At the Appellate Court
Jerusalem District

Appeal 5042/15

In the matter of:

1. _____ Dwayat, ID No. _____
2. _____ Abu Kif, ID No. _____
3. _____ Atrash, , ID No. _____
4. _____Abu Ghanem, ID No. _____
5. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA No. 580163517

all represented by counsel, Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Sigi Ben Ari (Lic. No. 37566) 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 Abir Jubran-Dakawar (Lic. No. 44346) and/or Nasser Odeh (Lic. No. 68398) and/or Nadia Dakah (Lic. No. 66713)

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.

1. **Minister of Interior**
2. **Population and Immigration Authority**

represented by counsels of the legal department
15 Kanfei Nesharim Street, Jerusalem
Tel: 02-5489888; Fax: 02-5489886

The Respondents

Urgent Appeal

The honorable court is hereby requested to order the respondents to immediately accept appellants' demand for an oral hearing before a final decision is made regarding the intention to revoke appellants' permanent residency status in Israel, all in accordance with respondents' procedures and to avoid violation of appellants' right to due process as required by law.

Preface

1. This appeal concerns respondents' refusal to guarantee appellants' right to an oral hearing before a final decision is made on the revocation of their permanent residency status in Israel, a right vested in them according to case law, respondents' undertaking to appellant 5, respondents' procedure and respondents' position as presented in HCJ 7803/06 **Abu Arafeh v. Minister of Interior**; hereinafter: the **general petition**). Needless to point out that the need to hold an oral hearing in the case at bar is of great importance in view of the fact that this case concerns appellants' fundamental right to present oral arguments against the intention to revoke their permanent residency status, thus, causing some of them to become stateless in the entire world.

2. In view of the fact that the failure to guarantee the right to present oral arguments against the intention to revoke their status severely violates appellants' right to due process, requests for interim injunction and interim order are filed at the same time and together with the appeal at hand. We shall hereinafter discuss things in an orderly manner as follows.

3. It should also be emphasized that the appeal at bar is filed with the honorable court without prejudice to the arguments raised by the appellants before the Supreme Court in HCJ 7961/15 **Dwayat v. Government of Israel,** according to which the respondents should have stayed the entire proceedings for the revocation of the status of appellants 1-4 until such time as a decision was made in the general petition which was currently pending before the High Court of Justice.

The Factual Part

The Parties

4. **Appellant 1**, _____ Dwayat, born on July 23, 1996, is currently 19 years old and a resident of Sur Bahir located in East Jerusalem. An indictment was recently filed against appellant 1 and the criminal proceeding is still in its initial stages. Appellant 1 is currently held in Megido prison. Appellant 1 has no status in any other place in the entire world.

5. **Appellant 2**, _____ Abu Kif, born on May 17, 1997, is currently 18 years old and a resident of Sur Bahir located in East Jerusalem. An indictment was recently filed against appellant 2 and the criminal proceeding is still in its initial stages. Appellant 2 is currently held in Megido prison. Appellant 2 has no status in any other place in the entire world.

6. **Appellant 3**, _____ Atrash, born on August 26, 1997, is currently 18 years old and a resident of Sur Bahir located in East Jerusalem. An indictment was recently filed against appellant 3 and the criminal proceeding is still in its initial stages. Appellant 3 is currently held in Megido prison. Appellant 3 has Jordanian citizenship.

7. **Appellant 4**, _____ Abu Ghanem, born on January 8, 2004, is currently 22 years old and a resident of Jabal al Mukaber located in East Jerusalem. An indictment was recently filed against appellant 4 and the criminal proceeding is still in its initial stages. Appellant 4 is currently held in Eshel prison. Appellant 4 has Jordanian citizenship.

8. **Appellant 5** (hereinafter: **HaMoked**), is a registered not-for-profit association which has taken upon itself, *inter alia*, to assist East Jerusalem residents and their family members in various matters *vis-à-vis* state authorities and to protect their rights before legal instances, either in its own name as a public petitioner or as counsel to those whose rights were violated.

