

Unfortunately, one of my cases resulted in a rather bad judgment of the Israeli High Court. The court accepted as legitimate the stated policy of the Ministry of Interior to limit the number of "those who lack the right to enter" (the words used by the court – this means non-Jews) who may enter Jerusalem. (This decision, *Abu Dahim*, H.C.1404/93, is so far unpublished.) The case did not completely close the door because it was decided on its facts. It was the case of a student who lived seventeen years in Jordan and became a specialist doctor. His brothers, sisters and parents all live in Jerusalem. He failed to come back at the end of seven years but there was no need for him to become naturalized in Jordan because he already had Jordanian citizenship; nor did he have to ask for permanent residency in Jordan because as a citizen, he was automatically entitled to this. Furthermore, he married a Jordanian citizen and has a medical practice in Jordan.

I attempted to use what I thought to be a loophole in the law, and requested an A5 visa, a temporary residency status. The Ministry of Interior said that this status is granted either where the state has an interest in a person becoming a resident or where the state will eventually grant residency. (For example, sometimes they grant this status in cases of children when they are not sure that they are in fact living with the mother in Jerusalem, for a maximum of two years, at the end of which they usually grant permanent residency.) This status may also be granted where a definite purpose for remaining in Israel for a limited period can be shown. Here, in my view, lies the only glimmer of hope in the *Abu Dahim* decision; it is sometimes possible to show that the person is essential or needed because of his or her skills, abilities or knowledge. I succeeded to obtain A5 temporary residency status in a subsequent case, although there were special circumstances.

It is important to note that the onus of proof in establishing a right to residency or a right to regain residency is on the applicant.

2. Visitor Permits

As I have mentioned, the stated policy is to limit the number of persons entering on different permits. However, an exception is made in the case of visitor permits where the visitor is a very close family member. If an application for a more distant relative is rejected, the chances of success may be increased if socio-economic factors are raised, and a financial guarantee that the person will actually leave is usually accepted.

It should be remembered that until recently we were dealing with people holding passports from states which are at war with Israel. There is a definite fear on the part of the Ministry that these people will want to extend their stay in Israel, which also extends to citizens of other states. Filipinos must pay a NIS 5,000 cash or bank guarantee in order to enter, obtain a work permit or stay as a visitor. (This may be reduced to NIS 3,000 depending on how close the relative is and the reason for the visit.) I would stress that the general policy is to limit the granting of such applications.

Finally, the physical conditions in the office where Jerusalemites submit applications are extremely poor. A few years ago there was a fire at the Ministry of Interior in which many files were lost and people were forced to resubmit applications which had been lost.

Subsequently, the office has been improved, but there is tremendous pressure on this understaffed office, whose employees work half-time, lack patience, often deliberately misinform the applicants about their rights, and do not or do not wish to know that there have been policy changes.

Perhaps the most essential point is that every application has to be accepted and processed, even if it is clear that it will be refused. Everyone has a right to submit an application; to ask for an uncle to visit, for a child to be registered, for family reunification. In many cases the first obstacle is the clerk who decides that there is no point in accepting it because it is going to be rejected. He or she has no right to do so. In my view it is essential to make a concerted effort to establish the basic point that every application has to be accepted no matter how ridiculous it might seem. From a lawyer's point of view, if the application is not submitted, it does not exist and no subsequent action can be taken.

Notes

* From about 1979, the authorities decided that in the majority of cases it is the woman who moves to join her husband, and that children will follow the mother. It seems that the reason behind the policy is to minimize the number of Palestinian children with Jerusalem identity cards.

In the case of *Issa* (included in the list of relevant Israeli High Court cases in Appendix II), the Ministry was asked to give reasons for refusing to register a child in the Population Registry where the mother was a resident. In its affidavit in reply, the Ministry stated that since 1948 it had followed a policy based on the assumption that a woman follows her husband because of the nature of Palestinian society. Although the court rejected this, the fact that the policy is not contained in a written regulation makes it more difficult to challenge.

