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Date: April 26, 2006
Reply reference no.: 14735

Mr. Itay Ravid, Adv.
HCJ Department
State Attorney's Office
Ministry of Justice
P.O. Box 1087
Jerusalem

By Fax

Dear Adv. Ravid,

Re: **HCJ 2959/06 Ahmidat v. Commander of the Army Forces in the West Bank**

1. Further to our conversation, please find enclosed (Appendix A) Lt.Sa'ad's letter dated 3 February, 2006. Owing to an office mishap the enclosed letter (that refers to nine incidents) was not filed in the Ahmidath family file. In light of this, a mistake entered into our petition when we averred that our application to you was not furnished with a reply - whereas it was in fact replied to - almost three years after it was originally sent. I regret the mistake.

2. As to the letter itself, it rejects our request, on a somewhat ambiguous basis, and from all that we were able to decipher from it, appears to be defective on legal grounds and on factual grounds.

3. Lt. Sa'ad's central argument is that a condition for being included in the HCJ population has always been that one's "life center" be in the territories. This claim is categorically incorrect, and as I will demonstrate below it is contrary to the internal logic of the HCJ arrangement.

4. On a **factual level Lt. Sa'ad claims that:**

> **"We have examined your application with respect to the following residents. From a repeat investigation that we carried out in the matters of your clients it unmistakably transpires that**

> **their life center was not in that region in the effective period. In the aforesaid investigation we examined the continuous period of time spent by the said persons with their spouses in that region, beginning from the 1970s period up until today, and the results of this investigation reveals unequivocally that they spent most of their time outside this region. Before the above arrangement could apply to them…"**
>
> **[And with respect to Petitioner 1: "According to the investigation that we carried out it transpires that that person stayed in the region for a period of 25 days. And thus, he is not eligible to be recognized as belonging to the aforesaid population."**

The Legal Aspect

5. The legal claim averring that the HCJ agreements have included a condition, in terms of which entitlement thereunder is contingent upon having a "life center in the region" for a certain period, is a new claim that we encountered for the first time at the beginning of 2005. Things have become so absurd to the point that the authorities have refused to acknowledge those who have in the past officially and in writing been recognized by the HCJ as belonging to the population under its jurisdiction, but instead claim that it [i.e. the recognition-DF (translator)] was a mistake.

6. In order to reveal the groundlessness of this claim one must examine the HCJ agreements, their content and the way they were consolidated.

HCJ Agreements- Historical Background and Internal Logic

7. HCJ agreements came after a long period in which the policy of the army commander was not to approve applications for family unification and only do so as rare exceptions (and generally for collaborators). Spouses of residents could visit the region for fixed and distinct periods, for what became known generally speaking as "summer visits". **In this way their options for establishing themselves in the region was prevented by law.** In 1989 in order to enforce this policy an operation was carried out to expel women who were married to residents and who stayed in the region after their permits had expired. In the years that followed many more visitors from the territories were expelled as soon as the permits held by they had expired. Another tool of enforcement of this policy was the refusal to hear family unification applications when the foreign spouse was in the territories. This meant that a **family**

unification permit was conditional on the spouses not having their life center in the territories. Even receiving a visitor's permit involved many hardships during those years, a factor which also prevented many spouses from entering and residing in those territories.

8. Against this backdrop, petitions to the HCJ were filed in 1990, 1991, 1992 and 1993 in the name of dozens and hundreds of families of the residents of the territories, which attacked this policy.

The arrangements that were consolidated within the framework of these petitions were meant to solve the issue. One of the components of the solution was granting a right of continued residence in the region for the "HCJ populations". This population is made up of those who in the period leading up to August 1993 (inclusive) were affected by the policy of the army commanders as described above: whether this involved someone who violated the law and spent the center of their lives in the territories in breach of the law, whether this involved those who divided their lives equally between the territories and abroad, or whether it involved those who did not wish to violate the law and also did not have the financial ability to split their lives between the territories and another place, and therefore entered the territories for short periods of time.

