At the District Court in Jerusalem **Adm. Pet. 725/03**
Sitting as the Court for Administrative Matters

In the matter of:

1. **T. Rajub**
2. **M. R.**
3. **A minor boy**
4. **A minor girl**
5. **A minor boy**
6. **A minor boy**
7. **A minor girl**
8. **A minor girl**

Petitioners 3-8 by their parents, Petitioners 1 and 2, all from Shu'afat refugee camp, East Jerusalem

9. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger (Reg. Assoc.)**

all represented by attorneys Adi Landau (Lic. No. 29189) and/or Yossi Wolfson (Lic. No. 26174) and/or Manal Hazan (Lic. No. 28878) and/or Tamir Blank (Lic. No. 30016) and/or Lena Abu Moh Zoabi (Lic. No. 33775)
whose address for the purpose of service of court documents is Hamoked: Center for the Defence of the Individual
founded by Dr. Lotte Salzberger
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555; Fax. 02-6276317

The Petitioners

v.

1. **Minister of the Interior**
2. **Director, Population Administration**
3. **Director, Population Administration Office in East Jerusalem**
4. **Coordinator of Government Activities in the Territories**

all represented by the Jerusalem District Attorney's Office
4 Uzi Hasson Street, Jerusalem
Tel. 02-6208177; Fax. 02-6222385

The Respondents

Petition for Order Nisi

A petition is hereby filed for an order nisi directing Respondents 1-3 to show cause:

A. Why they do not keep their administrative promise and approve, in the context of Petitioner 2's request for family unification, arrangement of his status by granting him an A/5 visa.

B. Why they do not give notice that Government Decision 1813 does not apply retroactively to applications filed before the decision was made.

The grounds for the petition are as follows:

1. This petition deals with the breach of the administrative promise, given to Petitioners 1 and 2 by Respondent 3, whereby the status of Petitioner 2 will be arranged by granting him an A/5 visa, which would have been granted him were it not for the failures committed by Respondent 3's office. Decision on the Petitioners application was delayed in the said Respondent's office for *seven* more months. In May 2002, Government Decision 1813 was adopted. This decision provides that pending applications are not to be upgraded (hereinafter: the government's decision). Respondent 3 decided to apply it also to the Petitioners' application, notwithstanding his express promise given some five months prior to publication of the government's decision.

2. Unlike his earlier promise, when Respondent 3 approved the application for family unification, he decided to refer the Petitioner to obtain a permit from the District Coordinating Office, and not an A/5 visa, as promised.

3. For reasons unknown to the Petitioners, Petitioner 2 has never been able to effectuate the said Respondent's referral to obtain the permit from the D.C.O. Although Respondent 3 approved the Petitioners' application following explicit approval by security officials, soldiers in the D.C.O. contend that there are security grounds to prevent approval of the request, and refuse to grant the permit to him. The Petitioners' requests to resolve the matter of the security prohibition remained unanswered. In the meantime, the Petitioners were unsuccessful in arranging the Petitioner 2's legal stay in Israel.

4. Respondent 3's procrastination in handling the request, and the breach of his administrative promise to upgrade Petitioner 2's status due to the delay created by the Respondent, infringe the fundamental rights of Petitioners 1-8 to family life and human dignity. As a result of the Respondent's failure to arrange his status in Israel, Petitioner 2 is exposed day after day to delays, arrest, and expulsion. The entire family

finds itself in financial incertitude and psychological instability because of the uncertainty about the father's status.

The Petitioners

5. Petitioner 1 (hereinafter: the Petitioner) is a permanent resident of the State of Israel who has lived in Jerusalem her entire life. She is the wife of Petitioner 2 and the mother of Petitioners 3-8.

6. Petitioner 2 (hereinafter: the Spouse) is the spouse of the Petitioner. They were married in 1990 and have lived together in Jerusalem since then. The Spouse is the father of Petitioners 3-8.

7. Petitioners 3-8 (hereinafter: the children or the Petitioners' children) are permanent residents of the State of Israel. They are the minor children of Petitioners 1 and 2 (hereinafter: the Petitioners).

8. Petitioner 9, a registered society whose offices are in East Jerusalem, was established to assist persons who fell victim to abuse or oppression by state authorities, including by protecting their rights by initiating court action, either as public petitioner or as representing the individuals whose rights were violated.

The Respondents

9. Respondent 1 is the government minister empowered by the Entry into Israel Law, 5712 – 1952, to handle all matters ensuing from this statute, among them requests to obtain a status in Israel.

10. Respondent 2 is the director of the Population Administration in Israel. In accordance with the Entry into Israel Regulations, 5734 – 1974, Respondent 1 delegated to Respondents 2 and 3 his powers relating to the handling and approval of applications for family unification, which are submitted by permanent residents of the state who live in East Jerusalem. Also, Respondent 2 takes part in the decision-making process relating to requests to obtain a status in Israel in accordance with the Entry into Israel Law and the regulations that were enacted pursuant thereto.

11. Respondent 3 administers the Population Administration's East Jerusalem district office. In accordance with the Entry into Israel Regulations, 5734 – 1974, Respondent 1 delegated to Respondents 2 and 3 his powers relating to the handling and approval of applications for family unification, which are submitted by permanent residents of the state who live in East Jerusalem. Respondent 3 is the official actually responsible for making decisions on applications for family unification of residents of East Jerusalem.

12. Respondent 4 is the Coordinator of Government Activities in the West Bank, the most senior liaison position between military and civilian officials, and thus responsible, inter alia, for the various coordination and liaison offices that issue the permits to stay in Israel. Respondent 4 was attached to the petition as a formal respondent insofar as some of the factual events relevant to the petition relate to the offices for which he is responsible, even though the Petitioners do not seek relief from him in this petition.

The facts

13. The Petitioners married in 1990 and established their home in the Shu'afat refugee camp, in Jerusalem. Ever since then, the Petitioners have lived in the camp with their children: in the first years of their marriage, in a unit in the home of the Petitioner's parents, and since 1995, in a rented apartment.

