At the Supreme Court Sitting as a Court of Appeals in Administrative Matters

AAA 6407/11

Before:	**Honorable Deputy President M. Naor** **Honorable Justice U. Vogelman** **Honorable Justice D. Barak-Erez**
The Appellants:	**1. _____ Dejani** **2. _____ Dejani** **3. _____ Dejani (minor)** **4. _____ Dejani (minor)**
	v.
The Respondent:	**Ministry of the Interior – Population Authority**
	Appeal against the judgment of the Court for Administrative Affairs Jerusalem (Honorable Judge Solberg) dated August 2, 2011 in AP 55720-11-10
Session date:	19 Iyar 5773 (April 29, 2013)
Representing the Appellants:	Adv. Najib Zaid
Representing the Respondent:	Adv. Itzhak Bart

Judgment

Justice U. Vogelman:

Is there cause to order of the status upgrade of appellant 2 to the status of a temporary resident in Israel, according to the judgments of this court in **Dufash** and **Khatu**? This is the question in which we have to decide in this appeal.

1. Appellants 1-2 (hereinafter: **appellant 1** and **appellant 2**) married each other on March 20, 1995. Appellant 1 is a permanent resident in Israel, and appellant 2 is a resident of the Area. From their marriage petitioners 3-4 were borne. Immediately after the marriage, appellant 1 submitted a family unification application, for the purpose of receiving status in Israel for appellant 2. On February 25, 1999, a residency permit in Israel (DCO permit) was issued to appellant 2 by the commander of the Area, for a period of twelve months. Five months after the expiration of the first permit, the appellants submitted an application for its extension. Following the receipt of documents according to respondent's request, on January 24, 2002, DCO permits for an additional period of fifteen months were granted. The DCO permits were extended from time to time, until this day.

2. On March 26, 2009, the respondents received a letter from appellants' counsel, in which they requested to upgrade the status of appellant 2 and give him a temporary residency visa (A/5) in Israel. In a letter dated April 16, 2009, appellants' counsel was advised that according to the amendment of the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003 (hereinafter: the **Temporary Order Law**), the status of appellant 2 cannot be upgraded as requested. On June 1, 2009, the appellants filed an appeal with the Appellate Committee for Foreigners, in which they argued that the processing of their application for DCO permits was unjustifiably delayed, and therefore, the status of appellant 2 should be upgraded, based on the judgment of this court in AAA 8849/03 **Dufash v. Director of the East Jerusalem Population Administration Office** (June 2, 2008)(hereinafter: **Dufash**), according to which "The status of the applicant may be upgraded even if his status was not upgraded before the effective date, in the event that the failure to upgrade derived from a mistake or unjustified delay on respondent's part." The Appellate Committee rejected the appeal and determined that the failure to upgrade the status of petitioner 2 did not derive from a mistake or an unjustified delay in the processing of the application by the Ministry of the Interior.

3. The Court for Administrative Affairs in Jerusalem (the Honorable Judge **N. Solberg**) denied appellants' petition which was filed against said decision. It was held that the examination of the time periods during which appellants' application was processed by the respondent indicated that said time periods were not unreasonable. It was further held, that the delay in the processing of the application was caused due to appellants' conduct, who failed to attach all required documents, and failed to timely submit the application for the extension of the DCO permits. As a result of said conduct, the number of months during which appellant 2 had DCO permits prior to the government resolution No. 1813 of May 12, 2002 (hereinafter: the **government resolution**), did not satisfy the established requirement for the upgrade of his status (27 months).

The arguments of the parties in the appeal

4. The appellants argue that the processing of their family unification application (by the end of the 90's) was delayed due to respondent's procrastination and flawed handling of their matter. Among other things, the police position was obtained about three years after the submission of the application; a query to the National Insurance Institute regarding the permanent address of

appellant 1 was sent only four years after the submission of the application; the appellants were requested on several occasions to complete various documents and after they complied with said requests, they had to wait for a long time for an additional response. As a result of said conduct, the application was approved and the first DCO permit (for a period of twelve months) was given only in February 1999. It was further argued that the respondent was also delayed in the issue of the second DCO permit (for a period of fifteen months), which was granted only a year and a half after the submission of the application for its renewal. Against the backdrop of the above delays, it was argued that appellant 2 should be deemed to have been holding a DCO permit for a period exceeding 27 months on the date of the government resolution, and was therefore entitled to receive a temporary residency visa.

