At the District Court in Jerusalem sitting as the Court for Administrative Affairs

AAA 9143-10-22 'Alian et al. v. State of Israel – the Ministry of Interior
AAA 26583-10-22 Qunbar et al. v. State of Israel – the Ministry of Interior
AAA 26928-10-22 'Aweisat et al. v. State of Israel – the Ministry of Interior
AAA 31250-10-22 Mashur et al. v. State of Israel – the Ministry of Interior
AAA 31319-10-22 al-Qunbar et al. v. State of Israel – the Ministry of Interior

April 13, 2023

Before the Honorable Judge Tamar Bar-Asher

The Appellants in AAA 9143-10-22	1. **_____ 'Alian** 2. **_____ 'Alian**
The Appellants in AAA 26583-10-22	1. **_____ Qunbar** 2. **_____ Qunbar** 3. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
The Appellants in AAA 26928-10-22	1. **_____ 'Aweisat** 2. **_____ Qunbar** 3. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
The Appellants in AAA 31250-10-22	1. **_____ Qunbar** 2. **_____ Qunbar** 3. **_____ Qunbar** 4. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
The Appellants in AAA 31319-10-22	1. **_____ Qunbar** 2. **_____ Qunbar** 3. **_____ Qunbar** 4. **_____ Qunbar (ID No. _____)** 5. **_____ al-Qunbar** 6. **_____ Qunbar (ID No. _____)** 7. **_____ al-Qunbar** 8. **_____ Qunbar** 9. **_____ al-Qunbar**

	10. **_____ al-Qunbar** 11. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
	v.
The Respondent:	**Population and Immigration Authority**
Applicants requesting to join	**1. Herzel Hajaj** **2. Meirav Hajaj** **3. We Chose Life – Bereaved Families and Victims of Hostilities**
Representing the Appellants in AAA 9143-10-22:	Adv. Muhamad Shahabi
Representing the Appellants in AAA 26583-10-22, 26928-10-22, 31250-10-22, 31319-10-22:	Adv. Daniel Shenhar (HaMoked Center for the Defense of the Individual)
Representing the Respondent:	Adv. Meital Fogel (District Attorney's Office, Jerusalem (Civil))
Representing the Applicants requesting to join	Adv. Yaakov Cohen

Judgment

1. The five appeals at hand (which were heard together), were filed against the judgment of the Appeals' Tribunal in Jerusalem according to the Entry into Israel Law, 5712-1952 (hereinafter respectively: **The Tribunal; the Entry into Israel Law**) (the Honorable Adjudicator Ilan Halevga) dated September 20, 2022. In its judgment the Appeals' Tribunal dismissed, for the most part, the five appeals (Appeal (Jerusalem) 4464/20, Appeal (Jerusalem) 4484/20, Appeal (Jerusalem) 4485/20, Appeal (Jerusalem) 4522/20 and Appeal (Jerusalem) 3201/21, which were heard together), which had been filed against the decisions of the Minister of Interior dated November 22, 2020 (hereinafter: the **Third Decision of the Minister of Interior** or the **Decision of the Minister of Interior**), to discontinue the family unification and child registration procedures and to revoke the stay permits or residency visas given to the Appellants.

   The Appellants are family members of different degrees of kinships (half siblings, nephews/nieces and cousins) of the perpetrator Fadi Qunbar (hereinafter: the **Perpetrator**) who committed an intentional deadly ramming attack on January 8, 2017 in Armon Hanatziv promenade in Jerusalem, killing four IDF soldiers, cadets from the IDF’s officer’s training course, Shira Tzur, Yael Yekutiel, Shir Hajaj and Erez Orbach of blessed memory and injuring eighteen civilians and soldiers (hereinafter: the **Attack**).

During the attack the perpetrator was shot and killed. The above decision of the Minister of Interior was given following the attack on the basis of the position of the security bodies according to which revocation of the status of the perpetrator's family members would assist to create deterrence which may prevent future attacks.

Hence, the principal issue which is discussed in the appeals concerns the power of the Minister of Interior to discontinue family unification and child registration procedures based on considerations which were defined in his decision as "**general deterrence considerations**".

Background and Relevant Facts

2. The facts pertaining to each one of the Appellants were broadly described in the judgment of the Appeals' Tribunal. We shall briefly describe them below.

3. **The Appellants in AAA 9143-10-22 (Appeal 4522/20)**: Appellant 1 (____ 'Alian), born in 19__, a permanent Israeli resident, (half) niece of the perpetrator, married in 2002 to Appellant 2 (____ 'Alian), resident of the Area. The spouses have four children, all permanent Israeli residents. Appellant 1's family unification application with Appellant 2 dated November 20, 2008 was approved and on September 9, 2009 Appellant 2 received stay permits in Israel, which were renewed from time to time, and in total over a period of seven years and a half.

4. **The Appellants in AAA 26583-10-22 (Appeal 4464/20)**: Appellant 2 (___ Qunbar), born in 19__, a permanent Israeli resident, (half) brother of the perpetrator, married in 1998 to Appellant 1 (____ Qunbar), born in 19__, resident of the Area. The spouses have eight children, seven of whom are permanent Israeli residents. On December 10, 1997 Appellant 2 submitted a family unification application with Appellant 1 which was rejected for the failure to prove a center of life in Israel. Another application dated February 12, 2006 was approved and on December 11, 2006 Appellant 1 received stay permits in Israel, which were renewed from time to time and in total over a period of about twelve years.

5. **The Appellants in AAA 26928-10-22 (Appeal 4585/20)**: Appellant 2 (____ Qunbar), born in 19__, a permanent Israeli resident, (half) sister of the perpetrator, married a resident of the Area and from said marriage had four children including Appellant 1 (____ 'Aweisat), born in 19___. In 2010 Appellant 2 got divorced. On June 25, 2008 Appellant 2 had submitted an application for the registration of her minor children in Israel, which was rejected for the failure to prove a center of life in Israel. In 2011 the application in Appellant 1's matter was re-examined and approved and accordingly he was given stay permits in Israel which were renewed from time to time until September 1, 2016. On October 23, 2015 another son of Appellant 2, the brother of Appellant 1, was arrested. Due to his involvement in an attempt to commit an attack he was convicted of membership in a terror organization, attempt to cause a person's death, conspiracy to commit a crime and possession of a knife, and was sentenced to fifteen years in prison. Due to the position of the security bodies which objected to the extension of Appellant 1's stay permit, he was given the opportunity, through his mother, to present his arguments, but they have failed to do so. Shortly before the expiration of the stay permit

which had been given to him, its validity was extended for an additional period of one year and in total he held stay permits over a period of about five years and a half.

6. **The Appellants in AAA 31250-10-22 (Appeal 4584/20)**: Appellant 3 (____ Mashur), born in 19__, a permanent Israeli resident, (half) sister of the perpetrator, married in 1990 Appellant 1 (____ Mashur), born in 19__, resident of the Area. The spouses have six children, including Appellant 2 (____ Mashur), born in 19___, resident of the Area. The first family unification request which had been submitted in 1994 by Appellant 2 together with Appellant 1 and for the registration of the children in Israel was rejected in 1997 for failure to prove a center of life in Israel. Another application for the registration of the children was submitted in 2006 and another family unification application was submitted in 2007. The two applications were approved on December 4, 2007 and accordingly Appellants 1 and 2 received stay permits in Israel which were renewed from time to time and in total over a period of about elven years.

7. **The Appellants in AAA 31319-10-22 (Appeal 3201/21)**: Appellant 1 (___ Qunbar), born in 19__, a permanent Israeli resident, married in 1971 Appellant 2 (____ Qunbar), born in 19___, resident of the Area, a cousin of the perpetrator. A family unification application which had been submitted by Appellant 1 in 1994 was rejected in 1997 for failure to prove a center of life in Israel. After a petition was filed with the High Court of Justice (**HCJ 6177/97**) an agreement was reached according to which Appellant 2 was given a stay permit for one year which was extended from time to time and which was held by him, in total, from August 4, 1998 until February 17, 2011 (for about twelve years and a half). His application for status upgrade from February 15, 2011 was approved and on December 26, 2011 he received an A/5 temporary residency visa for one year, which was renewed from time to time and which was valid, in total, for about seven years.

   Appellant 4 (___ Qunbar), born in 19__, a permanent Israeli resident, is married to Appellant 3 (_____ Qunbar), born in 19___, resident of the Area, a cousin of the perpetrator. The spouses have six children, permanent Israeli residents. A family unification application which had been submitted by Appellant 4 in 1994 was rejected in 1997 for failure to prove a center of life in Israel. After a petition was filed with the High Court of Justice (**HCJ 3586/98**) an agreement was reached according to which Appellant 2 *[sic]* was given a stay permit for one year which was extended from time to time and which was held by him, in total, from November 23, 1998 until November 19, 2016 (eighteen years). His application for status upgrade from November 5, 2012 was approved and on November 19, 2016, following the notice of the Minister of Interior in the framework of HCJ 813/14 **A v. Minister of Interior** (October 18, 2017) (hereinafter: HCJ **813/14**) he received an A/5 temporary residency visa for one year, which was renewed from time to time and which was valid, in total, for about five months.

   Appellant 6 (___ Qunbar), born in 19__, a permanent Israeli resident, is married to Appellant 5 (_____ al-Qunbar), born in 19___, resident of the Area, a cousin of the perpetrator. A family unification application which had been submitted by Appellant 4 in 1994 was rejected in 1997 for failure to prove a center of life in Israel, but another application from February 12, 2006 was approved on October 23, 2006. Stay permits in Israel were given to the Appellant which were renewed from time to time and which were held by him, in total, over a period of about ten years.

