At the Jerusalem District Court **Adm. Pet. /05**
Sitting as the Court for Administrative Affairs

In the matter of:

1. **_____ Hajazi, Identity No._____**
2. **_____ Hajazi, Identity No._____, minor**
3. **_____ Hajazi, Identity No._____, minor**
4. **_____ Hajazi, Identity No._____, minor**
5. **_____ Hajazi, Identity No._____, minor**
6. **_____ Hajazi, Identity No._____, minor**

All from Jabel Al-Mukaber, Jerusalem
Petitioners 2 to 6 are represented by their mother and natural guardian, petitioner 1.

7. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Saltzberger (R.A.)**

Represented by attorneys Osama Halabi and/or Dina Shibali on behalf of HaMoked: Center for the Defence of the Individual
Of 14 A-Zahara Street, P.O. Box 51596, Jerusalem 91514
Tel:02-6283555 : Fax: 02-6276317

The Petitioners

- Versus -

1. **Minister of the Interior**
2. **The Director of the Population Administration Office, eastern Jerusalem**

Represented by the Jerusalem District Attorneys
4 Yedidya Street, Jerusalem

The Respondents

Administrative Petition

An administrative petition for the granting of an Order is hereby filed which is directed at the respondents ordering them to appear and show cause:

A. Why they will not withdraw from their position that received expression in respondent 2's letter dated 27 December, 2004 according to which: "In response to your letter dated 1 November 2001 I hereby inform you that we have decided to approve the registration of the children as residents of Israel and according to the list enclosed herein - _____92, _____92 (should read 94), _____98, _____2000, _____2002 – they shall receive referrals to the CLA (emphasis not in original).

A copy of respondent 2's letter is attached as appendix **p/1**.

B. They will not register petitioners 2 to 6 in the Israeli Population Registry, even though they were minors under the age of 12, on the day of filing the application for their registration in the Israeli Population Registry, and even though they are children of an Israeli resident whose center of her life is in Israel, and why they will not accept the status of their mother, petitioner 1.

A copy of respondent 2's letter is attached as appendix **p/2**.

C. Why they will not apply the provisions of Regulation 12 of the Entry into Israel Regulations, 5734-1974 (hereinafter: "Entry into Israel Regulations"), as this has been interpreted by a ruling of the Supreme Court and this honorable court, to petitioners 2 to 6, and thereby avoid discriminating against them as opposed to other children who were born in Israel and even as opposed to children who were born abroad as shall be claimed in section 39 of this petition.

The grounds for the petition are as follows:

A. The factual background

The parties to the petition

1. **Petitioner 1 is a permanent resident of Israel**, married to Mr. _____ Hajazi ID No. _____, a resident of Soahara Shrakia, in the Bethlehem region, which borders Soahara Arabia which in turn borders Jerusalem. The couple has four daughters and a son. The eldest daughter "_____", **petitioner 2**, was born in Jerusalem on 20 August 1992, "_____", **petitioner 3,** was born in Jerusalem on 5 July 1994, "_____", **petitioner 4,** was born in Jerusalem on 13 January 1998, "_____", **petitioner 5,** was born in Jerusalem on 18 December 2000, "_____", **petitioner 6,** was born in Jerusalem on 26 October 2002. Petitioners 2 to 6 were registered at that time by their father in the Population Registration of the Region.

   A copy of the identity document of the *pater familias* is attached as appendix **p/3**.

A copy of the birth certificates of petitioners 2, 3, 4, 5 and 6 is attached and marked appendices **p/4, p/5, p/6, p/7 and p/8**, respectively.

2. Petitioners 2 to 6 conduct the center of their lives, together with their mother, petitioner 1, in Jabel Al-Mukaber in Jerusalem. It should be pointed out that the National Insurance Institute recognizes petitioner 1 as an insured person in accordance with the National Insurance Law and the National Health law, and has even given her children, petitioners 2 to 6 temporary identity numbers.

   A copy of the print out from the National Insurance Institute with respect to the identity numbers for petitioners 2 to 6 is attached as appendix **p/9**.

3. Petitioner 7 is a non-profit organization registered in Israel, whose aim it is to assist disadvantaged persons who have fallen victim to the condescension or discrimination of the State Authorities, and their work includes defending their rights in court, whether in its own name as a public petitioner or whether as a representative of persons, whose rights have been infringed.

