At the Court od Appeals
District of Jerusalem

Appeal
2469/14

In the matter of:

1. **_____ Taha, ID No. _____**

2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA No. 580163517**

Represented by counsel, Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Noa Diamond (Lic. No. 54665), and/or Sigi Ben-Ari (Lic. No. 37566) and/or Abir Joubran-Dakwar (Lic. No. 44346) and/or Hava Matras-Irron (Lic. No. 35174) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Bilal Sbihat (Lic. No. 49838) and/or Nasser Odeh (Lic. No. 68398)

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 Appellants

v.

The Population, Immigration and Borders Authority

Represented by counsel, attorneys from the legal department
15 Kanfei Nesharim Street, Jerusalem
Tel: 02-5489888; Fax: 02-5489886

The Respondent

Appeal

The honorable court is hereby requested to order the respondent to retract its decision to deny the application of appellant 1, the widow of a permanent Israeli resident who has been living in Jerusalem for almost twenty years, to obtain status in Israel for humanitarian reasons, and to order it to immediately approve appellant's application to continue to stay in Israel lawfully after the death of her husband.

Preface

Ye shall not afflict any widow, or fatherless child.
If thou afflict them in any wise, and they cry at all unto me,
I will surely hear their cry;

(Exodus 22, verses 22-23).
This appeal concerns respondent's decision – a decision which was transferred to the appellants on October 23, 2014 – to deny the application of a widow – resident of the West Bank who has been living in Jerusalem for almost twenty years, to continue to reside lawfully in her home in Jerusalem after the death of her husband. Regretfully, upon the death of her husband the appellant found herself drawn into a long and exhausting ordeal of administrative and legal proceedings, confronted by the respondent which used its best efforts to deport her from home in Israel to the West Bank. As will be specified in the body of the appeal below, after the respondent denied the application which was submitted in appellant's matter to the committee which advises the Minister of Interior on the grant of stay permits in Israel for humanitarian reasons to residents of the Area (hereinafter: the **humanitarian committee**) and forced the appellant to turn to the High Court of Justice, the respondent notified the court that the inter-ministerial committee would reconsider her matter. However, although as a result of respondent's above notice to the court the petition was deleted, the respondent has not fulfilled its said undertaking to the court until this very day. Instead, after more than a year during which the unfortunate appellant has been waiting for a decision in her matter the respondent made a problematic and flawed decision which consists of factual errors, procedural mistakes, misrepresentation and more, and all of the above without having submitted the matter of appellant 1 for the consideration of the inter-ministerial committee. Hence, this appeal.

The Parties

1. Appellant 1 (hereinafter: the **appellant**), originally a resident of the Occupied Palestinian Territories (OPT), is the widow of the late Mr. _____ Taha, a permanent Israeli resident (ID No. _____), who has been living in Jerusalem since she married the deceased in 1995, and whose residency in Israel has been arranged for twelve years by renewable stay permits.

2. Petitioner 2 is a registered not-for-profit association which handles, *inter alia*, the matters of residents of East Jerusalem *vis-à-vis* the Israeli authorities, including by protecting their rights before the courts, either in its own name as a public petitioner or as counsel to individuals whose rights were violated.

3. The respondent is the Population, Immigration and Borders Authority.

Appellant's Matter

4. The appellant, originally an IPT resident, married in 1995 a permanent Israeli resident, _____ Taha (hereinafter also: the **husband**). As aforesaid, this was their second marriage, after they had both lost their former spouses.

5. An Israeli marriage contract dated June 23, 1995, between Mrs. Taha and her husband, the late Mr. Taha, is attached and marked **P/1**.

6. It should be noted that Mr. Taha has three sons and a daughter from his previous marriage. All of Mr. Taha's children are married and reside in Jerusalem. Mrs. Taha also has children from her first marriage, but she had to separate from them after they were transferred to the custody of her late husband's family, immediately after his death. To date the relations with them are naturally weak.

7. From the date they were married in 1995, the appellant and her husband lived in the Ras al- Amud neighborhood in Jerusalem, in a house owned by the husband.

8. After they were married, on August 20, 1995, the spouses turned to the office of the population authority of the Ministry of Interior in East Jerusalem for the purpose of arranging appellant's status in Israel and submitted for her a family unification application No. 1306/95. Following repeated requests and correspondences of the attorney who represented the appellant and her husband at that time their application was approved after about five years.