Appellant 8 (___ Qunbar), born in 19__, a permanent Israeli resident, is married since 1997 to Appellant 7 (_____ al-Qunbar), born in 19___, resident of the Area, a cousin of the perpetrator. The spouses have five children, permanent Israeli residents. A family unification application which had been submitted by Appellant 8 in 2005 was approved and since March 9, 2006 the Appellant received stay permits which were renewed from time to time and which were held by him, in total, over a period of about ten years.

Appellant 10 (___ Qunbar), born in 19__, a permanent Israeli resident, is married since 1972 to Appellant 7 (_____ al-Qunbar), born in 19___, resident of the Area, a cousin of the perpetrator. The spouses have nine children, seven of whom are permanent Israeli residents. A family unification application which had been submitted by Appellant 10 in 1994 was approved and since its approval the Appellant received stay permits which were renewed from time to time. Following the notice of the Minister of Interior in the framework of **HCJ 813/14** the status of Appellant 9 was upgraded and since July 26, 2016 he held an A/5 temporary residency visa for about five months.

8. **The first decision of the Minister of Interior and the first appeals**: after the terrible attack on January 8, 2017, a meeting was held by the political-security cabinet, following which it was decided that according to the power vested in the Minister of Interior, a decision shall be made by him pursuant to which the validity of the stay permits and temporary residency visas in Israel held by the perpetrator's family members by virtue of the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003 (hereinafter: the 2003 Temporary Order or the Temporary Order) shall not be extended. Accordingly, the Appellants were informed on January 10, 2017 that the Respondent was considering revoking the stay permits or residency visas which had been given to them and they were summoned for a hearing which was held on January 19, 2017.

After the hearing the decisions of the Ministry of Interior dated January 25, 2017 were given (hereinafter: the **First Decision of the Minister of Interior**) revoking the stay permits and residency visas of ten Appellants: Appellant 2 in AAA 9143-10-22; Appellant 1 in AAA 26583-10-22; Appellant 1 in AAA 26928-10-22; Appellants 1 and 2 in AAA 31250-10-22; Appellants 2, 3, 5, 7 and 9 in AAA 31319-10-22. It was stated in said decisions that "**following the severe attack… a meeting was held between the Minister of Interior and the security bodies. In the meeting information was presented according to which there are suspicions that several individuals of your extended family maintain contacts with ISIS and are involved in terror activity, therefore, your continued stay in Israel poses a security threat. Accordingly, a privileged opinion was provided by the security bodies.**"

The above ten Appellants filed appeals against the first decision of the Minister of Interior with the Appeals' Tribunal in Jerusalem, some of which were heard together. One of the appeals which concerned a different matter was rejected (Appeal (Jerusalem) 1398/17) while in the other appeals (Appeal (Jerusalem) 1399/17, Appeal (Jerusalem) 1400/17 and Appeal (Jerusalem) 1401/17 (hereinafter: the **First Appeals**) judgment was given by the Tribunal on December 12, 2017 (the Honorable Adjudicator I. Halevga), in which it was consensually held that the first decision of the Minister of Interior shall be cancelled. It was also held that Appellants' cases shall be decided anew after the Appellants are interviewed and after their arguments are heard once again. The reason for Respondent's agreement to cancel the first decision of the Minister of Interior

stemmed from the fact that according to the statements of response on its behalf "**the decision to revoke Appellants' stay permits is based on other and different reasons than those which were specified in Respondent's letter and against which the Appellants have defended**" (page 2 of the Tribunal's judgment). Said judgment was also applied to another appeal concerning some of the Appellants which was heard separately, also constituting part of the first appeals (judgment dated January 2, 2018 in Appeal (Jerusalem) 1463/17).

9. **The second decision of the Minister of Interior and the second appeals**: after Appellants' cases were reconsidered and after the Appellants were re-interviewed, the new decisions of the Minister of Interior were given on April 23, 2018 (hereinafter: the **Second Decision of the Minister of Interior**). In these decisions, Appellants' stay permits and residency visas were revoked again. The decision stated that it relied on the opinion of the security bodies according to which "**the revocation of the status shall assist to create substantial deterrence against the rising phenomenon of terror attacks**".

Appeals against the second decision of the Minister of Interior were also filed by the Appellants with the Appeals' Tribunal (Appeal (Jerusalem) 3285/18, Appeal (Jerusalem) 3286/18, Appeal (Jerusalem) 3289/18 and Appeal (Jerusalem) 3287/18 (hereinafter: the **Second Appeals**), which were also heard together.

The Appeals' Tribunal decided in its judgment dated August 2, 2020 (the Honorable Adjudicator I. Halevga), that Appellants' cases should be returned once again to the Respondent, to be decided by it anew. Said decision was mainly based on the judgment of the Court for Administrative Affairs in Jerusalem (the Honorable Judge O. Shacham) in AAA (Jerusalem) 11930-07-18 **State of Israel v. Khatib** (January 3, 2019) (hereinafter: **Khatib**) which was given after the second decision of the Minister of Interior. It was held in said judgment that according to the Temporary Order, the Minister could not refrain from giving a stay permit or residency visa on the basis of general deterrence considerations, but only on the basis of information concerning a concrete security threat, direct or indirect. Against the backdrop of said judgment and in the absence of response in the second decision of the Minister of Interior concerning his power to discontinue family unification or child registration procedures on the basis of general deterrence considerations, the Appeals' Tribunal held that Appellants' matter shall be returned to the Minister of Interior to be decided anew by a reasoned decision.

10. **The third decision of the Minister of Interior (the decision at hand)**: on November 22, 2020 the third decision of the Minister of Interior was given. In his reasoned decisions from said date the stay permits and temporary residency visas held by the Appellants were revoked for the third time. All of the decisions are almost [identical] in their reasons, other than in the case of Appellant 1 (_____ 'Aweisat) in AAA 26928-10-22 (Appeal 4485/20), which also included the reason of indirect security preclusion against the backdrop of the conviction of his brother of an attempted terror attack (as specified above).

The decisions of the Minister specified in detail the factual circumstances of each one of the Appellants and described the history of the proceedings in their cases, as specified above. The decisions also discussed the broad discretion vested in the Minister by virtue

of the Entry into Israel Law with respect to granting and revoking stay permits in Israel and with respect to the examination of family unification applications by virtue of the Temporary Order in the framework of which security considerations are taken into account which relate directly or indirectly to the applicant him/herself, including general deterrence considerations. Accordingly, the decisions specified the deterrence considerations which were taken into account in view of the deteriorating security situation, the rise in terror attacks and the unique characteristics of the "**lone wolf**" phenomenon as occurred in the severe attack at hand. With respect to the "**general deterrence considerations**" it was emphasized that "**the security bodies are of the opinion… that general deterrence considerations exist, whereby, rejecting an application in similar circumstances, may prevent future attacks and save human lives**". The above as stated in the decisions, on the basis of "**the data in the possession of the security bodies** [which] **show that the security situation has been significantly deteriorating as of 2013, in both intensity and level of murderous terror, requiring measures to be taken to deter potential perpetrators from committing attacks in general, and "lone wolf" attacks in particular**".

It was also stated in the third decision of the Minister of Interior that the right to family life does not necessarily require granting a stay permit in Israel and that due to reasons of public safety and security the Appellants can also maintain family life outside Israel, as was *inter alia* held in HCJ 7052/03 **Adalah v. The Minister of Interior**, IsrSC 61(2) 202 (2006) (hereinafter: **Adalah**). As stated in the decision "**there is no dispute that against a person's application for family unification … stands the right of the state for its security and for the security of its residents and the latter stands before me in the circumstances at hand**".

The third decision of the Minister of Interior was reasoned as follows (the quote is taken from the last paragraphs of each decision (the wording is almost identical in all of them, other than the numbering of the paragraphs which differ from one decision to the other)):

> **"The Entry into Israel Law grants the Minister of Interior broad discretion while granting or revoking a stay permit in Israel. With respect to an application concerning a foreigner, who has less connections to Israel and is not vested with the right to enter or stay in Israel, as things are in the case at hand – according to the discretion vested in me by virtue of said law reasons are considered which relate to the family unification application submitted by virtue of the Israeli spouse (such as: center of life, false details and the like) as well as security considerations relating to the applicant him/herself, directly or indirectly, including general aspects of deterrence, as such exist in the case at hand. The above, even if the permit was given by virtue of the Temporary Order Law, since the Temporary Order Law sets limitations on granting permits or visas to residents of the Area and does not derogate from the general power vested in the Minister to refrain from granting a permit or visa. It should be noted that the above situation differs from the revocation of a permanent residency status due to breach of allegiance to the state of Israel, which was discussed in Abu Arafe (HCJ 7803/06) following which and according to its circumstances the legislation was amended. These circumstances**

are materially different from the circumstances which are described in the case at hand.

As stated in the beginning of my letter, on January 8, 2017 the perpetrator … [note: the family relations between the Appellants and the perpetrator are described herein] **committed a ramming attack in Armon Hanatziv promenade in Jerusalem. Said attack formed part of a continuing trend which started from the beginning of 2013 of a deteriorating security situation and rise in terror attacks against the state of Israel, its citizens and residents, a trend which was manifested in the increased number of attacks in general, in the number of grassroots terror attacks, and in the number of Israelis who were harmed by the terror activity. An additional significant escalation was evident as of the beginning of March 2014 mainly in severe attacks in which Israeli citizens were killed or in which a hot weapon was used, as well as in attempts to commit severe attacks. Most terror activity was and continues to be led by local organizations and "lone wolf" perpetrators. It emerges from examinations of the "lone wolf" phenomenon that the reasons therefore, arise, *inter alia*, from the existence of family connections, even if indirect, to the Judea and Samaria Area, alongside other reasons. The security deterioration reached a new peak as of October 2015 and has continued ever since in the form of terror attacks, which are mostly committed by individual attackers, demonstrating audacity and planning, in all areas and arenas. We are concerned with a sequence of dozens of cases in which Israelis were injured, showing an increase in the amount, a change in the patterns of action and the severity of the attacks. In addition, as of October 2015, a significant increase has occurred in the involvement in terror of perpetrators who are family members of individuals holding status by virtue of family unification.**

In the circumstances of the case at hand, the security bodies are of the opinion that general deterrence considerations exist whereby rejecting the application, in similar circumstances, may prevent future attacks and save human life. In addition, the data in the possession of the security bodies show that the security situation has been significantly deteriorating as of 2013, in both intensity and level of murderous terror, requiring measures to be taken to deter potential perpetrators from committing attacks in general, and "lone wolf" attacks in particular.