** As to how Israeli officials know if someone has acquired permanent residency or citizenship in another country, the burden of proof is on the one who is asking to regain residency, who must submit documentation showing whether or not he or she became naturalized or resident elsewhere. The Ministry of Interior often asks for the last address or place of work of a person in the United States, and replies later that the Israeli Consulate has "investigated". Consulates abroad frequently give false or misleading information.

It seems likely that Israel will make an agreement with the Palestinians by which the Palestinian Authority would be obliged to register in the West Bank Population Registry anyone who is denied residency in Jerusalem.

The Right of Non-Resident Spouses of Jerusalem Residents to Work in Jerusalem and Israel

Mustapha Mar'i, Advocate, Al Haq

(A Palestinian human rights organisation based in Ramallah, West Bank)

There are three distinct policies pursued by Israel regarding the right of non-resident spouses of Palestinian Jerusalem residents to work in Jerusalem and Israel. The policy applied in a certain case depends almost entirely on the spouse's nationality and/or original place of residence. Such a policy ignores the fact that all such non-resident spouses have in common their marriage to a Jerusalem resident. These three policies are detailed hereunder:

1. Cases of West Bank and Gaza Strip Spouses of Jerusalem Residents

According to current Israeli policy (but it is important to note that this policy is frequently not adhered to), West Bank and Gaza residents married to Jerusalem residents are given permits to leave the area of their permanent residence and stay overnight in Jerusalem, if they prove that their spouses are actually living in Jerusalem. A security check is made by the office of the Civil Administration that issues the permit. The permit states clearly that it does not entitle its bearer to work in Israel (or Jerusalem).

If and when such a non-resident spouse wishes to work in Israel or Jerusalem, his potential employer should apply to the Israeli Labour Bureau for a permit to employ a West Bank or Gaza resident. The applicant is limited by many restrictions related to the kind of work he is seeking and age restrictions. (Currently, Palestinians residing in the West Bank and Gaza aged under 30 are not allowed to enter Israel and Jerusalem, but the age limit varies from time to time.) If such an application is approved, the employee hands it to the relevant West Bank Labour Department. The latter applies for a work permit, or asks the employee to apply, to the Civil Administration in that area. After a strict security check, a permit to work might be issued to the spouse of the Jerusalem resident. No reasons are usually given in cases of refusal.

2. Cases of Spouses of Jerusalem Residents who Entered Jerusalem on Visitor's Permits Issued by the Ministry of Interior

A visitor's permit does not constitute a permit to work in Israel or Jerusalem. On the contrary, each visitor's permit issued by the Ministry of Interior states clearly that its bearer has no right to work in Israel or Jerusalem.

There are indications of a new Israeli policy, according to which such spouses are given renewable extensions of visitors' permits, each extension being valid for six months. Despite information to this effect, I have noticed several cases during the past few weeks where such spouses were asked to leave the area upon the Ministry of Interior's refusal to extend their

permits. This shows, unless the contrary is proved, that the established procedure of the Ministry of Interior in this regard is still being practiced, which is that such people are not entitled to renewable extensions of their permits. It is, therefore, unrealistic to discuss the right of such spouses to work, while they are not even permitted to remain in the area legally.

3. Cases of Spouses who Entered Jerusalem on Visas from Israeli Embassies Abroad or from Israeli Border Crossing Points

Such spouses are usually given a B2 visa, which does not entitle its bearer to work in the area. This visa may be replaced with a B1 visa, which does confer the right to work if a certificate of employment from an Israeli employer is presented.