9. On January 3, 2000, the application was approved and the appellant received a first referral for a DCO permit. Since then, for twelve years, the permits have been renewed for the appellant.

10. The approval of appellant's first application, dated January 3, 2000, is attached and marked **P/2**.

11. On March 11, 2011, appellant's husband passed away in Jerusalem.

12. A death certificate is attached and marked **P/3**.

13. Upon the death of her late husband the appellant, who maintained a center of life in Jerusalem together with her Israeli husband for about seventeen years and is no longer a young woman, found herself facing the risk of being deported from her home, from the supportive community surrounding her, from her natural environment and from all the people who currently provide for her and take care of her.

14. For these reasons and in order to enable the appellant who has been residing in Israel for so many years, to continue to live in Israel, the bureau of respondent 2 apparently turned, at its own initiative, and submitted to the humanitarian committee an application for the appellant.

15. The application was submitted to the humanitarian committee in accordance with procedure No. 5.2.0017 of the Ministry of Interior – "Procedure for Cessation of the Procedure for the Arrangement of Status of Spouses of Israelis" – which regulates, *inter alia*, the implementation of the graduated procedure when the marital connection expired due to the death of the Israeli spouse. It should be noted that despite the fact that the appellant was a spouse of a permanent resident rather than of a citizen, the respondent habitually applies the provisions of the procedure to spouses of permanent residents as well. However, no copy of the application was delivered to the appellant and she apparently did not understand at all that an application had been submitted in her matter to the humanitarian committee.

16. Following appellant's inquiry with the humanitarian committee, a confirmation was received on January 10, 2012, from the coordinator of the humanitarian committee, which confirmed that an application in appellant's matter was indeed submitted to the honorable committee and that the application would be brought up for consideration according to a chronological order in accordance with its submission date.

17. The letter on behalf of the committee's coordinator is attached and marked **P/4**.

18. In view of the fact that until the date on which appellant 2 turned to the committee the appellant was not aware of the mere fact that an application had been submitted in her matter, which could act against her on the date of the hearing and the decision of the committee, appellant 2 sent on March

19, 2012, complementary arguments in support of the humanitarian application which had been submitted in her matter to the committee.

19. The letter with the complementary arguments dated March 19, 2012, is attached and marked **P/5**.

20. On December 9, 2012, appellant 2 received in its offices the decision of the Minister of Interior dated November 25, 2012, in appellant's matter which denied her application. A review of the decision indicates that the application was denied *in limine* on the grounds that the appellant does not have a sponsor who resides lawfully in Israel, as required by section 3A1(a) of the Temporary Order, which provides that the Minister of Interior may, for special humanitarian reasons, grant residency status or approve the grant of a stay permit in Israel based on the recommendation of a professional committee – the humanitarian committee, B.A. – to a resident of the Area or a citizen or a resident of a country listed on the addendum to the Temporary Order, **whose family member lawfully resides in Israel**.

21. A copy of the decision in appellant's mater is attached and marked **P/6**.

22. Following the decision and in order to understand its underlying reasons, appellant 2 turned to the humanitarian committee and requested to receive the protocol of the hearing which was held in appellant's matter.

23. On January 21, 2013, the protocol of the humanitarian committee was received in appellant 2's offices. A review of the protocol indicated that the application in appellant's matter was indeed denied *in limine* in view of the fact that she did not have a sponsor, in accordance with the discriminating provision of the Temporary Order. The protocol of the hearing further states, in a cruel and unfair manner, that the appellant has three children from her first marriage, a fact which has already been presented to the committee in the context of the complementary arguments which were sent to it on March 19, 2012, where it was noted that in fact the relations between the appellant and her children are virtually non-existent.

A copy of the protocol of the hearing which was held by the humanitarian committee in appellant's matter is attached and marked **P/7**.

24. In view of the committee's decision which sealed appellant's fate and denied her application *in limine*, without having considered her humanitarian matter on its merit only due to the fact that she did not have a sponsor in the application, in accordance with the discriminating requirement of the Temporary Order, the appellants filed on March 12, 2014 *[sic]*, a petition on this matter with the High Court of Justice, in HCJ 1924/13.

A copy of HCJ 1924/13 without its attachments is attached and marked **P/8**.