In effect the commander's new criterion harms precisely those who are in the last category of the HCJ population, that group which is law abiding and weak.

Alongside the aforesaid arrangements that were meant to solve the problems of couples who suffered separation problems during the period of the arrangements, there was another arrangement to solve future problems through issuing permanent resident permits (family unification) that were granted within the framework of quotas. As we shall see, during the first stages it was established that a condition for a family unification permit was residence outside the region at the time of the hearing of the application (this rule was later rescinded).

<u>HCJ Agreements: The Language of the State's Notices</u>

9. These things also were given concrete expression in the text of the State Notice to the HCJ.

In the HCJ Notice 4494/91 et al dated 11 November, 1992, Mr. Meny Mazuz (then the Director of HCJ affairs in the State Attorney's Office) proclaimed that the

arrangements for visitors' permits that could be extended from time to time would also apply to "**first degree family members (spouses and their minor children) who entered the region within the framework of the summer visits of 1991"** (paragraph 14), and to the "**summer visitors of 1992"** (paragraph 16). The test would be **entry to the region within the framework of a visit.** Not transferring the life center to that region. And it needs to be emphasized that had there been a center of one's life requirement, it would not in any case have been able to have included the 1992 summer visitors. At the time of filing this proclamation those who were in the region, even in the most extreme cases, were not there more than a mere few months.

In the HCJ Notice 4495/92 et al dated 22August, 1993 it was determined that those included in the first HCJ population would be eligible to an approval of their family unification applications. Members of the HCJ population were defined as those who had received long- term permits by virtue of the exiting arrangements or **"who had been eligible for receiving these types of visitors' permits".** This meant even those who had not resided in the region at all (aside from that summer visit that included them in the HCJ population).

In a supplementary notice HCJ 4495/92 et al, dated 8 February, 1994 the arrangement applied to those "**who entered the regions with a visitor's permit valid from 31 August, 1992 until 31 August, 1993**. Again, not only was there no life center requirement, but it is clear that it speaks about someone who does not have this as the center of his life at all, otherwise they would have already been included in the previous population !

10. It goes without saying that had a life center criterion been an integral part of the general criteria- a criterion that would have invalidated the eligibility of a great portion of the population – the petitions would not have been withdrawn by mutual consent.

One's life center in the territories as a criterion that negates eligibility

11. The state proclamations to the HCJ repeat the principle in terms of which "applications for permanent residence will be filed and heard when the person making the application resides outside the region, and only when the application is approved shall his entry to the region be permitted" (The quote is from the HCJ Proclamation 4495/92 dated 22 August, 1993).

In other words: A life center <u>outside the region</u> is a condition for eligibility. Not a life center <u>inside the region.</u>

The members of the HCJ population admittedly were exempt from this draconian provision that has since been rescinded for the general population; however it cannot be accepted that their residence outside the region, without relying on their exception, is to their disadvantage and denies their eligibility.

Behold once more: those who acted pursuant to the previous commander's policy, lost as a result thereof their eligibility pursuant to the present policy!

12. The "life center" requirement is, therefore, wholly fabricated and flies in the face of commitments made by the state before the Supreme Court - in language and in spirit.

13. Our arguments with respect to this new "life center" criterion were originally put forward before the authorities in our letter to the International Law Department of the Army Attorney's Office as early as 16 May, 2005. Despite repeated letters to the office this has yet to be replied to, and it appears to me, that this is not by chance. The letter dated 16 May, 2005 is attached as Appendix B.

<u>The Factual Aspect</u>

14. Lt. Sa'ad's argument, as much as I was able to understand, is that from the 1970s until today (see paragraphs 4 and 8 of his letter) the petitioner only resided in the territories for 25 days. According to this claim, the petitioner transferred his life center outside the region before the application of the HCJ arrangement (paragraph 4 of the letter). This claim is factually refutable. The petitioner is a native of the territories and has lived there all his life, aside from short visits to Jordan in 1998 and in 2004.