It should be clarified that the right to maintain family life does not necessarily require granting a stay permit in Israel. In the circumstances at hand, for reasons of public safety and security, your clients can maintain family life not necessarily in Israel as was also recognized by case law (judgment in HCJ 7052/03 Adalah v. The Minister of Interior).

There is no dispute that against a person's application for family unification and for a stay permit or residency status in Israel stands the right of the state for its security and for the security of its residents and the latter stands before me in the circumstances at hand. The purpose of the graduated procedure of your clients is humanitarian and is aimed at preserving the family unit and at preventing the separation of first degree family members. This humanitarian consideration loses its power in the circumstances described above.

In view of the aforesaid, according to the opinion of the security bodies whereby the revocation of the status shall assist to create deterrence against the rise of terror attacks, after I have thoroughly examined the data in the case of your clients, including the examination of the arguments which were raised by your clients in their interview, and by virtue of the power vested in me, I decided to reject, once again, the application to extend the stay permits/temporary residency visas given to them by virtue of the family unification procedure and to discontinue the procedure in their matter".

11. **The third appeals (at hand) and a brief summary of the appeal procedure**: the Appellants filed appeals against the third decision of the Minister of Interior for the third time. At this time as foresaid, the Appeals' Tribunal has dismissed the appeals in its judgment dated August 2, 2020 (with the exception of its decision that the temporary residency visa of the three Appellants who were holding an A/5 temporary residency visa shall be replaced with a stay permit) in the matter in which the five appeals were at hand filed. Similar to the proceeding before the Appeals' Tribunal, the hearing in the five appeals was also joined and held on January 10, 2023.

    Towards the hearing in the appeals at hand an application was submitted on behalf of Mr. Herzel Hajaj and Mrs. Meirav Hajaj, the parents of Shir Hajaj of blessed memory, one of those murdered in the attack, to appear in the hearing and speak before the court through the legal counsel of the organization "We Chose Life – Bereaved Families and Victims of Hostilities", as had also been done in the framework of the appeals which were heard by the Appeals' Tribunal. Their application was approved (after hearing the positions of the parties to the appeal) and accordingly, during the hearing, their arguments were also heard, in addition to their written arguments.

12. **The opinion of the security bodies**: in the beginning of the hearing an *ex-parte* hearing was held during which I was presented with information and with the major points of the opinion of the security bodies that the Minister's decision at hand relied on. Prior to giving the judgment I have reviewed their comprehensive opinion, the major points of which were referred to by the Minister in his decision as follows:

    "On January 8, 2017 Fadi Qunbar committed a ramming attack in Armon Hanatziv promenade, killing four Israelis; The atmosphere in the village of Jabel Mukaber supports terror attacks and the perpetrators are revered; Many of the inhabitants of the village have expressed support and approval of perpetrators and terror attacks on social media networks; glorifying terror attacks and perpetrators,

alongside publicly supporting them and their family members encourages terror and gives a boost to more young persons to commit terror attacks; it is the opinion of the professional security bodies that the revocation of the status shall assist to create substantial deterrence against the growing phenomenon".

The Judgment of the Appeals' Tribunal

13. In its judgment the Tribunal reviewed the backdrop against which the 2003 Temporary Order was enacted, according to which citizenship, residency status in Israel or stay permit shall not be given to a resident of the Area, the exceptions established therein with respect to residency visas and stay permits to children and spouses and the provision of Section 3D, enabling to refrain from giving residency status or stay permit if it is determined, according to the opinion of the security bodies that the resident of the Area, the applicant or their family member "**may pose a security threat to the state of Israel**". The Tribunal has also stressed that according to case law the examination of the security threat is made on a personal basis, and that indirect threat may also be examined arising from the applicant's close family members. It was accordingly held in **Khatib** that deterrence considerations do not constitute a security threat, direct or indirect, as this term is defined in Section 3D.

However, the Tribunal accepted Respondent's position that the power of the Minister of Interior is not limited only to the provisions of the Temporary Order but may also exercise his power by virtue of Section 11(a)(2) of the Entry into Israel Law. The Tribunal based its above conclusion on the provisions of Section 19 of the Interpretation Law, 5741-1981, providing that the power by virtue of one statutory provision does not derogate from the power by virtue of another statutory provision, and that the power of the Minister of Interior to discontinue a family unification procedure is also vested in him by virtue of causes which are not set in Section 3D, such as, for instance, bigamy, lack of sincerity in the spousal connection or absence of center of life in Israel.

In view of its above determination, the Tribunal examined whether Section 11(a)(2) of the Entry into Israel Law does indeed grant the Minister of Interior the power to discontinue a family unification or child registration procedure for deterrence considerations. In that regard the Tribunal held that the Section as worded grants the Minister of Interior broad discretion in the revocation of a residency visa granted by virtue of the Law. With respect to the subjective purpose of this Section the Tribunal held that it has already been held by case law that the legislator's intent was to apply it to foreigners the regulation of whose status is requested, and with respect to its objective purpose the Tribunal held that the fundamental principles of the system which are relevant to the case at hand should be considered including the sovereignty of the state, state security and public safety, promotion of human rights as well as an explicit authorization to violate basic rights. However, the fundamental assumption which was often established is that a person who is not a citizen is not vested with the right to enter the gates of the state and that even if permitted to enter, the state has a lesser commitment towards them.

14. In said circumstances the Tribunal held that the Appellants held stay permits and temporary residency visas which nullified the argument that their holders have an

expectation interest to continue staying within the territory of the state of Israel. In addition, the Tribunal has also examined the right of the spouses who are permanent Israeli residents to realize their right to family life with their foreign spouse. It has indeed been held that the right to family life is a fundamental right. However, against this right stands the right of all residents to life and security. It has also been held as aforesaid, that the realization of the right to family life does not require that it is necessarily realized in Israel. Against this backdrop the Tribunal held that according to case law, clear and unequivocal authorization is required to violate basic rights and even if such authorization exists in the law, it shall be interpreted narrowly since recognizing human rights underlies the objective purpose of each legislative act. On the other hand the Tribunal stressed that the state of Israel was dealing with a reality of numerous and severe acts of terror committed by "lone wolf" perpetrators, making it difficult for the security bodies to prevent terror attacks. Therefore "**this reality requires that the law deals with complex questions concerning the legitimate means that the state should take in its fight against terror. The reality is that the law lags behind terror. Terror sews destruction, violence and fear without any distinction. This reality requires us to give the laws a new meaning, while maintaining the balance between the security needs and human rights"**. (*Ibid*., page 15).

With respect to Appellants' argument that a person should not be punished for the acts of their relative, the Tribunal noted that additional cases may be found in case law in which different measures were taken against family members and that sometimes a person's actions cannot be disconnected from their environment and family.

15. In view of the aforesaid the Tribunal's conclusion is that Section 11(a)(2) of the Entry into Israel Law grants the Minister of Interior broad discretion including the discretion to discontinue family unification and child registration procedure for deterrence considerations. Finally, the Tribunal examined whether the above decision of the Minister of Interior satisfied the reasonableness and proportionality tests and in view of said tests reached the conclusion that the appeals should be dismissed. Nevertheless and as aforesaid, with respect to the Appellants holding A/5 temporary residency visas it was held that they shall be converted into stay permits.

In conclusion, the Tribunal added that it was well aware of the harsh result caused by the judgment to the Appellants and that the moral dilemma whereby the family members of the perpetrators are the ones paying the price of his actions although they had no involvement in his deeds, was discussed by the courts in the context of the realization of the power to demolish perpetrators' homes. Despite said difficulty the Tribunal added that "**on the other hand stands the principle of the sanctity of life**" while "**Terror creates a dangerous and harsh reality leading to harsh legal results**". (*Ibid*., page 18).

Finally, the Tribunal stated as follows: "**Last but not least. I am of the opinion that the Respondent should conduct from time to time an examination concerning the measure of discontinuing a family unification and child registration procedure for deterrence purposes and its benefits, and on the basis of the findings re-visit Appellants' matter"**.

Main Arguments of the parties

Appellants' Arguments

16. The Appellants argued that there is no dispute that the Appellants themselves are innocent, they have committed no offense and there is no direct or indirect security preclusion against them. They argue that initially an attempt was made to use different and varied arguments to revoke the permits and visas which had been granted to them, but since these arguments had no basis, it was eventually decided to base it on a problematic consideration of deterrence.

The Appellants argued that since the first decision of the Minister of Interior, their case was returned twice to the Minister of Interior to be decided anew, but in fact, the injustice caused to the Appellants was not rectified. In the judgment of the Tribunal in the second round, in connection with the second appeals (from 2018), it was held that the Respondent should examine the matter in light of the **Khatib** judgment, but in fact, it was not done. The Appellants also stressed that the decision of the Minister of Interior had severe consequences adversely affecting them and their families and therefore according to them, solid administrative evidence is required to substantiate his decision and that a proper balance between the various considerations is also required. In the circumstances at hand, the Appellants argue that there is no such evidence and that proper balance was not struck and therefore the decision should be revoked.