25. Following several agreed extensions, a preliminary response to the petition was submitted on July 28, 2013, in the context of which the deletion of the petition was requested in view of respondent's undertaking to transfer appellant's matter for the consideration of the inter-ministerial committee.

A copy of the preliminary response in HCJ 1924/13 is attached and marked **P/9**.

26. On July 31, 2014 *[sic]*, the appellants filed a request by the parties' mutual consent, to reply to the preliminary response, and after leave to submit the reply was granted to them, the reply was submitted on August 6, 2014 *[sic]*. In appellants' reply to the preliminary response they briefly explained why they requested the court to leave the petition pending despite respondent's undertaking to transfer appellant's matter for the consideration of the inter-ministerial committee.

A copy of appellants' reply to the preliminary response is attached and marked **P/10**.

27. However and as specified above, in view of respondent's undertaking to transfer appellant's matter for the consideration of the inter-ministerial committee, the court ordered on August 7, 2014 *[sic]* to delete the petition without prejudice to the arguments of the parties.

A copy of the judgment in HCJ 1924/13 is attached and marked **P/11**.

28. On October 1, 2013, a hearing was held for the appellant in respondent's East Jerusalem bureau.

A copy of the protocol of the hearing is attached and marked **P/12**.

29. On April, 29, 2014, the appellant was summoned again for a hearing in respondent's East Jerusalem bureau.

A copy of the protocol of the hearing dated April 29, 2014, is attached and marked **P/13**.

30. On May 25, 2014, June 26, 2014, July 27, 2014, August 21, 2014, September 2, 2014, October 2, 2014, and November 2, 2014, letters were repeatedly sent to the coordinator of the inter-ministerial committee inquiring of the status of appellant's matter.

A copy of appellants' inquiry letters to the coordinator of the inter-ministerial committee is attached and marked **P/14**.

31. Only on November 23, 2014, fifteen months after respondent's undertaking before the court to transfer appellant's matter to the inter-ministerial committee, a decision on behalf of the respondent was received in appellant 2's offices, which according to the date stipulated therein was given on November 13, 2014.

A copy of the decision in appellant's matter is attached and marked **P/15**.

32. In view of their importance the appellants will cite the main parts of the decision, from paragraph 7 onwards, *verbatim*:

> The data in your file indicate that:
>
> - Your son was imprisoned several times and you have received permits to visit him several times contrary to your claim that you do not maintain relationships with him and that you have not seen him, and in fact you have failed to inform that he was in prison and that he had very rich criminal record including long incarceration periods.
>
> - In 2004 and in 2007 you were granted Palestinian passports.
>
> - According to the information you have two daughters who reside in the surrounding Jerusalem area and a son in the Nablus area, a brother in the Nablus area and a sister in the Jenin area.

- You have many dozens of exits and entries through the border crossings into and from the "Area" through different border crossings.

- In addition you have several entries and exits through Allenby bridge.

In view of all of the above and the data which were presented, you maintain continuous relations with your family and children contrary to your statements in the interview, and the data indicate that your ties to the "Area" are stronger than your ties to Israel and I have therefore decided to deny your application to receive any kind of status in Israel. It should be noted that your matter was transferred for the consideration of the director general of the Population and Immigration Authority, who decided to accept my recommendation and to also deny your application for status in Israel. It should be noted that the facts and data were meticulously examined before an answer was given which was approved by the director general of the Population and Immigration Authority.

(The errors appear in the original, B.A.).

The Legal Argument

33. As will be specified below, respondent's decision to deny appellant's humanitarian application is an unreasonable and disproportionate decision, but beyond anything else, it is an unfair decision. As the appellants will prove, it is a decision which consists of substantial flaws and procedural defects, a decision which was made arbitrarily and ostensibly, even in bad faith. The appellants will refer to the substantial flaws of the decision and will thereafter specify the procedural defects thereof. We shall now turn to discuss things in an orderly manner.

A. The Substantial Flaws of the Decision

34. The respondent argues that the appellant has ostensibly concealed from her relevant information concerning the criminal record of her son who had served in the past incarceration sentences in Israel and that contrary to her statements she was in contact with him.

35. At the outset the appellants wish to protest against the making of such a cruel argument in the context of a humanitarian application. The appellants wish to clarify already at this stage, that it is an irrelevant argument and a mixture of unrelated issues, the only purpose of which is to muddy the appellant and validate the denial of her application. However, in view of respondent's non-professional reference to the matter, the appellants will also discuss this shameful argument.

