decisions, the petition in AdmPet 8568/07 was filed.

<u>The judgment of the Trial Court</u>

15. **In the judgment, the Court accepted the Respondents' petition and reversed the decision of the Ministry of the Interior not to grant Respondent 2 a permit for residency in Israel in the framework of a family unification application in Israel with Respondent 1**, and ordered the Ministry of the Interior to grant Respondent 2 a permit for residency in **Israel, despite the fact that she resides, with her nuclear family, outside the country**.

16. **First**, the Court rejected the State's claim that the petition must be denied due to laches. In this context, the Court ruled, *inter alia*, that the Respondents incurred no damage by the Respondents' delay in submission of the petition. **This is not the case**.

17. **Second**, the Honorable Trial Court ruled that the issue under review in the petition before it was "whether in light of the judgment in the **National Insurance** case, the Respondents, who reside in Wadi Humus, namely in the Judea and Samaria Area, should be deemed **as maintaining a center of life in Israel. This is not the case**.

The notice submitted by counsel for the National Insurance Institute in the National Insurance case, as quoted in the judgment of the Trial Court establishes that:

> "A *conditio 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 all the aforementioned and due to the fact that this is a single homogenous village, the Attorney General instructed the Defendant to announce that as long as the legal and political situation prevails and as long as the separation fence exists as planned, the Defendant shall 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 holds a permit for permanent residency under the Entry into Israel Law 5712-1952.

B. He is a resident of the Sur Bahir village, including village territory between the separation fence and the municipal territory of Jerusalem, and he resides in the village permanently and not temporarily."

[emphases added]

Despite the clear phrasing of the National Insurance Institute's notice on which the judgment relies, and despite the fact that the judgment is quoted by the Trial Court in its judgment, it was ruled, in the Trial Court's judgment, that the State 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…". **This is not the case**.

Third, on the basis of the erroneous premise cited above, as if the State of Israel agreed to deem persons permanently residing in Wadi Humus, outside the municipal border of Jerusalem and the national border of the State of Israel, **as residing within the State of Israel**, the Court deduced the manifestly erroneous conclusion that the same should apply to the residents of Wadi Humus **also for purposes of the Entry into Israel Law. This is not the case.**

From this erroneous conclusion, two further erroneous conclusions are drawn, according to the Trial Court. **The first** is that persons residing, as stated, in Wadi Humus, **outside the territory**, should be deemed as persons residing inside the State of Israel also for purposes of the Entry into Israel Law; and **the second** is that this, i.e. – residence in this area, justifies the granting of a permit for residency **in Israel to a foreign national residing outside Israel**.

18. In light of the aforesaid, the Trial Court established that despite the fact that **all the Respondents reside outside the State of Israel**, indeed, due to the special reality that has been created (namely, the expansion of the village of Sur Bahir beyond the municipal border of Jerusalem and the Israeli national border and the erection of the security fence in its current route, such that Wadi Humus, which lies outside the State of Israel and Jerusalem remains west of the fence), there is room to rule that Respondent 1, **a foreign national residing outside Israel**, is to be granted a permit for residency **in Israel**, so long as the political and legal situation prevails.

In view of these erroneous conclusions, the Court accepted the petition and ordered a permit for residency in Israel be granted to Respondent 2, who, no one disputes, lives with her husband and children **outside Israel**.

This decision has far reaching broad ramifications – namely, the granting of permits for residency in Israel to persons living outside it. In view of these broad ramifications, the State also requests the issuance of an order to delay implementation of the decision of the Trial Court.

The grounds for the appeal

19. The State's position is that the Trial Court's judgment must be reversed, as the Trial Court erred in its judgment on several substantive points.

20. The request which lies at the foundation of the petition submitted to the Trial Court concerns the granting of status in Israel – a permit for residency **in Israel** to a person who is a **foreign national** who resides with her nuclear family **outside the borders of the State of Israel** on a permanent basis.

21. The purpose of the Entry into Israel Law is to empower the Minister of the Interior, or persons acting on his behalf, to grant permits for residency in Israel, according to his discretion. It is obvious that the authority of the Minister of the Interior to grant permits for residency in Israel under the Entry into Israel Law, **is for the purpose of residing in Israel**.