15. And lest we be required to interpret Lt. Sa'ad's claims in a different manner, i.e., that it relates specifically to the spouse, in that case petitioner 2 has been in the territories not for merely 25 days but continuously for the last 13 years, from August 1993 (five months after their marriage) until this very day. She entered the territories at the age of 19 and she is now 32 and the mother of three children.

16. But perhaps Lt. Sa'ad is referring to the life center of both spouses together, and indeed, as one may see, five months after their marriage the petitioner moved to the territories, where the couple's children were born and where they have permanently lived for the past thirteen years.

17. There is one option left, and that is that Lt. Sa'ad investigated the center of the life of the couples spent together, not from the seventies until now (as claimed in the letter) but rather only as it relates to the period that was determined for belonging to the HCJ population- which is from the year 1989 until 31 August 1993, and if indeed it is to that period that we must relate, we shall discover that petitioner 2 who entered the territories on 5 August, 1993, five months after her marriage, resided with her husband during that period (until the end of that month) only 26 days.

    If this is Lt. Sa'ad's intention, there is something absurd in this requirement of applying "the life center" to its logical conclusion.

    Indeed it is clear that the summer visitors of 1993 could not have created the center of their lives in the territories before August 1993. See also Appendix P/4 to the petition, paragraph 2 (h); where it mentions that the arrangement shall also apply to someone who arrived in the last nine days of August 1993, and even to someone who did not enter during that time but whose visitor's permit was issued before 1 September, 1993. How could the state also apply the arrangement to those summer visitors of 1993, including those who in practice only entered the region in September if the conditions of being included were that the couple's life center be in the territories during that precise period?

    It is also clear that a couple who only married in March 1993 (like in our case) could not establish their life center in any place before August 1993. And even so there is nothing even remotely hinted in the HCJ arrangements that suggest an obligation on the spouses to have been married for a number of years. The only requirement is that at the time of the visitor's stay in the region, during the effective period, the person must already have been married to the resident.

<u>The Respondent's Breach of His Obligation to the Occupied Population</u>

18. Over and above the commitments that have been enshrined in the HCJ Agreements, we have an interest in the petitioners' fundamental rights and in the respondent's obligations as a military commander.

19. The military commander's obligation is to defend the honor of a protected resident and his family and welfare. Like every authority, the commander is also entrusted with the protection of the best interests of children. The military commander may only limit human rights in the framework of security considerations or considerations that relate to the preservation of public life for the benefit of the protected population.

Neither of these considerations formed the basis of the respondent's position. The respondent did not present any security considerations, neither does such exist. Had the petitioner presented a danger to the security of the region, there certainly would have been other ramifications that she would have to deal with over the course of the thirteen years in which she resided there. Also the population's welfare does not require preventing an arrangement for her residence in the region. In this matter, it appears that discretion must be given first and foremost to the Palestinian Authority (to which civilian authority in the emigration region has been transferred).

20. Simply stated, the respondent's position is not derived from any security considerations. Neither is the amount of resources in the region, his ability to be absorbed or the work situation part of his motives. The consideration that forms the basis of the decision is the demographic consideration which is concerned with the national component of the occupied territory. This is a consideration that every authority is forbidden from contemplating. It is tainted with discrimination and racism. It is forbidden a fortiori when it involves a military commander who is forbidden from considering the national or political interest of the Occupying Power.

21. Therefore even without the existence of the HCJ arrangements, it was incumbent upon the respondent to provide for the resolution of the petitioner's status – in order to preserve the rights of the petitioners and their minor children and in order to preserve the family unit and the public good.

<u>Summary</u>

22. Even during the most difficult days of the present Intifada extensions of family visits of the HCJ population continued. The petitioners were not able to enjoy this arrangement for the sole reason that the petitioner entered the country with a permit issued by the Ministry of the Interior. This is a typically bureaucratic matter. The justification that has been proffered in order to continue the obfuscation is baseless. I would appreciate it if you would work towards changing the position of the authorities and to arrange this matter, which would have been worthy of being solved even without a petition.

Respectfully yours,

Adv. Yossi Wolfson

Enclosure: Appendices A - B