

At the Jerusalem District Court sitting as the Court for Administrative Affairs

Administrative Appeal 20474-08-16 Salahat et al. v. Ministry of Interior Population and Immigration Authority

External file: 1085-14

Before: Honorable Justice Oded Shaham

Appellants: 1. Salahat
2. Salahat
3. Salahat
5. Salahat
6. Salahat
7. HaMoked – Center for the Defence of the Individual

Represented by Adv. Adi Lustigman

v.

Respondent: Ministry of Interior Population and Immigration Authority

Represented by Adv. M. Wiliger of the Jerusalem District Attorney's Office (Civilian)

Legislation Cited:

[Citizenship and Entry into Israel Law \(Temporary Order\), 5763-2003](#): Sections 2A, 3

[Citizenship Law, 5712-1952](#)

[Entry into Israel Law, 5712-1952](#)

[Entry into Israel Regulations, 5734-1974](#): Section 12

Judgment

Before me is an administrative appeal directed at the decision issued by the Appeals Tribunal (Jerusalem) in Appeal 1085/14 (Honorable Adjudicator Elad Azar, October 25, 2015).

1. The background to the appeal is as follows. The appellants are members of one family. Appellant 1 is the father of the family. He is a resident of Jerusalem. On September 26, 1992, Appellant 1 married a resident of the Judea and Samaria Area (hereinafter, the Area). Until 2005, the family lived in Abu Dis, in the territory of the Palestinian Authority, near Jerusalem. Since 2005, the family has lived in Jerusalem.
2. The couple has seven children together. Two of them, born in 1992, were registered as permanent residents shortly after their birth. In 2011, the mother and the remaining children submitted applications for family unification. Subsequently, two additional children, Appellants 5 and 6, were registered with temporary A/5 status for two years to review the family's continued residence in Israel (see the Population and Immigration Authority's decision dated November 12, 2012). The discussion

in the present proceeding focuses on three of them, Appellants 2 (born February 18, 1993), 3 and 4 (born February 25, 1995) (hereinafter collectively, Appellants 2-4). According to the decision, they would be issued B/1 residency permits for one year, subject to various technical conditions.

3. An internal appeal was filed against this decision. This appeal was rejected (Population and Immigration Authority decision, February 14, 2018). The decision on the internal appeal notes that the family's residence in Abu Dis indicates that the family members established their center of life in the Judea and Samaria Area. It was determined that "due to the family's residence in the Area for many years, we regard them as 'residents of the Area'." It was further held that no center of life in Israel in the relevant years had been proven.
4. An appeal was filed against the said decision with the Appeals Tribunal and dismissed in the decision that is the subject of the present appeal. I will address the reasoning of the decision in the course of the discussion of the appellants' arguments.
5. At the center of the discussion is the [Citizenship and Entry into Israel Law \(Temporary Order\)](#), 5763-2003 (hereinafter, the Temporary Order). Section 2 of this law provides that:

During the period in which this law is in force, notwithstanding any law, including Section 7 of the [Citizenship Law](#), the Minister of Interior shall not grant citizenship to a resident of the Area or a citizen or resident of a state listed in the Schedule under the Citizenship Law, and shall not grant them a permit to reside in Israel under the [Entry into Israel Law](#), and the Area Commander shall not grant a resident of the Area a permit to stay in Israel under the security legislation in the Area.

The term "resident of the Area" is defined in the law as "a person who is registered in the population registry of the Area, as well as a person who resides in the Area and not registered in the population registry of the Area, except for a resident of an Israeli settlement in the Area." Following this, Section 3A of the law, which stands at the center of the present litigation, sets out:

Notwithstanding the provisions of Section 2, the Minister of Interior, using his discretion, may –

- (1) grant a minor who is a resident of the Area, no older than 14 years of age a permit to reside in Israel for the purpose of preventing separation from his or her custodial parent who lawfully resides in Israel;
 - (2) approve an application for a permit to stay in Israel by the Area Commander for a minor who is a resident of the Area and is over 14 years of age for purpose of preventing separation from his or her custodial parent who lawfully resides in Israel, and provided that such a permit shall not be extended if the minor does not permanently reside in Israel.¹
6. The main question under consideration is whether Appellants 2-4 are "residents of the Area," as determined by the Ministry of Interior and affirmed by the Appeals Tribunal. An affirmative answer to this question results in the provisions of the Temporary Order applying to the matter of Appellants 2-4. A negative answer to this question results in these provisions not applying to the matter and in their application being considered under [Regulation 12](#) of the Entry into Israel Regulations, 5734-1974 (hereinafter, the Entry into Israel Regulations).

¹ This is an amended version of the term. The amendment was adopted in 2005 and focused on an alternative concerning registration in the population registry of the Area. Since this alternative is not relevant to the matter at hand, the fact that the law was amended is not at the center of the litigation.

