At the District Court in Jerusalem **Adm. Pet. 952/02**
Sitting as the Court for Administrative Matters

In the matter of:

1. M. Abu Jawila
2. A minor girl
3. A minor boy
4. A minor boy
5. A minor boy
Petitioners 1-5 are all from Kafr Aqeb, East Jerusalem
6. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – Reg. Assoc.

all represented by attorneys Adi Landau (Lic. No. 29189) et al., of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeideh Street, Jerusalem 97200
Tel. 02-6283555; Fax. 02-6276317

The Petitioners

v.

Ministry of the Interior et al.

by the Jerusalem District Attorney's Office
4 Uzi Hasson Street, Jerusalem
Tel. 02-6208177; Fax. 02-6222385

The Respondents

Reply of the Petitioners

In accordance with the decision of the Honorable Court of 10 February 2003, the Petitioners hereby state that they oppose postponement of decision on the petition until the decision is reached in HCJ 4608/02.

1. The present petition involves the Respondents unfair conduct in arranging the status of children permanent residents of the State of Israel. The conduct has continued for years and reached its peak toward the end of last year, when a sweeping decision was made to refrain from registering in the Population Registry children one of whose parents is a permanent resident and are born abroad. This decision was neither set forth in writing nor published.

The decision of the Supreme Court will have no effect whatsoever on the present matter for several reasons:

"Family unification" as opposed to "registration of children"

2. The main response of the Respondents is based on the false sameness that the Respondents give to "family unification" for the resident's spouse and the "registration of [minor] children" of the resident. These are two separate matters.

   A. In registering a child, the main interest being protected is the best interest of the child and the right and obligation of a parent having custody over his child and determining his palace of residence (see HCJ 979/99). In family unification for spouses, the main protected interest is the wholeness of the family.

   B. In registration of a child, the general principle is set forth in Section 12 of the Entry into Israel Regulations (hereinafter: Section 12). Based on their wording, these regulations indeed apply only to a "child born in Israel," but the logic is apt also for a child born in the region (see HCJ 979/99, at the end of Section 3 of the judgment). Contrarily, family unification is subject to the Entry into Israel Law only (and there is not, of course any distinction between a spouse born in Israel and one who was born abroad).

   C. In registering a child, for years the Respondents have employed, both as regards children born in Israel and children born abroad, a standard criterion, which is the center of life of the child (see Appendixes P/9-A and P/11-C to the petition). In family unification for a spouse, there are other criteria as well: the candor of the marriage, the lack of a criminal or security basis for denying the application.

   D. The differences in criteria resulted in a graduated arrangement in the family unification process for spouses, an arrangement that was never applied to minors (except for the relatively new attempt to set two years of temporary residency for children born outside of Israel – but this arrangement, too, is completely difference from the graduated arrangement for spouses). In the graduated arrangement, applied only in applications for family unification for spouses, the authorities check – each and every year for a period that exceeds five years – the center of life of the spouses, the candor of their marriage, and the lack of a security and criminal record.

   E. Because of the differences in the circumstances, the Respondents distinguished between the procedure relating to granting a status to children of a resident whose center of life is in Israel (a desired and necessary matter) and

the procedure relating to the spouse (a procedure that, on its face, allows the broader exercise of discretion). Registration of children entails a special form of its own (which has always included children born in Israel and children born abroad). The handling of the request is swifter. Other clerks handle the request – both in the office in East Jerusalem and in the head office of the Population Administration. The fee, when collected (in instances of children born outside of Israel), is collected only at the time that the status is granted and not at the time the request is submitted. In the past, the Respondents did not allow children born in Israel to be registered without the fee being paid and children born outside of Israel would also be registered (simultaneously).

See Section 42-45 of the petition.

The government's decision deals with family unification of the spouses and not with arranging the status of children of permanent residents of the State of Israel

3. Study of Government Decision 1813 (hereinafter: the government's decision) indicates that it deals only with family unification for spouses, and not with the status of children of residents of Israel whose center of life is in Israel:

A. The announced purpose of the government's decision was to discuss the family unification procedure with the objective of making naturalization more difficult, and this for security reasons, as stated. In sections C-F of the government's decision, as in all publications in the media, the ways that the Respondents were considering to change the procedure were published. These ways included, in part, extending its period, set quotas, make it more expensive, reduce the possibility of naturalization and of persons taking part in the procedure who had a security or criminal record. All these conditions have no connection with children, either in general or with the children who are the subject of the present petition.