22. The State shall argue that the Honorable Trial Court erred in drawing a parallel between the *ex gratia* arrangement to which the National Insurance agreed with respect to the application of the National Insurance Law ***vis-a-vis*** **the rights and duties under the same of persons already holding a permit for permanent residency in Israel** and residing in the part of the village of Sur Bahir located in the Judea and Samaria Area, and the application of the provisions of the Entry into Israel Law to our case, namely – **the granting of status in Israel, under the Entry into Israel Law, to someone who is a foreign national, permanently residing outside the State of Israel**.

23. **First**, the State shall argue that the Trial Court erred in ruling that in the **National Insurance** case, the National Insurance agreed to deem persons permanently residing in the Wadi Humus area (located in the Judea and Samaria Area) **as residing in the State of Israel**.

The State shall argue that the consent of the National Insurance (pursuant to the instructions of the Attorney General), in that same proceeding before the Labor Court, did not relate in any way to a recognition of persons living outside the State of Israel as **residing within the State of Israel**, for purposes of the National Insurance Law. The consent of the National Insurance in that proceeding was merely a consent not **to deny** the rights to which persons already **holding a permit for permanent residency in Israel** and residing at the time in the Wadi Humus area, which is located **outside the State of Israel**, are entitled under the National Insurance Law, **despite** the fact that they do not reside in the State of Israel.

This is clearly indicated by the notice submitted by the National Insurance in that proceeding, which, due to its importance, we shall quote again, as quoted by the Trial Court in its judgment:

> "A *conditio 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 all the aforementioned and due to the fact that is a single homogenous village, the Attorney General instructed the Defendant to announce that as long as the legal and political situation prevails and as long as the separation fence exists as planned, the Defendant shall 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 holds a permit for permanent residency under the Entry into Israel Law 5712-1952.

B. He is a resident of the Sur Bahir village, including village territory between the separation fence and the municipal territory of Jerusalem, and he resides in the village permanently and not temporarily."

[emphases added]

Namely – in the special circumstances created by the expansion of the village of Sur Bahir (beyond the Israeli national border to the Wadi Humus area), and given the present route of the security fence, persons meeting the abovementioned preconditions are entitled to rights and bound by duties **under the National Insurance Law and under this Law only, despite the fact that they do not reside in the territory of the State of Israel**.

(As noted by counsel for the National Insurance Institute in her notice, a *conditio sine qua non* for application of the National Insurance Law to a given person is that he lawfully hold a permit for permanent residency in Israel and also that he reside in the territory of the State of Israel.)

Therefore, the Trial Court erred in ruling that the meaning of the aforesaid consent given by the National Insurance to deem persons residing in the "Judean and Samarian" part of the village of Sur Bahir as residents of the State of Israel. **Not only is this area outside the State of Israel, but clearly a statement such as the above did not purport to apply and cannot be applied offhand to persons who never received a permit for permanent residency in Israel.**

24. It is not superfluous to note at this point, that not only does the State not recognize persons residing outside its borders as residents; and not only does the State not issue permits for permanent residency to persons who are not present within its borders; but rather in accordance with the Entry into Israel Regulations 5734-1974 (hereinafter; the **Entry into Israel Regulations**), a permit for permanent residency granted to a person who had settled outside Israel may expire under certain conditions.

25. In light of this, there is no basis for the conclusion drawn by the Trial Court that in view of the National Insurance's consent with respect to the rights and duties of persons holding a permanent residency permit who reside outside the territory, in Wadi Humus, **under the National Insurance Law**, such persons must also be deemed as **residing within the State of Israel for purposes of the Entry into Israel Law.**

    This conclusion is all the more baseless with respect to a person who neither holds nor is entitled to lawfully hold a permit for permanent residency in Israel and who resides in Wadi Humus.

26. **Second**, as indicated by the notice filed by counsel for the National Insurance in the **National Insurance** case as quoted above and in the judgment of the Trial Court, **the first condition** for maintaining rights and duties under the National Insurance Law with respect to persons living in the "Judean and Samarian" part of the village of Sur Bahir is that they **hold a permit for permanent residency in Israel**.