17. With respect to the judgment of the Appeals' Tribunal, the Appellants argued as follows: **First**, how is it possible that in the two rounds of the first appeals (in 2017 and 1n 2018) the appellants' positions were accepted, but the third time their position was rejected; **Second**, the Tribunal erred in disregarding the fact that the Temporary Order is the special law which applies to the circumstances of the case, and it does not include an authorization to discontinue family unification procedures for reasons of general deterrence. The above, particularly in view of the consistent case law according to which human rights may not be violated without an explicit authorization by law. Nor can it be compared to reasons directly related to family unification procedures, such as the absence of center of life or an insincere relationship, with respect of which there is also no express authorization; **Third**, the issue of proportionality could not have been examined in general with respect to all of the Appellants, as was done in the judgment of the Appeals' Tribunal. This issue should be examined individually with respect to each one of the Appellants; **Fourth**, the Tribunal did not examine the reasonableness of the decision of the Minister of Interior. Nor was it clarified what weight was given to the opinion of the security bodies and whether it was adopted without an independent consideration by the Minister of Interior; **Fifth**, the court's comment at the end of the judgment concerning the need to re-visit the matter from time to time is not clear and its practical consequences are not clear as well.

18. The Appellants argued that since the decision violates human rights in circumstances in which they are deprived of a right which has already been granted to them, weighty administrative evidence is required for this purpose. Accordingly, a decision to revoke the permits and visas granted to them over an extended period of time requires explicit legal authorization. According to them, in the circumstances at hand, the Temporary Order applies rather than the Entry into Israel Law, which, according to them, does not apply in the circumstances at hand. This fact also arises from Section 3 of the Temporary Order, which expressly states that so long as the Temporary Order is in force, a residency visa or a stay permit may not be granted by virtue of any other law, including the Entry into Israel Law. The following sections clarify the conditions under which residency visas

and stay permits will be granted and the conditions for revoking them or refusing to grant them. On the other hand, Section 11(a)(2) of the Entry Law empowers the Minister to revoke a stay permit "according to this law". It accordingly emerges that this Section authorizes the Minister of Interior to revoke only stay permits granted by virtue of the Entry Law, but not by virtue of any other law, as was also held in **Khatib**.

19. The Appellants referred again to case law which according to them held that in order to violate human rights an explicit authorization by law is required and that it was so held in many contexts including for the purpose of the Entry into Israel Law. With respect to this law it has already been held that it was not sufficiently detailed to enable a determination regarding the authority to violate human rights solely on the basis of a general and undetailed clause.

    The Appellants argued further that the administrative discretion vested in the Minister of Interior with respect to the grant of residency visas and stay permits in Israel is not unlimited and that according to the principle of legality it is limited by the boundaries of the law. An administrative authority may not take into account considerations which it was not authorized to consider, even if they are good and worthy considerations. Therefore, the Respondent should point at an explicit legal source on the basis of which the Minister could have made his decision. In the absence of any dispute that no security or criminal threat, direct or indirect, is posed by the Appellants, there is no room for the opinion of the security bodies, which does not relate directly to the Appellants, but rather concerns the need to deter the public at large. The Temporary Order limited Respondent's power to violate the basic right to family life on the basis of an indirect preclusion, emanating from others, in circumstances in which the preclusion arises from first degree family members. The Appellants argue that there is no room to expand the power to the circumstances at hand, relating to the discontinuation of a family unification procedure for reasons of deterrence.

20. The Appellants added that there is also a difficulty in the mere purpose of deterrence underlying the decision of the Minister of Interior and for this purpose reference was made, *inter alia*, to the statements made by the court in its judgment in AAA 8277/17 **Ziwad v. Minister of Interior** (July 21, 2022) concerning deterrence considerations, which overturned the decision to revoke the citizenship of perpetrators due to breach of allegiance to the state of Israel. As stated there, it is a consideration which raises a difficulty and it is doubtful whether the measure which was selected does indeed promote it (paragraphs 109-110 of the judgment of the Honorable President E. Hayut and paragraph 5 of the judgment of the Honorable Deputy President N. Hendel). On the other hand it was argued that a comparison could not be made to case law concerning demolition of perpetrators' homes, which are performed, *inter alia*, on the basis of deterrence considerations. The above, according to the Appellants, since for the purpose of house demolition there is an explicit authorization in the law, in Regulation 119 of the Defence (Emergency) Regulations, 1945. The above, contrary to family unification procedure, for the discontinuation of which on the basis of deterrence considerations there is no explicit authorization. In any case, the Appellants added that the explicit justification for the demolition of perpetrators' homes for deterrence considerations is also in dispute. According to them, as a general rule, according to the provisions of the Penal Law, 5737-1977, considerations relating to deterring the public at large can only be taken into

account when setting a punishment only of the offender himself/herself, but not with respect to another person.

The Appellants argued further that the right to family life was recognized as a constitutional right and therefore it can only be violated according to the Basic Law: Human Dignity and Liberty, on the basis of weighty considerations and on solid grounds. The Tribunal's determination that the Appellants shall be able to realize this right outside Israel cannot stand. It does not take into account their individual circumstances and the impact that said decision will have on their family members. The Appellants argued that the decision of the Minister of Interior is disproportionate since the measure which was taken was inappropriate. According to them, the Tribunal failed to consider the proportionality of the decision from the individual aspect of each one of the Appellants according to the sub-tests which were established by case law for the purpose of deciding whether an administrative decision is proportionate. In the circumstances at hand, it was argued, it seems that the decision stemmed from considerations of revenge and should therefore be revoked.

21. In the oral hearing it was also argued that the decisions of the Minister were also given with respect to family members of the perpetrator who are not his first-degree or even second-degree relatives and that in the absence of an authorization by law, it is inconceivable that there shall be no limitation on the scope of family members who may be adversely affected by the perpetrator's deeds as a result of the revocation of their stay permits or residency status. It was also argued that since as a result of the decisions the sponsor, who is a permanent resident, will not be able to enter Israel to realize his/her right to family life, decisions such as those at hand may cause mass deportation of more distant relatives of perpetrators.

Respondent's Arguments

22. The Respondent discussed the provisions of the 2003 Temporary Order (and the parallel provisions in Citizenship and Entry into Israel Law (Temporary Order) 5782-2022 (hereinafter: the **2022 Temporary Order**), the power of the Minister of Interior to accordingly grant a resident of the Area a stay permit or a temporary residency visa pursuant to the exceptions established therein and his power to revoke them or extend their validity. Among other things it was argued that the Minister is authorized to take into account security considerations, crime prevention consideration, center of life considerations and the like. The Respondent has also emphasized the security preclusion provision (Section 3D of the 2003 Temporary Order), according to which a stay permit or residency visa in Israel shall not be given to a resident of the Area if according to the opinion of the security bodies the resident of the Area, the applicant or their family member "**may pose a security threat to the state of Israel**".

According to the Respondent, an entrenched rule is that the Minister of Interior is vested with broad discretion in exercising his powers according to the Entry into Israel Law and according to the Temporary Order. It was also argued that the argument according to which a resident of the Area is vested with the right to receive status in Israel including the right to receive residency status or a stay permit cannot be heard, since the power to grant them is a discretionary power, which according to the Respondent, was not limited by law.

With respect to the security preclusion section (Section 3D) the Respondent argued that it was added in the amendment of the Temporary Order from 2005, and established the cases in which a stay permit or residency status shall not be given to a resident of the Area. This Section, according to the Respondent, does not establish a closed list of refusal causes, since such an interpretation is contrary to the explicit language of the provisions of the Temporary Order. According to these provisions, the Minister of Interior has a discretionary power to grant a residency status or a stay permit while Section 3D limits his broad discretion by imposing a prohibition against granting status or stay permit upon the occurrence of the circumstances described therein. As evidence of the above, the Respondent stressed that applications for stay permits or residency status by virtue of the Law are routinely denied, even if they comply with the conditions of Sections 3 to 3B of the 2003 Temporary Order. It was also held that security considerations form an inherent part of the Temporary Order since they have preceded it, led to its enactment and also presently guide the exercise of the discretion. Under these circumstances the Respondent argued that security considerations including considerations of general deterrence, aimed at creating effective deterrence against acts of terror, are considerations that the Minister of Interior is entitled to consider while examining an application to extend the validity of temporary residency visas or stay permits. The Respondent emphasized that the existence of security preclusion is a consideration which is also taken into account while examining other applications concerning the regulation or cancellation of status in Israel.

23. The Respondent added, beyond need, that Section 11(a)(2) of the Entry into Israel Law also empowers the Minister of Interior, at his discretion, to cancel a residency status which was given by virtue of said law. The Temporary Order does indeed establish specific provisions concerning residents of the Area, but it cannot limit or nullify the power vested in the Minister of Interior by virtue of the Entry into Israel Law, including, *inter alia*, his power to revoke a residency status according to his broad discretion by virtue of the Entry into Israel Law.

    The Respondent argued that in **Khatib** it was held that the opinion of the security bodies did not substantiate a consideration of deterrence. The above, according to the Respondent, contrary to the circumstances at hand in which the decision of the Minister and the judgment of the Appeals' Tribunal are based on the opinion of the security bodies which determined that "**the revocation of the residency shall assist to create a substantial deterrence against the growing phenomenon"** (as was cited in Respondent's response to the appeal, paragraph 41). Therefore, the Respondent argued that **Khatib** should be distinguished from the circumstances at hand. In addition the Respondent argued that it is a judgment of the district court sitting as a court for administrative affairs whose judgments, according to Section 20 of the Basic Law: the Judiciary, are neither binding nor guiding for the purpose of the decision at hand.

24. The Respondent emphasized that in the circumstances at hand there is no room to deduce from a judgment which concerns the revocation of permanent residency or the revocation of citizenship or from the determination that their revocation requires explicit authorization by law, since the case at hand concerns stay permits or temporary residency visas which may be extended for a limited period of time by the termination of which an application should be submitted for the extension of their validity and the acceptance of such application is discretionary. We are not concerned with the revocation of an existing permit or visa, but with renewed permits or visas subject to proving a center of life or a

sincere and exclusive relationship and absence of criminal or security preclusion. Therefore, the Respondent argued that the holding of permits and visas as aforesaid should not be regarded as Appellants' vested right, but rather as temporary decisions which are renewed from time to time.

