At the Supreme Court in Jerusalem

AFH 9081/11

Before:	**Honorable Vice President E. Rivlin**
The Petitioners	**1. al-Hafez** **2. Ahmad** **3. al-Hafez** **4. HaMoked: Center for the Defence of the Individual**
	v.
The Respondent:	**Minister of Interior**
	Petition for a further hearing of the judgment of the Supreme Court dated November 22, 2011 in AAA 1966/09, given by Honorable President D. Beinisch, Justice (ret.) E. E. Levy and Justice A. Grunis
Representing the Petitioners:	Adv. Adi Lustigman

Decision

1. At bar is a petition for a further hearing of the judgment rendered by the Supreme Court in AAA 1966/09 **'Attoun v. Minister of Interior** (unreported, November 22, 2011).

   In the judgment, it was held by majority opinion (written by Honorable Justices **E. E. Levy** and **A. Grunis**) and against the dissenting opinion of Honorable President **D. Beinisch**, that Petitioners 2 and 3 were not entitled to be registered as permanent residents in Israel.

2. Petitioners 2 and 3 are the minor children of Petitioner 1, who is a permanent resident of Israel. Petitioners 2 and 3 were born in Israel and live with their family in the "Wadi Hummus" neighborhood, which is a part of the village of Sur Bahir, on the outskirts of Jerusalem. As described in detail in the judgment, the Wadi Hummus neighborhood is the locus of a unique and complex

reality. A significant part of the village of Sur Bahir is under Israel sovereignty and included in the municipal borders of the city of Jerusalem. This is not so with respect to the Wadi Hummus neighborhood, which remained outside the border. This reality has led the state to consent to building the separation wall east of the village rather than inside it, so that there would be no physical separation between the different parts of the village. The state has also consented to consider residents who have permanent status in Israel and who live in the Wadi Hummus neighborhood as individuals who come under the National Insurance Law [incorporated version] 5755-1995 and the National Health Insurance Law 5754-1994.

3. The request made by Petitioners 2 and 3 to receive permanent status in Israel relied on Regulation 12 of the Entry into Israel Regulations 5734-1974 (hereinafter: **Regulation 12**). The District Court found that the purpose of this regulation is to grant a child status which is identical to the status of his parents who reside in Israel, so that the child may live with them without the family having to relocate. The court found that when the family resides outside Israel, Regulation 12 does not apply.

   The Petitioners appealed from this judgment to the Supreme Court and their appeal was rejected. The majority opinion held that the fundamental premise underlying the Entry into Israel Law 5712-1952, pursuant to which Regulation 12 was enacted, was that "the law applies to people who are present inside the country rather than outside it" and that Regulation 12 must be interpreted in light of this fundamental premise. It is impossible, the court held, to "grant a 'visa for residency in Israel', as stated in the Law, to a person who wishes to continue to live outside its borders". The Supreme Court added that the purpose of Regulation 12 was to prevent a discrepancy between a minor and his parent who has permanent residency in Israel and to allow the entire family unit to live in Israel. In the matter of the Petitioners, on the other hand, the family unit does not reside inside Israel and as such, there is no need to grant permanent residency in order to prevent a split in the family unit. However, the court emphasized that should the family wish to relocate into Israeli territory, Petitioners 2 and 3 would be able to apply for status under Regulation 12. The Supreme Court added that the Petitioners have indeed found themselves in a complex and difficult reality, but the state did offer them a reasonable solution for this predicament, by way of granting renewable permits to remain in Israel, which would allow Petitioners 2 and 3 to travel freely between their home and Jerusalem.

   The position of the minority opinion was different. According to that position, Regulation 12 does not preclude the possibility of grating permanent residency in Israel to persons living outside it in exceptional circumstances such as those herein. Primary among these circumstances is the fact that the Petitioners' center-of-life is inside Israel, though they live outside the country. This is due to the unique reality that has been created in the village of Sur Bahir. In addition, their father and his other children have permanent status in Israel and a split in the legal status of different family members within the same family unit is undesirable in terms of the children's best interest. Finally, the separation wall created a physical divide between the minors and the territory of the West Bank, so that from a practical perspective, it would be very difficult for them to lead their routine lives there, while residing in Wadi Hummus.