14. As a result of the discriminatory policy that Respondent 1 applied until 1994, female residents were not allowed to submit applications for family unification for their spouses. Immediately after becoming aware of the Respondent's change in policy in this matter, the couple submitted to the office of Respondent 3 an application for family unification, which was given number 603/95. The Petitioners attached many documents to their application proving that Jerusalem was the center of life of their family.

15. The couple has six minor children, the eldest 12 1/2 years old and the youngest six months old. All the children are registered as residents in the Israeli Population Registry and on their mother's identity card. The four children of school age are pupils in the Jerusalem school system. The family has been recognized by the National Insurance Institute for several years and receives child allotments. The Petitioner and the children have [national] health insurance and belong to the Histadrut Sick Fund in the city. The Petitioner is a housewife. The Spouse is unemployed because he does not hold a permit to stay in Israel. He suffers from a disability in his legs, as a result of which he requires a cane to assist him in walking, and is unable to walk for an extended period of time.

Correspondence with Respondents 3 and 4

16. On 2 April 1997, Respondent 3 approved the Petitioners' request, submitted on 23 December 1993, to register their children in the Population Registry. The request was approved after the Respondent was convinced that the center of life of the family was in Israel.

The letter of Respondent 3 is attached hereto and marked P/1.

17. On 10 November 1997, Respondent 3 informed the Petitioners that their application for family unification had been rejected on the grounds that "center of life in Israel was not proven." The Respondent's denial surprised the Petitioners, in that their request to register their children a few months earlier had been approved and that the approval was based on the same proof that was ostensibly lacking in the application for family unification.

The letter of Respondent 3 is attached hereto and marked P/2.

18. On 24 March 1998, the Petitioner appealed the decision of Respondent 3 to reject the Petitioners application for family unification. To the letter of appeal, Petitioner 9 attached extensive proof showing that the Petitioners' center of life was in Jerusalem. These proofs had been submitted to the office of Respondent 3 for some time, having been submitted in the context of the request to register children that the office had handled.

The letter of appeal that Petitioner 9 sent to Respondent 3 is attached hereto and marked P/3.

19. In his letter of 20 May 1998, Respondent 3 informed Petitioner 9 that, "in light of the documents that were provided, it was decided to continue the handling of the said application." Respondent 3 added that, "the center of life will be examined over the coming years until completion of the handling of the application."

The letters of Respondent 3 is attached hereto and marked P/4.

20. On 11 August 1998, Petitioner 9 wrote to Respondent 3 to request his approval of the application for family unification, in light of the proof that the Petitioners center of life was in Jerusalem, which formed the basis for the approval of the request to register their children some sixteen months earlier. In its letter, Petitioner 9 pointed out that it was improper to continue to postpone the check on entitlement to family unification, which would, in any case, continue over an extremely long period of five years and three months.

The letter of Petitioner 9 is attached hereto and marked P/5.

21. On 1 September 1998, Respondent 3 informed Petitioner 9 that the procedure for handling the Petitioners application requires "checking with other officials." The Respondent stated that he would inform Petitioner 9 of the results of the check once it was completed.

The letter of Respondent 3 is attached hereto and marked P/6.

22. On 4 May 1999, Petitioner 9 wrote to Respondent 3, requesting his decision in the matter of the application for family unification, in that eight months had passed since he indicated that the application was being checked by other officials.

The letter of Petitioner 9 is attached hereto and marked P/7.

23. On 17 November 1999, Respondent 3 stated that he had decided to approve the Petitioners' application for family unification. Accordingly, on 21 November 1999, the Spouse received a referral from the Respondent to obtain a permit from the Civil Administration.

The Respondent's notice of approval of family unification and the referral to the D.C.O. are attached hereto and marked P/8, A-B, respectively.

Failure to receive the first permit to stay in Israel as part of the family unification process

24. Notwithstanding the Ministry of the Interior's approval of the application, which was given subject to the approval of security officials, when Petitioner 9 contacted the D.C.O. to clarify if the Spouse can go to the office and obtain his permit, it was informed that the Spouse is not permitted to enter Israel because of a suicide attack that one of his relatives had committed. In its letter of 1 February 2000 to Captain Peter Lerner, head of the International Organizations Department, who was appointed to serve as the sole individual to provide information regarding the subject of Civil Administration D.C.O. permits, Petitioner 9 requested that the security issue be re-examined and that it be removed as a grounds for rejection because the security issue related to the Spouse's relative and not to the Spouse himself, and also because the said relative was apparently a very distant relative, so much so that the Spouse did not know that he existed.

Petitioner 9's request on behalf of the Petitioner is attached hereto and marked P/9.

25. When it did not receive a response, Petitioner sent, on 26 March 2000, a letter of reminder to Respondent 4, in which it requested an immediate reply.

Petitioner 9's letter is attached hereto and marked P/10.

26. On 28 May 2000, Petitioner 9 sent a letter of reminder to Respondent 4.

Petitioner 9's letter is attached hereto and marked P/11.

27. On 19 July 2000, six months having passed since its first letter, Petitioner 9 sent Respondent 4 another letter of reminder, in which it requested the Respondent's reply regarding the security grounds attributed to the Spouse.

Petitioner 9's letter is attached hereto and marked P/12.

28. On 27 September 2000, Petitioner 9 sent another letter of reminder to Respondent 4.

Petitioner 9's letter is attached hereto and marked P/13.

29. On 27 September 2000, 2 October 2000, 4 October 2000, 11 October 2000, 16 October 2000, 23 October 2000, 24 October 2000, and 29 October 2000, telephone conversations were held with Captain Peter Lerner. In the telephone conversations with him, Captain Lerner promised to check the matter, but he failed to do so. Despite the many letters and calls, no reply was received on behalf of Respondent 4.

Second request to obtain a permit to stay in Israel as part of the family unification process

30. On 9 November 2000, after one year had passed since Respondent 3 had approved the application for family unification, during which time the Spouse had not spent one day of stay legally in Israel, Petitioner 9 submitted a request for a second approval for the Spouse to stay in Israel. Attached to the request were documents indicating that the center of life of the Petitioners was in Israel.

Petitioner 9's letter is attached hereto and marked P/14.

