Jerusalem District Court sitting as the Court for Administrative Affairs
before Honorable Justice David Mintz

November 6, 2014

AP 20285-06-14

In the matter of:

1. _____ Ghanem
2. _____ Ghanem
3. _____ Ghanem
4. _____ Ghanem
5. HaMoked: Center for the Defence of the Individual

Represented by counsel, Adv. Benjamin Agsteribbe

The Petitioners

- **V**. -

Population and Immigration Authority

Represented by the Jerusalem District Attorney (Civil)
Adv. Yael Rod Slitan, Adv. Mosheh Viliger

The Respondent

Judgment

Petition for revocation of a decision made by the Respondent, the Population and Immigration Authority (PIA), not to register Petitioners 2-4 in the population registry, and for an order to grant said petitioners a permit for permanent residency under Regulation 12 of the Entry into Israel Regulations 5734-1975 (hereinafter: Regulation 12).

Background

1. The main facts are as follows: Petitioner 1 has been a permanent resident of Israel since 1972. She is married to a permanent resident and lives in Kafr 'Aqab in Jerusalem. She is the grandmother of Petitioners 2-4 (hereinafter: the Petitioner or the grandmother). Petitioners 2-4 (hereinafter: the children, or the Petitioners) were born in Jerusalem and they are the children of ____ Ghanem, the Petitioner's son (hereinafter: the father and ____ Ghanem (hereinafter: the mother), a resident of the Area. The father was sent to prison in 2001 and is serving nine life sentences. The parents divorced on February 23, 2011, and, the Petitioner claims, the mother severed all ties to the children about a decade ago. The Petitioner was appointed as the children's guardian in 2005 by order of the Jerusalem Shari'a Court, after the mother relinquished custody of the children.

2. The Petitioner contacted the Respondent a number of times in an attempt to have the children's status in Israel resolved. In her previous communications, she said that the mother had left for Jordan, remarried, abandoned the children and had no contact with them. On August 26, 2008, the Respondent denied the request to have the children registered in the population registry after discovering that the mother was not living in Jordan, but rather, in Judea and Samaria and that she had not divorced her husband, the children's father. A second application filed by the Petitioner on December 19, 2010 was rejected on the day it was filed because the Petitioner did not present a judgment issued by a court attesting to parental incapacity on the part of the mother. The rejection was given orally. On January 18, 2011, the Petitioner filed a third application to have the children registered in the population registry. She was asked to respond to some questions posed to her by the Respondent, and to provide a report from the welfare services with reference to the children's best interest. After some correspondence between the two parties, and after a report about the children prepared by the East Jerusalem Welfare Services was provided to the Respondent, the Respondent issued its decision on January 19, 2012, rejecting the Petitioner's application, mainly due to lack of evidence regarding the mother's parental incapacity to care for the children.

3. On March 1, 2012, the Petitioners filed an application with the Ministry of Interior Appellate Committee for Foreigners (hereinafter: the committee), in which they claimed that the Respondent had ignored the guardianship order issued for the Petitioner by the Shari'a Court and the welfare services report attesting that the children had been abandoned by their mother. On May 13, 2013, more than 18 months after said application was submitted, and before the committee made its decision in the matter of the Petitioners, the Petitioners filed a petition with this Court, asking the Court to rule on the Petitioner's application to have the children registered in the population registry and grant them a permit for permanent residency. On July 9, 2013, the petition was dismissed, with the Court noting that the committee was expected to make its decision soon thereafter. Another petition filed with this Court on April 24, 2014, against the delay in processing by the committee was ultimately dismissed without prejudice. On April 30, 2014, the committee issued its decision, rejecting the Petitioners' application. The committee ruled that the guardianship order issued by the Shari'a Court did not uphold the rationale underlying Regulation 12 and did not seek to protect the children's best interests, and therefore, the order did not compel the registration of the children under Regulation 12. Hence the petition at bar.

   To complete the picture, it is noted that following a hearing in the petition, held on September 16, 2014, the Respondent said that having reviewed the submission, it reached the conclusion that the matter of the Petitioners should be returned to it for re-evaluation and that it intended to make

further inquiries into the facts in the matter of the children and their mother, including summoning the Petitioner for an interview.