9. **Respondent 1** (hereinafter: **respondent 1** and together with respondent 2, the **respondents**), is the Minister who notified the appellants of his intention to act according to section 11(a) of the Entry into Israel Law and revoke their permanent residency status in Israel.

10. **Respondent 2** (hereinafter: **respondent 2** and together with respondent 1, the **respondents**), is the Population and Immigration Authority.

Factual Background and Exhaustion of Remedies

11. The following is the factual background of the appeal.

12. On October 14, 2015, respondent 2's Ministerial committee on national security affairs convened to discuss the security situation and approved a series of measures. Among other things the committee decided to "**revoke the permanent residency of perpetrators**". In the government meeting dated October 18, 2015, the prime minister specified the measures taken recently according to the decision of the Ministerial committee on national security affairs, including "revocation of perpetrators' residency".

    A copy of the decisions of the Ministerial committee on national security affairs made on October 14, 2015, taken from the website of the prime minister's office, is attached and marked **A/1**.

    A copy of the announcement of the government secretary given following the government meeting which was held on October 18, 2015, taken from the website of the prime minister's office, is attached and marked **A/2**.

13. On October 22, 2015, appellant 5 wrote to respondent 1 and informed him that it was representing appellants 1-4 in the status revocation proceedings in Israel, as it was reported on the media a day earlier that respondent 1 had signed letters which summoned appellants 1-4 for a hearing. Appellant 5 requested to be advised of any action taken in connection with said proceedings. Receipt of the letter at the Minister's office was confirmed by telephone on that day by Advocate Michal Pomeranz who represents appellants 1-4 in the status revocation proceedings in Israel on behalf of appellant 5 (hereinafter: **appellants' counsel**)

    A copy of appellant's 5 letter to respondent 1 dated October 22, 2015, is attached and marked **A/3**.

14. On November 9, 2015, appellant 1 informed his counsel in the criminal proceeding, Adv. Akram Khalili, when he met with him in extension of detention proceedings that he had received in prison a letter dated October 21, 2015, from respondent 1, which notified of the latter's intention to revoke his permanent status in Israel and of the opportunity to file arguments within 30 days. Following said information, appellants' counsel wrote on November 10, 2015, to respondent 1 and protested against the failure to transfer the above notice to her despite the representation notice which was given to him. She also noted that November 9, 2015, should be regarded as the date on which the letter was

served for the purpose of computing the days for the filing of the arguments against the intention to revoke appellant 1's status.

A copy of respondent 1's notice to appellant 1 of the intention to revoke appellant 1's permanent status is attached and marked **A/4**.

A copy of the letter of appellants' counsel to respondent 1 regarding appellant 1 dated November 10, 2015, is attached and marked **A/5**.

15. On November 12, 2015, appellants' counsel visited appellants 1-3 in Megido prison, when she was informed that appellants 2 and 3 have also received notices from respondent 1 of his intention to revoke their permanent status, while giving the opportunity to file arguments within 30 days. The notices were dated October 21, 2015.

A copy of respondent 1's notice to appellant 2 of the intention to revoke appellant 2's permanent status is attached and marked **A/6**.

A copy of respondent 1's notice to appellants 3 of the intention to revoke appellants 3's permanent status is attached and marked **A/7**.

16. On November 16, 2015, appellants' counsel wrote to responded 1 and demanded that the proceedings for the revocation of appellants' status be stayed. In her letter appellants' counsel noted that she became aware for the first time of the intention to revoke the permanent residency status of appellants 2-3 on November 12, 2015, when she visited them in prison, despite appellant 5's representation notice dated October 22, 2015. Therefore November 12, 2015, should be regarded as the effective date for the purpose of computing the days for the filing of the arguments against the decision to revoke their status.

A copy of the letter sent by appellants' counsel to respondent 1 dated November 16, 2015, is attached and marked **A/8**.