36. As specified in the factual part, the application to receive status in Israel for humanitarian reasons was submitted for the appellant in 2011 in view of the impossible situation encountered by her upon the death of her husband, when after having resided in Israel for seventeen years – and currently about twenty years – the family unification procedure undertaken by her for many years has suddenly vanished into thin air. It is also important to note that appellant's son was released from prison after serving his sentence a few years prior to the death of appellant's husband and the submission of the humanitarian application in her matter. It should be further emphasized that the fact that the appellant has a son who had served several prison sentences in Israel in the past did not prevent the respondent – and rightfully so – from approving at the time and in real time her family unification application with her husband and to date, after the husband's death, years after the son had been released from prison and in the context of the humanitarian application, there is no room to raise against this

unfortunate woman irrelevant claims. For the sake of good order the appellants wish to note that after his release from Israeli prison, appellant's son moved to live with his uncles in the Nablus area and as explained by the appellant in the hearings which were held for her in respondent's bureau – middle of page 2 of the protocol of the hearing which was held for her in respondent's bureau on April 29, 2014, and which was attached to this appeal above as Exhibit P/13 - the relations with him are not healthy mother-and-son relations but rather weak relations only.

37. The respondent further argues in its decision that the appellant concealed from it, in the framework of the hearings which were held for her in its bureau, her son's criminal record. However, the appellants do not understand how that is relevant to the matter at hand and what does the criminal record of her son with whom – contrary to respondent's claim in the decision – she hardly has any connection have to do with her humanitarian application which was submitted due to her place of residence and the ties she had been maintaining for many years to Israel. As aforesaid, it is a shameful claim, the only purpose of which is to besmirch the appellant and prove that while claiming that she had no relations with her son, she had ostensibly visited him contemporaneously in prison, all for the purpose of validating her deportation from her home, that and nothing else. The above claim has no merit and runs contrary to the circumstances of appellant's life as described by her in detail in the context of the hearings which were held for her.

38. To conclude this matter we would like to make note of one more issue. The above claim is much more severe in view of the fact unless the appellant was a West Bank resident who is subordinated to the Temporary Order, then, in view of the many years during which she had lawfully lived in Israel, she would have become, long ago, a permanent resident of Israel and a woman with full rights in her country, a woman against whom nobody would have dared to raise such cruel arguments for the purpose of deporting her from her home.

39. The appellants protest against respondent's conduct, which in the context of an extremely crucial decision concerning appellant's life, do not recoil from raising any argument, as inappropriate as it may be.

B. <u>The defects in respondent's argument concerning the issue of the passports</u>

40. The respondent also argues that the fact that the appellant was issued at her initiative Palestinian passports in 2004 and 2007 attests to the fact that her ties to the Area supersede her ties to Israel.

41. However, with respect to this issue the appellants are also of the opinion that it is an inappropriate argument. We shall specify. Firstly, this argument, like its predecessor, also concerns passports which were issued to the appellant a long time before her husband passed away and before the humanitarian application in her matter was submitted. In other words, this argument has nothing to do with appellant's condition from the date the humanitarian application in her matter was submitted, several years later.

42. Secondly, astonishingly enough, an inquiry held with the appellant indicates that the passports were not issued at her initiative, but rather, as a result of a demand posed to her by the respondent itself at the time. If the above is true, a matter which the appellant 2 has no reason to doubt in view the practice which has been recently encountered by appellant 2, then, indeed, the argument at hand is also an argument made in bad faith. The appellant handled at least two cases in which applicants of status in Israel were directed by the respondent to issue a foreign passport. In addition, appellant 2 came across a case in which an applicant, who had been directed by the respondent itself to issue a foreign passport, was later on demanded to provide explanations regarding his ties to the country which had issued the passport for him. It should be emphasized that this honorable court heard said

case in the framework of appeal 1990/14 in view of respondent's demand in said proceeding to cause the appellant to issue a Jordanian passport against his will. In the framework of appeal 1990/14 the appellants referred the honorable court to a similar case which was heard in HCJ 9310/12, in which the respondent also posed a demand for the issue of a foreign passport, while two years afterwards the petitioners were required to **specifically refer to issue of the status given by said passport**.

