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State of Israel
Appeals Tribunal under the Entry into Israel Law 5712-1952

Appeal (Jerusalem) 2802-18

Jerusalem Appeals Tribunal
Before the Honorable Judge Marat Dorfman

Appellants:	**1.** [redacted] **2. A (Minor)** **3. A (Minor)** **4. A (Minor)** **5. A (Minor)** **6. HaMoked – Center for the Defence of the Individual** Represented by Counsel, Adv. Daniel Shenhar
	v.
Respondent:	**[Illegible] Ministry of Interior – Population and Immigration Authority** Represented by Counsel [illegible], Adv. Ayala Shachar-Schwartz

Decision

1. Before me is an appeal filed on April 11, 2018, against the decision rendered by the respondent's Permits and Foreigners Department dated February 13, 2018, rejecting the application made by Appellant 1 (hereinafter: the appellant) to upgrade her status in Israel from temporary status to permanent residency.

2. At the outset of this judgment, I will note that the Tribunal is aware of the amendment to the procedure regulating the work of the inter-ministerial advisory committee for determining and granting status in Israel on humanitarian grounds, made on October 21, 2018, and relating to applications for status upgrades to a permanent residency permit (sections 12 and 13 of the procedure). However, since this amendment does not apply to the case before me, I will decide the appeal in accordance with the legal situation prevailing prior to the amendment of the procedure.

3. By way of factual background, I note briefly that the appellant is a Jordanian citizen, born on [redacted]1981. She is divorced and the mother of four children, Appellants 2-5, who are minors and permanent residents of Israel, born in 2004, 2005, 2009 and 2012. On August 16, 2000, the appellant married Mr. [redacted], a permanent resident of Israel, born on June 24, 1976 (hereinafter: Mr. [redacted]). The appellant entered Israel for the first time on July 11, 2003, on a B/2 visitor visa granted for a period of three months. On [redacted]04, the appellant and Mr. [redacted] had their daughter, Appellant 2. On [redacted]05, Mr. [redacted] and the appellant appeared in the respondent's offices and submitted an application to regularize the appellant's status in Israel by virtue of their marriage. On [redacted]05, the appellant and Mr. [redacted] had Appellant 3.

4. On February 22, 2005, the appellant was granted a B/1 residency permit, valid until July 17, 2005. On August 30, 2007, the Appellant was granted a B/1 residency permit, which was periodically extended

until December 31, 2009. On [redacted]09, the appellant and Mr. [redacted] had Appellant 4. On July 22, 2009, the appellants were instructed to furnish documents to continue the processing of their application. On December 22, 2009, the respondent issued a decision to approve the petitioner's Israeli status upgrade. On December 27, 2009, the appellant was granted an A/5 permit for temporary residency, which was periodically extended. On September 5, 2011, Mr. [redacted] appeared at the respondent's offices and requested to withdraw the family unification application with the appellant. On that date, he was given an interview, during which he noted that the appellant had been living in Beit Sahur for the previous three months and that she had filed a complaint against him with the police.

5. On September 7, 2011, the appellant was given a telephone interview, during which she claimed her relationship with Mr. [redacted] was "perfectly fine," and that she had been living for about a month at her uncle's home in Beit Sahur, as she was in the second month of her pregnancy. She further claimed that Mr. [redacted] may have requested to withdraw the application due to family pressure. Later that same day, a further telephone conversation was held with Mr. [redacted], during which he claimed that he had been visiting the appellant at her uncle's home, but when he realized she was not planning to return to live in Jerusalem, he decided to withdraw the application. He further stated that the couple's relationship was not fine, and that he wanted nothing to do with the appellant. On September 12, 2011, the appellant was given an interview at the respondent's offices, during which she claimed that she had been living at her uncle's home in Beit Sahur for about two weeks. The appellant further claimed that Mr. [redacted] was physically and verbally violent towards her. According to the appellant, the latter's family had asked him to divorce her, since she bore him only daughters.