With respect to the constitutional right to family life the Respondent emphasized that the scope of its applicability in the context relevant to the case at hand has already been discussed by case law, which held that said right does not necessarily include the right to maintain family life in Israel nor does it mean that by virtue thereof there is a vested right to receive residency status in Israel. In the circumstances at hand it was determined by the Minister in his decision that the state's right to protect its security and the safety of its inhabitants trumps Appellants' right. Therefore, according to the Respondent, it is doubtful whether Appellants' right to family life is indeed violated. Anyway, in view of the power vested in the Minster of Interior not to extend temporary residency visas or stay permits according to the law, there is no room for Appellants' arguments concerning the need to have another explicit authorization.

25. With respect to Appellants' arguments concerning the opinion of the security bodies, the Respondent argued that their opinion pertains to the case at hand and that there is no room to deduce from another opinion on security matters which was submitted in another case. With respect to the arguments made with respect to the demolition of perpetrators' homes, the Respondent added that it has already been held with respect to the legislative arrangement in this matter, that using deterring measures to save human life does not amount to penalizing innocent persons.

With respect to the reasonableness and proportionality of the decision of the Minister of Interior, the Respondent argued that there is no room for Appellants' argument that an individual examination has not been conducted, since the first part of each one of the decisions of the Minister of Interior includes an individual review of the circumstances of each one of the Appellants. The Appeals' Tribunal has also conducted in its judgment an individual examination which led the Tribunal to intervene with the Minister's decision with respect to three Appellants.

The Respondent added that the Minister of Interior exercised his power according to the rules of administrative law and that his decisions were made according to the power vested in him by virtue of the Temporary Order and by virtue of the Entry into Israel Law, taking into account security considerations which are relevant and legitimate considerations that the Minister may consider while exercising his powers. The Respondent argued further that his decisions were given after having examined the individual circumstances of the Appellants, giving weight to the harm which may be caused to them. Alongside the above, the duty and power of the state to use the measures available to it to protect the safety and security of the public in Israel were also considered. All of the above according to the position of the security bodies whereby the revocation of stay permits and residency visas in Israel which were given to family members of perpetrators who have committed terror attacks, shall assist to create an effective deterrence against future involvement in terror activity. Finally, the Respondent argued that as a general rule, the court does not replace its discretion with the discretion of the Minister of Interior in the event that the Minister's decision is given within the scope of

his power, in the event that his decision is reasonable and in the event that it was made after the relevant considerations have been considered.

Deliberation and Decision

The 2003 Temporary Order (and the 2022 Temporary Order) – Background

26. The stay permits or residency visas held by the Appellants were given to them by virtue of the 2003 Temporary Order. Some of the Appellants were given permits or visas prior to the enactment of the Temporary Order and some were given residency visas by virtue of the Minister of Interior's notice dated April 11, 2016 in the framework of **HCJ 813/14**.

    First we shall briefly describe the backdrop, against which the Temporary Order was enacted, its main provisions and the notice of the Minister of Interior in **HCJ 813/14** (for a more detailed description see inter alia, HCJ 813/14, the Honorable President M. Naor, paragraphs 1-5; AAA 9168/11 **A v. Ministry of Interior** (November 25, 2013), the Honorable Justice Zylbertal, paragraphs 2-4; the explanatory notes of the Citizenship and Entry into Israel (Temporary Order) Bill, 5782-2022 (government bill dated February 7, 2022, No. 1509, page 596)).

27. Until 2002 the residents of Judea, Samaria and the Gaza Strip (hereinafter: the **Area**) were entitled to receive status in Israel by virtue of family unification, according to a procedure of the Ministry of Interior, Population and Immigration Authority, which regulated a graduated procedure consisting of several stages (procedure 5.2.2001 which was cancelled). A maximal period of time was established for each stage and the status was regulated thereunder subject to applicant's compliance with the conditions of the procedure, absence of a criminal or security preclusion and a continued center of life in Israel. At the first stage the applicant was given a temporary stay permit (a DCO permit), at the second stage the applicant was given an A/5 temporary residency visa and by the conclusion of the procedure (which continued five years and three months) the applicant was entitled to receive a temporary residency visa in Israel.

    On May 12, 2002, government resolution No. 1813 was adopted regarding "**Handling illegal aliens and family unification policy with respect to the residents of the Palestinian Authority and foreigners of a Palestinian descent**" according to which the Ministry of Interior shall no longer handle new applications of residents of the Area to receive status in Israel; pending procedures of residents of the Area shall be frozen; and the status of a person who was already undergoing a graduated procedure shall not be upgraded to a higher status. The principles of the above decision were entrenched in the 2003 Temporary Order (which was published on August 6, 2003).

28. In Section 2 of the 2003 Temporary Order the rule was established according to which during the term of its validity the Minister of Interior shall not give a resident of the Area citizenship or residency status in Israel and the Commander of the Area shall not give a resident of the Area a stay permit in Israel. Several exceptions were established to this rule, some in the original Temporary Order, but most of them in later amendments. It was also determined that the Temporary Order shall be valid for one year, but may however be extended by order according to a government resolution and with the approval of the Knesset (Section 5). Since then its validity was extended from time to time until its expiration on July 6, 2021. On March 15, 2022 the 2022 Temporary Order was enacted

in its stead, which is mostly identical to the 2003 Temporary Order (one of the changes therein is the addition of Section 1 of the 2022 Temporary Order which was not included in the bill of the law as published and which, as stated in its caption, defines the "purpose" of the Temporary Order).

29. The 2003 Temporary Order was amended twice, in 2005 and in 2007. These amendments were made following comments of the Supreme Court in judgments which were given by expanded panels in petitions to the High Court of Justice in the framework of which the Temporary Order was challenged. However, as a general rule, the Temporary Order was approved in said judgments (**Adalah**; HCJ 466/07 **Galon v. Attorney General**, IsrSC 65(2) 44 (2012) (hereinafter: **Galon**). Currently several petitions are pending with respect to the 2022 Temporary Order).

30. With respect to the interim period of about eight months (between July 6, 2021 and March 15, 2022) during which the 2003 Temporary Order was no longer in force and the 2022 Temporary Order had not yet been enacted, it was held that during this period it was not possible to act according to its provisions. As was held in LAA 7917/21 **Lana Khatib v. Minister of Interior** (January 11, 2022) (hereinafter: **LAA Lana Khatib**) (which was heard by a panel of three in which leave for appeal was granted and the appeal was accepted), according to the basic rules of the administrative law, the administrative authority may not act in the absence of explicit authorization by law or according to statutory provisions which are not valid.

> **"There is no doubt that the situation at hand is very exceptional, The Respondents have acted for many years according to certain legal arrangements, that the Temporary Order was the source of their authority. However, at this time the Temporary Order Law is no longer valid. In this state of affairs, there is no dispute that the basic rules of the administrative law no longer enable to act according to the provision of a law which is not in force. It is a direct manifestation of the principle of legality which requires that the state authorities act according to an authorization by law, which has already been recognized in the early days of this court** (see: HCJ 1/49 **Bejerano v. Minister of Police**, IsrSC 2 80 (19499); HCJ 144/50 **Sheib v. Minister of Defense**, IsrSC 5 399 (1951)). Subsequently, the court, in its consistent judgments, directs that:
>
> > **'While exercising its powers the authority cannot rely on anticipated legislation and it must act according to the existing legal situation'** (HCJ 3674/94 **Tzarfati v. Minister of Health**, IsrSC 49(3) 804, 816 (1995). See also: HCJ 5692/97 **Doron v. Mayor of Rishon Le-Zion**, IsrSC 51(5) 380, 383 (1997); HCJ 2967/00 **Arad v. The Knesset**, IsrSC 54(2) 188, 191 (2000). See also: Daphne Barak-Erez **Administrative Law** Vol. A 100 (2010)" (Ibid., Honorable Justice D. Barak-Erez, paragraph 14).

<u>The Temporary Order – The rule and the exceptions</u>

31. The prohibition against granting status in Israel to the residents of the Area subject to the exceptions established in the Temporary Order was set, as aforesaid, in Section 2 of the 2003 Temporary Order (Section 3 of the 2022 Temporary Order) which states as follows:

> **During the period in which this Law shall remain in force, notwithstanding any other provision of law, including Section 7 of the Citizenship Law, the Minister of Interior shall not grant a resident of the Area, or a citizen or resident of a country listed in the Addendum, citizenship on the basis of the Citizenship Law, and shall not give them a residency visa in Israel on the basis of the Entry into Israel Law, and the Area Commander shall not grant such a resident of the Area a stay permit in Israel, on the basis of the security legislation in the Area**.

According to the 2005 amendments several exceptions were established to the above rule, including, with respect to spouses of Israeli residents and their children. With respect to spouses it was determined in Section 3 of the 2003 Temporary Order (Section 4 of the 2022 Temporary Order) that "Notwithstanding the provisions of Section 2" the general limitation – "**the Minister of Interior may at his discretion approve an application of a resident of the Area for a stay permit by the Commander of the Area**" in the event of a (male) resident of the Area over 35 years of age and in the event of a (female) resident of the Area who is over 25 years of age to prevent their separation from their spouses who legally reside in Israel. A similar provision was also established in Section 3A of the 2003 Temporary Order (Section 6 of the 2022 Temporary Order with respect to children, to prevent their separation from the custodial parent who legally resides in Israel. It was also determined that a residency visa in Israel may be given to minors under 14 years of age and that an application for a stay permit may be approved for minors over 14 years of age.