Copies of appellants' response in appeal 1990/14, the correspondence between the parties' attorneys in HCJ 9310/12 in the framework of which the demand for clarifications concerning the foreign passport was brought up – which was attached as an exhibit to appellants' response in appeal 1990/14 – and the decision of the court in said case, are attached and marked **P/16**.

43. Finally, the above argument is inappropriate in view of the fact that while the respondent tries to emphasize appellant's ties to the West Bank, by pointing at the passports issued by her a long time ago when her husband was still alive and years before the humanitarian application in her matter was submitted, it omits to present in the decision the fact that currently the appellant does not hold a Palestinian passport but rather a Jordanian passport without any national number, a passport held by many of the permanent residents of East Jerusalem. Hence, said argument is also an inappropriate argument which has nothing to do with the issue at hand.

C. <u>The flaws in respondent's response regarding appellant's family members residing in the West Bank</u>

44. The respondent continues to argue in its decision that the fact that the appellant has daughters who reside in the surrounding Jerusalem area, a son who resides in the Nablus area and a brother and sister who reside in the Area, attests to her strong ties to the Area. Not surprisingly, once again, the argument raised against the appellant is evidently an inappropriate and outrageous argument, for the following reasons. As explained by the appellant in the hearings which were held for her in respondent's bureau, she indeed has family members in the West Bank. However, the relations with her family members are far from being close and particularly the relations with her children from her first marriage – who were taken from her home at a young age after custody of the children was transferred to the father's family following his death - which relations are not regular and healthy. In addition it is an intrinsically inappropriate argument in view of the fact that the respondent would not have dared to raise such an argument against a widow who is not from the West Bank and claim that after about twenty years of residency in Israel, the fact that she has siblings who reside in the Area and the fact that she visits them once every few months, prove that her ties to that area is stronger than her ties to her home, and that the mere fact that they exist attests to that they will take her to their home and therefore she has a place to go to.

45. Finally we would like to emphasize that this argument is also made in bad faith, in view of the fact that the respondent which meticulously emphasizes appellant's ties to the West Bank by pointing at family members who reside over there, knowingly and intentionally omits the fact that the appellant also has two daughters who reside in Haifa and in Jabal Mukaber, both within the boundaries of Israel. Hence, this argument too is an inappropriate and outrageous argument which more than anything else attests to the disrespect with which the respondent handles applications which are so crucial for one's life and future. The severity of the above is aggravated by the fact that this case concerns a humanitarian application, and it stands to reason that the backdrop against which it is submitted would lead to a sensitive and pertinent treatment thereof.

D. <u>The flaws in respondent's response regarding appellant's travels to the "Area" and to Jordan</u>

46. The respondent also argues that the fact that the appellant travelled dozens of times to the Area and Jordan attests to the fact that her ties to the West Bank are stronger than her ties to Israel. However, as the appellants will explain below, this argument is also an outrageous argument which has no merit.

47. Firstly, the appellants will respond to respondent's argument concerning appellant's travels to Jordan and thereafter to her travels to the West Bank.

48. Once again the respondent mixes arguments which have nothing to do with the case at hand in the sense that the purpose justifies the means, since appellant's travels to Jordan have nothing to do with her ties to the Area.

    It is not quite clear what the respondent tries to argue by noting that the appellant traveled to Jordan a few times in the past. How does this fact attest to her ties to the Area? Moreover. An updated exits and entries report of the Civil Administration which was received by the appellants on December 2, 2014, indicates that the appellant left to Jordan five times only. In addition, all travels to Jordan were made between 1998 through 2007, namely during the years in which her husband was alive and a long time before the date on which the humanitarian application in her matter was submitted. In addition, appellant's inquiry indicates that all of her travels to Jordan through Allenby bridge were made by the appellant and her husband on their way to perform the Hajj and Umrah rituals. Hence, not only that the respondent makes inappropriate use of irrelevant arguments, it also exploits appellant's travels for the purpose of performing the rituals of her religion, for its own purposes.

    A copy of appellant's travels to Jordan in the years 1998 through 2007 is attached and marked **P/17.**

49. The appellants will now respond to respondent's argument concerning appellant's travels to the West Bank in the years which followed her husband's death.