4. Respondent 1 is the Minister of the Interior who by virtue of his position is responsible, *inter alia*, for the operation of the Israel Population Registry and for the implementation of the relevant Laws, regulations and policies for determining the status of persons in Israel.

5. Respondent 2 is the director of the Population Administration Office that operates in East Jerusalem (hereinafter: "Population Administration Office") which received petitioner 1's application to register her aforementioned five children in the Population Registry as permanent residents of Israel, and on whose behalf and in whose name appendix p/1 was sent to petitioner 1 and from whom she was informed per appendices p/29-p/33 as detailed in paragraph 25 of the petition that petitioners 2-6 had received referrals to receive a permit from the CLA exclusively.

Additional facts relevant to the petition

6. On 28 August 2001 petitioner 1 filed an application to register her children in the Israeli Population Registry with the Population Administration Bureau - East.

   A copy of the confirmation of the filing of the application to register the children is attached as appendix **p/10**.

7. In a letter dated 17 June 2002, and addressed to petitioner 1, Mrs. Hiat Natzara, from the Population Administration Office, announced that the application filed by petitioner 1 to register her children would be discussed within the framework of the family unification procedure for her husband, since her four children (i.e. petitioners 2 to 5) were registered in the Registry of the Region.

   A copy of the letter from Mrs. Natzara is attached as appendix **p/11**.

8. On 8 October, 2003 petitioner 7 sent an appeal to the offices of respondent 2 against the above decision of Mrs. Natzara and requested that petitioner 1's

application for the registration of her children be handled anew, **and supported its application with documents attesting to the center of life of petitioner 2-6 being in Israel including rental contracts, the children's immunization records, property tax invoices, water and electricity accounts, confirmation of membership in a health fund and her husband's pay slip.**

A copy of petitioner 7's letter is attached as appendix **p/12**.

9. On 26 November, 2003 petitioner 7 sent a reminder to Mrs. Natzara.

A copy of the reminder dated 26 November 2003 is attached as appendix **p/13**.

10. On 16 December, 2003 the offices of petitioner 7 received a letter of reply from the office that is headed by respondent 2, and which bears the date 30 November 2003. In this letter the respondents reaffirmed their position as stated in Mrs. Natzara's letter, dated 17 June, 2002 (appendix **p/11** above).

A copy of the letter of reply from respondent 2 dated 30 November, 2003 is attached as appendix **p/14**.

11. On 1 January, 2004 petitioner 7 once again sent a letter to Mrs. Natzara and requested that petitioner 1's application continue to be handled since it was filed before the Government Decision and Amendment to the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: Temporary Order).

A copy of petitioner 7's letter dated 1 January 2004 is attached as appendix **p/15**.

12. On 20 January, 2004 the office of petitioner 7 received Mrs. Natzara's response dated 18 January, 2004 which stated that because the Temporary order applied to petitioner 2 and she was above the age of 12 it was not possible to deal with the subject of her registration, and with regards to the other children (petitioners 3 to 6) Mrs. Natzara claimed that a family unification application should be filed which would be investigated and then be followed up with a response.

A copy of Mrs. Natzara's letter dated 20 January 2004 is attached as appendix **p/16**.

13. On 1 February, 2004 petitioner 7 applied to Adv. Yochi Gnesin a senior attorney from the HCJ department of the State Attorneys, with a letter summarizing the chain of events and the correspondence in the case of petitioner 1 from 10 March, 2003 up until receiving the letter from Mrs. Natzara dated 20 January, 2004 and once again claimed that Mrs. Natzara's response was completely unreasonable, likewise, **petitioner 7 emphasized in its application that at the time of filing its registered application (28 August, 2001) petitioner 2 was only nine and a half years old.**

A copy of petitioner 7's letter dated 1 February, 2004 is attached as appendix **p/17**.

14. On 14 April, 2004 petitioner 7 sent a reminder to Adv. Gnesin.

A copy of petitioner 7's letter dated 14 April, 2004 is attached as appendix **p/18**.

15. On 19 April, 2004 the offices of petitioner 7 received a letter from Adv. Na`ama Albah, from the office of the legal adviser to the Ministry of the Interior, which stated that petitioner 1 could file an application to resolve the status of all her children, in light of the fact that her first application was made before the government reached its decision and at that time, petitioner 2 had not yet reached the age of 12.

