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**At the Jerusalem District Court Sitting
as a Court for Administrative Affairs Justice**

AP 57730-02-13

Before the Honorable Judge I. Marzel

1. _____ **Hamidat, ID No.** _____
2. _____ **Hamidat, ID No.** _____
3. _____ **Hamidat, ID No.** _____
4. _____ **Hamidat, ID No.** _____
5. _____ **Hamidat, ID No.** _____
6. _____ **Hamidat, ID No.** _____
7. _____ **Hamidat, ID No.** _____
8. _____ **Hamidat, ID No.** _____
9. **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Adv. Noa Diamond et al.

Of HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Chair of the Appellate Committee for Foreigners (Jerusalem District)**
2. **Legal Advisor to the Population, Immigration and Border Authority**
3. **Head of the Population, Immigration and Border Authority**
4. **Minister of Interior**

all represented by Jerusalem District Attorney's Office - Civil
7 Mahal Street, Maalot Daphna, Jerusalem
Tel: 02-5419555; Fax: 02-5419582

The Respondents

Respondents' Response

Following the judgment dated September 18, 2014, which was given in the above captioned petition, the Population Authority wishes to notify that the Minister of Interior gave a new decision in Petitioner 2's matter. A letter of said decision and its underlying reasons was transferred today to petitioners' counsel and is attached hereto. Under these circumstances, the respondents are of the opinion that the petition became redundant and should be deleted, without going into additional arguments concerning the filing of contempt of court applications against the state, arguments, which under the circumstances, there is seemingly no need to attend to.

As stated above, the decision of the Minister of Interior was transferred to petitioners' counsel who requests an opportunity to respond to said notice.

(signed)
Moran Braun, Advocate
Jerusalem District Attorney's Office (Civil)

Monday, Shvat 20, 5775 (February 9, 2015)

Population Registry and
Immigration Authority
East Jerusalem

State of Israel

February 9, 2015

To
Mrs. Hadil Hamidat
c/o HaMoked for the Defence of the Individual
Fax: 02-6276317

Re: Family Unification Application No. 487/08 for Mr. _____ Hamidat, ID No. _____

This is to inform you that according to a judgment dated September 18, 2014 in AP 57730-02-13, the application was examined by the Minister of Interior, who by virtue of the general power vested in him under the Entry into Israel Law and the Temporary Order Law, decided to deny the application for conflict of interests in view of the nature of applicant's position with the Palestinian Authority, and as will be specified below:

The family unification application was denied on December 5, 2011, by the director general of the population authority based on information provided by the applicant in a hearing which was held in his case on June 20, 2010, according to which "Mr. Hamidat is employed by the Palestinian Authority (PA) and holds the cultural and political training portfolio of the PA. In the framework of his position, Mr. Hamidat is in charge of the training and guidance of the PA's policemen. Between the years 1992-1994 Mr. Hamidat worked in the Orient House, and was employed by the PA from its foundation. In addition, between the years 1990-1991, Mr. Hamidat was held under administrative detention, and between the years 1991-1992, he was held under an additional administrative detention. The investigations conducted by the National Insurance Institute (NII) and which were received by the respondent, indicate that from their marriage in 1990 and until August 2004 the family lived in the Bani Na'im village in the Hebron area, outside the municipal area of Jerusalem. To date the family resides in Akeb village located on the other side of the security fence.

In the hearing which was conducted to Mr. Hamidat he argued that he was appointed to his position as the person in charge of cultural affairs in the PA on April 1, 2010, but not on behalf of the police. Mr. Hamidat also argued in the hearing that he was in charge of political training, and that he acted as a lecturer. An examination of the pay slips provided by Mr. Hamidat indicate that Mr. Hamidat's salary is paid by the PA and that he holds the rank of "Akid" (lieutenant colonel). In view of the above, due to a concern of a conflict of interests it was decided to deny the application."

The decision of the director general of the population authority to deny the family unification application was appealed by the applicant to the Appellate Committee for Foreigners in Jerusalem, appeal No. 157/12. On January 17, 2013, the appeal was denied.

A petition against the decision of the chair of the committee was filed with the Court for Administrative Affairs in Jerusalem, AP 57730-02-13, in the framework of which it was argued that the applicant was holding a civilian-academic position in nature, that he was giving academic courses to the Palestinian Police, and that he did not engage in any police or military activity.

In the framework of the petition the applicant transferred the contents of the lectures, which indicated that the lectures concerned national-political guidance to the recruits of the PA Police which is in charge of law enforcement. The issues taught include, *inter alia*, the constitutional infrastructure of the PA, the legal principles and the structure of the organization, legal hierarchy at the PA, rights and liberties in the constitution, rights and obligations of the recruits to the Palestinian security forces, prohibitions, penalties, etc.