6. The appellant was also asked about the complaint she had filed with the police, and stated she had withdrawn it due to threats from her husband's family. According to the appellant, she wished to move to Jerusalem and receive guardianship of her daughters and child support from Mr. [redacted]. At the end of the interview, the appellant was asked to provide the respondent with proof, within 14 days, that she had moved to Jerusalem. On February 2, 2012, a letter was received from the appellant's counsel, stating the appellant had been summoned to the respondent's offices for December 12, 2011, for purposes of submitting an application to the inter-ministerial committee, and that she had appeared on the date required with partial documents, including a letter explaining that the appellant's counsel was gathering relevant documents for submission of the application. It was further argued that on January 10, 2012, the appellant appeared at the respondent's offices and submitted the application to regularize her status in Israel on humanitarian grounds. On February 5, 2012, the appellant was given an interview, during which she claimed, inter alia, that she was living in al-'Eisawiyah. The appellant claimed she had sold the gold in her possession to pay the rent initially, and that the Amidar company is now assisting her with the payments.

7. She further claimed that Appellant 4 is with her full-time, Appellant 3 visits on holidays, and the appellant [sic] visits her every two or three months. The appellant claimed that court hearings were taking place regarding her daughters' guardianship. The appellant further claimed that in June and July of 2011, she and Mr. [redacted] rented a house in Beit Sahur and she subsequently moved to live with her uncles for a short time. She further claimed that she and Mr. [redacted] had not yet divorced and might get back together. On February 21, 2012, the appellant and Mr. [redacted] had their daughter, Appellant 5. On March 1, 2012, a letter was received from the appellant's counsel, asking the respondent to provide an update once the appellant's application to regularize her status in Israel was transferred to the inter-ministerial committee. On March 5, 2012, a notice of update regarding changes in the appellant's circumstances was sent, including, inter alia, the court's ruling regarding the appellant receiving custody of her daughters and the child support payments made by Mr. [redacted] to the appellant.

8. On March 13, 2012, a letter was sent by the respondent to the appellant's counsel, requiring the appellant to submit an application to regularize her status in Israel, including payment of a fee in the amount of 175 ILS [~ 60 USD]. On January 26, 2013, the appellant submitted an application to regularize her status in Israel on humanitarian grounds. On the same day, the appellant was given an

interview, during which it emerged that she and Mr. [redacted] were living separately and that he sometimes came to pick up the daughters and see them, but the spouses still had no settlement. She further stated that she and Mr. [redacted] did not intend to divorce. According to the appellant, she was living at that time in al-'Eisawiyah. On March 23, 2014, the appellant's case was heard by the inter-ministerial committee, and the respondent's director general found it appropriate to adopt the committee members' recommendation and approve a temporary A/5 permit for a period of two years, one year at a time. It was further decided that at the culmination of this period, the appellant's further status in Israel would be examined in light of current, relevant circumstances at that time.

9. On April 29, 2014, the appellant was sent the decision of the respondent's director general. In light of the above decision, the appellant's A/5 residency permit was extended on humanitarian grounds. On February 22, 2016, the appellant submitted an application for permanent status in Israel. On April 17, 2016, the appellant was given an interview, during which she claimed, inter alia, that she was living in a rented apartment in al-'Eisawiyah with her daughters, that the daughters did not see their father much and that they had been with him during spring break. She further stated that she and Mr. [redacted] would not be cohabitating again. On May 3, 2016, the appellant and Mr. [redacted] divorced. On May 16, 2016, a decision was given by the head of the Central Desk at the respondent's headquarters, stating there was no basis for granting the appellant permanent status, since no change had been proven in the circumstances of the application and no special humanitarian grounds had arisen that could justify granting permanent status. It was further decided that at this stage, the appellant's A/5 residency permit would be extended for an additional year.

10. On May 30, 2016, a letter was sent to the appellant's counsel stating that, in accordance with the above decision, the appellant must attend the respondent's offices in order to receive a further one-year A/5 residency permit in Israel. On June 1, 2016, the appellant's residency permit was extended for an additional year. On April 9, 2017, and on May 8, 2017, the appellant's counsel contacted the respondent's headquarters, requesting a decision in an appeal which, he alleged, was filed back on June 7, 2016. On June 5, 2017, the appellant's counsel was informed that he must submit the request via the respondent's East Jerusalem office. On that same day, June 5, 2017, Appeal 3081-17 was filed with the Appeals Tribunal in Jerusalem concerning the failure to respond to the internal appeal.

11. On August 6, 2017, a decision was handed down in Appeal 3081-17, striking the proceeding as it was agreed that the internal appeal had not been submitted to the competent authority. On September 4, 2017, an internal appeal was submitted. On January 8, 2018, Appeal 1158-18 was filed with the Appeals Tribunal in Jerusalem regarding the failure to respond to the submitted internal appeal. On February 13, 2018, the head of the Permits and Foreigners Department at the respondent's headquarters issued a decision, following reconsideration of the application and addressing the arguments raised in the appeal. The appeal was rejected. On March 18, 2018, a decision was handed down in Appeal 1158-18, whereby the appeal was stricken in view of the decision of February 13, 2018. The appellants did not accept the rejection, hence the appeal before me.