5. The respondent is of the opinion that the appeal should be denied due to a delay in appellants' application. According to him, the legal infrastructure which enabled the submission of the current application for status upgrade materialized on the date on which the **Dufash** judgment was given, in June 2008, whereas the application at hand was submitted only in March 2009. In addition, the decision of the Appellate Committee was given in September 2010, whereas the administrative petition against it was filed only in February 2011. In addition, the respondent argues that the events underlying appellants' arguments occurred over a decade ago.

The respondent is also of the opinion that the appeal should be denied on its merits. According to him, no unjustified delay or mistake occurred in the processing of appellants' case, which justified the application of the outline established in **Dufash** to their matter. The respondent argues that as of the effective date for the purpose of the transitional provisions (the date of the government resolution) appellant 2 held DCO permits for an aggregate period of sixteen months only. During this period (between the date on which the first application was approved and the government resolution), the appellant did not act diligently and expeditiously to extend the DCO permits held by him. Among other things, the application for the renewal of the permit was submitted five months after the expiration of the first permit, and appellant 2 delayed the submission of documents which were required for additional five months. The respondent emphasizes that the **Dufash** judgment referred to an unjustified delay in the processing by the authority **after the family unification application was approved**, whereas in our case, the vast majority of appellants' arguments is directed against respondent's conduct during the period which preceded the approval of the application (between the years 1995 and 1999).

Discussion and Decision

6. Status in Israel to a foreign resident under a family unification application is granted in the context of a graduated procedure (see also: HCJ 3648/97 **Stamka v. Ministry of the Interior**, IsrSC 53(2) 728 (1999)). The graduated procedure for the grant of status in Israel to a resident of the Area who is married to a permanent resident is executed – on the relevant date for the procedure at hand – according to the procedure of the Population and Immigration Authority No. 5.2.001 (hereinafter: the **procedure**). According to the procedure, which consists of several phases, each phase in the graduated procedure is subject to the absence of criminal or security preclusion and to continued maintenance of a center of life in Israel. On the first phase, after the approval of the family unification application, a DCO permit is granted to an applicant, resident of the Area, for twelve months, and thereafter the permit is extended for additional fifteen months (a total of 27 months). By the end of 27 months of presence in Israel under DCO permits, an applicant's status is upgraded and he is granted with a temporary residency visa (A/5) for a year, which is extended twice, each time for one year. At this point, and in the absence of any preclusion, the applicant was entitled to receive a permanent residency visa in Israel.

7. On May 12, 2002, the government resolution entitled "Handling illegal foreigners and family unification policy concerning residents of the Palestinian Authority and foreigners of a Palestinian origin" was adopted. This decision, in fact, froze pending procedures of residents of the Area concerning the receipt of status in Israel, and prevented status upgrade within the framework of the graduated procedure. The decision stated that the Ministry of the Interior would no longer process new applications of residents of the Area for status in Israel. About a year later, said decision was entrenched in the Temporary Order Law, which since then was extended several times. The Temporary Order Law provides that the Minister of the Interior will not grant citizenship or a residency visa in Israel to a resident of the Area, and the commander of the Area will not grant a resident of the Area residency permit in Israel according to security legislation in the Area. Section 4(1) of the Temporary Order Law enables – in the context before us – only to extend the validity of the permits and visas which were in force prior to the effective date of the Law. Namely, according to the Law, the current situation may be preserved, but the status of a resident of the Area cannot be upgraded. It should be noted that the petitions against the constitutionality of the Temporary Order Law were discussed by expanded panels of this court and were denied (HCJ 7052/03 **Adalah - Legal Centre for Arab Minority Rights in Israel v. Minister of the Interior**, IsrSC 61(2) 2002 (2006); HCJ 466/07 **Gal-on v. Attorney General** (January 11, 2012)).

8. Notwithstanding the sweeping arrangement which denied the possibility of a status upgrade as of the effective date, the court held in **Dufash –** with the consent of the state – that:

"The status of the applicant may be upgraded even if his status was not upgraded before the effective date [the date of the government resolution (May 12, 2002) – U.V.], in the event that the failure to upgrade derived from a mistake or unjustified delay on respondent's part."