17. On November 17, 2015, a response was given through the legal advisor for the population and immigration authority to the letters of appellants' counsel dated November 10, 2015, and November 16, 2015. The reply letter noted that on October 21, 2015, respondent 1 signed a notice of intention to act according to section 11(a) of the Entry into Israel Law against the appellants and that his notices were transferred to the four appellants through the Israel Prison Service. It was also noted that he was not aware of appellant 5's notice dated October 22, 2015, that it was representing the appellants. At the same time, respondent 2's counsel noted that <u>any response to the notices given by the Minister of Interior regarding the appellants would be transferred to respondent 2 until December 8, 2015</u>.

A copy of respondents' letter dated November 17, 2015, is attached and marked **A/9**.

18. On November 17, 2015, appellants' counsel answered the letter of the legal advisor of respondent 2 and noted that she, personally, verified receipt of the notice concerning appellants' representation dated October 22, 2015, by respondent 2's bureau. She also added that there was no basis for the date stipulated by respondent 2's legal advisor, December 8, 2015, as the date for the filing of the written arguments, and reiterated that the dates mentioned in her former letters should be regarded as the effective dates for this matter.

A copy of appellants counsel's letter dated November 17, 2015 is attached and marked **A/10**.

19. On November 19, 2015, appellants' counsel sent an additional letter to respondent 2's legal advisor and requested to add that the fact that hearings were held to the appellants at such an early stage of the criminal proceeding violated their right to due process.

A copy of appellants counsel's letter to respondent's counsel dated November 19, 2015, is attached and marked **A/11**.

20. In view of respondent 1's failure to respond to the letters of appellants' counsel regarding the stay of the proceedings initiated against the permanent residency status of appellants 1-4, the appellants filed on November 23, 2015, an urgent petition with the Supreme Court, HCJ 7961/15 **Dwayat v. Government of Israel**. In the petition the appellants requested that the implementation of the decision of the ministers' committee on national security affairs regarding the "revocation of the permanent residency of perpetrators" be delayed and that the respondent refrained from taking any action for the revocation of the permanent residency status of the appellants in particular, and of the residents of East Jerusalem in general, until such time as a decision was made in the general petition which was pending before this honorable court, HCJ 7803/06 **Abu Arafeh v. Minister of Interior**.

21. On that very same day the Honorable Justice Hendel ordered that the respondents should respond to the petition within thirty days. In view of said decision the appellants submitted on November 24, 2015, an urgent request for clarification in which they noted that no reference was made in the decision to the interim injunction which had been requested together with the petition. In addition it was argued that the date which was scheduled in the decision for respondents' response made the petition redundant, in view of the fact that the respondents have already commenced the permanent status revocation procedure and the appellants had to submit their arguments against the decision until December 8, 2015. In addition the appellants requested that in the event that their petition for *order nisi* be denied by the honorable court, an urgent hearing in the petition be scheduled prior to December 8, 2015, the date which was scheduled by the respondents as the last date for the submission of appellants' arguments against respondents' decision. Following appellants' request, another decision was given by the Honorable Justice Hendel according to which he found no reason to give the requested interim injunction. It was further held that in view of the congested schedule of the court, the request for an urgent hearing in the petition should also be denied.

22. In the morning of November 29, 2015, the petitioners filed an appeal with this honorable court (appeal 4682/15 **Abd Dwayat et al. v. Minister of Interior et al.**) in which they requested to order the respondents to give them full thirty days for the submission of a written appeal against the intention to revoke the permanent residency status of appellants 1-4, as required by law.

Copies of the request for interim injunction and interim order and of the statement of appeal 4682/15 **Abd Dwayat et al. v. Minister of Interior et al**., without exhibits, are attached and marked **A/12**.

23. On that day, November 29, 2015, at noon, respondent 2's legal advisor sent a letter to appellants' counsel in which he notified that the last date for the submission of the written arguments was scheduled for December 15, 2015. Respondent 2's legal advisor also stated in his letter "that the argument according to which one must wait until the criminal proceedings pending against your clients are concluded has no merit and there is no preclusion for advancing the administrative proceedings against them".