31. On 27 December 2000, Respondent 3 sent a letter stating that, "the request is being checked with other officials, in addition to center of life." Respondent 3 added that, when he receives the response of the other officials, he will give his response.

Respondent 3's letter is attached hereto and marked P/15.

32. On 22 March 2001, Petitioner 9 sent a letter of reminder to Respondent 3.

Petitioner 9's letter is attached hereto and marked P/16.

33. On 24 April 2001, Petitioner 9 sent a letter of reminder to Respondent 3.

Petitioner 9's letter is attached hereto and marked P/17.

34. On 18 June 2001, the undersigned, on behalf of Petitioner 9, telephoned to Ms. Weiss, of the office of Respondent 3, and requested that she check where the Petitioners request stood. Ms. Weiss said that she would get back to Petitioner 9 within the week with her reply.

35. On 9 July 2001, Ms. Weiss called Petitioner 9's office. She did not recall what happened to the requests about which she had been asked. The same day, the undersigned sent a list of a number of requests whose handling had been severely delayed by Respondent 3. The Petitioners' request was among them.

Petitioner 9's letter is attached hereto and marked P/18.

36. On 3 October 2001, Petitioner 9 sent another letter to Respondent 3, in which it provided details on several requests that were pending in the Respondent's office for a long time.

Petitioner 9's letter is attached hereto and marked P/19. See Section 2 A of the letter.

37. On 11 October 2001, a meeting was held by the undersigned and Ms. Tal Filmus, on behalf of Petitioner 9, and Mr. Avraham Lekach, who is Respondent 3, at his office. Among the matters discussed was the delay in the handling of the Petitioners' request. Mr. Lekach undertook to check the matter and announce his decision.

38. On 14 November 2001, Petitioner 9 sent to Respondent 3 another letter of reminder regarding the matters of the Petitioners and of other families that awaited the Respondent's decision.

Petitioner 9's letter is attached hereto and marked P/20.

39. On 16 December 2001, Respondent 3 wrote to Petitioner 9, demanding documents indicating that the family's center of life was in Israel.

Respondent 3's letter is attached hereto and marked P/21.

40. On 3 January 2002, Ms. Filmus, on behalf of Petitioner 9, called the office of Respondent 3 and spoke with Ms. Siman Tov Porat (hereinafter: Ms. Porat) regarding the Petitioners' request. Ms. Filmus asked why the Petitioners had been requested to provide once again to Respondent 3 such a long list of documents proving center of life, and, in any event, why Respondent 3 did not deliver his decision regarding the request.

According to Ms. Porat, the Petitioners' file had been "buried": in the office, so no decision had yet been made. Ms. Porat added that, insofar as the request had not been approved as a result of the failure of the Ministry of the Interior, the year of delay will be counted as part of the graduated arrangement, and following a renewed check of the updated documents and the response of the other officials, the Spouse would receive

an A/5 temporary-resident visa. According to Ms. Porat, the A/5 visa would be approved for the Spouse in February 2001.

41. On 17 January 2002, Petitioner 9 wrote to Respondent 3, attaching comprehensive proof that the Petitioners' center of life was in Jerusalem. In her letter, Ms. Filmus, of the office of Petitioner 9, summarized in writing her conversation with Ms. Porat.

    Petitioner 9's letter is attached hereto and marked P/22.

42. On 3 February 2002, Petitioner 9 sent a letter of reminder to Respondent 3 relating to a number of requests, among them the Petitioners' request.

    See Section 1C of the letter of Petitioner 9, attached hereto and marked P/23.

43. On 6 March 2002, Petitioner sent a letter of reminder to Respondent 3. In the first paragraph of her letter, Ms. Filmus wrote to Ms. Porat:

    > **You stated that an A/5 visa was to be given in February 2002. The visa has not yet been received. Even though this period is included in the graduated arrangement, it is intolerable that a person is living in Israel without a valid visa because of your office's faulty handling.**

    Petitioner 9's letter is attached hereto and marked P/24.

44. The comment made by Ms. Filmus is reinforced by the chronology of events in March: from the middle of March to mid-May 2002, Respondent 3's office completely froze handling of applications for family unification of residents. At first the freeze resulted from a strike, and then from the Passover holiday, and after that by the decision of Respondents 1-3 to completely freeze the handling of applications for the family unification of spouses of Arab descent and of requests to arrange the status of children only one of whose parents is a resident.

45. On 12 May 2002, Government Decision 1813 was adopted. It limited the freeze to applications for family unification that had not been approved prior to the decision. The government's decision stated that the status of persons who are involved in the graduated arrangement for examining entitlement to family unification are not to be upgraded.

46. On 6 June 2002, Petitioner 9 sent a letter to Respondent 3 that set forth a large number of requests that were pending for a long time in his office, among them the Petitioners' request. In Ms. Filmus's letter, written on behalf of Petitioner 9, she stated that, regarding the Petitioners' application for family unification, Respondent 3 had

promised that, due to Respondent 3's great delay, the Spouse would be given in February 2002 an A/4 permit to stay in Israel. This visa would have been received by that date had his request not been overlooked by the Respondent's office.

Petitioner 9's letter is attached hereto and marked P/25.

47. On 13 June 2002, Ms. Filmus called Ms. Porat and inquired where the handling of the request stood. Ms. Porat stated that Respondent 3 had not yet reached a decision on the request because the other officials had not yet stated their position on the matter.

48. On 1 July 2002, Ms. Porat called the office of Petitioner 9 and informed Ms. Filmus that the Petitioners' request had been approved. However, Ms. Porat added that, because of the government's decision, the Spouse would receive only a D.C.O. permit, and not an A/5 visa, as promised. In response to Ms. Filmus' comment that it was unfair that the Spouse and his family would be harmed because of the negligence of the Minister of the Interior, Ms. Porat stated that, "nothing can be done about it, *the lucky ones* were upgraded before the government's decision."

49. On 4 July 2002, the Spouse went to Respondent 3's office and received a referral to obtain the permit from the D.C.O.

Respondent 3's approval of the request is attached hereto and marked P/26.