A copy of the letter from Adv. Na`ama Albah dated 18 April, 2004 is attached as appendix **p/19**.

16. In the wake of Adv. Na`ama Albah's letter, petitioner 7 applied on 19 April, 2004 to Mrs. Hagit Weiss, from the office of the East [Jerusalem] Population Registry, and requested once again to register the children of petitioner 1 in the Israeli Population Registry, including petitioner 2. Together with the application, petitioner 7 also attached the aforementioned letter by Adv. Albah.

A copy of petitioner 7's application dated 19 April, 2004 is attached as appendix **p/20**.

17. On 14 June, 2004 another application was sent by petitioner 7 to Adv. Gnesin, in terms of which petitioner 7 requested that a hearing over petitioner 1 application to resolve the status of her children **be conducted on the basis of the application to register the children which was filed in the month of August, 2001, pursuant to the forms and policies that applied on the day of the filing the original application,** and without requiring her to file a new application.

A copy of petitioner 7's application dated 14 June, 2004 is attached as appendix **p/21**.

18. On 4 July, 2004 the offices of petitioner 7 received a letter from Adv. Albah dated 1 July, 2004 which stated that the application for the resolution of the status of petitioner 1's children would **continue to be handled on the basis of the application that was filed in August, 2001** (emphasis not in original).

A copy of Adv. Albah's letter dated 1 July, 2004 is attached as appendix **p/22**.

19. On 13 July, 2004 the offices of petitioner 7 received a letter from the Office of the Population Administration, bearing the date 7 July, 2004 and titled "**Your application for family unification – original application".** The letter included a request to produce documentation for the years 2001 to 2004, and to file an original application for family unification for the children of petitioner 1.

A copy of the letter dated 7 July 2004 is attached as appendix **p/23**.

20. On 5 August, 2004 petitioner 7 sent a letter to Mrs. Efrat Porat from the Population Administration Office referring her attention to the letter by Adv. Albah dated 1 July 2004 (appendix p/22) which stated that there was no need to file a new family unification application and the handling of her application would continue on the basis of the application that was filed in August 2001. Likewise, in order to expedite the handling of the application, petitioner 7 attached to its letter all the required documents proving that the petitioner's center of their lives was in Jerusalem, and requested that they are registered immediately.

A copy of the petitioner 7's letter dated 5 August 2004 is attached as appendix **p/24**.

21. After not receiving a reply, petitioner 7 sent a reminder on 19 October, 2004 to the office of respondent 2.

A copy of the petitioner 7's letter dated 19 October, 2004 is attached as appendix **p/25**.

22. Further reminders dated 10 November, 2004 and 12 December, 2004 were sent to the offices of respondent 2, with respect to the matter of petitioner 1's application.

A copy of the petitioner 7's letter dated 10 November, 2004 is attached as appendix **p/26**.

A copy of the petitioner 7's letter dated 12 December, 2004 is attached as appendix **p/27**.

23. On 27 December, 2004 petitioner 7 received respondent 2's letter (**p/1)** which stated **"**In reply to your letter dated 1 November 2001… **we have decided to approve the registration of the children as Israeli residents and** in accordance with the list enclosed herein _____92 + _____92 (should read 94) + _____98 + _____2000 + _____ 2002 **they shall receive referrals to the CLA…"** (Emphasis not in original). **Respondent 2 invited petitioner 1 to come to the Population Administration Office on 10 January, 2005 "for the purpose of carrying out the registration".**

24. In response to the above letter by respondent 2 (p/1), the current counsel for the petitioners approached the former and asked him to settle the application to **register** petitioner 1's children in the **Population Registry** (as opposed to being referred to the CLA) without further delay. Counsel for the petitioners noted in his letter, *inter alia*, that a grating internal contradiction emerges from respondent 2's letter above, where on the one hand it announces its decision to register petitioner 1's children as Israeli residents, but on the other hand informs them of "their referrals to the CLA". Likewise, counsel for the petitioners emphasized the following things:

> "…**, it has already been ruled, that even the <u>fact that a child</u> who we wish to register in the Israeli Population Registry <u>has already been registered in the Population Registry of the Palestinian Authority does not prevent his registration as a permanent resident in Israel pursuant to Regulation 12, and also the incontrovertible fact that the center of the child's life is Israel,</u> since then we are not dealing with a "resident of the region", <u>and therefore even a "Temporary Order" that was encated in July 2003 does not prevent his registration</u>"** (emphasis original)**.**

A copy of counsel for the petitioners application dated 4 January, 2004 is attached as appendix **p/28**.

