At the Jerusalem District Court **AP 727/06**
Sitting as a Court for Administrative Affairs **Honorable Judge Sobel**

In the matter of: **_____ Nofal et al.**

Represented by counsel, Adv. Adi Lustigman (Lic. No. 29189) et al.
of 27 Shmuel Hanagid St., Jerusalem, 94269
Tel: 02-6222808; Fax: 03-5214947

The Petitioners

v.

State of Israel - Minister of Interior
Represented by counsel of the Jerusalem District Attorney
7 HaMahal St., Ma'aleh Daphna, Jerusalem
Tel: 02-5419512; Fax: 02-5419581

The Respondent

Motion under the Contempt of Court Ordinance

The petitioners make this motion under the Contempt of Court Ordinance and request the court to order the respondent to uphold the section of a judgment dated May 22, 2011, ordering the respondent to amend procedure 2.2.0010 in several material aspects so as to protect the fundamental rights of children and their parents, according to Basic Law: Human Dignity and Liberty.
The judgment was upheld on the individual level as the daughter, Wafa, received permanent status.

The grounds for the petition are as follows:

Strangers whom I do not even know,
From other places around and from town,
I wish they all knew there is one child out there,
And that child is me.
(Yehuda Atlas, from *'That Child is Me'*)

1. A year ago, on May 22, 2011, a judgment was rendered by the honorable court, ordering the respondent, *inter alia*, to amend procedure No. 2.2.0010 "Procedure for the registration and granting of status to a child only one of whose parents is registered as a permanent resident in Israel."

"**Exhibit A**" Judgment dated May 22, 2011 is attached as exhibit "**A**".

2. To date, and despite petitioners' requests, the procedure has not been amended in accordance with any one of the court's orders. The following is a link to the original and improper version of the procedure published in respondent's web site:

   http://www.piba.gov.il/Regulations/7.pdf (Hebrew)

The following are the orders of the honorable court which were not upheld:

3. Paragraph 11

   It was held, that the respondent should establish in procedure an arrangement pursuant to which, upon the expiration of a six-month period from the submission of an application for the arrangement of the status of a child, in the absence of a final decision, the child's presence/status in Israel would be arranged: to the extent that the delay in making the decision was caused by the respondent and no security or criminal objection was raised.

   A year elapsed since the date of the judgment. The procedure has not been amended and the respondent is not acting in accordance with the order of the honorable court.

   HaMoked: Center for the Defence of the Individual (hereinafter: **HaMoked**) is processing several cases of families whose children await a decision while this order of the court is not implemented.

   Thus, for instance, in the matter of _____ Natsheh, an application for the arrangement of the status of the family's young children, infants, born in July 2007 and April 2009, was submitted in July 2010. Along with the application, a complete set of documents was submitted to substantiate the family's center of life, including a certificate issued by the National Insurance Institute, recognizing the father as an Israeli resident since 2007, more than two years prior to the submission of the application. To date, and even subsequent to the submission of appeal No. 563/11 in this matter, no decision was rendered in the application and the children were not granted temporary status as ordered in the judgment which is the subject matter of this motion. For the sake of accuracy, we would like to point out that presently, the respondent wishes to hold an additional hearing for the parents, since an interrogation of family members indicated that the grandfather may have a house in Hebron. Nevertheless, there is no dispute that in view of the full cooperation of the father, who is a resident, in providing all information and explanations requested of him and in the absence of any security or criminal issues, the respondent should have acted in this case as ordered in the judgment - an order which he should have long since established in procedure.

"**Exhibit B**" Petitioners' request dated July 11, 2011, that respondent implement the **Nofal** judgment which is the subject matter of this motion and apply it to the application of the children of Rami Natsheh, to which no response has ever been given, is attached and marked as exhibit "**B**".