In May the Court for Administrative Affairs was advised that applicant's matter was brought for the decision of the Minister of Interior at that time, and that according to the Minister's decision applicant's application for status in Israel by virtue of family unification procedure was denied, in view of a conflict of interests between the senior position held by him with the Palestinian Authority – a rank of Akid – a rank parallel to the rank of a colonel with the Palestinian Authority security forces, for which he received a salary on an ongoing basis from the Authority, and the requested status in Israel.

On September 18, 2014, judgment was given in the above petition which held that the decisions of our Ministry – were revoked.

As aforesaid, in view of the judgment dated September 18, 2014, applicant's matter was reconsidered and in view of the above data, according to which the applicant is a senior employee holding the rank of Akid – colonel with the PA; he is engaged, *inter alia*, in national-political guidance and training of policemen in the Palestinian Authority; he receives salary on an ongoing basis from the Palestinian Authority. A review of the lectures given by the applicant indicates that the lectures include, *inter alia*, national-political guidance to the recruits of the PA Police which is in charge of law enforcement. The curriculum includes the constitutional infrastructure of the PA, the legal principles and the structure of the organization, legal hierarchy at the PA, rights and liberties in the constitution, rights and obligations of the recruits to the Palestinian security forces, prohibitions, penalties, etc.

It was found that the grant of stay permits in Israel to the applicant may impinge on important interests of the state of Israel, in view of the fact the applicant had an intrinsic conflict of interests between the position held by him with the Palestinian Authority and the loyalty owed by him to the Palestinian Authority, its employer for many years, and his commitment to the state of Israel where he wished to live. Holding a senior position with a public Palestinian agency, may indicate of a high level of loyalty of the employee to the Palestinian Authority. Our Ministry is of the opinion that it is inappropriate to give him a stay permit in the state of Israel in the framework of a family unification procedure, even temporarily.

According to case law, the discretion vested in the Minister of Interior in connection with the grant of stay permits is broad, and derives from the nature of the power and the sovereignty of the state to decide who may enter its gates. In the above case permit should not be granted to the applicant.

This case concerns a family unification application which is currently limited, by law, to DCO permits only. The position of the Ministry of Interior is that no lawful status should be granted to the applicant in Israel (either in the context of the graduated procedure or outside the procedure, especially as currently such a distinction has no significance in view of the Temporary Order). The concern of a conflict of interests is the same regardless of whether lawful status in Israel is given to the applicant by way of DCO permits in the context of the procedure, or outside the procedure, in view of his position. Even the grant of temporary permits does not nullify the concern of impingement on important interests of the state of Israel.

The above consideration was weighed by our Ministry against the consideration that the visa applicant (the sponsored party) was married to a permanent resident. However, this consideration alone cannot be taken into account, while disregarding or failing to give a significant weight to the expected impingement on the interests of the state of Israel and the broad security aspect, should a stay permit in Israel be granted to a holder of a senior position with the Palestinian Authority, with which Israel has a basic conflict in various areas.

As aforesaid, in making the decision, the right of the applicant and his wife to family life was balanced against the impingement on the interests of the state of Israel.

In this context the grounds given by the Court for Administrative Affairs to its decision in the petition should be referred to.

The court held that a denial due to a conflict of interests argument is premised on the provisions of section 3D of the Temporary Order Law (paragraphs 10-11 of the judgment). It should be noted that presently there is no specific objection of the security agencies. Nevertheless, the Minister of Interior is also authorized to deny a family unification application on the grounds of conflict of interests, by virtue of his general and broad authority and by virtue of the principle of state sovereignty. The court held that the issue of "dual loyalties" and conflict of interests was not simple. It is indeed so. However, these decisions are not made frequently and in any event issues of this sort are decided solely by senior position holders such as the director general of the Population Authority or the Minister of Interior, and by nobody else. The above projects on the complexity of the issue, beyond the examination of the specific circumstances of each case. It should also be reminded that despite the complexity of the matter, the Supreme Court as well as the district courts have repeatedly approved decisions of this sort as a matter of principle.

The court holds that the applicant has been residing in Israel for several years by virtue of judicial orders the revocation of which was not requested (paragraph 12). Apparently, the revocation of the temporary judicial orders which were given to the applicant should have been requested. However, with all due respect, it seems that this fact does not carry much weight under the circumstances. There is a difference between the grant of status – even if a temporary one, given the Temporary Order Law – and a temporary stay in Israel by virtue of judicial orders. In addition, as aforesaid, no argument concerning a specific security threat posed by the applicant has been raised. However, the conflict of interests issue is not necessarily based on the existence such a specific threat. The main point is that when things are put to the test, the applicant who has "dual loyalties" – it may be most reasonably assumed – will prefer the Authority, its employer, which pays his salary, over the state of Israel. And again, he is a senior employee of the PA.