    The rationale for the consent given as it was before the Labor Court, was that in the special circumstances created by the expansion of the village of Sur Bahir into the Judea and Samaria Area, and considering the present route of the security fence, it would not be right to deny persons **who hold a permit for permanent residency in Israel** the rights **they had already possessed under the National Insurance Law**.

    However, drawing from this the conclusion reached by the Trial Court that due to this consent, given beyond the letter of the law (namely – the National Insurance Law), one must grant a permit for residency **in Israel** to a person who is **a foreign national**, who has no vested right to receive a permit for residency in Israel at all, for the purpose of family unification **in Israel**, where her spouse **does not reside in Israel**, and this, solely because this spouse continues to receive rights and be bound by duties under the National Insurance Law *ex gratia*, is going a long way.

27. On this issue, the State wishes to refer to the judgment of the Honorable Judge Solberg in AdmPet 8350/08 at the Jerusalem Magistrates Court, issued on the very same day that the judgment of the Honorable Judge Tsur was issued in our case.

That case concerned the question of granting a permit for residency in Israel to two of the children of the Petitioner in that petition. [The Petitioner] holds a permit for permanent residency in Israel and he also resides in the Wadi Humus neighborhood, located, as stated, outside the State of Israel. As for the significance of the judgment in the National Insurance case, the Honorable Judge Solberg noted that:

> 14. As may be recalled, the Petitioners also sought to rely on the aforesaid judgment which applied the National Insurance and Health Insurance Laws. Based thereon, the Petitioners argued that that the institutions of the State have already acknowledged that the center of life 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 the National Insurance and Health Insurance Laws, status will be granted only to a person who holds a permit for permanent residency, and is also a resident of the village. Only upon the fulfillment of both these conditions, cumulatively, will 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 residency 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 residency, is not entitled to these conditions (Petitioner 1 and his seven children from his first wife were amongst the claimants there, unlike Petitioners 2 and 3 at bar, who had not joined the suit there). This means that they themselves recognized the distinction between a person holding Israeli residency 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 residency,

> borders on bad faith and is logically deficient. The argument is tautological, in other words, because the Attorney General determined that amongst the residents of the Wadi Humus neighborhood, anyone having the status of 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 residency. Accepting this argument is thus illogical, and will also unduly prejudice the Respondents who gave their consent to the arrangement pertaining to national insurance based on the existence of a distinction between those who are permanent residents and those who are not.
>
> [emphases added]

A copy of the judgment given by the Honorable Judge Solberg in AdmPet 8350/08 is attached and marked **AP/2**.

28. Moreover, it is clear that one cannot learn from the legal position, held beyond the letter of the law, as presented in the National Insurance case **not to deny** a group of persons holding permits for permanent residency in Israel **certain economic rights already given to them**, that other, new rights should be **granted**, certainly not rights concerning **the granting of status**. All the more so when the person in question is not among that initial group of persons holding a permit for permanent residency. (on this issue see and compare, for instance, HCJ 799/08 **Pinchas Shalalam v. Licensing Official under the Firearm Act et al.**, *Piskey Din*, 36(1) 317 (1981) and the quotes therein).

29. **Note well, the significance of the Trial Court's judgment in our case is that the Ministry of the Interior is now obliged to grant a permit for permanent residency to a woman who is a foreign national, whose spouse does not live in Israel, who, herself does not live and has not lived in Israel, nor is seeking or expected to live in Israel.**

The decision of the Ministry of the Interior which is the subject matter of this discussion is the decision **not to accede the Respondents' application to grant a permit for residency in Israel pursuant to a family unification procedure, under the Entry into Israel Law**. A

decision such as the aforementioned is given considering the fact that the Entry into Israel Law was not intended to grant a permit for residency **in Israel** to a foreign national **who does not reside in Israel** and considering the purpose of the **family unification procedure** - protection of the family unit by providing the couple the possibility of living together **in Israel** and in order not to place the Israeli spouse in a dilemma of choosing between his spouse and his place of residence.