Accordingly, for instance, an application for the arrangement of the status of the children of _____ Shamasneh was submitted on September 14, 2010. When a year and two months elapsed and no decision was rendered, the mother submitted, on November 13, 2011, through HaMoked, a request to implement the Nofal judgment so that the status of the children would be arranged, even if temporarily, until a decision is rendered. No response has ever been given to this request. Only on February 13, 2012 and April 17, 2012 were the applications for all the children approved (separate approvals for children of different ages). This, over and above the six-month period set in the procedure and without having the temporary status arrangement implemented, not even for the children who were under the age of 14.

"**Exhibit C**" Petitioners' request to have the judgment implemented in the matter of the children of Haniya Shamasneh, is attached as exhibit "**C**".

There is no dispute that delays in respondent's decisions, for various reasons pertaining to the respondent only, are an everyday occurrence. However, the court's order was left abandoned on the paper on which the judgment was printed. It has not been incorporated into the procedure and is not implemented, thus causing severe damage to young children.

4. Paragraph 13

The court disqualified the provision of section C.7.2.6. of the procedure which ties together applications of different family members in a manner whereby a denial or a security preclusion concerning one family member halts the processing of status of the family's children, unless the parent notifies otherwise. The court held:

> The respondent must in any case continue examining the request for as long as no notification has been received from the parents of its withdrawal due to the rejection of the foreign parent’s request or that of another sibling of the minor. On must not create a new obligation on the applicant to report that he has not withdrawn his request.
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> This being so, the respondent must delete the final section of the above mentioned procedural provision, starting with the words“and adding”, or alternatively, to replace this final section with a provision noting the possibility of requesting population authority office to terminate processing of the request for status after its submission.

The court order is explicit and detailed and does not leave much room for imagination or pondering on the respondent's part. Nevertheless, to this day the respondent has refrained from implementing it. It is clear that the harm

caused to a child whose application is denied automatically, without any discretion, is extremely severe.

The case of the Shanaytah family, discussed in appeal No. 817/09, demonstrates the absurdity and hardship created by respondent's disqualified provision which still constitutes part of the procedure that appears on the web site of the Ministry of Interior. In this case, the respondent denied a family unification application of a father and children on the grounds that there was a security preclusion. However, the respondent failed to state to whom that preclusion pertained. The mother was advised to declare that she wanted to continue with the application for the arrangement of status of the children. The petitioner, who was represented by the undersigned through HaMoked, submitted an appeal against the denial and a request for clarifications, thinking that by submitting the appeal, in which she requested to continue to process the application she had submitted for her children, she expressed her wish that her entire application continue to be further reviewed. Only at a later stage, within the framework of the litigation of the appeal, did she realize that the respondent considered the application for the children closed due to the fact that she did not physically come to his office and requested to continue processing the application, although she submitted an appeal and sent many reminder letters regarding this issue, in which she reiterated her wish to arrange the status of her family members, and although the respondent never asked her to physically come and request to re-submit an application which had already been submitted but in respect of which no decision was made. This matter was eventually solved only due to the appeal and after a long time. The procedure is still published in its disqualified version.

5. Paragraph 14

The court ordered in its judgment to amend section C.7.2.13 of the procedure in a manner that a parent whose child received temporary status would be given notice in writing in the Arabic language, about the need to renew the visa and the date on which he should act for such renewal. The court held:

> The obligation to notify in Arabic also, was added to the procedure in accordance with the petitioners' request during the hearings on the petition. The petitioners requested that the notification in Arabic be verbal and written; however, the procedure does not refer to written notification. Since the temporary permit is granted for two years, there is a great deal of logic in the request that guidance to parents in the matter of actions they must take before the end of the two years should be written. The obligation to give written notice is also obvious from the judgment in AP (Jerusalem) 402/03 **Judah v. Interior Minister** (October 26, 2004) which endorsed an agreement

between the parties, according to which applicants to the population administration office would be given written notice concerning the need to apply for the minor's permanent status at the end of the two years in which he has temporary status. Written notification enables parents to remember and ensures control over the granting of guidance to parents by the processing official. It is not surprising that the form notifying approval of a request for a DCO permit, which is enclosed as an attachment to the respondent's procedures No. 5.2.0011 in the matter of granting status to a foreign spouse married to a permanent resident and No. 5.2.0008 in the matter of processing the granting of status to a foreign spouse married to an Israeli citizen, which includes (in Section 8) written notice of the applicant's obligation to request an extension of the permit two months prior to its expiry. In the absence of an explanation by the respondent for the lack of a similar provision in the child registration procedure , it is incumbent upon him to add to this procedure that the notification to the parent shall also be given in writing (including in the Arabic language when this is the language that the parent speaks).