7. There is no dispute that Appellants 2-4 do not fall under the alternative in the definition of the term “resident of the Area,” which concerns registration in the population registry of the Area. The question, therefore, is whether these appellants should be regarded as residing in the Area, which is the second alternative in the term’s definition.
8. In its case law, the Supreme Court has held ([AAA 1621/08 State of Israel v. Hatib](#), January 30, 2011), that the said alternative requires actual residence in the Area (paragraph 9 of the judgment of Honorable President D. Beinisch; see in this context also the explanatory notes to the Citizenship and Entry into Israel Law (Temporary Order) (Amendment) Bill, 5765-2005, Bills 173, 624). In **Hatib**, the Court further held (paragraph 12) that for purposes of this alternative, a “substantive examination – according to the test of most ties – with respect to the actual residency of the person seeking status” would be required.
9. The facts of the matter before me must be addressed with this as the background. The factual point of departure which guided the Appeals Tribunal is that, beginning in September 2005, when they were 10 and 12 years old, the center of life of Appellants 2-4 was in the city of Jerusalem. It follows that at the time the application that is the subject of this litigation was submitted, in 2011, the center of life of the appellants had been in the city of Jerusalem for approximately six years. The preponderance of their ties was, clearly, to the city of Jerusalem and to the State of Israel.
10. Indeed, in the years preceding that, although Appellants 2-4 had ties to the State of Israel, for example (for purposes of schooling or medical care), the majority of their ties were to the Area, where they resided. In this respect, the proximity of Abu Dis to Jerusalem does not negate the fact that it is in the Area (see the majority opinion in the judgment of the Supreme Court in [AAA 1966/09 ‘Attoun v. Minister of Interior](#) (November 22, 2011). As noted in the decision of the Appeals Tribunal, this was a longer period than the period during which their center of life was in the State of Israel.
11. At the same time, no claim is made, or evidence provided, that between 2005 and 2011, the appellants had any connection whatsoever to the Area. Nor does such a connection arise from the statements given by the family’s mother ██████████ Salahat (December 14, 2006, to the National Insurance Institute, October 15, 2012, to the Population Authority). This is a prolonged period during which it appears that the appellants’ family uprooted itself from the Area and clearly ceased its permanent residence there (cf. [HCJ 282/88 ‘Awad v. Prime Minister and Minister of Interior](#), IsrSC 42(2) 424 (1988), paragraph 15 of the judgment of Honorable Justice A. Barak). Under these circumstances, at the relevant point in time, the appellants can no longer be regarded as residents of the Area within the meaning of the Temporary Order. Consequently, the Temporary Order does not apply to them.
12. On this issue, the Appeals Tribunal referred to the judgment of the Supreme Court in [AAA 5718/09 State of Israel v. Srur](#) (April 27, 2011, Honorable Justice U. Vogelman). That case concerned an individual (the respondent therein) who was registered in the population registry of the Area and came under the original definition of “resident of the Area.” This definition was interpreted in [AAA 5569/05 Ministry of Interior v. ‘Aweisat](#) (August 10, 2008), where it was held that where a person is registered in the population registry of the Area, they must prove they lack any other connection to the Area. In **Srur**, the Court held that the respondent had not met this burden, given that he had lived in the Area for a long period, studied in the Area, and his father was a resident of the Area (paragraph 27). In that situation, the Court held it could not be said that this was a person who, apart from his registration in the population registry of the Area, had no connection to the Area. Therefore, he was held to be a resident of the Area under the law applicable to his matter.
13. The matter before me is different. Appellants 2-4 were not and are not registered in the population registry of the Area. The definition in the Temporary Order, as well as the **‘Aweisat** ruling, do not apply to their matter. Consequently, the outcome reached by the Court in **Srur** by applying the relevant law therein, has no bearing upon the present case.