In our case – there is also no dispute that Respondent 1, the Israeli spouse – holder of a permit for residency in Israel, **does not reside in Israel**. The couple has lived together, with their children, in their home since their marriage in Wadi Humus – **outside the State of Israel**. In any case, it is clear that the Israeli spouse does not wish to invite and has no intention of inviting his wife to live with him in **Israel** by way of a family unification procedure.

Thus, how can it be determined, in these circumstances, that the decision of the Ministry of the Interior not to grant a permit for residency **in Israel to a person who has not resided therein** (although, it must be noted, at the outset, made a false declaration that he did reside therein) **and does not intend to reside therein**, that he is entitled to have the Ministry of the Interior grant his wife a permit for residency in **Israel**?

In these circumstances, the State shall claim that the Respondents' application for **granting of a permit for permanent residency in Israel** under the Entry into Israel Law to a **foreign national who does not live in its territory** was lawfully denied and that there was no cause, legal or otherwise, for the Trial Court's intervention in this decision and that, therefore, the Trial Court's ruling must be reversed.

30. In this matter too, the remarks of the Honorable Judge Solberg in the abovementioned AdmPet 8350/08 are relevant. One of the arguments presented by the petitioners in that matter was that the two children must be granted the same status as their father in order to prevent breaching the integrity of the family unit, this, in accordance with Regulation 12 of the Entry into Israel Regulations 5734-1974 (hereinafter; the **Entry into Israel Regulations**).

In this context, the Honorable Judge Solberg referred to the judgment of the Honorable Court in HCJ 979/99 **Pavaloayah Carlo (minor) v. Minister of the Interior**, *Takdin Elyon*, 99(3), 108 (1999), and noted that the purpose of Regulation 12 is to have a child born to parents who are Israeli residents have the same status as his parents, so that he is able to live his life with his parents, without their being forced to relocate. However, where the parents do not live in the State of Israel, **the rationale at the basis of the Regulation does not exist**:

> "10. From the day Petitioners 1 and 2 were born until today, they have been residing outside the area of sovereignty of the State of Israel. Their parents too do not reside 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 at the basis of the regulation, to grant them status in Israel.
>
> 11. Thus, Regulation 12 does not apply in the case of Petitioners 2 and 3 and therefore the application of Petitioner 1 to grant them permanent status must be examined as any application for family unification. The Minister of the Interior has formulated a procedure regarding this issue, pursuant to the powers vested in him under the Entry into Israel Law. This procedure determines, first and foremost, that it is not enough that the inviting person has the status of permanent resident in Israel, but it should rather be examined whether the inviting person indeed is an actual Israeli resident. This 'residence' must be examined according to the question where his center of life is. At the basis of this procedure, as 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, a real need arises to apply tests of ties 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 tie 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 rights of one sort or another;

…

13. We know where the Petitioner at bar resides. It is also known that his children reside 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 reside 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.

[emphases added]

31. Similarly, in our case too, the State shall argue that considering the fact that there is no dispute in our case as to where the Respondents reside, and the fact that the Respondents all live together **outside the State of Israel** is not disputed, the Honorable Trial Court erred when it reversed the decision not to grant Respondent 2 a permit for residency **in Israel**, when it is known that she resides with her nuclear family outside Israel.

32. **Third**, the State shall argue that the Honorable Court erred in rejecting the **argument regarding laches**, considering the overall circumstances of the matter.

The Court noted in its decision, that the delay in submission of the petition was relatively short, due to the fact that the petition was filed a few months after the Respondents' additional application was denied in 2007. The Court further noted that the Respondents' delay did not prejudice the position of the State and that for this reason too, the State's argument regarding laches must be rejected.

33. The State shall argue, with all due respect, that these rulings cannot stand.

The delay in the Petitioners' petition was not simply a delay from 2007, when the Respondents' second application was denied by the Ministry of the Interior, but a delay since the date of the original decision in their matter in 2001, as the decision in 2007 was, in effect, merely a decision that there was no cause to change that original decision.

It shall be further noted in this context, that the Respondents, for all intents and purposes, deceived the State when the original application to grant a permit for residency to Respondent 2 was submitted. As indicated by the facts, the Respondents have falsely represented themselves from the time the original application was filed, as if living in the village of Sur Bahir, in the home where the parents of Respondent 1 - the husband are still living today. This house is located inside the territory of the State. The Respondents claimed, and also declared in an affidavit before the Jerusalem Magistrates Court, pursuant to the demand of the Ministry of the Interior, that they live in the parents' home in Israel, in Sur Bahir.