A copy of the letter of respondent 2's legal advisor is attached and marked **A/13**.

24. In view of the above, the appellants filed on November 29, 2015, a request on their own behalf for the deletion of the appeal. On November 30, 2015, judgment was given by the court of appeals according to which the appeal was deleted with an order for costs.

25. On December 7, 2015, appellants' counsel turned to respondent 2's legal advisor and demanded that in addition to the written arguments an oral hearing be also held for the appellants, all of the above without prejudice to appellants' general position that the proceedings currently pending against them should be stayed.

A copy of appellants' counsel letter to respondent 2's legal advisor is attached and marked **A/14**.

26. On December 9, 2015, a response was received from respondent 2's legal advisor regarding the demand for an oral hearing, according to which the request for an oral hearing would be **considered** by the respondents after their receipt of the written arguments, if and to the extent raised.

A copy of the reply letter of respondent 2's legal advisor dated December 9, 2015 is attached and marked **A/15**.

27. In view of the response of respondent 2's legal advisor to the demand that an oral hearing be held, appellants' counsel wrote to him again on that very same day and made it clear that the appellants insisted on their right to have an oral hearing before a final decision in their matter was made, regardless of the fact that arguments are submitted by them in writing. Hence, appellants' counsel demanded that clarification be immediately given by respondent 2 according to which appellants' right to have an oral hearing was reserved for them.

A copy of the letter sent by appellants' counsel to respondent 2's legal advisor on December 9, 2015, is attached and marked **A/16**.

28. On December 14, 2015, respondent 2's legal advisor notified appellants' counsel once again that "your clients' request for an oral hearing will be **considered** after your written arguments are received."

A copy of the reply letter of respondent 2's legal advisor dated December 14, 2015, is attached and marked **A/17**.

29. On December 15, 2015, the appellants submitted to respondent 2 their written arguments against the intention to revoke their permanent residency status.

30. **Hence, the respondents refuse to ensure that they would maintain and uphold appellants' vested right to have an oral hearing before a decision is made on the revocation of their status. Therefore, the appellants have no alternative but to turn to this honorable court and request it to order the respondents to uphold appellants' right to have an oral hearing and due process before such a crucial decision is made on the revocation of their status in Israel.**

The Legal Framework

31. The appellants will argue that the inappropriate conduct of the respondents that unfairly deprive them of the possibility to hold an oral hearing in a matter which is so crucial for their future and status, amounts to an intentional and deliberate violation of their right to due process. Needless to point out that respondents' conduct directly affects appellants' matter and rights to present their arguments and have a fair hearing which are violated as a result of said conduct as will be specified below.

The right to be heard

32. The importance of the right to be heard cannot be overstated. The Supreme Court regards the preliminary hearing in the realm of administrative law as one of the rules of natural justice (HCJ 3/58 **Berman v. Minister of Interior**, IsrSC 12 1493, page 1503; HCJ 290/65 **Eltagar v. The Mayor of**

Ramat Gan, IsrSC 20(1) 29, page 33; CrimApp 768/80 **Shapira v. State of Israel**, IsrSC 36(3) 337, 363 and many others).

33. The more severe and irreversible the consequences of the governmental decision are, the more essential it is to enable the involved individual to present his arguments and respond to arguments raised against him in an attempt to refute them (HCJ 5973/92 **The Association for Civil Rights in Israel v. Minister of Defense,** IsrSC 47(1) 267, pages 285-286).

34. The right to be heard and its importance was discussed by the Honorable Justice (as then titled) Barak in the **Gingold** case as follows:

> A fundamental right of an individual in Israel is that the public authority which takes action against his status would not do so before it grants said individual the right to present his arguments. As far as this fundamental right is concerned, it makes no difference whether the public authority acts by virtue of a statute or by virtue of an internal directive or agreement. It also makes no difference whether the power which is exercised is judicial, quasi-judicial or administrative and whether the discretion vested in said authority is broad or narrow. In any event in which a public authority wishes to change a person's status it must act towards him fairly, and said duty imposes on the authority the obligation to give said person the opportunity to present his arguments. (HCJ 654/38 **Riva Gingold v. the National Labor Court**, IsrSC 35(2) 649, pages 654-655).