Exhaustion of remedies

50. In the period from the end of March 2002 to August 2002, the Civil Administration did not issue any permits to enter Israel, even to invitees who were referred to a D.C.O. to obtain permits to stay in Israel as part of family unification.

51. Following the correspondence with the Coordinator of Government Activities in the Territories,[1] a letter was sent on 14 August 2002 to Petitioner 9 by an official on behalf of the Coordinator. The letter stated that, at the present time, the Civil Administration was issuing permits to enter Israel to invitees in applications for family unification that have been approved. In accordance with that statement, Petitioner 9 wrote to Respondent 3, seeking to verify that referrals to the Civil Administration by Respondent 3 would in fact be made as regards those persons whose applications for family unification had been approved.

Petitioner 9's letter, a copy of which was also sent to Respondents 2-4, the response on behalf of the Coordinator of Government Activities in the

[1] In this correspondence, Petitioner 9 described the consequences of the failure to provide permits to persons involved in the family unification process, who waited for a long time for approval of their requests and now, despite the Ministry of the Interior's approval, which is subject to the approval of the security officials, are prevented from staying lawfully in Israel.

Territories, and Petitioner 9's letter to Respondent 3 are attached hereto and marked P/27, A-C, respectively.

Contacts with Respondent 4

52. In accordance with the instruction given by Captain Lerner, head of the International Organizations Department, in a telephone conversation with him, Petitioner 9 sent his office, on 19 August 2002, a fax containing the particulars of persons waiting for permits to enter Israel, after their applications for family unification had been approved by the Ministry of the Interior.

Petitioner 9's letter and a letter of reminder dated 27 August 2002 that were sent to Captain Lerner and Respondent 3 are attached hereto and marked P/28, A-B, respectively.

53. On 19 September 2002, Captain Lerner responded to Petitioner 9, in which he stated that the Spouse was forbidden from entering Israel. Captain Lerner did not explain the meaning of the surprise prohibition, which was given only some two months after the Interior Ministry's approval, *which was given based on the lack of a reason to reject it.*

Captain Lerner's letter is attached hereto and marked P/29.

54. On 24 September 2002, Petitioner 9 wrote to Captain Lerner, asking for an explanation of the security reason that the Spouse was not allowed to enter Israel, in light of the current approval of the security agencies, on which basis the request for family unification was approved in July 2002.

Petitioner 9's letter is attached hereto and marked P/30.

55. In a telephone conversation between Ms. Filmus, of Petitioner 9, and Captain Lerner that was held on 15 October 2002, the latter stated that Ms. Filmus's letter had been sent to the expert officials for review.

56. On 5 November 2002, Petitioner 9 wrote to Captain Lerner to receive a response from him in regard to the Spouse's matter.

Petitioner 9's letter is attached hereto and marked P/31.

57. In a telephone conversation held between Ms. Filmus and Captain Lerner on 7 November 2002, Captain Lerner stated that security grounds existed against the Spouse, which, if new, prevailed over the Interior Ministry's approval. Ms. Filmus explained to Captain Lerner that it was unlikely that a new security reason existed, in light of the Interior Ministry's current approval, which was supported by these very

same [security] officials, and in that the Spouse had not been arrested or interrogated in the meantime.

Ms. Filmus further stated that security grounds had been raised against the Spouse in the past, prior to the approval given by the security officials, which apparently had not been removed despite the approval given by the officials, and that the Petitioner's letters to Captain Lerner had not been answered for more than a year, such that the Petitioners ultimately were compelled to submit a new application. Ms. Filmus requested Captain Lerner to state to Petitioner 9 in writing if, indeed, there was a "new grounds for rejection" and what was its basis. In her letter to Captain Lerner of the same day, Ms. Filmus repeated her request to obtain Captain Lerner's response in writing.

Petitioner 9's letter is attached hereto and marked P/32.

58. On 17 November 2002, Ms. Filmus left a message on Captain Lerner's cellular phone in which she requested that he make his reply on the subject.

59. On 27 November 2002, Ms. Filmus sent a letter of reminder to Captain Lerner by fax, in which she again requested his reply as to the explanation for the security grounds against the Spouse, and whether the grounds were new to the security officials, which prevailed over the absence of security grounds according to the security officials some two months earlier.

Petitioner 9's letter is attached hereto and marked P/33.

60. On 1 December 2002, Captain Lerner sent Petitioner 9 a brief reply, indicating that the Spouse had never received a permit, and therefore he was not entitled to receive a permit. Captain Lerner added that, "In any event, he is now prevented from, and is not entitled to receive a permit." Captain Lerner ignored Ms. Filmus's questions in her letters and in her telephone conversations with him regarding an explanation of the security grounds and their validity, in light of the approval given by the security officials.

Captain Lerner's letter is attached hereto and marked P/34.

Petitioner 9's continuing efforts to arrange the Spouse's legal status

61. On 8 December 2002, Petitioner 9 sent a letter to Respondent 3 indicating that – without forgoing the contention that, in light of the manner in which the Spouse's case was unfolding, and the administrative promise made to him, the Spouse should be granted an A/5 visa – the Petitioners requested the assistance of Respondent 3 in

effectuating Interior Ministry's approval of extension of the Spouse's permit to stay in Israel as part of his application for family unification.

Petitioner 9's letter is attached hereto and marked P/35.

62. On 17 December 2002, Petitioner 9 sent a letter to attorney Galit Lavie, of the Interior Ministry's legal department, requesting assistance in resolving the Spouse's problem.

Petitioner 9's letter is attached hereto and marked P/36.

63. In her response of 23 December 2002, attorney Lavie stated that the matter was not of a legal nature, and that she would, therefore, request Respondent 3 to handle the inquiry.

Attorney Lavie's letter is attached hereto and marked P/37.

64. No response of any kind was received from Respondent 3. Thus, on 22 January 2003, six months after the Ministry of the Interior approved the request that had been submitted a year and a half earlier, without the Spouse being given a status in Israel, Petitioner 9 delivered a "pre-High Court of Justice petition" to attorney Osnat Mandel, head of the High Court of Justice Petitions Division in the State Attorney's Office. In her letter, the undersigned, acting on behalf of Petitioner 9, described the chronology of events that led to the administrative promise given to the Spouse, and requested the State Attorney's Office to intervene to arrange the Spouse's status in Israel by issuing him an A/5 visa.