For this purpose, the hearing in **Dufash** was remanded to the Court for Administrative Affairs, for a specific examination of the manner by which the application was processed (see also: AAA 5534/07 **Rajub v. Minister of the Interior** (July 16, 2008) (hereinafter: **Rajub**); on the other hand, see: HCJ 5198/06 **Jayussi v. Minister of the Interior** (December 18, 2008)). The **Dufash** judgment has therefore enabled to upgrade the status of residents of the Area within the framework of family unification procedure, where the conduct of the authorities concerning the processing of the status upgrade – in the period which preceded the effective date – was flawed, and the failure to upgrade on an earlier date stemmed from such flaws. And indeed, following the **Dufash** judgment, which was given in June 2008, many applications in this spirit were received by the Ministry of the Interior, appeals were filed with the appellate committees, and thereafter – petitions were filed with the court for administrative affairs as well as with this court. The appeal before us is one of these cases (see recently: AAA 6404/11 **Tawil v. Ministry of the Interior** (February 14, 2013) (hereinafter: **Tawil**); AAA 4324/11 **Mohammad v. Ministry of the Interior** (judgment has not yet been given, the hearing was held on February 17, 2013)).

9. Another judgment which should already be mentioned at this stage is HCJ 5315/02 **Khatu v. Minister of the Interior** (December 4, 2002) (hereinafter: **Khatu**), which preceded the **Dufash** judgment by a few years. In Khatu it was noted that under special circumstances, if it became clear that a family unification application which was duly approved, should have been approved earlier, and only as a result of negligence or mistake the approval was not granted earlier – the above should be taken into account while considering to shorten the term of the graduated procedure. Namely, in such cases the passage of time between the submission of the application and the date of its approval may be taken into consideration, if it turns out that a delay occurred which resulted from a negligent conduct of the Ministry of the Interior.

10. The **Dufash** judgment focused on the conduct of the authority during the period which commenced on the date on which the family unification application was approved and ended on the effective

date. However, as was also noted recently in **Tawil**, within the framework of the examination, arguments which pertain to the conduct of the authority during the period which preceded the family unification application should not be disregarded either (in the spirit of the **Khatu** judgment) (see **Tawil**, paragraph 15). Hence, flawed conduct of the authority in such an early period may have a bearing on the right to receive an upgrade on the effective date according to the **Dufash** outline (see also the comment of Justice **E. Rubinstein** in the above **Rajub**). Said ruling was also entrenched in judgments of the court for administrative affairs in Jerusalem which has discussed this issue on many occasions, and also gave weight to delays which occurred in the examination phase of the family unification applications (AP (Admin-Jerusalem) 8228/08 **Hirbawi v. Minister of the Interior** (March 1, 2009) [the Honorable Judge **J. Zur**]; AP (Admin-Jerusalem) 7887-07-10 **Tufaha v. Minister of the Interior** (November 18, 2010 [the Honorable Judge **N. Ben Or**]; AP (Admin-Jerusalem) 735/06 **Shhabi v. Minister of the Interior** (May 26, 2011)[the Honorable Judge **M. Sobel**]; AP (Admin-Jerusalem) 31153-03-12 **Abu Alhuwa v. Ministry of the Interior** (June 25, 2012)[the Honorable Judge **Y. Marzel**]).