25. On 10 January, 2005 petitioner 1 appeared at the Population Administration Office. At this occasion she was presented with five documents relating to petitioners 2-6, each of which was titled "**Approval to Receive an Exit permit to stay in Israel; for a minor resident of the region according to the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003.' In section 3 of the approval it was noted that entry into and residing in Israel was conditional on attaching an exit permit from the Civilian Administration in the Judea and Samaria Region and in carrying a valid Palestinian passport as an identifying document." In section 4 of the approval it was noted that it was incumbent upon petitioner 1 together with her minor children to make contact within 90 days with the Civil Liaison Administration at her "place of residence" otherwise the respondents would regard the application for a visa to stay in Israel as having been rescinded".**

A copy of the permits that were handed over to petitioner 1 in respect of petitioners 2-6 is attached as appendices **p/29, p/30, p/31 p/32, and p33** respectively.

26. **As transpires from the aforesaid, the petitioners were born in Jerusalem and they have lived there permanently and continuously from the day of their births and have established the center of their lives there.** The respondents do not dispute this. Despite this fact, the respondents chose not to register petitioners 2-6 as residents, but to refer them to the Civil Liaison Administration (CLA) at "the region of residence"!! By which they mean the region registered in the father's identity document which is Bethlehem. As a result of this position adopted by the respondents, petitioners 2-6 are not considered Israel's permanent residents in Israel and not even its temporary residents. Therefore they are not entitled to health insurance or for any type of social rights unless the National Insurance Institute decides to render them a kindness.

B. <u>The main legal questions that require the honorable court's determination:</u>

27. A) Are petitioners 2 to 6 "residents of the region" as claimed by the respondents, and does the Temporary Order apply to our case as claimed by the respondents in appendices **p/29-p/33**?

B) Even assuming that the Temporary Order does apply, does this prevent the respondents, as they have claimed, from registering petitioners 2 to 6 in the Israeli Population Registry and from granting them the status of their mother, which is the status of permanent residents or at least the status of temporary residents? Or perhaps it is possible and even mandatory from the exception that was established in section 3(1) of the Temporary Order?

C. <u>The legal argumentation</u>

The respondents' position towards petitioners 2 does not comply with relevant rulings and legislation.

28. A) **The respondents' conduct and their way of handling the application by petitioner 1 to register her children** which has continued for more than three years **has been characterized by an unreasonable administrative delay.**

B) **In addition, the respondents' position with respect to petitioners 2-6 over the course of the above-mentioned period –** which was at first characterized by a refusal to discuss the registration application (which was filed on 28 August 2001) with the claim that their registration needs to be done within the framework of an application for family unification with the husband (see **p/11 and p14** of the petition). Later on it was characterized by a refusal to discuss the registration of petitioner 2 in light of the Temporary Order, with the claim that she was above the age of 12, even though on the day of filing the application petitioner 2 was 9 years old, and with a demand that with respect to petitioners 3-6 she should file a (new) family unification application (**p/16).** Finally they decided to refer the petitioners to the CLA to receive "entry into Israel" permits (see **p/29-p/33)** that do not grant the petitioners any kind of right including the basic right to medical care – **proves the regime's obstructive and arbitrary behavior towards the petitioners and their disregard of the principle of the welfare of the child in addition to this being in contravention of the principles that were determined in the rulings that are relevant to registering children in an identical or similar situation to the situation of petitioners 2-6 as shall be detailed below.**

The status of a child follows the status of the Israeli resident custodian parent.

29. Israeli legal theory recognizes the importance of the family unit and respects the value of its integrity as well as the interest of protecting the welfare of the children who together with their parents constitute the above unit. As a derivative of this important rule, Israeli legal theory adopted the **<u>important principle</u> according to which the status of the child needs to be the same**

as the status of their custodian parent who is a resident of the state, provided that the child lives with his parent within the territory of the state. And it has already been ruled that:

> "**One must avoid creating a chasm between the status of a minor child and the status of his custodial parent who the parent who holds the right of custody over him…there is no place to distinguish between the status of the minor child and the status of his custodian parent in Israel, and this may be derived either within the framework of the interpretation of Regulation 12 or from the determination of a suitable criterion for exercising discretion that has been granted the Minister of the Interior in the Entry to Israel Law**"
>
> See: HCJ 979/99 **Pabaloya Carlo (minor) *et. al.*. v. Minister of the Interior *et. al.*** (not reported) Pador 99(2), 522.