The correspondence sent by Petitioner 9 to the State Attorney's Office is attached hereto and marked P/38.

65. Failing to receive a response from the State Attorney's Office, on 6 February 2003, Ms. Filmus, of Petitioner 9, called the office of the head of the HCJ Petitions Division and asked attorney Mandel's law clerk, Mr. Efi Michaeli, where the pre-HCJ petition stood. Subsequently that same day, Ms. Filmus sent Mr. Michaeli a fax requesting the State Attorney's Office to assist in arranging the Spouse's status without having to file court action.

Petitioner 9's letter is attached hereto and marked P/39.

66. On 13 February, 20 February, 2 March, and 3 March 2003, Ms. Filmus, acting on behalf of Petitioner 9, wrote to the law clerk, Mr. Michaeli, who repeated that no reply had been received "from the relevant officials." Mr. Michaeli told Ms. Filmus that he would once again check with the officials.

67. To date, no response has been received from the State Attorney's Office, the Ministry of the Interior, or the Civil Administration to Petitioner 9's inquiries, and the Spouse has not been given a status in Israel.

Summary of the chronology of events

68. We see, therefore, that the Petitioners' application for family unification was submitted *approximately eight years* ago and was approved *more than three years ago (almost five years after it was submitted).* According to the graduated arrangement, if the Petitioners met the various criteria set by Respondent 3, the Spouse should have received his A/5 visa two years and three months following approval of the application. However, in the three years that have passed since approval of the application, the Spouse has not been able to stay in Israel legally for even one day:

The office of Respondent 4 refused to issue the first permit, claiming a security impediment that was not explained and was raised at the time that the Interior Ministry approved the application subject to approval of security officials.

Thereafter, the second request for a permit was overlooked and neglected for more than one year in Respondent 3's office. Respondent 3 undertook to count this period as part of the graduated arrangement, and at the time of the approval to issue an A/5 visa to the Spouse, which he was supposed to be given at the beginning of the third year.

However, the handling of the request continued to be delayed in the office of Respondent 3 for an additional seven months, until the government made its decision that graduated-procedure requests are not to be upgraded. Therefore, Respondent 3 refused to keep his promise, and agreed to approve a Civil Administration permit only, in the language of the clerk handling the matter in Respondent 3's office, "the lucky ones were upgraded before the government's decision."

Since the approval for the permit was given, Petitioner 9 has taken actions to effectuate the referral given by the Interior Ministry to obtain a D.C.O. permit for the Spouse, in order to put an end to his illegal stay, actions that failed, albeit no substantive explanation was given for the failure. Simultaneously, Petitioner 9 sought to obtain an A/5 visa for the Spouse, as Respondent 3 promised. The Petitioners' written and telephone inquiries to Respondent 3 and the State Attorney's Office (in the pre-HCJ petition) have not been answered.

Effect of the Respondents' conduct on the Petitioners

69. The Respondents' actions have placed the Petitioners in an impossible situation. On the one hand, the family is required to maintain its center of life in Jerusalem as a primary condition to attain approval of its application for family unification, and after it was approved, for five and a quarter years. On the other hand, the Spouse is unable to stay in Israel legally – neither during the period prior to the initial approval of the application, nor *during the years following the application's approval.*

70. While the Petitioners' application and inquiries continued to be neglected by the various state officials, from the time that the Petitioners married, their family has lived *for 13 years* in a situation of total helplessness and uncertainty regarding their future. They live in fear and anxiety in the shadow of the danger that the Spouse, the father in the family, will be arrested and deported. The Spouse remains in Israel as a criminal against his will, an illegal alien, as if being kept under house arrest, without entitlement to any rights and unable to provide a livelihood for his family.

71. The harm suffered by the Petitioners' family does not fail to affect any of their substantive rights to dignity, liberty, family life, and earning a living. They live in poverty because the Spouse is unable to provide a livelihood for his family, a result of his lack of freedom of movement and fear of being arrested and deported; simultaneously, they suffer from the potential absence of the Spouse in taking part in household chores, assisting in taking the children to medical treatment, school, or kindergarten, and to friends. There have been many times that the Spouse was unable to accompany his wife and children on family visits in the city, and he is afraid to visit his parents and siblings because of the possibility that he will not be able to return to his wife and children.

For example, a few months ago, the family wanted to go together to the Old City to celebrate a religious festival and the children's vacation from school. When they reached the checkpoint at the entrance to the Shu'afat refugee camp, soldiers stopped the family and demanded that the Spouse provide an ID card and were unwilling to listen to his explanation about the Interior Ministry's approval. The soldiers ultimately made the Spouse return to his house in the camp, threatening that in the future, he would be taken to the other side of the checkpoint or would be arrested. All this took place in the presence of the Spouse's minor children. The two small children began to cry when they saw the soldiers shouting at their father, and asked why the soldiers were screaming at their father, and why he was unable to go on a trip with the family during the holiday. The family returned to their home because the Petitioner

did not want to travel about alone with the six children, and, in any event, the holiday atmosphere had changed to one of fear and tears.

The graduated-arrangement process

72. The graduated-arrangement process that Respondents 1-3 and officials of the State Attorney's Office established for permanent residents of Israel and their spouses from the Occupied Territories extends for five years and three months. The process begins on the day that the application is approved. This approval is obtained, on average, four or five years after submission of the family unification application. Prior to the freezing of the process – following the government's decision regarding applications that were not approved –spouses would submit an application for family unification after the couple marries. After four to five years pass from the time of the marriage, a period of time as to which the family proves that their center of life was in Israel, and provided there are no security or criminal problems, the arrangement begins.

    A letter from Attorney Gensin, of the State Attorney's Office, describing the graduated arrangement is attached hereto and marked P/40.