Comparisons

For the sake of comparison, I will briefly outline the situations of non-resident spouses in the West Bank and Gaza Strip and in the United States.

a) The Situation of Non-Resident Spouses in the West Bank and Gaza Strip

In the territories occupied in 1967, except Jerusalem, a new policy has been established since 1992, according to which non-resident spouses of Palestinian residents of these areas are, subject to some limitations, allowed to renew their visitors' permits for extendable periods, each of six months. Any spouse who is eligible to extend his permit is given a de facto residency status which enables him to work in the 1967 occupied territories without obtaining a work permit. (Other visitors to the Occupied Territories must apply for a special permit if and when they wish to work in these territories.)

b) The Situation of Non-Resident (Foreign) Spouses in the United States

A non-American spouse of an American citizen is allowed to apply for residency in the States immediately after marriage. This residency status is usually granted to the non-resident spouse within four to six months. Upon the approval of the application for residency in the States, the non-resident spouse is issued with an American Green Card. This document entitles its bearer to all rights other than the right to vote which American citizens are entitled to, including the right to work. No special work permit is required from the bearer of such a document. A work permit might even be granted during the short interim period during which the Green Card application is processed.

Al Haq's Arguments:

1. As regards West Bank and Gaza Strip spouses of Jerusalem residents.

a) The security check is repeated needlessly, since a previous security check will have been

conducted when the spouse was granted the permit to leave his area and stay overnight in Jerusalem.

b) Such a spouse is required to apply for the permit to work at the Civil Administration in the West Bank and Gaza Strip, despite the fact that he has already succeeded to convince the Israeli authorities of the fact that he is living with his spouse in Jerusalem and that the center of his life is in Jerusalem. The referral to the Civil Administration, and the security check, is required for each extension of the permit. Thus it is clear that the Israeli authorities give no weight to the fact that such spouses are residing in Jerusalem with their families, and are supposedly doing so permanently. Once convinced that the applicant's center of life is indeed in Jerusalem, why ask him to go again and again to the Civil Administration in the West Bank, where he does not live, to request a renewal of his work permit? This is the same treatment accorded to West Bank residents coming to work in Israel.

c) Such a spouse of a Jerusalem resident will not be able to work in Israel or Jerusalem unless:

- i) The work he is applying for falls within the list of areas of employment in Israel that are open to West Bank and Gaza Strip residents, which is prepared by the Israeli authorities and changes from time to time. (Currently, work is permitted in construction and agriculture.)
- ii) He is within the age limits set by the Israeli authorities, which varies from time to time.
- iii) The quota for that period is not filled at the time he applies. (The quota of workers from the West Bank and Gaza Strip allowed to work in Israel at any one time is decided, inter alia, on the basis of the security situation and the unemployment rate in Israel.)

While such a spouse is being allowed to live in Jerusalem, the above restrictions should not be applied to him.

2. The spouses who fall within the three criteria I have outlined in this presentation are all spouses of Jerusalem residents. The only difference between them is their nationality or place of original residency. Thus it is clear that the Israeli authorities deal with cases not on the basis of the right to family unity, but on the basis of other criteria.

3. The strict procedures for non-resident spouses of Jerusalem residents, even when compared with the policy regarding such spouses in the rest of the Occupied Territories (which also violates the right to family unity), show that the "battle of Jerusalem" has continued since the occupation of the city in 1967. By such policies and procedures, Israel intends to create a reality that undermines the rights of the Palestinian people as regards Jerusalem.

4. As a result of such policies, separated Palestinian families may decide to live outside the borders of the city. This in turn leads to the Israeli authorities applying Article 11 of the **Law of Entry Into Israel** as regards the Jerusalem members of these families, which deprives them of their residency status in Jerusalem. There are several hundreds, or maybe thousands, of such families.

Proposals

A. The procedures applied to spouses who entered Jerusalem on visas should be applied to all other spouses of Jerusalem residents, irrespective of their nationality or formal place of residence.

B. The procedures applied to non-resident spouses of West Bank and Gaza residents should be applied to spouses of Jerusalem residents who entered using visitors' permits issued by the Israeli Ministry of Interior, particularly the granting of the right to work after the extension of the visitor's permit for six month periods.

Notes

1. Whenever the term "West Bank" is used, it means the West Bank excluding East Jerusalem.
2. Whenever the male is addressed, the female is implied, unless otherwise clearly stated.