Parties' arguments

4. The Petitioners argue that the Respondent's decision violates their own fundamental rights and the fundamental rights of the Petitioner as their grandmother. The decision ignores a conclusive order issued in their matter by a competent court and breaches Regulation 12. The Respondent had no competency to question the validity of and order issued by a recognized court in Israel. The Respondent's assertion that the rationale underlying the guardianship order given in their matter fails to uphold the rationale of Regulation 12 was ultra vires and made by an authority that is not charged with assessing the child's best interest. The Respondent also failed to prove that the children's interest is different from that asserted in the guardianship order and no evidence was presented to counter the fact that the children have been raised by their grandmother for roughly a decade, whilst their parents refrain from fulfilling their obligations towards them.

5. In contrast, the Respondent argues that its decision, approved by the committee, is reasonable and well founded and gives no cause for this Court's intervention. Regulation 12 cannot be used in this case, wherein the mother gave custody of the children to the grandmother only to receive the benefits that come from the grandmother having guardianship over the children. The guardianship order was given solely for the purpose of having the children registered in the population registry and contained no reference to the mother's capabilities. The rationale underlying Regulation 12, which allows to maintain the integrity of the family unit, is not present so long as no parental incapacity on the part of the mother was proven. Moreover, the natural presumption with respect to the mother's capacity is strengthened by the fact that she had declared before the Shari'a Court that she is capable and that she is able to care for the children. Add to that the fact that the Petitioners had previously made false declarations with respect to the mother's place of residence. In any case, Regulation 12, which is meant solely for the purpose of resolving the matter of minors, cannot be applied to Petitioner 2, who has recently turned 18.

Deliberation and ruling

6. Regulation 12 of the Entry into Israel Regulations 5734-1974, issued pursuant to the Entry into Israel Law 5712-1952 (hereinafter: Entry into Israel Law) stipulates as follows:

> The status of a child who was born in Israel, but to whom section 4 of the Law of Return 5710-1950 does not apply, shall be the same as the status of the child's parents. Inasmuch as the parents do not share one status the child shall receive the status of the father or of the guardian unless the other parent objects thereto in writing. Inasmuch as the other parent objects, the child shall receive the status of one of the parents, as shall be determined by the Minister.

The purpose of this regulation is to prevent a gap between the status of a parent who is a permanent resident in Israel and resides in the country pursuant to the Entry into Israel Law and the status of a child who is born in Israel but is not entitled to status in the country by birth (HCJ 979/99 **Pabulaya v. Minister of Interior** (published in Nevo, November 23, 1999)). Therefore, the Regulation stipulates that the status of a child born in Israel will generally be determined by the status of the child's parents. When the parents do not cohabitate, the child's status will be determined according

to the guardian parent's status. Ordinarily, the center-of-life assessment relates to the minor's parents, rather than other relatives (see also: AP 8106/06 **'Asi v. Minister of Interior** (published in Nevo, September 17, 2007)). In exceptional circumstances, when the parents are not the individuals raising the child and the child is under the guardianship of another person, Regulation 12 allows the child to receive the same status as the appointed guardian.

7. As a rule, the Minister of Interior has broad discretion in exercising his powers under the Entry into Israel Law (HCJ 758/88 **Kendal v. Minister of Interior**, IsrSC 46(4) 505 (1992); HCJ 3648/97 **Stamka v. Minister of Interior**, IsrSC 53(2) 728 (1999)). However, and though the Minister may take other considerations into account when exercising powers under Regulation 12, it has been ruled that the minor's center-of-life should be given "the most considerable weight" (AAA 5569/05 **'Aweisat v. Minister of Interior** (published in Nevo, August 10, 2008)). In fact, although the question of a minor's center-of-life usually arises in relation to a parent, there is no choice by to view the element of center-of-life as a central consideration even when the minor's center-of-life is not with the parents.