73. In the invitee decides not to stay illegally in Israel during the years that pass until decision is reached on the application, and decides to live in the West Bank, the application will be rejected on center-of-life grounds or fictitious-marriage grounds (if his wife and children do not go to live with him). Alternatively, the Ministry of the Interior is liable to revoke the wife's residency on the grounds that she went to live with her husband outside of Jerusalem in the time preceding approval of the application.

74. In the first two years and three months of the graduated procedure, the invitee's stay in Israel is arranged by means of a D.C.O. permit, which, until recent months, was valid for one year. The invitee is then entitled, for the following three years, to remain in Israel pursuant to an A/5 visa, which grants him social rights, including national health benefits. This visa, too, is valid for only one year.

75. According to the graduated arrangement, to attain continuity of valid visas, applicants must submit a request to extend their visas about two months prior to their expiration date, so that the Interior Ministry will have sufficient time to consider the request and approve it upon expiration of the previous visa. The rationale lying behind the request prior to expiration of the existing visa is to prevent a situation in which applicants stay in Israel illegally in cases in which their applications for family unification have already been approved, and the applicants are involved in the graduated-arrangement process.

76. It is obvious that the state is forbidden from establishing an arrangement that by its nature causes a person to violate the law. Also, the state has an important interest to ensure that its agencies do not create a situation of many persons staying illegally in Israel, which would prevent the orderly supervision of persons staying in the country. Proper administration and logic dictate that such situations not occur.

Difference between a D.C.O. permit and an A/5 visa

77. Following the government's decision, Respondents 1-4 changed their policy regarding D.C.O. permits given in the context of the graduated arrangement, and determined that an invitee in the family unification process who is given a referral from the Ministry of the Interior to obtain a permit from the D.C.O. is to be given a permit for only three months (instead of one year). The applicant is required to request the D.C.O. to extend the permit four times a year.

78. Thus, we see that an invitee in the family unification procedure now waits many months, and in our case, *one year and seven months,* for approval of the application and, upon approval, receives a referral from the Interior Ministry to obtain a permit issued by the D.C.O.

The Interior Ministry's referral to obtain a permit from the D.C.O. is sent to the D.C.O. only on the day on which the invitee comes to take it from the Ministry of the Interior, which is generally about two weeks after the application is approved. The referral reaches the D.C.O. about one month after it is sent and one and a half months after the application is approved (this is the time that it takes for distribution of the referrals at the D.C.O.: the referrals are first sent in a group to the D.C.O. in Beit El, and they are then sent to the relevant D.C.O.). Or the invitee must go to the D.C.O. in his original area of residence to submit a request for a magnetic card. The checks and preparation of the magnetic card take another month or so; only then can the invitee go to the D.C.O. in the area where he was born to obtain the permit to stay in Israel.

It should be mentioned that the schedule presented here does not take into account periods of comprehensive closures, strikes, or cessation of activity by the Interior Ministry. These occur frequently and lead to further prolonged delays.

Examples of Petitioner 9's requests to Respondent 4 to intervene in resolving the problem of failure to issue D.C.O. permits as part of the graduated process, and the responses given by Respondent 4, are attached hereto and marked P/41.

79. Thus, at best, the invitee whose application for family unification has been approved, or is already in the family unification process, is able to arrange that he stay legally

with his family in Israel during the two and a half months after approval of the application for family unification. It should be mentioned that it is impossible for the individual to know if the magnetic card or permit that he requested has been prepared for him at the D.C.O., so in most cases, he must go again and again to the D.C.O. and wait for hours, at time in vain, to receive some utterance by soldiers at the D.C.O..

On the problems in arranging the lawful stay in Israel of persons invited as part of the family unification process, see the letter of Ms. Filmus, writing on behalf of Petitioner 9, to the Coordinator of Government Activities in the Territories, attached hereto as Appendix P/27 above, and Sections 24-67 above.

80. As stated, the current situation is that since the end of the freezing of issuance of the permits, the D.C.O. permit that was formerly issued for one year, is issued for a three-month period only. *The permit must be extended every three months,* and not annually. As a result, the "invitee" must undergo the tiring process of going to the D.C.O. time after time – four times a year.

It is important to note that the bureaucratic demands create a lack of overlapping of the permits, thus causing illegal stay also when a permit is issued for another year as part of the family unification process.

81. Also, the D.C.O. permit only allows the holder to stay in Israel, and not necessarily to work in Israel, and it never grants social benefits, including the right to health insurance as provided by the National Health Insurance Law.

82. Therefore, there was reason for setting a period of two years and three months from the beginning of the "graduated arrangement" – when it had already been proven to the State of Israel for years (the years preceding the approval and the two years following approval of the application), that the individual is indeed married to a resident of Israel and lives with her in Jerusalem, and does not endanger the public – the said person who is involved in the family unification process will be given a more stable status than that provided by a D.C.O. permit, one that grants him rights such as the right to health services, the right to a movement certificate, and the right to earn a living, without being subject to the frequent closures and the temporary freezes.

83. For these reasons, the Petitioners will argue that a D.C.O. permit is not like an A/5 visa, and that, in the case of the Spouse – who has lived in Israel with the Petitioner since they were married, *as far back as 1990,* who already suffered from improper discrimination by the Respondents when the Petitioner was not allowed to submit an application for family unification on his behalf until 1994, and later when, apparently by mistake, was not allowed to exercise his permits, and subsequently, when his

request was overlooked by the office of Respondent 3, and later the authorities' promise to him was not kept and he again was accused, unjustly and without explanation, for being a security risk – it is proper, reasonable, and just that he now receive, in accordance with the promise given by the authorities, an A/5 visa.

The legal argument

84. The Petitioners will argue that the failure of the Respondent to handle the Petitioners' application for prolonged periods of time, the failure to respond to the many requests and inquiries of Petitioner 9, the failure to keep the administrative promise, and retroactive application of the government's decision in the Spouse's case constitute unconstitutional conduct that contravenes the rules of administrative law, are unreasonable, and infringe the fundament rights of the Spouse, Petitioner 1, and Petitioners 3-8, permanent residents of the State of Israel.