From the General to the Particular

The Delay Argument

11. The respondent is of the opinion that the appeal should be denied due to delay – in the date on which the application was submitted to the authority as well as in the date on which a petition was filed with the court for administrative affairs. Indeed, the fact that the court is required to examine the conduct of the authorities during the period between the end of the 90's of the last century and the beginning of the 2000's, is problematic. However, the **Dufash** judgment was given in June 2008, and changed the legal situation, in a manner which facilitated the upgrade of status in exceptional cases, notwithstanding the provisions of the Temporary Order Law. Namely, the delay argument should be examined *vis-a-vis* the date on which the **Dufash** judgment was given, rather than *vis-a-vis* the occurrence of the events themselves. Parenthetically, in view of the fact that we are concerned with examination of events which occurred more than a decade ago, the individuals who wish to submit an application for an upgrade of status according to the **Dufash** outline, were required to act expeditiously and apply to the authorities as soon as possible after said judgment was given. In the case at hand, about ten months elapsed from the date on which the **Dufash** judgment was given and the date on which the application was submitted by the appellants before us. The administrative petition too, was not filed in a timely manner but rather in a certain delay. However, under the circumstances of the case at hand, I am of the opinion that the appeal should not be denied for a delay in the institution of proceedings by the appellants, for the following cumulative reasons. Firstly, the court for administrative affairs did not deny the petition due to delay and discussed it on its merits. Secondly, this court was willing, not a long time ago, to waive a similar delay in the submission of an application according to the **Dufash** outline (see: AAA 2946/11 **Desuki v. Ministry of the Interior** (January 3, 2013)). Thirdly, the respondent did not argue that the delay in the submission of the application posed an evidentiary difficulty which encumbered his ability to prove his arguments, and anyway, the documents which were attached by the parties enable us to make a decision in the dispute, on its merits.

The dispute between the parties

12. Appellants' arguments concerning unjustified delays in the processing of their applications by the respondent pertain to two main periods: the first one: a period of about four years from the date on

which the family unification application was submitted (March 30, 1995) until the date on which the application was approved and a DCO permit was granted to appellant 2 (February 21, 1999) (hereinafter: the **first period**); the second one, a period of about a year and a half from the date on which the application for the extension of the DCO permit was submitted (July 26, 2000) until the date a decision was given and the permit was granted (January 24, 2002) (hereinafter: the **second period**).

13. With respect to the first period – although there is no dispute regarding the load which was imposed on the relevant dates on the bureau of the Ministry of the Interior in East Jerusalem as well as on the other authorities, questions arise as to the manner by which appellants' application was processed, which lingered for **four years**. After the family unification application was submitted (March 30, 1995) and after the position of the Israel Security Agency (ISA) was received on August 1, 1995, the respondent requested additional documents concerning appellant 1's place of residence (October 22, 1996). After the documents were produced, which indicated that appellant 1 lived in a house which was not registered in her name, the respondent requested to receive affidavits attesting to the fact that she resided in that house (October 30, 1997). Only in September 1998 the position of the police was received, which has not been received earlier, and shortly thereafter an updated position of the ISA was received. Thereafter, a query was sent to the National Insurance Institute (January 3, 1999), and immediately on the following day a summary of an investigation which has already been concluded in June 1997 was transferred, according to which appellant 1 was indeed living within the boundaries of the state of Israel. The application was approved – eventually – only in February 1999. Hence, the main delays which should be referred to during the period which preceded the approval of the application are the delay in the submission of the position of the police, which – as aforesaid – had no reservations; the absence of coordination between the Ministry of the Interior and the National Insurance Institute, as the investigation conducted by the latter already indicated in 1997 that appellant 1 was living in Jerusalem, whereas its findings were transferred to the Ministry of the Interior only two years later; and the delay in respondent's response to the documents which were produced by the appellants at his request (about a year passed between one request to the other). The conclusion is that appellants' family unification application could have been approved before the date on which it was actually approved, were it not for the delay in the authorities' conduct.

14. With respect to the second period – from the date on which appellant 2 embarked on the graduated procedure (February 25, 1999) until the effective date (May 12, 2002) – an aggregate period of 39 months, appellant 2 held a DCO permit **during a period of 16 months only,** whereas the condition for a status upgrade within the framework of the graduated procedure is a completion of an aggregate period of 27 months. Appellant 2 submitted the application for the renewal of the DCO permit five months after the expiration of the first DCO permit which was granted to him. Shortly thereafter, appellant 2 was requested to produce additional documents (August 13, 2000), which were provided only six months later (February 20, 2001). Additional documents which were requested (in a letter dated March 27, 2001), were provided after the elapse of two months (June 3, 2001). Updated affidavits which were requested by the respondent (July 10, 2001), were furnished after the elapse of about five months (December 2, 2001). The application for the extension of the permit was eventually approved only on December 12, 2001, and the permit was delivered to appellant 2 on January 24, 2002. A review of said chain of events indicates that the substantial delays in the processing of the application for the extension of the permit were caused by appellant 2. However, we must not disregard the objective difficulties which the applicants encountered in respondent's bureau in East Jerusalem during the relevant period (HCJ 4892/99 **Ja'aber v. Minister of the Interior** (June 6, 2001); HCJ 2783/03 **Jabara v. Minister of the Interior** (November 23, 2003)). The court for administrative affairs in Jerusalem, which following the **Dufash** judgment, dealt broadly with these issues, held on several occasions that such difficulties