35. Moreover. The right to be heard is not only a formal procedure which consists of invitation and hearing. **The right to be heard is the right to a fair hearing** (HCJ 598/77 **Eliyahu Deri v. The Parole Board**). **It is the right to be given proper opportunity to respond to information which was obtained** and which may affect the decision in petitioner's matter (see: HCJ 361/76 **Hamegader v. Slomo Refaeli**).

The right to be present arguments constitutes a substantial and integral part of the right to be heard

36. The right to present arguments before the administrative authority which considers or intends to take an action which violates an individual's right or interest, was recognized as a supreme right which constitutes part of the rules of natural justice (see for instance: HCJ 3/58 **Berman v. Minister of Interior**, IsrSC 12 1493, 1508; HCJ 3379/03 **Moustaki v Attorney General**, IsrSC 58(3) 865, 899; HCJ 5627/02 **Saif v. Government Press Office**, IsrSC 58(5) 70, 75).

37. In another matter it was held that the right to be heard is not only the right of the individual to present his arguments before the authority, but rather it is a right which requires a **fair hearing** that provides the individual an opportunity to respond to the arguments raised against him:

> The case before us demonstrates the great importance that should be attributed to a strict adherence to the rules concerning the right to a fair hearing. Since the petitioner has not been given the opportunity to hear the complaints against him and to present his own position, he became convinced that the considerations of the authorities were inappropriate and discriminatory and his trust as a citizen in the government was undermined.
>
> The rules concerning the right to a fair hearing are aimed at preventing this state of affairs, since the purpose thereof is not only to ensure that in practice justice is made with the injured individual, but also to ensure that the trust of the public in good governance is maintained…

> This right is not only a formal procedure of summons and hearing. The right to be heard means the right to a fair hearing (HCJ 598/77, page 168). The meaning of this right is to give a proper opportunity to respond to information which was obtained and which may affect a decision which concerns petitioner's matter (see: HCJ 361/76).
>
> **Therefore, the right to be heard is not properly exercised, if the applicant is not advised of the information which was obtained in his matter and is not given the opportunity to properly respond thereto**.
>
> (HCJ 656/80 **Abu Romi v. Minister of Health**, IsrSC 35(3) 185, 190; Emphasis added, A. J.).

The importance of oral hearing: case law

38. On August 11, 2009, judgment was given in AAA1038/08 **State of Israel v. Ja'abis** (hereinafter: **Ja'abis**) in which it was held that whenever the Ministry of Interior considered denial of applications for security or criminal reasons, it was obligated to hold a hearing to the applicants before making a decision in the application. The court held that the manner by which said preliminary right to be heard would be exercised should be established by the Ministry of Interior in an appropriate procedure (see paragraph 37 of the judgment).

39. The Supreme Court held further in **Ja'abis** that the Ministry of Interior should establish a new hearing procedure. With respect to the form of the hearing the Supreme Court made a general statement according to which the preferable manner by which a hearing should be held was a combination of a written and oral hearing:

> As far as I am concerned, common sense prefers the possibility of combination – **laying down a written foundation and its completion by an oral hearing which enables to get a personal impression of the individual at hand and to ask questions which arise from the written arguments**. The written foundation obligates a person to prepare his arguments properly with responsibility and precision, also by using counsel for this purpose; the oral completion provides for further clarifications.
>
> (The words of the Deputy President Justice Rubinstein, in paragraph 30 of his judgment).