Right to maintain family life

85. The Respondents' conduct described above infringes the Petitioners' right to live together and to maintain a family unit as they choose. The right of a person to marry and establish a family unit is a fundamental right that must not be infringed. This right is derived from the right to dignity to which every individual is entitled. Marrying and establishing a family is the complete expression of the individual's personality, which enables the individual to attain self-fulfillment within society and within the family. The family is the basic unit of society. The family is also the nest that protects the children. It is not surprising, therefore, that both Israeli domestic law and international law seek to protect the family unit.

86. Israeli law recognizes a normal family life as a central and fundamental value that deserves protection by society:

> **The protection of family integrity constitutes part of Israeli public policy. The family unit is "the primary unity… of human society…"** (Justice Heshin in Civ. App. 238/53, *Cohen et al. v. Attorney General, Piskei Din* 8, at page 4, 35)

On this point, see also:

> HCJ 488/77, *John Doe et al. v. Attorney General, Piskei Din* 32 (3) 421, 434; Civ. App. 451/88, *John Does v. Attorney General, Piskei Din* 49 (1) 330, 337; Reh. Civ. 401/95, *Nahmani v. Nahmani et al., Piskei Din* 50 (4) 661, 683; HCJ 979/99, *Pabaloya Carlo v. Minister of the Interior, Takdin Elyon* 99 (3) 108.

87. The right to family life is considered a natural right of constitutional dimension:

> **The right of parents to custody of their children and to raise them, with all that entails, is a natural, primary, constitutional right, as an expression of the natural connection between parents and their children… This right is expressed in the privacy and autonomy of the family: the parents are autonomous in making decisions regarding their children – education, lifestyle, place of residence, and so on – and interference by society and the state in these decisions is an exception that requires justification … This approach is grounded in the recognition that the family is "the most basic and ancient family cell in human history, which was, is, and will be the foundation that serves and ensures the existence of human society" (Justice (as his title was at the time) Elon in App. Civ. App. 488/77, *John Doe et al. v. Attorney General, Piskei Din* 322 (3) 421, 434).**
> (President Shamgar in Civ. App. 2266/93, *John Doe, a Minor, et al. v. John Roe, Piskei Din* 59 (1) 221, 235-236)

88. In the judgment in *Stamkeh*, the Honorable Justice Heshin discussed the importance of the family unit, which has the status of a basic right, and also Israeli's commitment to this right, inter alia, from Israeli's being party to international conventions that recognize the importance of the right to maintain family life:

> **Our matter, we should recall, revolves about the basic right granted the individual – every individual – to marry and establish a family. It is superfluous for us to mention that this right is recognized in international conventions accepted by everyone…** (HCJ 3648/97, *Bijalbohen Petel et al. v. Minister of the Interior, Piskei Din* 53 (2) 728, 784-785)

89. International law states that every person has the liberty to marry and raise a family.

For example, Article 10(1) of the International Covenant on Economic, Social and Cultural Rights, ratified by Israel on 3 October 1991, states:

> **The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for**

its establishment and while it is responsible for the care and education of dependent children….

See also: Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, Article 8(1); International Covenant on Civil and Political Rights, Articles 17(1) and 16(3), which took effect regarding Israel on 3 January 1992.

90. Harm to the integrity of the family unit of a person violates the individual's dignity. The Petitioners will argue that their right to normal family life is enshrined in the Basic Law: Human Dignity and Liberty, in the provisions that protect liberty, dignity, and privacy.

Rights of the child – infringement of the rights of Petitioners 3-8

91. The disgraceful handling of the Petitioners' application for family unification especially harms their six minor children, who range in age from twelve and a half years old to six months old. The refusal to allow the father of Petitioners 3-8, residents of the State of Israel, to live with them lawfully in their home in Israel, leads to stress, instability, and uncertainty in the family's life, creating a detrimental effect on the normal development of children. Growing up in the absence of the two parents will cause the children of the Petitioners inestimable damage and suffering and violate their right to live in a whole-family environment, where such environment is desired by the family.

92. In Israeli law, the principle of the best interests of the child is an underlying, fundamental right. In Civ. App. 2266/93, *John Doe v. John Roe, Piskei Din* 49 (1) 221, Justice Shamgar held that the state must intervene to protect the child from infringement of his rights.

93. The right of minor children to live with their parents is recognized as an elementary, constitutional right by the Supreme Court. See the comments of Justice Goldberg in HCJ 1689/94, *Harari et al. v. Minister of the Interior, Piskei Din* 51 (1) 15, 20 opposite letter B.

94. The Convention on the Rights of the Child contains several provisions that require protection of the child's family unit.

For example, in the preamble to the Convention:

[The States Parties to this Convention being] convinced that the family, as the fundamental group of society and the natural environment for the

growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

… that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

Article 3(1) of the Convention states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 9(a) of the Convention states:

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

95. The provisions of the Convention on the Rights of the Child has been increasingly recognized as a complementary source for the rights of the child and as a guide for interpreting the "best interests of the child" as a consideration in our law: see Civ. App. 3077/90, *Jane Roe et al. v. John Doe, Piskei Din* 49 (2) 578, 593 (the Honorable Justice Heshin); Civ. App. *John Doe, a Minor, et al. v. John Roe, Piskei Din* 49 (1) 221, 232, 233, 249, 251-252 (the Honorable President Shamgar); Reh. Civ. 7015/94, *Attorney General v. Jane Roe, Piskei Din* 50 (1) 48, 66 (the Honorable Justice Dorner); HCJ 5227/97, *David v. Supreme Rabbinical Court (Takdin Elyon* 98 (3) 443), in Section 10 of the judgment of the Honorable Justice Heshin.

96. The Petitioners' minor children suffer great harm from the refusal of the Respondents to arrange their father's stay in Israel. The psychological stress at home resulting from the Spouse being denied for a prolonged period of time a permit to stay in Israel, the

economic hardship suffered by the family, and the uncertainty as to whether the family will be able to live together in their home in Jerusalem cause irreversible harm to the normal development of the children.

97. In refraining from handling the Petitioners' application for family unification and from responding to the inquiries and requests of Petitioner 9 over such a long period of time, the Respondents breached the provisions of the Convention on the Rights of the Child, and failed to take into account the best interests of the Petitioners' children, who are residents of the State of Israel, as to which they should have been given primary consideration.