The above order has not been complied with either.

"**Exhibit D**" See for instance registration summaries given to parents upon the approval of the application of their children and the grant of temporary status indicating, **in Hebrew only**, that the status was granted for two years with no guidance concerning future applications and with no explanation in Arabic, attached as exhibit "**D**".

6. Paragraph 12

To complete the picture, we would like to note that according to AAA 5718/09 **State of Israel v. Srur**, cited in paragraph 12 of the judgment, the respondent should have amended section C.7.2.8 of the procedure, in a manner reflecting the decision in said judgment, according to which the child's age for the purpose of status category should be his age on the date the application was submitted rather than the date on which two years elapsed since the visa was granted. This is not implemented either by respondent on his own initiative, with the exception of those cases in which the upgrade is specifically requested. Several cases were brought to HaMoked, in which the parents were not represented or in which their former counsel was not aware of the changes that had taken place in the legal state of affairs following the **Srur** and **Nofal** judgments. Therefore, an upgrade was not requested and an application to

extend the validity of the visa was submitted, which was extended without an upgrade. All this, despite the fact there is no dispute that according to the current legal state of affairs, the children were entitled to have their status upgraded. Most of these cases were brought to HaMoked due to a delay in the upgrade to temporary status. However, when the processing of these cases began, it emerged that according to the law, the children should receive permanent status. The respondent, on his part, has failed to implement, on his own initiative, the provisions of the judgments and to inform the applicants of the change that had taken place in the legal state of affairs. This further illustrates what is obvious – the importance of issuing a procedure and complying with the orders of the court.

Petitioners' communications to respondent requesting him to act in accordance with the orders of the court and to refrain from contempt of the judgment

7. On September 17, 2011, after four months had elapsed from the date of the judgment, the petitioners sent respondent's counsel in the petition, Adv. Yael Antebi-Sharon, a detailed communication requesting the implementation of the judgment. Among other things, the petitioners requested to have the procedure transferred from the registration category to the visa category on respondent's web site or to have it added to this category as well so that it may be more easily located. The petitioners expressed their hope that the initiation of contempt of court proceedings would not be required.

"**Exhibit E**" Petitioners' letter dated September 17, 2011 is attached as exhibit "**E**".

8. On September 27, 2011, Adv. Levrun, who assumed the handling of the case on respondent's behalf, responded that the matter was in processing and that "in view of the fact that coordination was required with several parties, at present, processing has not yet been terminated." Therefore, the respondent added through Adv. Levrun, that he would appreciate the petitioners' waiting before filing a motion for contempt of court. Although it is not clear who all these parties are and why several parties and many months are required to implement the clear, explicit and decisive judgment of the honorable court, the petitioners waited, hoping that the matter would be advanced by the respondent and the procedure be amended. This has not materialized.

"**Exhibit F**" Respondent's letter dated September 27, 2011 is attached as exhibit "**F**".

9. On March 12, 2012, ten months after the judgment was rendered, the undersigned wrote once again, on behalf of the petitioners, to respondent's counsel, Adv. Levrun, and requested her, as a last attempt before requesting the intervention of the court, to send the petitioners the revised procedure or to immediately update them on the matter.

"**Exhibit G**" The letter sent on behalf of the petitioners dated March 12, 2012 is attached as exhibit "**G**".