The court refers to the difference between the courts' judgments on the conflict of interests issue and applicant's case (paragraph 13). In this context it should be noted that in H CJ 3373/96 **Za'atra**, the conflict of interests argument pertained to the activity of the sponsored party in the Palestinian security forces. In H CJ 2898/97 **Atiya**, the conflict of interests arose from the fact that the sponsored party was the deputy chairman of the Palestinian Red Crescent, and acted as the director general of the Palestinian Ministry of Health. In AP 251/07 **Hammad**, the conflict of interests argument was based on the fact that the sponsored party held a senior position with the PA's customs authority. In AP 326/04 **al-Razem**, the conflict of interests stemmed from the sponsored party's employment with the Authority's tax authorities. In all of the above cases the courts did not find it appropriate to intervene with the decision of the Minister of Interior. Despite the differences between the cases, the courts have not infrequently approved denial based on conflict of interests, even when the sponsored party was not employed by the Palestinian security forces.

Our ministry does not regard the fact that in those cases family unification applications were concerned, a sufficient reason to draw a distinction under the circumstances which justifies a deviation from prevailing case law. A conflict of interests situation is "static" by its nature. Namely, for as long as the applicant is employed by the PA and hold his senior position thereat, a *de-facto* conflict of interests situation exists. We do not find room to differentiate between the grant of permanent residency status and the grant of a temporary status in a conflict of interests situation, in general, and under the circumstances of the matter, in particular. The fact that due to the above referenced Temporary Order Law the applicant can presently receive a DCO permit only does not make a difference either.

A substantial difficulty exists in a situation in which the Minister of Interior is requested to approve an application, despite the existence of an intrinsic conflict of interests as aforesaid which may impinge on vital interests of the state, pursuant to a law which has a security purpose and which permits, at the utmost, the grant of a temporary stay permit.

The court refers to applicant's explanations concerning the scope of his position and its civilian-academic nature, according to him, with the PA. The court also refers to the need to make the balancing taking into consideration the right to family life (paragraphs 15-16). Firstly, even in view of applicant's explanations concerning the nature of his position, we are still concerned with a person holding a senior position with the PA, who engages, *inter alia*, in the training of recruits to the Palestinian Police. Beyond the applicant's rank and salary, it was found that his activity at the PA gave rise to a substantial and extended concern of a conflict of interests. Secondly, as aforesaid, we have certainly considered the right to family life. The sponsoring party has permanent residency status in Israel and the spouses have six children. The family's difficulty in this case is obvious. However, the decision does not necessarily dictate a separation from the father. The right to family life does not necessarily have to be exercised in Israel. The family can move and live in the territories of the PA as it did in the past. Against all of the above it should be emphasized that applicant's intrinsic conflict of interests supersedes the right to family life under the circumstances of the matter.

It should be pointed out that a review of the existing material shows that in the hearing the applicant claimed that he was holding real estate property in the territories of the PA. It should also be noted that to date the family lives in Akeb village which is located on the other side of the security fence.

The court holds that the proportionality issue should also be considered in view of applicant's argument that the only thing he currently requests is to live lawfully in Israel, and nothing more than that (paragraph 16). To a large extent, all of the above said also provides a response to this issue, given applicant's conflict of interests, and the fact that in practice – whatever caption his preset application may have – he wishes to permanently stay in Israel (namely, maybe not as a "permanent resident" as this term is defined in the Entry into Israel Law, but *de facto* to stay in Israel permanently). Applicant's arguments concerning the possibility to "limit the visa" are unacceptable. A decision of the Ministry of Interior approving a family unification application – either in a situation in which a B/1 permanent residency status may be granted in the initial stage (in cases in which the Temporary Order Law does not apply), or in a situation in which the initial approval results in the grant of a DCO permit - is a normative decision. It is a decision in which the Ministry of Interior conveys its opinion that the application satisfies the conditions of the family unification procedure and that the application should be further examined in the framework of the graduated procedure. There is an intrinsic difficulty in the argument that a decision which denies a family unification application based on substantial and pertinent grounds, is disproportionate because the possibility to "limit the visa" was not considered. With all due respect, when it was found that a person who requested to receive status in Israel, to reside in Israel, to maintain family life in Israel, was in a conflict of interests situation due to the position held by him with a foreign

state or authority, there is no room to "limit the visa" only due to the principle of proportionality, when the balancing point between the right to family life and the denial of the application on the grounds of conflict of interests favors the latter. The above also applies to the case at hand.

Under the circumstances of the matter, in view of the nature of applicant's position with the PA, it was decided to deny the application due to conflict of interests. You may appeal this decision by filing an appeal to the court of appeals in Jerusalem according to section 13 (24) of the Entry into Israel Law, 5712-1952.

Sincerely,

(signed)

Weiss Hagit

Bureau manager