50. Appellants' general position concerning appellant's travels to the West Bank, which is located only a few kilometers away from Jerusalem, is clear and unequivocal. The West Bank is not located beyond the high mountains or the Sambation river. Hence, there is nothing wrong in appellant's travels. The appellant has the right to travel to the West Bank for as long as she holds a stay permit in Israel which enables her to return to Israel, and nothing in these short trips to the West Bank can attest to the existence of any ties to the West Bank, and it is only obvious that said trips cannot attest to the existence of stronger ties to the West Bank than appellant's ties to her city and home for the last twenty years in Jerusalem.

51. The respondent also errs and misleads on the individual level. The data in appellants' possession indicate that in the years which followed her husband's death, the appellant traveled to the West Bank about ten times per year, and in most cases she returned to Israel on the very same day. In other words: the respondent dares to argue that the appellant, who lives about 355 days in Israel, and on the other hand, stays in the West Bank about ten days per year only – a matter which is also incorrect, since in most cases the appellant returns on the very same day to her home in Jerusalem – has stronger ties to the West Bank than to Jerusalem, her home for the last twenty years. Hence, this argument should not have been made particularly with respect to a woman in appellant's condition.

    A copy of appellant's travels to and from the West Bank in the above mentioned period is attached and marked **P/18**.

Procedural flaws in respondent's decision

52. As specified in the factual part, the decision challenged in this appeal was given after an unbearable procrastination on behalf of the respondent which forced the appellants to turn and file a petition with the High Court of Justice in this regard, following which the appellant was referred to, at a later stage, to the inter-ministerial committee. However, said inappropriate conduct was also accompanied by additional flaws and defects which will be referred to by the appellants herein below.

A. <u>The respondent acted contrary to its explicit undertaking before the High Court of Justice</u>

53. As will be specified below, and as indicated by respondent's preliminary response in HCJ 1924/13 and the judgment in said case, the respondent explicitly undertook before the honorable court to refer appellant's matter to the inter-ministerial committee, for its consideration. It should be noted that as a result of said undertaking the petition was deleted, contrary to appellants' position, who requested to leave the petition pending. Nevertheless, astonishingly enough, it turns out that the decision which was eventually given in appellant's matter was not made by the inter-ministerial committee which consists of professionals in different areas, but was rather made by two single individuals, namely, the coordinator of the inter-ministerial committee, a secretary in respondent's headquarters, and respondent's director-general – who also chairs the inter-ministerial committee. The ostensible decision also indicates that the coordinator of the committee presented her recommendation to the director-general and the director-general, in his turn, also decides to deny the application.

B. <u>A decision which is drafted in a non-professional manner</u>

54. In addition to the flaw of breaching the undertaking to the court in appellant's matter, the decision at hand is drafted in a manner which is patently non-professional. Thus, for instance, it is unclear from the manner by which the decision is drafted whether the coordinator of respondent's committee is the one who made the decision, after having transferred her recommendation in the matter to the director-general who, in turn, only signed the recommendation and approved it, or whether the director-general himself considered appellant's matter on its merits and made his own decision in the matter. In addition, it is unclear from the language of the decision which is signed by the coordinator of the inter-ministerial committee, whether an internal appeal may be filed against the decision – in view of the language of the notice which states that the appellant has 21 days to appeal the decision, a period which, as known, is set for the purpose of filing an internal appeal against respondent's decisions – or whether the notice refers to the possibility to file an appeal with the honorable court – in view of the fact that the decision was also made by respondent's director-general who approved the decision of the secretary.

55. It should be emphasized that when the undersigned called the coordinator of the inter-ministerial committee of the respondent on December 1, 2014, in order to inquire into the matter – and advised her that if the intention of the notice was to enable the appellant to appeal to the court, then, the appellant has, according to the law, 30 days to file the appeal – he was told that she knew her job and did not have to be taught what to do and that it was clear that the notice referred to "**the appeals committee which replaced the appellate committee**" and not to an internal appeal, and that the respondent was entitled to determine that the appellants had 21 days to file such an appeal rather than 30 days.

56. Again, astonishingly enough, on December 4, 2014, a letter was received from the coordinator of the committee, which was dated November 26, 2014 – namely, a date which preceded the telephone conversation which was initiated by the undersigned with her – in which she informed that in her letter dated November 13, 2014 – the decision – a mistake was made regarding the right to appeal and that the appellants were entitled to appeal to the honorable court pursuant to section 13(24) of the Entry into Israel Law.

A copy of the letter which was received by the appellant on December 4, 2014, is attached and marked **P/19**.