30. Implementing the provisions of the Law that are relevant to the registration of children needs to be in accordance with this above-mentioned important principle. In our case petitioners 2-6 were born in Israel to an Israeli resident, so that the provisions of **Regulation 12** of the Entry into Israel Regulations apply to them, and even if the petitioners were registered in the region, this in and of itself is not sufficient to justify the creation of a distinction between their status in Israel, within the family unit, and between the status of their mother, a resident of Israel.

31. As stated the legal basis for registering a child who was **born in Israel** in the population registry is Regulation 12 of the Entry into Israel Regulations. The Supreme Court already ruled that when the Minister of the Interior or someone authorized by him to exercise his discretion with respect to the application to register children in accordance with the above regulation, **he must do so pursuant to the center of life of the child** and not pursuant to the classification of the applicant parent. Therefore, since it has already been proven that the center of life of the petitioners is in Israel, there is a duty upon the respondents to register petitioner 1's children in the Israeli Population Registry, since it has been proven that they have established their center of life with her within Israel.

HCJ 48/89 **Reinhold Issa v. Director of the District Population Administration**, *Piskei Din* 43(4), 573.

32. In addition to the aforesaid, and within this context Adv. Maria Bakshi from the legal office of the Ministry of the Interior wrote on 18 March, 1996 that "a statement of clarification was released to all the offices of the Ministry of the Interior which stated that in any case of an application for registering children the application should be examined on its merits, and **in the event that it has been proven that the center of life of the applicant and his /her children is in Israel, the children should be registered"** (emphasis not in original A.H.).

Adv. Bakshi's letter to Adv. Rosenthal is attached as appendix **p/34**.

33. The respondent's position as reflected in appendices p/1 and p/29 – p/33 of the petition creates a chasm between the status of the mother who is a permanent resident of Israel and the status of her children who have only been offered the status of temporary residents. This position is in contravention of the Supreme Court ruling in HCJ 979/99 **Pabaloya Carlo** above.

34. Moreover, the filing of an application to register children that is not done soon after their birth, like in our case, does not prevent the registration of children as permanent residents of Israel. It has already been ruled that "**one must not adopt the respondent's position according to which Regulation 12 applies only if the application is filed soon after the birth. From the perspective of preserving the integrity of the family, there is no difference between someone who seeks status in Israel for his child, soon after his birth and someone who seeks Israeli status for his child, who was born a while beforehand. In both cases, if the custodian parent has an Israeli permanent residence permit and the center of life of the family is here, it would be proper to allow him to raise his child and to live with him"** (emphasis not in original).

Adm.Pet (Jerusalem) 577/04 **Alqurd v. Minister of the Interior** (the honorable Justice Arad, dated 24 October, 2004)

See also Adm.Pet (Jerusalem) 956/04 **Abu Mandil v. Minister of the Interior (the honorable Justice Heshin, dated 1 March, 2005) who approvingly cites the dicta of the honorable Justice Arad and applies them to the case that was placed before him.**

A retroactive application of the Temporary Order does not withstand the test of reasonableness

35. A) Applying the Temporary Order, retroactively, so that it would apply to the application to register the children which was filed by petitioner 1 on 28 August, 2001, i.e. before the Government Decision and before the coming into force of the Temporary Order, does not withstand the test of reasonableness and one should only apply to petitioner 1's application those laws and procedures that were in force at the time of its filing with the Ministry of the Interior.

B) Professor Yitzhak Zamir in his book *Administrative Authority* relates to the reasonableness test that applies to cases where an administrative decision is given retroactive application, with the following words:

> **"…among other things it is well known that special weight is given to the question whether the authority that the Law grants is destructive authority or optimal authority. If exercising authority retroactively does not harm the conferred rights and does not impose new obligations, but does the**

opposite, conferring rights or bettering the situation, one would tend to believe that in the main the Law may allow for retroactive application."

See: Y. Zamir *Administrative Authority*, Nebo Publications Ltd., Jerusalem, 1996, volume 2, 975.