10. On March 13, 2012 Adv. Levrun responded that "The preparation of the procedure is in its most final stages, and its final completion is expected in the near future." The undersigned's question of that same day as to what the respondent estimated the near future to be, received no response from Adv. Levrun.

"**Exhibit H**" The two letters dated March 13, 2012 are attached as exhibit "**H**".

11. Today, **one year after the judgment was rendered,** the procedure which was last updated in 2008, is still published – in the same version which was disqualified by the court. More than two months have passed since the stage defined by the respondent - ten months after the judgment was rendered - as the "most final stages", and no revision has been made in the procedure. Perhaps worse still, in many ways, the respondent acts, as specified above, according to its previous policy, which was disqualified for being unreasonable.

12. The respondent is clearly in contempt of the judgment and severely injures not only the rule of law but also all aspects of the lives of the children of Israeli residents of East Jerusalem – whose entire set of human rights directly and fundamentally depends on their having status, and hence, also, on there being a proper, accessible and clear procedure for the arrangement of their status.

Contempt of Court

13. The respondent exhibits no respect or special urgency to comply with the judgment. He continues to be in contempt day by day, hour by hour.

14. This is not only a matter of forgetfulness or neglect, but rather of premeditation. Respondent's counsel is well aware of the provisions of the judgment and the respondent himself is also aware of the passage of time. Nevertheless, he chooses not to comply with the judgment. This situation should not be allowed to persist and must not appear to be deemed an acceptable norm.

15. Respondent's conduct constitutes contempt of court and severely injures the children of Israeli residents from East Jerusalem.

16. The words of the court in HCJ 2732/05 **Head of the 'Azzun City Council v. Government of Israel et al.** (October 5, 2009) are relevant to this matter: "The judgments of this court are not mere recommendations and the state is bound by duty to respect them and comply with them as expeditiously and efficiently as may be required under the circumstances of the matter."

17. The honorable court is also referred to statements made in HCJ 4805/07 **Israel Religious Action Center v. Ministry of Education** (July 27, 2008) ibid, in paragraph 34 and thereafter:

> 34. One of the basic principles of the rule of law is that "once a judgment is rendered it must be upheld to the letter and the spirit" (remarks of President Shamgar in HCJ 5711/91 **Poraz v. Chairman of the Knesset**, IsrSC 46(1) 299, 308 (1991)). The obligation to abide by judgments and uphold them is one of the basic paradigms upon which the rule of law in a democratic state is based…
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> 35. A citizen's failure to uphold a court judgment constitutes a severe violation of the rule of law. Seven times worse, is the failure to uphold a judgment by a state authority. Indeed, "the obligation to uphold a judgment given by a competent instance, applicable to any person, is all the more incumbent upon state authorities" (directive 6.1003, Attorney General Directives (dated June 15, 2003)). The failure of a state authority to abide by a judgment of a judicial instance is one of the most severe and troubling dangers facing the rule of law in a democratic state (A. Rubinstein and B. Medina, The Constitutional Law of the State of Israel (Volume A, Basic Principles, 5765), pages 271-274). …In a certain case, where the state failed to uphold a judgment in the specified time, the following statements were made, which are also relevant to our case:
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> > "This situation, whereby a judgment is not upheld during a seven-month period, is a grave situation in a state of law, where the state, which is in charge of maintaining the rule of law, is itself party to disobeying the law and case law… (HCJ 7713/05 **Noah – The Israeli Federation of Animal Protection Societies v.**

Attorney General (not published, rendered on February 22, 2006).

18. While respondent is in contempt of the decisions of the honorable court, the cases of many children is still subject to a procedure which has long since been disqualified. The information given to the public on this sensitive and important issue is misleading and does not reflect the legal state of affairs as determined by the court in a conclusive judgment.

19. Therefore, the honorable court is hereby requested to hold the respondent in contempt of the judgment and order the respondent to immediately make a decision in the application and to order the respondent to pay significant expenses for this application and for the contempt.

Today: May 29, 2012

[signed]

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Adi Lustigman, Adv.
Counsel for the Petitioners