40. However, the procedure which was published following the **Ja'abis** judgment – procedure No. 5.2.0015 from April 15, 2010, captioned "Procedure on Security Agencies Comments regarding Family Unification Applications" – provided that the hearing would be held in writing and the right to an oral hearing was not included therein. This is the place to note that said approach had been rejected by judicial criticism **even before the procedure was established**, *inter alia*, on the date of the hearing which was held on January 28, 2010, in HCJ 779/03 **Rimawi v. Minister of Interior**, in which it was agreed by Justices Procaccia, Rubinstein and Vogelman that in the absence of an oral hearing the petitioner was not granted with the right to be heard, or in AP (Jerusalem) 1954/09 **Hillal v. Ministry of Interior** (judgment given on August 24, 2010), where it was held by the court that as a general rule the Ministry of **Interior was obligated to hold an oral hearing to any person, including a foreigner, whose entry into the state was denied or whose deportation was sought and that "weighty reasons are required to deny a person" of said right**.

A copy of the judgment in AP (Jerusalem) 1954/09 **Hillal v. Ministry of Interior**, is attached and marked **A/18**.

Oral Argument: correspondence between appellant 5 and respondent 2

41. In view of the failure to include the right to an oral hearing in respondent 2's procedures, appellant 5 turned to respondent 2 and demanded that the procedure be amended according to the judgments which were broadly described above, and that said right would be included therein. And indeed, following a long correspondence respondent 2 notified appellant 5 on October 21, 2013, that it would update its procedure and that accordingly an applicant who already had residency status or stay permit in Israel and the denial of his application was considered, would be entitled to an oral hearing before a final decision was made in his matter. In addition and following said response, on January 2, 2014, respondent 2 updated the procedure which currently explicitly provides in section 2.2 thereof that an applicant who already has residency status or stay permit in Israel will be entitled, if he so desires, to have an oral hearing, together with and in addition to his right to submit written arguments before a final decision is made in his matter.

42. In view of the above, and notwithstanding the fact that respondent 2's procedure is captioned "Procedure on Security Agencies Comments regarding Family Unification Applications" and in view of the fact that there are no other procedures regarding the revocation of permanent residency status, appellants' right to have an oral hearing is all the more so valid since while the procedure concerns sponsored parties in family unification procedures whose roots are not in Israel and particularly not in Jerusalem, the appellants at bar and their family members were born in Jerusalem and have been living there for their entire lives.

    Copies of respondent 2's reply letter dated October 21, 2013, and of te respondent 2's updated procedure are attached and marked **A/19-20** respectively.

The failure to uphold the right to an oral hearing runs contrary to respondents' position

43. Finally it should be noted that respondent 2 is not willing to undertake and ensure that an oral hearing be held to the appellants before a decision is made on the revocation of their status in Israel. This position does not reconcile with its position as expressed in the statement of response which was submitted by it in the general petition, according to which the power to issue an order for the revocation of permanent residency status **is broad and shall be used rarely, carefully and cautiously, for pertinent considerations, based on a meticulous examination of the factual and circumstantial infrastructure in an educated manner and in unique, rare, irregular and exceptional cases, under very extreme circumstances while strictly maintaining substantial and procedural limitations** (see paragraph 75, 112-113, 127-131 of the statement of response, A.J).

    Copies of the relevant paragraphs of the statement of response in the general petition are attached and marked **A/21**.

Conclusion

44. In the framework of the proceedings instituted against them and before a final decision is made in their matter, the appellants wish to make an attempt to change the severe decision by exhausting their right to present their arguments and be heard in a fair and proper manner. However, respondent 2 uses its best efforts to deny them these basic rights including by its refusal to undertake that appellants' right to have an oral hearing be upheld. Consequently, the appellants find themselves fighting the respondent which knowingly breaches its duties towards them as an administrative authority and violates their right to due process with all ensuing consequences.

45. Therefore, the honorable court is hereby requested to order respondent 2 to immediately accept appellants' request and undertake that an oral hearing be held before a final decision is made in their matter. In addition, the honorable court is requested to obligate respondent 2 to pay attorneys' fees and costs of trial.

Jerusalem, December 17, 2015.

_____
Abir Jubran-Dakawar, Advocate
Counsel to appellants

(File No. 89542)