may amount to an "unjustified delay" on respondent's behalf, as defined in **Dufash** (see for instance: AP (Admin. Jerusalem) 402-03-11 **Fiqyeh v. Ministry of the Interior** , paragraph 16 and the references made therein (June 24, 2012)). Even if this difficulty does not justify, in and of itself, a "waiver" of the months which appellant 2 was short of in the second period, hence, along with the delays which occurred in the first period – prior to the approval of the family unification application – my conclusion is that indeed an "unjustified delay" occurred in the processing of appellants' matter, which justifies the upgrade of appellant 2's status according to the **Dufash** outline.

15. Parenthetically, it should be noted that the case at hand is different from the **Tawil** case, where the appeal was denied after it was held that an unjustified delay did not occur in the conduct of the authority. Among other things, it was found in that matter that the family unification application which was submitted in 1994 was denied in 1997 based on the authorities' determination that the spouse was not an Israeli resident, and said state of affairs changed only after the policy was changed within the framework of the Sharansky procedure. In addition, the delay in the renewal of the DCO permits primarily resulted from a criminal proceeding which was conducted against Tawil at that time.

16. It should be clarified that the term "unjustified delay" does not constitute a complaint against the public servants who were under a heavy work load. The question is who is responsible for the delay in the processing of appellants' application, including that which resulted from the heavy load which was imposed on the relevant office holders. In my opinion, under the circumstances of the matter – as specified above – the appellants should not be held accountable for such delays, and they should be regarded as if their application was approved on an earlier date – before the government resolution and the Temporary Order Law – according to the **Dufash** and **Khatu** judgments.

Therefore, if my opinion is heard, the appeal should be accepted. The judgment of the court for administrative affairs will be revoked. The respondent will give appellant 2 a temporary residency visa (A/5) within the framework of the graduated procedure for family unification, subject to the conditions set forth in respondent's procedures, namely, the absence of criminal or security preclusion, maintenance of a center of life in Israel and a continued spousal relationship between the appellants.

In view of the timing of the submission of the application and the petition – I will propose to my colleagues not to issue an order for costs.

Postscript

17. Following the above, I reviewed the opinion of my colleague, the Deputy President, who joined me in my conclusion, and added a general comment concerning the failure to upgrade the status of individuals who commenced the graduated procedure before the effective date. My colleague proposes to the legislator to consider, within an amendment to the Temporary Order Law, the application of a different approach to this group, in view of the passage of time. I would like to join her in this comment.

18. Appellant 2 and others in his condition – the processing of whose applications was frozen against the backdrop of the government resolution and the Temporary Order Law – are included in the transitional provision set forth in section 4(1) of the Law. Namely, they continue to lawfully stay in Israel under the same status they had on the effective date (May 12, 2002). Appellant 2 resides in Israel lawfully for many years under temporary residency permits (DCO permits), renewable on an annual basis, subject to a security examination.

19. Under these circumstances, it seems that the provision regarding the stay of status upgrade of individuals, who fall under the transitional provisions, is no longer necessary in view of the security purpose of the Temporary Order Law – a purpose which was emphasized by this court when it examined the constitutionality thereof. Firstly, as far as the latter are concerned, not only that an individual examination may be conducted, but rather, such an examination is actually conducted once annually upon the renewal of the permit. Secondly, these individuals were subordinated, for over a decade, to the examination of the security agencies, in view of the fact that permits are renewed only in the absence of security preclusion. Thirdly, even after a person's status in Israel is upgraded – from residency under a DCO permit to residency under an A/5 temporary residency visa (and this is the category with which we are concerned) – he continues to be subordinated to security examination, in view of the provisions set forth in respondent's procedures within the framework of the graduated procedure.

Therefore, I am also of the opinion that the legislator should reconsider the limitation imposed on the upgrade of the status of individuals who live in Israel lawfully under a residency permit pursuant to the transitional provisions of the Temporary Order.

