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In the Supreme Court

H CJ 6180/08

**HaMoked: The Center for the Defence of the Individual
founded by Dr. Lotte Salzberger**

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The Petitioners

- Versus -

**Commander of the Army Forces in the Judea
and Samaria Area**

Represented by the State Attorneys' Office
Ministry of Justice, Jerusalem
Tel: 02-6466289; Fax: 02-6467011

The Respondents

Respondent's Reply

1. Pursuant to the decision by the honorable Justice Grunis dated 10 July, 2008 which was submitted to the State Attorneys' Office on 13 July, 2008, the respondent respectfully files its response to the petition.
2. The petition is concerned with the petitioners' request that petitioner 1 and his minor child, petitioner 2, be issued with Israeli entry permits for the purpose of their passage from the Judea and Samaria Area in which they are currently located, to the Gaza Strip where petitioner 1's wife and her minor daughter are located.

It is also requested that the respondent avoid conditioning the passage of petitioners 1-2, and of other Palestinian residents of the Judea and Samaria Area, on a commitment not to return to the Judea and Samaria Area.
3. Under the Closed Territories Order (West Bank Area) (No. 34), 5727-1967, the Judea and Samaria Area were declared a sealed military territory, whose

entry to and exit from are only permitted under a personal permit from the Commander of the IDF Forces in the Area or by someone who is authorized by him. In light of this a resident of the Judea and Samaria Area who requests to leave the Area (to Israel or to any other place) is required to receive a permit from the army commander.

Petitioner 1, like any other resident of the Area has no vested right to enter into Israel, for the purpose of passage, or for any other reason (compare this case mutatis mutandis with HCJ 9657/07 **Jarbo'a v. The Army Commander of the West Bank** (given on 24 July, 2008, unreported) and in HCJ 7277/94 **John Doe v. The Military Governor of the Gaza Strip** *Takdin Elyon* 95(2), 889 (1995).

4. **Nonetheless after examining the general circumstances of the case, the respondent does not oppose permitting the one-time passage of petitioners 1-2 to the Gaza Strip via Israel.**
5. However the respondent wishes to emphasize that the current government policy does not allow residents, whose center of their lives is in the Gaza Strip passage to the Judea and Samaria Area, except in very exceptional cases. Therefore, it is clear that should future applications be filed by petitioner 1 to return to the Judea and Samaria Area the respondent's policy that is in force at that time will have an impact on the position taken with respect to those applications, and all of this is stated without expressing any position in the case of applications which have not yet been filed, and which shall be examined pursuant to the circumstances of the time and the place.

The respondents' policy with respects to visits by residents of Gaza to the Judea and Samaria Area was recently approved in the judgment of the honorable court in HCJ 9657/07 **Jarbo'a v. Commander of the Army Forces in the West Bank** (given on 24 July, 2008, unreported) in which the following was held:

"Petitioner 1 who lives in the Gaza Strip wishes to enter the Judea and Samaria Area, while passing though territory of Israel, in order to visit three of her children who live in the Judea and Samaria Area. We are dealing with children of the ages of 17, 19, and 23.

The authorized body decided that under current circumstances the aforesaid passage should only be permitted in exceptional cases and petitioner 1's case does not fall under this category. Against the backdrop of the current security reality, especially in the Gaza Strip, we have not found any fault in the decision not to consent to petitioner 1's application. The present case is qualitatively different from other cases in which there are exceptional medical circumstances, and the like. It should be borne in mind that petitioner 1 has no vested right to enter Israel for any purpose whatsoever, including passage to the Judea and Samaria Area

Therefore in light of current circumstances, the petition is dismissed. [Emphases added]

These dicta also apply, mutatis mutandis, to our case

6. The respondent wishes to note that from a check performed by the computerized system it emerges that the **center of life of petitioner 1 is in the Gaza Strip and has remained that way for many years.**

On 17 September, 2000, petitioner 1 left the Judea and Samaria Area and went to the Gaza Strip via the Erez crossing, and ever since he has lived outside the Judea and Samaria Area for a period of **close to seven years.** As emerges from the petition, over the course of this period, in which **he lived in the Gaza Strip,** petitioner 1 got married to Mrs. _____ Amam, a resident of the Gaza Strip, and it was there where their two children were born (petitioner 2, _____ Amam, and his sister, _____ Amam, who are registered as residents of the Gaza Strip).

On 20 May, 2007 after having lived in the Gaza Strip for close to seven years, petitioner 1 filed an application for an Israeli entry permit for the purpose of accompanying his ailing mother who was being treated in the “Muqased” hospital in East Jerusalem. His application was approved and he was issued with an Israeli entry permit which was valid from 20 May, 2007 to 26 May, 2007. Likewise, petitioner 1 was issued, pursuant to his application, with three more permits in order to accompany his ailing mother, and which were valid for the following dates: 30 May, 2007, 31 May, 2007 - 1 June, 2007, and 4 June, 2007 – 13 June, 2007.

In all probability after these permits had expired, the petitioner entered the Judea and Samaria Area.

7. The petitioners claim that upon completion of the visit the petitioner filed a number of applications to permit his passage to the Gaza Strip to visit his wife and daughter.

After clarifying with personnel from the Civil Administration it emerges that the first application for visiting the Gaza Strip was filed in February, 2008, seven months after the expiry of the Israeli entry permit that was given to petitioner 1, and the reply by personnel from the respondent was delivered to the Palestinian side. On 21 April, 2008 petitioner 3 sent a letter concerning petitioners 1-2 and on 15 May, 2008 it was sent a reply by the office of the legal adviser to the Judea and Samaria Area (the letter are attached as appendices **p/3 and p/4** to the petition).

It should be noted that pursuant to what the respondent has announced, under the present situation in which it appears from the petition that petitioner 1 is in practice interested in living in Gaza with his wife and children, there is no need to make a commitment, and all this while taking note of the respondent’s position as stated in paragraph 5 above.

8. It should be noted that in July, 2008 an additional application was filed to permit petitioners 1-2 to pass through Israel in order to travel to the Gaza Strip. No documentation whatsoever was attached to the application aside from a photocopy of the petitioner's identity document, and it was not clarified whether the petitioner wished to travel to the Gaza Strip for the purpose of a temporary visit or in order to settle there permanently. This application was dismissed for lack of supporting documentation, and a notice to that effect was delivered to the Palestinian liaison.
9. Under these circumstances, in which one is led to understand from the petition that the petitioner is interested in living in Gaza with his wife and children, and in which the respondent does not oppose permitting the passage of petitioners 1-2 to the Gaza Strip via Israel as requested by them in the petition, the respondent is of the opinion that the petition has become redundant and the court is requested to dismiss it without prejudice.

Today, 3 Av 5768
4 August, 2008

(signed)
Adv. Liora Weiss- Banski,
Assistant to the State Attorney