Only after this affidavit was filed, was Respondent 2 issued with a permit for temporary residency in Israel for one year. This and more, only when the renewal of the permit was requested, did it become clear, following an investigation conducted by the National Insurance Institute, that the Respondents made a declaration which was manifestly untrue to

the Ministry of the Interior. As such, as of the expiration of this permit for temporary residency, Respondent 2's permit was not renewed.

Against this refusal, no appeal, objection or petition was filed by the Respondents. The Respondents sat and waited "on the fence", literally, as we shall illustrate below.

34. As noted above, in the framework of planning the route of the security fence in the area of the village of Sur Bahir, the route of the fence was to pass close to the municipal border of Jerusalem (which is also the border of the State of Israel in that area) between the village of Sur Bahir (which is located inside the State of Israel) and Wadi Humus, where the Respondents reside, such that the home of the Respondents (and many like them) was to remain on the eastern – "Judean and Samarian" side of the fence. However, following submission of the petition before the Honorable Court, the State agreed to change the route such that it also includes the homes built in Wadi Humus, which is located in the Judea and Samaria Area, on the western – "Israeli" side of the fence. This consent by the State was endorsed as a judgment **in December 2003**.

35. Considering the aforesaid, it is not true that the Respondents' delay in submitting the petition regarding the State's decision in their matter in 2001 did not prejudice the State's position, since, if the administrative petition which is the subject matter of this appeal were filed within the appropriate timeframe after the decision in 2001, it would have been reviewed before the erection of the security fence; and, if the State had known at the time the route of the security fence was determined that it might be required to grant status in Israel to foreign spouses of Israeli residents **residing in the Judea and Samaria Area** because the fence goes through the Judea and Samaria Area (east of the houses of the village which are located in the Judea and Samaria Area), it might not have agreed at that time to change the route of the fence.

In this context, it shall be noted, that this matter impacts not only the case of the Respondents, but also many other residents in the area surrounding Jerusalem, whose circumstances are similar to those of the Respondents.

36. Thus, with respect to our case, the State's consent to change the route of the separation fence such that it leaves Sur Bahir as well as Wadi Humus west of the fence, constitutes, in effect, a change for the worse of its position, in relation to its position in 2001, before the erection of the fence in area of the village of Sur Bahir.

37. **Therefore, and in light of all the aforesaid, the Honorable Court is requested to accept the appeal and reverse the judgment of the Trial Court**.

Request for delay of implementation

38. Considering all the aforesaid, the State shall request the Honorable Court to order delay of the implementation of the operative section of the Trial Court's judgment, i.e. – **granting a permit for residency in Israel to the Respondent, who does not reside in Israel**.

39. First, the State shall argue, that in light of all the grounds provided herein, the chances of the appeal's admittance are high, which justifies delaying implementation of the judgment.

40. Second, the State shall argue that the balance of convenience also leans in favor of the State in this case, considering the fact that granting Respondent 2 a permit for temporary residency in accordance with the judgment of the Trial Court **will alter the existing situation** whereas delaying implementation of the judgment will preserve the *status quo*.

We shall recall here, that Respondent 2 has not held a valid permit for residency in Israel since 1999, and also, the permit she was granted in 1998, was issued on the basis of false pretenses.

Moreover, as explained above, not granting Respondent 2 a permit for residency **in Israel** under the Entry into Israel Law, as requested by the Respondents in the framework of a **family unification procedure in Israel**, will not cause harm to Respondent 2, who does not require said permit for residency in order to continue residing with her family, **in her home which is located**

outside Israel, in the Judea and Samaria Area, and from which the State has no intention to remove her.

41. In view of this, the Honorable Court is requested to instruct delaying the implementation of the Trial Court's judgment.

Today, 5 Adar, 5769

1 March 2009

[signed]
Yochi Genesin, Att.
Director of Administrative Affairs
State Attorney's Office

[signed]
Hila Gorny, Att.
Senior Deputy State Attorney