Justice

Deputy President M. Naor:

1. After I have reviewed the opinion of my colleague Justice Vogelman, I decided to join his conclusion, so that the appellants are not discriminated against as compared to others whose circumstances were similar and whose applications for status upgrade were submitted to the authorities in the periods which followed the judgment in AAA 8849/03 **Dufash v. Director of the East Jerusalem Population Administration Office** (June 2, 2008)(hereinafter: **Dufash**). A review of the judgments of the courts for administrative affairs indicates, that as a general rule, other than a number of exceptions to which I shall refer below, petitions which were filed after the **Dufash** judgment were not denied on the grounds of delay in the submission of applications to the authorities.

2. I agree with the determination of my colleague, according to which the delay argument should be examined relative to the date on which the **Dufash** judgment was given rather than relative to the date on which the events themselves occurred (paragraph 11 of his judgment). I will add that when we examine a delay argument relative to the date on which the **Dufash** judgment was given, we must first and foremost examine the delay argument relative to the date on which **the application for status upgrade was submitted**, following said judgment, rather than relative to the date on which the petition was filed. Namely, the period which should be examined in this regard is the period between the **Dufash** judgment (June 2, 2008) and the date of the application, based on said judgment, for status upgrade. The petitioners should not be held accountable for the period which passed between their first application for status upgrade following the **Dufash** judgment, and the authority's response to the their application, and anyway, the period which passed from the date on which the application for status upgrade was submitted until the date on which the petition was filed, should not be taken into consideration for the purpose of delay on petitioners' part in the advancing their matter after the legal situation was changed following the **Dufash** judgment. However, the date on which the petition was filed may be relevant for a delay argument in another sense, namely, a statutory delay with respect to the date on which an administrative petition should be filed against decisions of the authority – i.e., the decision in petitioners' application for status upgrade following the change in the legal situation after the **Dufash** judgment.

3. My colleague pointed at a host of judgments given by the court for administrative affairs. I shall remind, with respect to the argument of delay in the submission of applications to the authorities after the **Dufash** judgment, some additional judgments: AP (Jerusalem) 27661-11-11 **al-Haram v. Ministry of the Interior** (February 2, 2012) in which the argument of delay in the filing of the petition following the **Dufash** judgment was denied, despite the fact that the application for status upgrade was submitted in 2010 (whereas the application in the case at hand was submitted in the beginning of 2009)); AP (Jerusalem) 2064-11-10 **Faraun v. Ministry of the Interior** (February 28, 2011) (in which it was determined by the **appellate committee** that appellants' argument which relied on the **Dufash** judgment did not constitute a delay, despite the fact that the application for status upgrade was submitted about eight months after the **Dufash** judgment (namely, only about a month and a half before the application at the case at hand was submitted); AP (Jerusalem) 1953-05-11 **Natshe v. Ministry of the Interior** (July 28, 2011) (where an argument concerning delay in the submission of an application for status upgrade about two years and two months after the **Dufash** judgment was denied); and AP (Jerusalem) 43308-06-11 **Halbiya v. Ministry of the Interior** (October 2, 2011) (where an argument concerning delay in the submission of an application for status upgrade about a year and a half after the **Dufash** judgment was denied). In view of said judgments, I will join the position of my colleague according to which, for the purpose of preventing a discrimination against the petitioners who submitted their application for status upgrade about ten months after the **Dufash** judgment, it should not be determined that such a delayed submission constitutes a delay which justifies a summary denial of the administrative petition.

4. However, it should be clarified, that as far as I am concerned, in general, there is indeed room to accept an argument of delay in the submission of applications to the authorities following the **Dufash** judgment. Thus, it is important to clarify that cases of applicants who will apply in the future or who submitted applications after the period in which the appellants in the case at hand submitted their application – 10 months after the judgment was given – may certainly be denied on the grounds of delay. As noted, in the past, petitions were hardly denied on the grounds of delay in the submission of applications to the authorities following the **Dufash** judgment, to the best of my knowledge, with the exception of three cases which were reported: AP (Central) 28024-03-10 **Desuki v. State of Israel** (March 15, 2011 (hereinafter: **Desuki**); AP (Haifa) 24780-05-10 D.S. v. Ministry of the Interior (February 19, 2012) (hereinafter: D.S.); and AP (Tel Aviv) 35473-10-11 **Zarzur v. Ministry of the Interior** (January 29, 2013) (hereinafter: **Zarzur**).