In addition, according to the provisions of Section 3A1 of the 2003 Temporary Order (Section 7 of the 2022 Temporary Order) the Minister of Interior was empowered to give a stay permit or a temporary residency visa for special humanitarian reasons and subject to the recommendation of a professional committee appointed according to this Section. Additional exceptions were established in the transition provisions (Section 4 of the 2003 Temporary Order; Section 15 of the 2022 Temporary Order) enabling, *inter alia*, to extend the validity of permits and visas held by residents of the Area prior to the effective date of the Temporary Order, but not to upgrade their status to a higher status. Another exception which concerns two of the Appellants was established in the notice of the Minister of Interior which was submitted in the framework of **HCJ 813/14**, according to which a status upgrade may be approved for residents of the Area holding a stay permit, if a family unification application had been submitted by them and was approved by the end of 2003.

The Security preclusion clause and the Minister's decision pursuant thereto

32. The application of the exceptions to the rule prohibiting the grant of residency visas or stay permits to residents of the Area was limited only to applicants with respect of whom there is no security preclusion. This provision was established in Section 3D (which was added in the 2005 amendment) with respect to the exceptions established in Sections 3,

3A1, 3A(2), 3(b)(2) and (3) and 4(2) of the 2003 Temporary Order (Section 11 of the 2022 Temporary Order, with respect to the exceptions established therein in Sections 4, 6, 6(2), 7, 8(2) and (3) and 15(a)(2)) (hereinafter: the **Security Preclusion Clause**). Hence, this is the language of the clause in pertinent part (the last part was omitted):

> **No stay permit in Israel or residency visa in Israel shall be granted to a resident of the Area, according to sections 3,3A1, 3A(2), 3B(2) and (3) and 4(2) and no stay permit shall be granted to any other applicant who is not a resident of the Area, <u>if the Minister of Interior or the Commander of the Area, as the case may be, determines, according to the opinion of the competent security bodies, that the resident of the Area or another applicant or their family member may pose a security threat to the State of Israel</u>; In this section, "family member" - a spouse, parent, child, brother and sister and their spouses…**

33. As a general rule and as has often been held, the Minister of Interior is vested with broad discretion while exercising his powers according to the Entry into Israel Law. This broad discretion stems from the nature of the power vested in the Minister by virtue of said law and due to the sovereignty of the state to decide who may enter its gates and who may stay therein (see inter alia, HCJ 758/88 **Kendel v. Minister of Interior**, IsrSC 46(4) 505 (1992), The Honorable Justice S. Netantahu, page 520 (hereinafter: **Kendel**); HCJ 4156/01 **Dimitrov v. Ministry of Interior**, IsrSC 56(6) 289 (2002), Honorable President A. Barak, paragraph 8; AAA812/13 **Bautista v. Minister of Interior** (January 21, 2014), Honorable Justice U. Vogelman, paragraph 8 (hereinafter: **Bautista**); HCJ 7803/06 **Abu Arafe v. Minister of Interior** (September 13, 2017), Honorable Justice U. Vogelman, paragraph 44, and see also: *Ibid*., Honorable Justice E. Rubinstein, paragraph C; Honorable Justice N. Hendel, paragraph 7 (hereinafter: **Abu Arafe**)).

This broad discretion is also vested in the Minister of Interior while exercising his powers by virtue of the Temporary Order (AAA 5645/21 **A v. Minister of Interior** (April 11, 2022), Honorable Justice D. Mintz, paragraphs 16-17 (hereinafter: **AAA 5645/21 A**); HCJ 1905/03 **'Akel v. State of Israel – Minister of Interior** (December 5, 2010), Honorable Justice U. Vogelman, paragraphs 10-11 (hereinafter: **'Akel**)). According to the broad discretion vested in the Minister of Interior by virtue of the Temporary Order, applications for residency visa or stay permits in Israel are often denied, notwithstanding the fact that the conditions of any of the exceptions set in the Temporary Order are satisfied. Accordingly, for instance, the position of the Minister of Interior has often been accepted when applications as aforesaid were denied due to bigamy (see, for instance: **AAA 5645/21 A,** paragraph 17; **AAA 3091/21 State of Israel – Minister of Interior v. A** (May 22, 2022), Honorable Justice S. Shohat, paragraphs 19-22); in circumstances in which it was found that the applicant presented in his/her application unreliable information (AAA 8844/04 **Sha'aban v. Ministry of Interior** (February 12, 2006), Honorable Justice E. Rivlin, paragraph 4); due to the applicant's criminal activity (HCJ 4942/07 **'Amarin v. Minister of Inerio**r (September 2, 2007), Honorable Justice A. Procaccia, paragraphs 10-11); and even due to suspicions of criminal activity although the investigation files concerning the applicant had been closed (HCJ 7241/07 **Tareira v. Minister of Inerio**r (January 7, 2009), Honorable Justice A. Procaccia, paragraphs 11-12).

34. However, despite the broad discretion vested in the Minister of Interior while exercising his powers according to the Entry into Israel Law, his decisions are not immune from judicial review according to the grounds for judicial review of administrative actions. It has also been often held in this regards that indeed "**the discretion of the Minister of Interior in this matter, as aforesaid, is broad. However, the discretion is not absolute. Similar to any other case in which the administrative power is exercised, the discretion of the Minister of Interior in his decisions concerning granting a permit or visa is also subject to the scrutiny of the court in the framework of the recognized grounds for judicial review of administrative acts. The Minister of Interior must exercise his discretion in good faith, on the basis of equality, proportionately, reasonably and on the basis of pertinent considerations**" (**Bautista**, *Ibid*. See *inter alia*, also: **Kendel,** pages 527-528; '**Akel**, paragraph 11).

The same applies to the broad discretion of the Minister of Interior when he decides to deny an application on the basis of the Security Preclusion Clause and to the judicial review of his decisions. With respect to said discretion it was held that "**The Minister of Interior must exercise his above power according to the basic principles of Israeli administrative law. He must exercise powers which enable violation of basic constitutional rights according to the standards established in the limitation clause of the Basic Laws with respect to human rights (…). The decision of the Minister of Interior… should therefore satisfy the requirement of proportionality. In this regard, three sub-tests were developed: the rational connection test, the least injurious means test and the proportionality test (in its narrow sense). In the case at hand a connection of correlation should exist between the purpose of safeguarding state security and public safety and the refusal to grant a stay permit; it is required that the means taken - shall be the least injurious one; and finally, it is required that a proper relation is maintained between the means of refusing to grant a stay permit and the benefit arising therefrom to state security and public safety**" (HCJ 2028/05 **Amara v. Minister of Interior** (July 10, 2006), Honorable President A. Barak, paragraph 11 (hereinafter: **Amara**)).

35. With respect to the security preclusion as a result of which the Minister of Interior shall refrain from granting a residency visa or a stay permit, notwithstanding the fact that the exceptions established in the Temporary Order are complied with, the starting point is that a heavy weight is given to security considerations. "**The starting point in a democratic society is that democracy has the right and even the obligation to take measures to protect itself. When a risk threatens the state or the security of its residents using the democratic system for that purpose, the rights and liberties granted by it cannot be effectively exercised (…). Hence, in the framework of the restraints imposed on it, democracy is not required to assist those undermining it or acting in collaboration with its enemies to harm it"** (**Abu Arafe**, paragraph 45).

The Temporary Order was enacted on the basis of security considerations which also guide the discretion of the Minister of Interior while exercising his powers by virtue thereof (**Adala**, Honorable President A. Barak, paragraph 79; **Galon**. See also the explanatory notes for the 2023 Temporary Order bill: Citizenship and Entry into Israel (Temporary Order) Bill, 5763-2003 (Government Bill dated June 4, 2003, No. 31, page 482)).

With respect to the enactment of the Security Preclusion Clause (Section 3D of the Temporary Order 2003; Section 11 of the 2022 Temporary Order), it was clarified that its inclusion was required in view of the expansion of the exceptions to the general rule established in the Temporary Order limiting citizenship, residency visa and stay permits during the term of its validity (Section 2 of the Temporary Order 2003; Section 3 of the 2022 Temporary Order). The explanatory notes to the bill state as follows with respect to the addition of the Security Preclusion Clause (explanatory notes to Section 3 of the Citizenship and Entry into Israel (Temporary Order)(Amendment) Bill, 5765-2005 (Government Bill dated May 16, 2005, No. 173, page 560)): "**In view of the expansion of the exceptions as proposed… and for the purpose of preventing the security threat as a result thereof, it is proposed to establish in the Temporary Order the principle which shall be recognized by the courts in their judgments, according to which a security threat emanating from first degree family members of the applicant requesting family unification in Israel or of an applicant requesting another stay permit, may prevent granting a stay permit in Israel to said resident. The above, in view of the professional opinion of the security bodies according to which the connection of a resident of the Area with a family member as aforesaid from whom the security threat arises, may be abused, as has often been proven in the past**" (emphasis was added).

The expansion of the term "**family member**" was made in the framework of a later amendment from 2007, but the term as established, which includes only first degree family members – "**spouse, parent, child, brother and sister and their spouses**" – is narrower than the proposal which also included "**a child of any of them**" (explanatory notes to Section 5 of the Citizenship and Entry into Israel (Temporary Order)(Amendment No. 2) Bill, 5767-2006 (Government Bill dated December 18, 2006, No. 273, page 182), in the framework of which the addition to the last part of Section 3D was also proposed, which is irrelevant to the case at hand).

36. The security threat which may justify a refusal to grant a stay permit or a residency visa in Israel was broadly defined in the Security Preclusion Clause of the Temporary Order, in a manner which does not only include a direct threat posed by the applicant himself/herself, but also an indirect threat emanating from their family members, as defined in said section. As stated in this regard "**Hence, a "security threat" is broadly defined by the legislator. It includes not only a direct threat posed by the permit applicant himself/herself (hereinafter: a direct security threat) but also an indirect threat emanating from their close family members (hereinafter: indirect security preclusion)" (**HCJ 7444/03 **Daka v. Minister of Interior** (February 22, 2010) Honorable Justice A. Procaccia, paragraph 26. See also: HCJ 1740/04 **'Ayat v. Minister of Interior** (July 31, 2006)).