Deliberation and decision

12. The question needing resolution in this appeal is whether the respondent's decision not to upgrade the appellant's status, or at the very least not to set a defined timetable for upgrading her status, falls within the bounds of reasonableness. The decision of the respondent's Permits and Foreigners Department states that the appellant's application for a status upgrade does not meet the threshold requirements for status upgrade to permanent residency, since the status granted to the appellant as of March 2014 was not granted pursuant to a procedure which allows, at its conclusion, a status upgrade, but rather by virtue of a decision of the inter-ministerial committee, that is, a decision which is humanitarian and exceptional in nature. The respondent's decision also stated that upon further examination of the grounds for the request, no material change has been found in the humanitarian circumstances that would justify upgrading the status to permanent, or alternatively, transferring the request at this stage

for a further hearing before the inter-ministerial committee. It was also noted that the appellant's current status grants her all the social benefits provided by the State of Israel. Therefore, the head of the Permits and Foreigners Department decided to reject the appeal and determined that the appellant's continued status would be examined in May 2018, in light of the relevant circumstances. The appellant's status was, in fact, examined in May 2018, and at that time, her temporary permit (A/5) was extended for an additional year, until May 6, 2019.

13. Having reviewed all the documents in this case, heard parties' arguments and weighed the relevant considerations, my conclusion is that there is room to intervene in the respondent's decision. While the mere passage of time since the grant of temporary A/5 status on humanitarian grounds does not, in itself, justify upgrading the status to a permanent residency permit, the passage of time must constitute an important factor in the array of considerations to be weighed in deciding whether the time has come for a status upgrade as part of a humanitarian examination. The longer a status upgrade applicant remains in Israel, the deeper his or her ties to Israel naturally become, in the absence of evidence to the contrary, of course. The respondent's position, whereby, for the purpose of an upgrade, a change in circumstances must occur, and, in its absence, the applicant must demonstrate exceptional humanitarian reasons giving rise to grounds for a status upgrade, raises considerable difficulty and, in fact, leaves applicants in a state of uncertainty about their future in Israel for many years. This approach, whereby an individual granted status under a humanitarian process is expected to remain in Israel under probationary review, with no status upgrade, for undetermined periods, is alien to the overarching scheme of status in Israel, which institutes proceedings with a clear pathway from start to finish.

14. In the circumstances of this case, the appellant has been in the country since 2003. She was granted humanitarian temporary status in March 2014. That is, at the time the respondent's decision under appeal herein was given, the appellant had had humanitarian A/5 status for a period of about four years. The appellant has four daughters who are, as stated above, permanent residents and have been integrated into educational facilities in Israel. I accept the appellants' argument that the uncertainty and impermanency surrounding the appellant's status undermine the minor daughters' sense of stability and security. On the other hand, I am also prepared to accept the respondent's position that at the time the decision on the internal appeal was given, there was no room to immediately upgrade the appellant's status to permanent residency. However, given the fact that the center of life of the appellant and her daughters is in Israel (the respondent's contention that the appellant alternately resides in Israel and in the Palestinian Authority has not been proven to me), in view of the best interest of the minors, and to give the appellant and her daughters a sense of stability, it would have been appropriate, in that decision, to set a defined timetable for the appellant's future status upgrade. This was not done in the case before us.

15. In light of all the above, I hereby accept the appeal in the sense that I hereby hold that at the time of the expiration of the appellant's A/5 temporary residency visa (i.e., on May 6, 2019), and in the absence of any criminal or security impediment, the appellant's status shall be upgraded to permanent residency. Thirty days prior to the status upgrade to permanent residency, the appellant shall submit the appropriate application to the respondent to obtain a permanent residency permit in Israel, in keeping with this decision.

16. I hereby order that the respondent shall, within 30 days, pay to the appellants their legal costs in the amount of 3,000 ILS [~ 1,020 USD].

17. Appeals may be submitted to the Jerusalem District Court, sitting as a Court of Administrative Affairs, within 45 days.

Given today, the 20 Heshvan, 5779, October 29, 2018, in the absence of the parties.

[signed]
Marat Dorfman, Adjudicator
Appeals Tribunal