   In **Desuki**, the petitioners applied to the authorities 10 months after the date on which the **Dufash** judgment was given and the petition was filed about a year and a half after the judgment was given. The court held that the petition was filed in delay, both relative to the date on which the contested decision was given, as well as in view of the change of the legal situation following the **Dufash** judgment. However, in an appeal to this court (AAA 2946/11 **Desuki v. Ministry of the Interior** (January 2, 2013)), the state notified that it **did not** pursue the delay argument. Therefore, the case was remanded to the court for administrative affairs, which held (in a judgment dated March 12, 2013) that the appellate committee should re-consider petitioners' appeal.

   With respect to the two additional judgments – **D.S.** and **Zarzur** – these are administrative petitions which were denied, *inter alia*, on the grounds of delay, both in contesting the administrative decision as well as on the grounds of delay in the filing of the petitions following the **Dufash** judgment. In **D.S.** the application for status upgrade was submitted in the beginning of 2010 – namely, 9 months after the date on which the application in the case at hand was submitted. Moreover, the delay in the filing of the petition following the **Dufash** judgment was not the main reason for the denial of the petition. In **Zarzur**, the petition was denied on the grounds of delay, both in view of the time which passed from the date on which the decisions which were contested

in the petition were given, as well as in view of the time which passed from the date on which the **Dufash** judgment was given. In **Zarzur** the application for status upgrade was submitted in March 2011 – almost three years after the **Dufash** judgment and about two years after the application for status upgrade was submitted in the case at hand. The **Zarzur** judgment was appealed (AAA 1595/13 **Zarzur v. Ministry of the Interior**), which appeal is currently pending before this court, and it is not the place to express an opinion as to the chances of the appeal.

5. Without resolving the question of where lies the border between applications which were submitted to the authority based on the **Dufash** judgment in delay (applications which give rise to the argument of delay), and those which were submitted in view of the current judgments within a reasonable period of time, it may be said that a substantial difference exists between the date on which the application for status upgrade was submitted in the case at hand, and the few cases in which the courts for administrative affairs denied petitions on the grounds of delay in the submission of applications to the authorities following the **Dufash** judgment. In other cases in which applications for status upgrade were submitted within a period similar to the period in the case at hand – about 10 months after the **Dufash** judgment – delay arguments in this context were denied. Therefore, although, as far as I am concerned, an argument of delay in the submission of applications to the authorities after the **Dufash** judgment does exist, under the circumstances of the case at hand, I shall join the conclusion of my colleague, according to which there is no room to accept the delay argument so that the appellants will not be discriminated against.

6. Finally, I wish to make a general comment concerning the failure to upgrade the status of individuals who embarked on the graduated procedure prior to the government resolution of 2002: as mentioned by my colleague, we denied petitions against the lawfulness of the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003. The validity of said law was extended until now from time to time. I am of the opinion that it would be appropriate – if and when the law is extended again – to take into consideration the condition of the individuals who do not receive an upgrade despite the fact that they have commenced the graduated procedure such a long time ago. Perhaps with respect to them, after such a long stay in Israel, an individual examination may be conducted (see and compare my position in HCJ 7052/03 **Adalah - Legal Centre for Arab Minority Rights in Israel v. Minister of the Interior**, IsrSC 61(2) 202 (2006), paragraphs 19-23 of my judgment). Perhaps the fact that the petitioners and others like them do not receive an upgrade despite the fact that they live in Israel for such a long time, is the underlying basis for the approach manifested by the **Dufash** judgment, and by the many other judgments which were submitted by petitioners' counsel and the judgments which were mentioned by my colleague, Justice Vogelman, and myself. However, it is my opinion that the solution for the failure to upgrade, should be general rather than conditioned on the question, which may no longer be properly examined, why the processing of this or another family unification application was delayed over a decade ago. The above said should be considered by the legislator.

Deputy President

Justice D. Barak-Erez

I concur.

Justice

Decided as specified in the judgment of Justice U. Vogelman.

Given today, 11 Sivan 5773 (May 20, 2013).

Deputy President | Justice | Justice