The security threat arising from the involvement of family members in activity against state security, as a result of which a residency visa or stay permit shall not be granted although under the circumstances they may be granted, also exists when the applicant himself/herself is not involved in any manner in such activity, but only any of his/her family members. The reason for that stems from the concern that the presence of the applicant in Israel shall, intentionally or unintentionally, assist the hostile activity of their family member. Accordingly, for instance, it was said with respect to a woman whose brother was involved in terror activity that "although until this day it has not been argued

against the Appellant that she was involved in any act against state security, in view of the activity of her brother, the concern arises that her presence in Israel may, intentionally or unintentionally, assist to carry out the hostile activity against Israel" (AAA 5451/07 **Abasi v. Regional Population Administration Office – Jerusalem** (September 18, 2007), Honorable Justice E. Arbel, paragraph 7. See also: AAA 658/13 **Taha v. Ministry of Interior** (June 2, 2013), Honorable Justice D. Barak-Erez, paragraph 13).

37. However, the security threat according to the Security Preclusion Clause should be weighed against the violated right, which under the current circumstances is the right to family life, striking a proportionate balance between the violation of the above right and the security threat. The violation of the right to family life may sometimes be very severe, either due to the fact that a family whose center of life has been in Israel for many years shall be forced to relocate and move elsewhere as a result of the refusal to give any of its members a residency visa or a stay permit or because it may divide the family unit (compare: **Daka**, paragraph 48 and with respect to the balancing of the different considerations, see paragraph 51).

In view of the aforesaid, the security threat emanating from the permit applicant should be examined, with respect to each applicant, individually, particularly when it is an indirect threat emanating from their family members (**Amara**, paragraph 14), since only an individual examination can ensure that the decision of the Minister of Interior to refrain from giving a stay permit or a residency visa for reasons of security preclusion, does in fact comply with the requirement of proportionality. Since "**The measure of individual examination of the concerned persons, is undoubtedly an appropriate and proportionate measure. The individual examination is designed to identify a potential threat which may be posed by any specific person**" (**Amara,** paragraph 12 and the words of the Honorable President A. Barak in **Adalah**, paragraphs 94 and 113 (quoted there).

The importance of the individual examination which is required to examine the proportionality of the Minister of Interior's decision to refrain from giving a residency visa or a stay permit due to a security preclusion arising from the hostile activity of their family member, is the only way by which the justification for denying the permit or the visa due to indirect security preclusion may be examined. As was emphasized in that matter "**the individual examination, according to the individual circumstances of the case, should examine whether an actual or potential threat is posed by the foreign spouse. The intensity of the security threat is examined on the basis of the examination of individual material pertaining to the involved persons**" (**Amara**, paragraph 13). It was also emphasized that "**a refusal to grant legal status in Israel due to a "security preclusion" relating to the applicant himself/herself, is not problematic, provided that the refusal is based on a proper factual basis**" (*Ibid*., paragraph 14).

On the other hand, if the alleged security preclusion stems from activity of the applicant's family member, the situation is different, albeit the fact that such a threat is recognized as justifying the denial of a stay permit or residency visa, since as aforesaid "**a security threat emanating from a family member of a resident of the Area may also substantiate a denial of an application for legal status in Israel… [since] in the severe security situation that Israel is concerned with at this time, 'wide safety margins' are**

required in regulating status in Israel for residents of the Area" (*Ibid*., and also in paragraph 15). However and as aforesaid, it requires an individual examination of each application. Such an examination usually relies not only on open information, but also on privileged information including intelligence information in the possession of the security bodies, provided that the Minister's decision is made on the basis of appropriate administrative evidence (*Ibid.*, paragraphs 16-17; **Daka**, paragraph 47). It was also held that the burden to prove that the security threat has reached a probability level justifying the denial of a residency visa or a stay permit is imposed on the state (**Daka**, paragraph 43).

Deterrence considerations in the framework of the Security Preclusion considerations

38. In the case at hand, the opinion of the security bodies on the basis of which the decision of the Minister of Interior was made, does not refer to a direct or indirect security threat emanating from the Appellants or from any of their family members (as the term "family member" is defined in the Security Preclusion Clause), but rather to information concerning **"general deterrence considerations"**.

Nor does the Respondent argue that it has in its possession concrete information pointing to a security threat emanating from any of the Appellants, but rather that the decision of the Minister of Interior is made, as stated therein, on the basis of "**general deterrence considerations**" relying on the opinion of the security bodies stating that in their professional opinion "**denying the application… may prevent future attacks and save human life**" (as aforesaid, the major principles of the opinion and information underlying it were presented to me in an *ex-parte* hearing and after the hearing I have reviewed the entire material included therein).

The Security Preclusion Clause provides "**No stay permit in Israel or residency visa in Israel shall be granted to a resident of the Area",** according to any of the exceptions listed in this Section **"if the Minister of Interior or the Commander of the Area, as the case may be, determines, according to the opinion of the competent security bodies, that the resident of the Area or another applicant or their family member may pose a security threat to the State of Israel;** For this purpose and as aforesaid, a **"family member"** – is a first-degree family member – **"a spouse, parent, child, brother and sister and their spouses"** – unlike cousin, nephew and such other more distant family members (like some of the Appellants).

Hence, the question which should be decided is whether "**general deterrence considerations**" are among the considerations the Minister of Interior was empowered to consider according to the power vested in him by virtue of the Temporary Order and by virtue of the Security Preclusion Clause.

39. The above question was discussed in **Khatib** with respect to the mother of a minor perpetrator (hereinafter in this paragraph: the **Mother**), who was shot and killed in a stabbing attack committed by him, in which a Border Police soldier was slightly injured.

The **Mother**, resident of the Area, born in 19__, married in 1996 an Israeli resident, born in 19__ (hereinafter in this paragraph: the **Father**). In 1999, the Father filed a family unification application which was approved in 2001. Since then, the Mother received stay permits in Israel which were renewed on an annual basis until 2016. Following the attack

committed by her son in October 2015, notice was sent to his parents (the respondents) by the Minister of Interior informing them of the intention to deny their family unification application. After holding a hearing in their matter a decision was made (dated March 15, 2016) revoking the stay permits which were given to the Mother and discontinuing the family unification procedure. The Parents filed an appeal against the decision with the Appeals' Tribunal in Jerusalem, after the filing of which a supplementary decision was accepted (dated November 3, 2016) which included supplementary reasoning for the original decision. Among the different reasons specified therein it was noted that she was the mother and natural guardian of the perpetrator, and was therefore responsible for his actions by virtue of her duty to supervise and control her minor children; the inability to disconnect the deeds of the son from his family in the framework of which he grew-up and was educated; the Mother's lack of sense of responsibility for the attack following her statements in the hearing; the fact that the attack was committed as part of a wave of "lone wolves" attacks, which were committed, inter alia, as it emerges from an examination of the security bodies, for reasons relating to the existence of family ties. It was also stressed that status in Israel cannot be easily given "to someone under whose parental care and supervision a hateful act of terrorism was committed against the state of Israel".

In the hearing of the appeal an open paraphrase was submitted on behalf of the security bodies which noted that members of the second generation of family unification procedure are consistently overrepresented in terrorism compared to their share in the population, which is indicative of the level of threat posed by them; In addition, during the recent security escalation, beginning as of October 2015, Israeli Arabs have committed a substantial number of terror attacks, about half of which were committed by members of the second generation of family unification procedures (a more detailed description of the facts in **Khatib**, see *Ibid*,. paragraphs 3-5).

In its judgment dated May 23, 2018 the Appeals' Tribunal (Honorable Adjudicator A. Ezer) accepted the appeal (Appeal (Jerusalem) 1806/16) against the decision of the Minister of Interior to revoke the residency visa held by the perpetrator's Mother by virtue of a graduated family unification procedure and against the Minister's decision to discontinue the procedure. The judgment was appealed by the state, but as aforesaid, its appeal was dismissed by the Honorable Judge O. Shacham, in its judgment (dated January 3, 2019) against which Leave for Appeal has not been filed by the state with the Supreme Court.

In its judgment the court emphasized that the state (the appellant) did not dispute the Tribunal's determination that no direct or indirect security preclusion was attributed to the perpetrator's Mother (the respondent). The court referred to the determination of the Appeals' Tribunal that the threat emanating from residents or citizens members of the second generation of family unification procedures emerged from the opinion of the security bodies which was presented to it. However, the Tribunal held that the above did not suffice to substantiate any of the legal grounds specified in the Temporary Order justifying the revocation of the status of a resident of the Area.

Having reviewed the opinion of the security bodies the court adopted the conclusion of the Appeals' Tribunal and held that "**Indeed, the rationale of the Temporary Order Law is of a concrete threat, direct or indirect, emanating from a specific person. The law does not establish grounds which are based on general deterrence**

considerations. No such concrete threat emanating from the Respondent emerges from the opinion. Moreover, the opinion does not include an evaluation by the professional body whereby the denial of Respondent's application has any security added value, not even on the general deterrence level. Hence, the opinion does not actually support the decision of the Ministry of Interior." (emphasis was added) (**Khatib**, paragraph 11).

In addition, the court did not find in the supplementary arguments any arguments justifying the Minister's decision. Accordingly, it was held, *inter alia*, that the Mother's basic obligation to see to that her son does not harm state security, cannot give rise to an absolute responsibility for all of her son's actions (*Ibid*., paragraph 12). With respect to the argument that the Mother did not acknowledge responsibility for the deeds of her son, it was held that support of terror did not emerge from what she had said in her interview and that precisely the opposite emerged from her statements there (*Ibid*., paragraphs 13-14). Anyway, the court noted that "**in view of the picture which arises from the material in its entirety, it is difficult to avoid the impression that the decisions in Respondent's matter contained a punitive element, for actions she did not carry out and for which she is not responsible**" (Ibid., paragraph 14).