B. Furthermore, the statements set forth by Respondents' counsel in Sections 12, 26, 28, 49, 50 of its preliminary response, in which they emphasize the security rationale underlying the government's decision renders meaningless their argument that the government's decision includes the registration of children. Surely, the Respondents are not arguing that the Petitioners children, minors ages 7, 11, 12, and 13 endanger state security.

C. The wording of the government's decision also dictates this interpretation. The government's decision expressly mentions that its consequences related to "the foreign spouse" and to persons who are taking part in the "graduated procedure – the procedure that relates only to family unification for spouses.

The decision also mentions preventing the entry of "spouses of fictitious or polygamous marriages, and also children of previous marriages of the invited person" – which also teaches that the intention is to invitees who are adult spouses.

HCJ 4508/02 relates to other matters

4. The petition in HCJ 4608/02 was set for hearing in May 20-03, and it is not known when a decision will be reached. In any event, the petition relates to the government's decision, which, as we have seen, does not make the slightest mention of the registration of children in the Population Registry. Contrarily, the present petition deals with the invalid attempt by the Respondents to apply the government's decision also to the regulation of the status of children of permanent residents.

   A. The petitions that will be discussed in HCJ 4608/02 all relate to the procedure whereby the spouses, *and not the children,* obtain citizenship. The petitions deal with citizens of the state whose children are automatically citizens at birth; as a result, the subject of registration of children cannot arise in the framework of those petitions.

   B. We should point out that the hearing in HCJ 4608/02 is set for 14 May 2003, and the decision will certainly be reached at a later date. Maintaining the situation in which permanent residents residing in Israel are unable to grant a status to their children, for an unknown period of time, which will exceed a year in any event, is unreasonable. Especially grave in this situation is that children of permanent residents of the sate cannot be given a status, without any statutory or administrative basis for the refusal, except for the statement of the Respondents that the government's decision dealt with these cases.

   C. While the Respondents refuse to inform permanent residents how they can arrange the status of their children born outside of Israel, with hundreds of children having no connection to the West Bank being among this group, residents of the state are left in a situation of uncertainty as regards their ability to grant a status to their children, and many children who live with their Israeli resident parents are deemed to be staying in the country illegally.

Improper comparison between residents of the State of Israel and foreigners

5. The Respondents' analogy between the present case and the judgment attached to its repose is peculiar. None of the decisions cited by the Respondents related to residents or their children, but to immigrants or children of foreigners who are given resident status – which is not the case in the matter presently before the court.

A. The Respondents mentions and quote the court decisions which state that a foreigner does not have a vested right to receive a permit to reside in Israel.

For example, in HCJ 482/71, *Clark v. Minister of the Interior, Piskei Din* 27 (1) 113, involved persons who came to Israel as tourists and after their visa expired wished to acquire a status in Israeli. In Rehearing HCJ 6781/97, *Vera Ankin v. Minister of the Interior, Takdin Elyon* 98 (1) 591, the adult son of a Russian woman, who was married to a Jew and came t live with him in Israel without her son, and several years later the adult son wanted to join his mother.

> Let us not forget that permanent residents of the State of Israel are not immigrants or foreigners who came to Israel, but have been residents of Jerusalem for generations.

B. The Respondents' inapplicable analogy between the principles relating to foreigners and the present case illustrates their improper approach. The Respondents perceive and relate to permanent residents of the state, for whom Jerusalem is their homeland, and who, although his matter is regulated by the Entry into Israel Law, he is not the one who entered Israel. Rather, the Israeli government painted the label on him – despite his lengthy presence here – of immigrant, foreigner, who seeks to acquire a status in Israel for himself and for his minor children.

C. The Petitioners further contend that *Ankin* clearly indicates that even under the rules established by the Respondents themselves, the status of a child accompanying a parent who received the right to permanent residency in Israel will be granted the status of permanent resident of the state:

> **One rule states that a permanent-resident permit will be given to a minor child, who accompanies a parent who received the right to permanent residency in Israel or to Israeli citizenship, if this parent holds lawful custody of the minor for a period of at least two years to the time that he came with the parent to Israel.** (*Aknin*, Section 2(c))

Note well: unlike in *Aknin,* in our case, the mother of Petitioners 2-5 were not given a permit for permanent residency on the grounds of her marriage; rather, the Petitioner is a permanent resident of the state in that she was born in Jerusalem to parents who were residents of the state.

The document that the Ministry of the Interior issued following the order of the Court in HCJ 1689/94, titled "Criteria for Granting Permit for Permanent Residency in Israel," is attached hereto and marked Rep/1.