8. The Respondent argued, therefore, that the "exceptional circumstances" that would justify grant of status based on the relationship between the children and a relative who is not a parent are not present in the case at hand as the mother's parental incapacity was not proven. Indeed, the situation that emerges is that the mother gave up raising her children of her own accord. It appears that the guardianship order was not preceded by an examination of the mother's parental capacity and there was no determination at the time that she is unable to care for her children. The same emerges from the statements the mother made to the Shari'a Court, whereby she preferred that the children be raised by their grandmother, though she was capable of caring for them. The aforesaid notwithstanding, the Petitioners' contention that the children had been raised by their grandmother ever since their father's incarceration and that the mother had abandoned them and had had no contact with them at least since 2005, was not refuted by the Respondent. The Petitioners provided support for their contention in the form of a report from the welfare services, which corroborated the claim that the Petitioner is raising the children in her home in Jerusalem and provides for all their physical and emotional needs, while the mother (who had seemingly moved back to Judea and Samaria) had not contacted her children at least since 2005. In this context, the committee's comment, in its decision, that the welfare report was deficient in that it contained no reference to the mother's parental capacity, or to the contention that the mother had given up the children of her own accord. Note, the report of the welfare services social worker was prepared in 2011, and it notes that the mother had not been in contact with her children for years and that the grandmother was raising them. In this situation, it is difficult to accept the contention that the social worker should have assessed the parental capacity of the mother, who has been "out of the picture" for some time.

9. In this context, it is noted that the Respondent did not claim that this was a "false" guardianship, in the sense that the mother has in fact been raising the children and supplying all their needs in their home in Jerusalem over the past decade. In any event, in this context too, the contention regarding the children's abandonment and the severing of all ties with them, was not denied. The Respondent did make allegations about the reasons for said "abandonment", as the mother had stated before the Shari'a Court that she was able to care for them. However, the fact that the mother (and all the more so the father) had had no contact with the children for many years, throughout which they had been living with and raised by their grandmother alone, was not disputed.

10. To clarify, this is not a case in which a foreign national seeks to remain with a relative, a citizen or a resident, only to justify the grant of permanent residency in Israel. Clearly, in such cases, the grant of permanent residency is not justified (see HCJ 4156/01 **Dimitrov v. Ministry of Interior**, IsrSC 56(6) 289 (2002); HCJFH 8916/02 **Dimitrov v. Ministry of Interior**, (published in Nevo, July 6, 2003)). This case is also entirely different from the cases in which the guardian parent is present and the child attempts to gain status by claiming he or she is "in the custody" of another guardian, who has status in Israel (cf: AP 27267-01-14 **A. v. Minister of Interior** (unpublished)). Our case concerns stateless children, abandoned by both their mother and their father and it has been found and proven that their center-of-life, throughout their lives over the years has not been with their parents but with their grandmother in Jerusalem. This fact was not disputed.

11. In this state of affairs, there is no choice but to read Regulation 12 as applicable in the matter of the Petitioners. Therefore, the Respondent's claims with respect to the legitimacy of the guardianship order issued by the Shari'a Court are irrelevant in this case, as the children were born in Jerusalem to a father who is a resident of Jerusalem, who have been living in Israel for close to a decade and have no contact with their mother. In this state of affairs, close to ten years after the first application in the matter of the children was filed, there is no room to accept the Respondent's request to reexamine the issue of the mother and her whereabouts. Any further delays in the proceedings in the Petitioners' matter will cause unnecessary harm to the children, when the Respondent should have exhausted the process of examining the mother's whereabouts in the years that have passed and before issuing the decision in their matter.

12. Before concluding, with respect to the Respondent's claim that Regulation 12 does not apply to Petitioner 2, who, as the proceedings were delayed, ceased to be a minor and has turned 18. The effective date with respect to child registration is the date on which the application was made (see, cf: AP 128/05 **Razem v. Population Administration – East Jerusalem** (published in Nevo, November 13, 2005); AP 926/04 **'Afaniya v. Ministry of Interior** (published in Nevo, October 25, 2004)). Seeing as there is no dispute that Petitioner 2 was a minor at the time the application for registration in the population registry was made, there should be no distinction between him and his younger siblings.

13. Therefore, the petition is accepted. The Respondent will issue Petitioners 2-4 permits for permanent residency in Israel as aforesaid. The Respondent will also pay for Petitioner's costs in the amount of 15,000 ILS.

Issued today, 13 Cheshvan 5775, November 6, 2014, in parties' absence.

[signed]

David Mintz, Judge