In conclusion the Honorable Judge O. Shacham clarified that he had reached his above conclusion in view of the actual violation of the Mother's basic right to family life, considerations that should have been taken into account by the Minister of Interior and which were not given proper weight. It was pointed out that the Respondent is a mother of children and that she has been holding the status the revocation of which was requested, for many years. Nevertheless "**the decision gave no weight to the far reaching implications of uprooting the family from the place that has been the center of its life for more than a decade"** (*Ibid*., paragraph 16). It was therefore held that even taking into account the public policy considerations raised by the state, the conclusion is that the Minister of Interior's decision is clearly disproportionate (*Ibid*., paragraph 17).

40. As is remembered, the decisions of the Minister of Interior herein discussed with respect to the Appellants (the third decision dated November 22, 2020) were given following the judgment of the Appeals' Tribunal dated August 2, 2020 concerning the second appeals (from 2018). In its judgment the Tribunal discussed, *inter alia*, the **Khatib** judgment which was given on January 3, 2019, after the second decision of the Minister of Interior dated April 23, 2018. The Tribunal also emphasized the rule according to which a legislative act should not be interpreted as authorizing violation of basic rights, unless the authorization is clear, unequivocal and explicit. It was also emphasized, alluding to the court's words in **Abu Arafe**, that "**the more important the right and the more severe its violation, a stricter authorization shall be required by the court and the more narrowly it shall be interpreted**" (**Abu Arafe**, Honorable Justice U. Vogelman, paragraph 52 and see also the case law there).

In view of its above conclusions, the Tribunal held in its judgment concerning the second appeals that in the second decision of the Minister of Interior the considerations relating to his power to discontinue a family unification or child registration procedure on the basis of general deterrence considerations were not at all considered as required. For this reason, Appellants' case was returned for the second time "**to be re-examined in view of**

the court's judgment in Khatib", in view of all of the principles which were discussed by the Tribunal in its judgment and in view of Appellants' arguments.

Following the above judgment of the Tribunal, the Minister of Interior's third decision (at hand) was given. The decision stated that "**The Entry into Israel Law vests broad discretion in the Minister of Interior while granting or denying status in Israel**". It was also stated that "**With respect to an application for a foreigner whose connection to Israel is weaker and who is not vested with the right to enter or stay in Israel, as are the circumstances in the case at hand – in the framework of the discretion vested in me by virtue of said law, reasons are examined relating to the family unification application submitted by virtue of the Israeli spouse (such as: center of life, false details and the like) as well as security reasons and considerations relating to the specific applicant, directly or indirectly, including general deterrence considerations, as such exist in the case at hand**" (emphasis was added).

Hence, it seems that the decision does not make a genuine attempt, if any, to apply the holdings of the court in **Khatib**. The broad discretion vested in the Minister by virtue of the Entry into Israel Law, which is not in dispute, does not suffice. According to the principle of legality in administrative law and the basic principles of administrative law, even where there is broad discretion, it is limited by the boundaries of the explicit authorization established by law. As was emphasized in **LAA Lana Khatib** with respect to the Temporary Order "**It is a basic principle – that the respondents must act solely within the limits of the existing law**" (*Ibid*., paragraph 15 and see also paragraph 14), namely, according to and within the limits of the authorization under the Temporary Order, so long as it is in force. Indeed, there is no dispute, as stated in the Minister's decision (as indicated by us above) that he was authorized to examine, among other considerations "**reasons relating to the family unification application… (such as: center of life, false details and the like)"**. In addition, according to the language of the Security Preclusion Clause and as stated in the Minister's Decision, he was also authorized to examine "**security reasons relating to the specific applicant, directly or indirectly**" (as indeed has long been determined, *inter alia*, in **Daka** and **Amara**). However, unlike the statement made in the Minister's decision, neither the Security Preclusion Clause nor any other provision includes any authorization allowing the Minister to take into account "**general deterrence aspects**".

The Temporary Order, limiting the cases in which status or stay permit may be granted to a resident of the Area, does not derogate from the general power of the Minister of Interior to refrain from granting visas or stay permits as aforesaid. However, despite the general limitation established in the Temporary Order, several exceptional circumstances were established therein, upon the occurrence of which temporary visas and stay permits shall be granted, subject to the occurrence of the circumstances of the Security Preclusion Clause. Said preclusion was explicitly and solely limited to circumstances in which according to the opinion of the competent security bodies the applicant poses a direct or indirect security threat. Conversely, general deterrence considerations on the basis of which residency visas or stay permits shall not be given and particularly with respect to persons who have already been receiving them during a long period of time, are not among the considerations that the Minister was authorized to examine according to the Temporary Order (**Khatib**, paragraph 11).

In addition, also similar to **Khatib**, it is difficult to say that in the decision at hand, actual weight was given by the Minister of Interior to the far reaching consequences of uprooting the Appellants' families from the place which has been the center of their life for so many years, or that weight was given to the possibility of separating any of the family members as a result of the Minister's decision. It should also be remembered that some of the Appellants are not included in the definition of "family member" as this term is defined in the Security Preclusion Clause. Some are half siblings of the perpetrator, but others are his cousins or nephews. For this reason too it is difficult to hold that the general deterrence considerations, which were considered in these circumstances, can be applied to these family members. As is remembered, with respect to the perpetrator's mother in **Khatib** it was said that no claim was made that she had been aware of her son's plans or that she had disregarded them and therefore it was found that there was no justification to hold her responsible for his actions (*Ibid*., paragraphs 12-14). If it was so held under such circumstances, then with respect to the Appellants *a fortiori*, since it has not been proven that there was any connection between them and the perpetrator who is responsible for the horrific and deadly attack.

41. Before we conclude it should be noted that there is no room for the comparison which was made by the parties in their arguments to case law concerning demolition of perpetrators' homes. It is a different matter and in any event, unlike the case at hand, it is entrenched in explicit authorization established in Regulation 119 of the Defence (Emergency) Regulations, 1945.

Conclusion

42. Indeed, as argued by the Respondent, the **Khatib** judgment is not a binding or guiding ruling, but I found this judgment to be a correct ruling, without any clear reason to deviate therefrom. Notwithstanding the judgment of the Appeals' Tribunal with respect to the second appeals, it seems that the third decision of the Minister of Interior (the decision at hand) does not actually apply the holdings of the **Khatib** judgment. In these circumstances, the matter should have been returned to the Minister to be decided anew (a fourth decision) *in lieu* of the decision at hand (the third decision). However, it is doubtful whether it is the right thing to do in view of the continuation of the proceedings (about six and a half years as of the first decision of the Minister), after three decisions of the Minister and after three rounds of appeals before the Appeals' Tribunal.

It therefore seems that if the state is of the opinion that in the framework of the security preclusion considerations weight should also be given to general deterrence considerations, then it should have acted, during all those years in which Appellants' cases were tossed back and forth between the Minister and the Appeals' Tribunal, to amend the Security Preclusion Clause set in the Temporary Order. However, at this time, according to the wording of this Section, the Minister may consider "**According to an opinion of competent security bodies, that the resident of the Area or the other applicant or their family member may pose a security threat to the State of Israel**", the above in view of the explicit statement that a "**family member**" is only a "**spouse, parent, child, brother and sister and their spouses**". So long as it has not been determined that the Minister may also examine "**general deterrence considerations**", an authorization empowering the Minister to examine these considerations cannot be read into the Security Preclusion Clause of the Temporary Order.

43. Finally, it should be noted that from the privileged material which was presented to me for my review, one cannot deny the evaluation of the security bodies according to which the denial of stay permits and residency visas in Israel from family members of perpetrators who committed acts of terror, may assist in creating general effective deterrence against future involvement in acts of terror. However and as aforesaid, these considerations, which are "**general deterrence considerations**", do not necessarily concern the Appellants at hand, nor do they constitute a direct or indirect "**security preclusion**" concretely emanating from the Appellants or their family members. In addition and as aforesaid, these considerations do not form part of the considerations that the Minister of Interior was authorized to consider according to the Security Preclusion Clause. It should also be added that it is doubtful whether these considerations may be applied to persons who do not fall within the definition of a perpetrator's "**family member**". Therefore, on the basis of this reason too, it seems that not only that an explicit authorization is required for the purpose of considering general deterrence considerations, but that a clear definition is required for the degree of kinship to the perpetrator with respect of which these considerations may be taken into account.

44. In view of the aforesaid, the appeals are accepted in the sense that Appellants' applications for the renewal of the residency visas or stay permits which were given to them should be decided anew by the Respondent.

Due to the fact that Appellants' matter has been pending for about six years and a half (as of January 2017), to ensure that a decision in their matter is given within a reasonable time, and on the other hand, to enable the Respondent to properly consider its decision, a renewed decision in Appellants' matter shall be given within six months from the date of this judgment.

The Respondent shall bear Appellants' costs in the sum of NIS 2,000 to each one of the Appellants, as follows: NIS 4,000 to Appellants 1-2 in AAA 9143-10-22; NIS 4,000 to Appellants 1-2 in AAA 26583-10-22; NIS 4,000 to Appellants 1-2 in AAA 26928-10-22; NIS 6,000 to Appellants 1-3 in AAA 31250-10-22; NIS 20,000 to Appellants 1-10 in AAA 31319-10-22.

The guarantees deposited by the Appellants in each one of the Appeals shall be returned to them through their legal counsel.

Given today, 22 Nisan 5783, April 13, 2023, in the absence of the parties.

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Tamar Ben-Asher, Judge