C) Petitioners 2-6 at the time of filing the application were entitled to be registered in the Israeli Population Registry by virtue of Regulation 12 of the Entry into Israel Regulations, since they were children of a permanent resident who was born in Israel and they have established the center of their lives here**. The retroactive application of the Temporary Order in our case, and the interpretation given by the respondents to section 3(1) therein, has thus far prevented the registration of the children as Israeli residents and has prevented them from receiving the rights that flow from this status. Therefore, the petitioners will claim that retroactive application of the Temporary Order in our case should be disallowed and certainly one cannot condone a situation where petitioners 2-6 are worse off than other children who were born and live in Israel.**

Petitioners 2-6 are not "residents of the region" as this term has been defined in section 1 of the Temporary Order.

36. It has already been ruled that the **fact that the child** which we seek to register in the Israeli Population Registry **has already been registered in the population registry of the Palestinian Authority, does not prevent his registration as a permanent resident of Israel pursuant to Regulation 12,** and also the **indisputable fact that the center of his life is in Israel.** In our case, there is no dispute as to the center of life of petitioners 2 to 6 being in Israel, whereas the Temporary Order applies to those who are essentially a "resident of the region" **i.e. was born, was raised and lived at the time of filing the application and at the time of the hearing in the region therefore even the Temporary Order does not prevent their registration**. For the purpose of substantiating these claims the honorable court is referred to the judgment in the "Gusha" case, in which it was determined, *inter alia* that: "**if we are to view the petitioners as those whose center of their lives is located in Israel, then they are entitled to registration by virtue of Regulation 12 even if we are to view registration as granting a residence permit. The Citizenship and Entry into Israel Law may not be used in a case like this to shatter the petitioners, since this Law only applies to a person who is a resident of the region"**. And when relating to section 1 of the Temporary Order the court says: **"… this provision does not establish what law will apply to someone who is registered in the Population Registry of the Region, but to someone who in practice does not live in the region. It does not establish that registration creates an irrefutable presumption with respect to the residency and center of life of those who are registered in the Population Registry of the Region…I shall not deviate from this general rule that registration, in the absence of a specific provision of the**

Law (…) only constitutes prima facie proof of the correctness of its content but is not strong enough to prevent the petitioners from proving that the details that appear within it are not true".

Adm.Pet (Jerusalem) 822/02 **Gusha v. Director of the Population Administration Office** (the honorable Justice Adiel dated 1 September, 2003).

Even if the Temporary Order applies, a correct interpretation of it does not prevent the registration of petitioners 2-6 as residents.

37. Further to what was claimed in section 35 above, and to the court's determination in the judgment in the **Gusha** case, the petitioners will claim that the Temporary Order does not apply to our case. Firstly – petitioners 2 to 6 were born in Israel and secondly **– because the center of their lives and of their family is located in Israel. Therefore they are entitled to be registered by virtue of Regulation 12 even if we were to view registration as the granting of a residence permit. And as has already been ruled in the Gusha case above, the Temporary Order cannot be used in this case to crush petitioners 2 to 6, since this Law applies only to those who are "residents of the region", and petitioners 2 to 6 do not live in the region and are not resident there.**

38. However if it is held that **the Temporary Order applies to our case, that is not sufficient to prevent the respondents granting petitioners 2 to 6 the status of permanent residents of Israel,** based upon the exemption in section 3(1) of the Temporary Order. This section explicitly enshrines the power of respondent 1 to grant children under the age of 12 status in Israel. The section **does <u>not</u> limit the authority of the minister to granting a child such as this the exclusive status of "temporary resident"**, as suggested in appendices p/1 and p/29 to p/33 of the petition. Section 3(1) above also allows for the granting of a "**residence permit**". Therefore the petitioners will claim that the circumstances of this case and the fact that the application was filed in August 2001, and that a hearing on the application was, to put it delicately, needlessly postponed in complete contravention of the rules of proper administration, it was incumbent upon the respondents to grant them the status of permanent residents like the status of their mother.

Discriminating against petitioners 2 to 6 setting them apart from other children who were born in Israel and even from other children who were born outside of Israel.