D. According to the Respondents, no child of a permanent resident of Israel has a vested right to receive a status in his country. Thus, the Respondents arrange the status of the child in Israel only after conducting a strict examination regarding the center of life of his parents, *whether the child was born in Israel or abroad.* If the examination reveals that family members, the minor children and their resident parents, live in Israel, then even if the child is born abroad, the Respondents have until now approved requests to register the child in the Population Registry.

See the comments of Justice Beinish in HCJ 979/99, quoted in Section 35 of the preliminary response of the Respondents, regarding the importance of "developments that took place during the life of the family," regarding the place of birth and to Section C of the conditions for arranging a status that the Respondents set, attached hereto.

In the present case, Petitioner 3 indeed conducted a strict check of the center of life of the Petitioners and found that they live in Israel and that the changes that occurred during the family's life justify the granting of a status in Israel to the three small children, who were born in Israel. Despite this determination regarding the family's center of life, and notwithstanding that no contention was made that the children constitute a security problem, the Respondent decided not to exercise his discretion regarding the four minor children who were born in the West Bank.

Harm to residents of the state and their children who were not born in the West Bank

6. The Respondents changed their position regarding arranging the status of children, which, based on its wording, Section 12 does not apply to, not even as regards children born in the West Bank.

A. Children of residents, in cases in which the Respondents do not apply the government's decision, receive varied answers from the Respondents regarding the possibility to arrange their status.

Among those in this situation are children who are born abroad (and not in the Occupied Territories), whose parents are told that their request will be considered in the context of an application for the family unification of the foreign parent, which is completely inconsistent with the contentions set forth

in Section 5 of the Respondents' response, according to which they do not retract their announcement that a request to obtain a status for the child will be considered separately from the parent's application for family unification.

Children born in Israel face this same problem where, because of the difficulty in arranging their status in Israel, they were formerly registered in the West Bank, and the Respondents now refuse to arrange their status ion Israel, even though they live with their parent who is resident here.

B. As appears from the above, in the absence of systematic legislation, the Respondents change their position as they wish as regards arranging the status of children of residents. As described in the petition, the Respondents formerly sought to apply their changing policy also to children born in Israel whose cases came within the provisions of Section 12; however, because this subject is under investigation, the Respondents had to retract it and act according to law.

See Section 32-37 of the petition.

7. Therefore, in addition to the individual case, the present petition deals with the problem of arranging the status of the children of permanent residents that also applies to children whose matter, even according to the Respondents' does not come within the government's decision. It is understood that this problem will not be resolved following the government's decision, unless the matter is properly enshrined in statute and regulations.

Conclusion

8. As described in the petition, the Respondents decided to apply the matter of arranging the status of children to the said government's decision, although this matter is not mentioned explicitly or by implication in the decision, and although the decision was not published or ever brought to the public's attention. The Respondents change the procedure for registering children that had been in effect prior to the government's decision, but never informed or published in any place how it is possible to arrange the status of children, one of whose parents is a resident, who were born abroad. For this reason, many children, including those whose spouse is not of Palestinian descent, do not know how they can provide a status to their children in their country.

9. This situation has been in place since March 2002, when the total freeze on the handling of requests to register children in the office of Respondent 3 began, the demand to postpone decision on this essential matter, which goes to the very heart of a person's fundamental rights, for a prolonged and unknown period of time will cause

grave harm to many parents and children, whose rights to know how they can, or even if they can, grant a status to their children and put an end to the current uncertainty.

10. Therefore, without waiving the arguments made above, the Petitioners believe that, even if the Honorable Court decides to postpone decision in the matter of arranging the status of the children until the hearing in HCJ 4608/02, the Court must require the Respondents to show cause as regards Sections C-G of the petition, which discuss arranging the status of the children of permanent residents, including children who were not born in the West Bank, and therefore, also according to the Respondents' way of thinking, the government's decision does not apply in their matter.

11. In the present case, we are presented with an absurd situation: in one family, some of the children are registered in the Population Registry and others are not. This case is not the only one in which this situation exists. Therefore, the temporary injunction will offer provisional relief to the individual Petitioner, but will postpone the decision relating to the principle involved that is so necessary for many other children and their parents, permanent residents of the state. For this reason, and because the Petitioner insist that the hearing in HCJ 4608/02 is irrelevant to the present matter, we are compelled to reject the suggestion, and we request that the matter be heard on its merits on the seven particular points for which the petition was filed.

For these reasons, the Honorable Court is requested to issue an order nisi as requested in the petition, and after receiving the Respondents' response thereto, to make it absolute, or, in the alternative, set a date for the hearing of the petition.

Jerusalem, today, 18 February 2003

[signed]
Adi Landau, Attorney
Counsel for Petitioners