14. In this regard, I considered the remark made by the Supreme Court in **Srur** (paragraph 26), whereby, “although maintaining a center-of-life in Israel is a condition for receiving status in Israel under the child registration procedure, this does not mean that anyone who spent two years in Israel prior to submitting his application is no longer a ‘resident of the Area.’” In that case, as stated, the Court considered the matter of a person registered in the Area’s population registry. However, even assuming that these remarks apply to persons not registered in the Area’s population registry as well, the standard established in **Hatib** still stands and was also cited with approval in **Srur**. According to this standard, as explained above, the appellants should not be regarded as residents of the Area at the relevant time.
15. The respondent refers in this context to another judgment, H CJ 9794/06 **al-‘Abid v. Minister of Public Security** (May 28, 2007). In that case, the petitioner had resided in the territory of the Palestinian Authority for approximately three years, and thereafter stayed in the State of Israel for approximately three years, until submitting an application for family unification in 2002. The judgment held the petitioner to be a resident of the Area within the meaning of the Temporary Order. However, the duration of the appellants’ stay in the State of Israel, without any indication of a real connection to the Area, is significantly longer. In this situation, and given that the standard established in **Hatib** was not applied in that case, the outcome reached by the Court under the circumstances of that judgment does not determine the outcome of the present case.
16. Additional support for the conclusion I have reached can be found in general interpretive considerations established in case law regarding the Temporary Order. In **Srur**, it was held, in this context, that the general purpose of the Temporary Order is security (paragraph 31). With respect to the exception set forth in section 3A of the law, it was held that “the purpose was to prevent the separation of a minor resident of the Area from his parent who lawfully resides in Israel... the purpose of this exclusion is to uphold the security purpose which the Temporary Order was designed to promote in a proportionate manner and whilst minimizing the infringement on human rights as much as possible” (ibid.). The Court also addressed purposes concerning the preservation of “the integrity of the family unit and the child’s best interest,” (paragraph 33), the prevention of unnecessary harm to the right to family life (paragraph 34), and as a derivative of all these, equating a child’s civil status to that of their parents (paragraph 36). It was noted, regarding the latter principle, that Section 3A should be interpreted, insofar as possible, in accordance with this principle (ibid.). These general purposes were used in that case to interpret the arrangements established in the Temporary Order. They also apply when interpreting the terms section of the law, which determines whether a particular matter falls within the law’s scope in the first place. An added consideration relates to the fact that the Ministry of Interior’s decision regarding Appellants 2-4 may render them stateless.
17. Having reached the conclusion that the matter does not fall under the Temporary Order, there is no need to rule on the appellants’ further argument, relating to their age at the time of the application. Section 3A of the Temporary Order draws a distinction between the status of a person who, at the time of application submission, was under the age of 14 (who may be placed on a track toward acquiring permanent residency) and a person who has already reached the age of 14 at that time (for whom only a stay permit may be approved). There is no dispute that the appellants had reached the age of 14 at the time the application was submitted in 2011. The material also indicates that a previous application, submitted in 2009, was rejected because the appellants’ father, who submitted the application, was serving a prison term at the time. The appellants were over the age of 14 at the time that the application was submitted as well.
18. The appellants argue that due to the father’s drug addiction, an application on their behalf was not submitted at an earlier date. It is further argued that it would have been possible to contact the Ministry of Interior when the appellants were under the age of 14, at which point they could have obtained permanent residency even under the assumption that section 3A of the Temporary Order

applied to their case. This is, according to the argument, a limitation of the father, due to which the application in the matter of Appellants 2-4 was not submitted in a timely manner.

19. There is no legal dispute that the point of departure is that the issue of age, for purposes of the Temporary Order, is determined according to the date of submission of the application (see **Srur** above, paragraphs 46-47). Drug addiction does not constitute an objective impediment or force majeure that may justify recognizing an exception to this basic rule. Therefore, I am inclined to reject this argument by the appellants.
20. Nevertheless, I will note that the cut-off point established in the law regarding age is based on a general security purpose. The fact that an earlier application in the appellants' case could have led to the acceptance of their request to be recognized as residents, even under the Temporary Order, indicates that the strength of this purpose in the circumstances of the case is not high.
21. The result of all the above is that grounds have been established for intervention in the decisions of the Ministry of Interior concerning Appellants 2-4, and in the decision of the Appeals Tribunal which affirmed them. Indeed, there is no dispute that the Ministry of Interior has broad discretion in granting residency permits. However, this discretion does not confer immunity from intervention where a decision is made through an incorrect application of the law applicable to the matter. In the present case, it appears that such an error occurred in the application of the law, which requires intervention in the decisions of the Ministry of Interior and the Appeals Tribunal.
22. The appeal is hereby granted, and the decision of the Appeal Tribunal, including the costs order against the appellants, is hereby set aside. The appellants' matter is therefore remanded to the respondent, so that it may follow Regulation 12 of the Entry into Israel Regulations, which applies to the matter of Appellants 2-4, on the basis of the assumption that the Temporary Order does not apply to their case. To remove any doubt, it is hereby clarified that no position is being taken regarding the issue of the criminal preclusion concerning Appellant 3, which was not discussed in the present proceeding. The respondent is hereby ordered to cover the appellants' costs in this proceeding in the amount of 10,000 ILS. This amount takes into account the scope of the work required in the proceeding and the result reached. No VAT shall be added. The amount is due by February 15, 2017. The deposit made by the appellants in this proceeding will be refunded via counsel.

Delivered today, 11 Tevet 5777, January 9, 2017, in the absence of the parties.

Oded Shaham 54678313

This document is subject to editing and textual revisions