4. The Petitioners currently seek to hold a further hearing in the judgment given in their matter. The Petitioners claim that Regulation 12 should be considered as establishing a substantive test for center-of-life, rather than a technical test of place of residence. It was submitted that the interpretation of Regulation 12 that is contained in the judgment does not give adequate weight to the principle of the child's best interest and the right to family life. The Petitioners believe that in so doing, the Supreme Court has broken with the established principle that statutes are to be interpreted according to their purpose rather than merely their language. In addition, the Petitioners believe that the judgment which is the subject of their petition would enable the family unit to preserve its integrity, other than the fact the family sleeps in the same house, as Petitioners 2 and 3 have no social rights in Israel.

The Petitioners further claim that the interpretation given to Regulation 12 by the court has broad ramifications for every person who wishes to acquire status in Israel, as the judgment sets the standard of literal interpretation which disregards the purpose of the statute or of the secondary legislation. In this context, the Petitioners enumerate the various populations with respect to which, in their view, difficulties may arise as a result of the judgment.

5. I have reviewed the judgment and the arguments made by the Petitioners and have found that there is no room to accept the petition. Indeed, the petition points to a complex reality, in which the center-of-life of the Petitioners' family is entirely within Israel, while their home is located outside it, and in the background, there is a difficulty to establish a center-of-life outside Israel given the existence of the separation fence. This reality is considered both in the majority opinion and in the dissenting opinion. The justices serving on the panel were not divided on the question of where the Petitioners' center-of-life lay, or on substantive questions of literal and purposive interpretation, but rather on the question of the definition of the exact purpose of Regulation 12. The majority's decision was ultimately based on the position that Regulation 12 was designed to prevent a gap between the status of parents and their minor children in cases where the family unit is maintained inside Israel and the granting of status is required in order to enable the minors to live in Israel with their family. As stated, the dissenting opinion had a different view of the purpose of the law. It held that the purpose of Regulation 12 was to prevent a discrepancy between the status of parents and their minor children even in cases in which they did not live in Israel, but maintained their center-of-life in the country and where granting status is required for the minors' interests. It thus appears that these differing positions do not establish, nor imply, a general rule on interpretation.

   The matter of the rule that was established in the judgment is confined to granting status under Regulation 12 to persons who do not live in Israel and do not wish to do so. As is known, the rule is that the Supreme Court produces common law norms with a panel of three justices and only in very few, exceptional cases will a further hearing by an extended panel of justices be warranted. Indeed, it has been established that "even difficult cases and complex questions are commonly heard by a panel of three justices of the Supreme Court" (CivFH 2699/09 **Weinstein v. Bank HaPoalim LTD.** (unreported, August 30, 2009)). Judicial policy reserves the proceeding of a further hearing for exceptional and rare cases. This case does not fall within this category. From a legal standpoint, the majority opinion, as the dissenting opinion, relies on existing rules relating to the interpretation of statutes in general and the interpretation of Regulation 12 in particular. Indeed, opinions were divided as to the manner in which common law should be further developed, but I have not found that in the case at bar, this amounted to a justification for holding a further hearing.

   It should be noted that I have also not found that the Petitioners were able to establish their argument with respect to significant broad ramifications for procedures for acquiring status in Israel in cases that are significantly different from the one at bar. This is so particularly in light of the fact that even the position that was ultimately accepted in the judgment did not employ a technical or literal interpretation, but had taken the purpose of the statute into consideration.

   Therefore, the petition is denied. As no response was requested, no costs order is being made.

   Issued today, 22 Tevet, 5772 (January 17, 2012)

Vice President