39. A) The respondents' refusal to register as permanent residents, petitioners 2 to 6 **<u>who were born in Israel and live there</u> discriminates against them and sets them apart from other children who were born in Israel and were registered pursuant to Regulation 6 of the Entry into Israel Regulations.**

B) **Moreover the implications of the respondents' position in our case towards petitioners 2 to 6 is that they are granting them a status that is even inferior to that which the respondents themselves**

confer on a child of a permanent resident who was <u>born outside of Israel.</u> On 24 October 2004, in a declaration that **received the validity of a judgment** (Adm. Pet. (Jerusalem) 402/03 **Juda** case above) the respondents declared that their policy in a case where a child was born to a permanent resident outside of Israel **would be as follows: a family unification application would be filed, which was a gradual process that would last two years, over the course of which the child would receive a temporary resident visa(5/A), and upon completion would receive the status of permanent resident.**

C) **Worsening the situation and status of petitioners 2 to 6 who are entitled, for reasons that have been detailed above, to being registered as permanent residents as opposed to the situation and status of a child who was born outside of Israel and who receives the status of a temporary resident (5/A), proves the obstructive and arbitrary behavior of the respondents, and indicates a <u>breach of the principle of equality and invalid discrimination</u> which in turn indicates an extreme lack of reasonableness in their position towards the petitioners.**

D) **In the conduct described above, the respondents have breached the principle of equality which is a "particular, nameless" right which is derived from "human dignity as a constitutional, supra-statutory right", which is enshrined in the Basic Law: Human Dignity and Liberty. And even if it may be said that the principle of equality may be limited by legislation, the limitation must be in the form of "legislation that is passed for appropriate purposes, as stated in the limitation clause" per the honorable Justice Aharon Barak.**

For support of the claim that the equality principle is protected in the Basic Law: Human Dignity and Liberty see: **A Barak *Purposive Interpretation in Law,* volume 3, Nevo Publications, Jerusalem, 1994 – 5754, 423-426.**

The respondent's position contravenes the principle of seeking the child's welfare.

40. The principle of the welfare of the child is a principle that is entrenched in Israeli law. The respondent's position in our case if it is implemented will mean that petitioners 2 to 6 are not entitled to health insurance and to other social rights, and thus contravenes the above principle, and does not conform to the State's obligation to concern itself with the welfare of the child, and unnecessarily harms the basic rights of the petitioners including their **right to dignity** which enshrines their right to live within the framework of a protected family unit. And even if the National Insurance Institute will interpret the contents of appendix p/9 as a recognition of the entitlements of petitioners 2-6 to an allowance and/ or receiving medical care, and where such a case is the outcome of **an act of commendable <u>kindness</u> whose continuation is dependent on the goodwill of the Institute**, this will not be sufficient to negate the injustice that has been caused by respondents 1 and 2 in their

decision, which is the subject of this petition, not to grant petitioners 2 to 6 the status of a permanent resident or even that of a temporary residents, **a status that would have created the right to receive a monthly stipend and national health services**.

The respondent's position does not conform to the State's obligations pursuant to the Convention on the Rights of the Child.

41. The respondent's position as this was given expression to in documents enclosed in appendices p29-p33 and the outcome of the aforesaid does not conform, to put it delicately, to the State of Israel's obligations pursuant to the International Convention on the Rights of a Child, and primarily to the obligation to preserve the family unit in which the child lives, to grant him a status that would ensure that he sustains himself with dignity (section 7 of the Convention) as well as ensuring that the right of access to health services will not be denied to him (sections 24-25 of the Convention).

The respondent's position suffers from unreasonableness and is disproportionate

42. Relying on all that has been assembled above, and for all the legal reasons that have been raised in the previous paragraphs, the petitioners will claim that the respondents' position and their refusal to register them in the Israeli Population Registry as residents suffers from unreasonableness and is not proportional so that the court's intervention to rectify the above-mentioned harsh results is naturally required.

D. The absence of alternative relief

43. In the circumstances of the present case the petitioners do not have alternative relief to that which it requests the honorable court grant them.

E. The requested relief

44. For all these reasons the honorable court is requested to grant the petitioners' application and to issue the orders as requested at the beginning of this petition and especially to order the respondents to register petitioners 2 to 6 in the Population Registry and to grant them the status of permanent residents in Israel. Likewise the honorable court is requested to order the respondent to pay the petitioners' costs and attorney fees.

_____

Osama Halabi, Attorney

Counsel for the Petitioners