57. Hence, the all of above indicates that the decision at hand is a scandalous decision filled with errors and intrinsic and procedural defects, which should be – abolished.

The Authority's obligation to act reasonably and fairly

58. It is incumbent upon the administrative authority to act reasonably, proportionately, fairly and for the attainment of a proper purpose. These are superior principles which govern the scope of respondent's discretion. On this issue see: HCJ 1689/94 **Harari et al. v. Minister of Interior,** IsrSC 51(1), 15 and HCJ 840/79 **Builders and contractors Center in Israel v. The Government of Israel**, IsrSC 34(3), 729 and especially in pages 745-746, the words of the Honorable Justice (as then titled) Barak as follows:

> The state, through those who act on its behalf, is the trustee of the public, and the public interest and properties were entrusted to it to be used for the benefit of the public at large… this special status imposes on the state the obligation to act reasonably, honestly, for pure motives and in good faith. The state must not discriminate against, act arbitrarily or in bad faith, or be in a conflict of interests situation. Shortly, it must act fairly.

59. From the general to the particular. The numerous flaws in respondent's decision to deny appellant's application speak for themselves and attest to a deficient conduct which includes a blatant breach of the obligation to act reasonably – deporting a person from his home after about twenty years at no fault on his part – honestly – knowingly raising arguments which have nothing to do with the case at hand along an intentional omission of relevant data to the application and particularly data concerning the dates on which certain events occurred – for pure motives and in good faith – conduct which is contrary to an explicit undertaking which was given to the court in appellant's matter, intentional distortion and omission of the date on which certain events occurred in real time, omitting the fact that currently the appellant has a Jordanian passport rather than a Palestinian one as well as the fact that in addition to her family members in the West Bank the appellant also has family members in Israel, presenting her travels abroad in a distorted manner which draws a picture according to which the appellant ostensibly divides her time between the West Bank and Israel in a manner which reinforces her ties to the West Bank. In addition, it is an arbitrary and unfair decision – a decision made by respondent's secretary and respondent's director general rather than by a committee which consists of professionals engaged in different areas of expertise as undertaken by the respondent before this honorable court in HCJ 1924/13 – ostensibly without a serious consideration of the matter of this unfortunate woman, who has no home other than her home in Jerusalem.

60. The importance of creating a proper balance between administrative norms which concern the public at large and taking into consideration exceptional humanitarian circumstances which concern an individual person like in the case at hand, has already been stressed by the court for Administrative Affairs in AP 2430/04 as follows:

> In a legal system entrenched in an open humane approach which can show empathy to severe exceptional situations, **it would be appropriate to recognize that every general norm must also leave room for the consideration of exceptional circumstances, in which the application of the norm would cause a severe humane injury. Our ability to apply general administrative norms must integrate, while maintaining a proper balance, with the ability to take into consideration circumstances in which it would**

not be appropriate to formally and automatically apply rules the result of which is particularly harsh. The moral content which enables the creation of general norms must also leave room for the consideration of situations which warrant a different conclusion. An excessive automatism in the application of rules is similar to a formalistic application of legal procedures, both of which require consideration of exceptional circumstances.

(emphasis added, B.A.)

61. There is no doubt that appellant's case is a clear case in which an exceptional approach and empathy to the difficult circumstances of appellant's life are required, as stipulated in the judgment in AP 2430/40. However, respondent's decision to deport the appellant from her home based on the reasons which were specified above, attests to the fact that the decision at hand shows no empathy to appellant's exceptional circumstances. As a matter of fact, it is a cruel decision the underlying reasons of which attest to the fact that the respondent decided to deport the appellant from Israel no matter what. It is a decision which intentionally disregards the severe condition of the appellant who desperately needs basic protection which would enable her to continue to live in her only home in the entire world, a decision which causes her unbearable injustice and is therefore unreasonable and unfair.

Conclusion

62. In view of the above, the court is hereby requested to order the respondent to at as requested in the beginning of this appeal, so that the appellant would be able to continue to live in her home in Israel also after the death of her husband and the cessation of the family unification application which was undertaken by her until that time. The honorable court is also requested to obligate the respondent to pay appellants' legal fees and costs of trial.

Jerusalem, December 8, 2014.

_____

Benjamin Agsterribe, Advocate
Counsel to the appellants

(File No. 73824)