Failure to keep an administrative promise

98. The promise made by Respondent 3 is deemed an administrative promise, which was given in the context of the lawful authority of Respondent 3.

Respondent 3 *promised* the Spouse that, in February 2002, at the time of the approval of his request, he would be issued an A/5 visa (see Section 39 above). The Respondent's promise to grant the Spouse temporary-resident status was based on the Respondent's procedures, whereby in cases in which progress is not made in the handling of an application due to delays by the Respondent, the period of delay will be deemed part of the graduated arrangement, it being inconceivable that a person who met all the requirements set by the Respondent would have to bear the consequences of the delay.

99. Respondent 3's promise actually is a repetition of the rules of procedure regarding family unification, which were set by Respondents 1-3, together with the State Attorney's Office. However, the Spouse was given an explicit promise to give him trust and confidence after he was harmed following the failure to handle his application for family unification for a whole year.

100. It goes without saying that, taking the period of delay into account when calculating the period of the graduated arrangement does not compensate the person for the harm caused him during that period, because of the delay in handling, whereby his stay in Israel became illegal, with all the psychological and financial harm which that entails, as described above.

101. Respondent 3 contends that, following the government's decision not to upgrade pending family unification applications, he was prohibited from upgrading the Spouse's request. In the Petitioners' opinion, this refusal by Respondent 3 was not made in good faith. The government's decision is sweeping; while not preventing the

Respondent from exercising discretion in justifiable individual cases. Indeed, the Respondent exercises his discretion, notwithstanding the government's decision, and makes upgrades and even grants initial approval of applications for family unification in certain cases where the applicants were not responsible for the delay in the handling. This discretion was exercised, as stated, despite the government's decision. Unfortunately, Respondent 3 does so only after court action has been initiated against him.

For example, in Adm. Pet. 813/02, *Anabawi et al. v. Director, Population Administration Office in East Jerusalem*, following the filing of the petition, the Respondent upgraded the status of the invited petitioner and issued him an A/5 visa. In Adm. Pet. 991/02, *Taha v. Director, Population Administration Office in East Jerusalem*, following filing of the petition, Respondent 3 granted initial approval to the application for family unification, after the petitioner had already received notification that his application had been rejected because of the freeze. In the notification, he was informed that he would have to leave Israel immediately. In Adm. Pet. 1007/02, *Natshe et al. v. Director, Population Administration Office in East Jerusalem*, Respondent 3 granted initial approval, despite the freeze set forth in the government's decision, for the couple's application for family unification.

102. A governmental authority surely retains the power to change its general policy, but

> **This is not true regarding the power of the authority to revoke or change its prior decision, or completed administrative action that it took, when the decision – or action – embodies a valid governmental promise to the individual, or a specific portion of the population, when the rejection or change is liable to harm persons who relied on the promise and determined his behavior in accordance therewith.** (See HCJ 799/80, *Shlalam v. Licensing Clerk Pursuant to the Shooting Law, 5709 – 1949, Piskei Din* 36 (1) 317, 331.)

The Respondent must, therefore, balance the authority's interest

> **In rectifying a mistake or aberration in its action, which if carried out would be improper or even harm the public; and, on the other hand, lies the need to ensure the stability of action of public administration, stability being one of the conditions for the normality of administrative regulations**

> **and an important guarantee for the preservation of the citizen's trust in the governmental authority.** (See HCJ 799/80 above.)

103. In the case that is the subject of this petition, the promise of Respondent 3 contained no defect or risk of harm to the public, and the Respondent did not approve the Spouse's request before an extremely strict examination (lasting seven months from the time that the administrative promise was made) was made by security officials. Clearly, no argument can be made that keeping the promise would be improper. Indeed, Respondent 3 does not raise any of these contentions.

104. The Petitioners will argue that Respondent 3 did not feel bound by his promise to the Petitioners, for which reason he did not exercise his discretion and failed to balance the various interests, including harm to the Petitioners' family, in deciding to renege on his administrative promise as soon as a formal pretext for not keeping the promise, i.e., the government's decision, appeared.

105. In HCJ 715/89, *Sarig v. Minister of Education and Culture et al., Takdin Elyon* 93 (3) 1408, Paragraphs 19-20 of the judgment, the Court holds that:

> **In arguing there is lawful justification to alter or retract its governmental promise, the authority is expected, at least generally, to indicate a change in circumstances that apply to the giving of the promise, and to convince the court that keeping its promise in the new circumstances is unjustifiable and is inconsistent with carrying out its obligations towards the public.**

As stated, notwithstanding the new circumstances – the government's decision – Respondent 3 approved requests that had not been upgraded or approved in circumstances that justify doing so – after petitions to the Court were filed in these matters. Thus, we see that the government's decision is not a sweeping lawful basis for not keeping the administrative promise that Respondent 3 gave to the Petitioners. The Respondent also does not mention any change in circumstances regarding the specific case involving the Spouse that took place in the seven months that passed from the day the promise was made to the day that the request was approved. Quite the opposite: since Respondent 3 promised the Spouse that he would receive an A/5 visa, Respondent 3 carefully checked, over a period of seven months, the request and received the position of security officials as to whether security grounds exist for denying the Spouse's request. Thus, the considerations underlying the promise are

identical, and even provide greater support in light of the passage of time, and no grounds were raised against the Spouse.

106. Indeed, a government authority that changes its reason and breaches its promise to an individual or to the public indicates that it did not give proper consideration, before acting, to the substance and meaning of its initial decision. An authority that hastens to retract its promise fails to meet its duty to exercise its governmental power reasonably and in good faith. By so acting, the administrative body undermines not only the trust of persons harmed as a result of retraction of its promise, but the trust of the general public as well.

In HCJ 135/75, *Sytex Corporation Ltd. v. Minister of Trade and Industry, Piskei Din* 30 (1) 673, the Court held that stability in the actions taken by the governmental authority is so important that its promises obligate it even if the citizen does not rely on them and does not change his position to his detriment. In our case, the stability and consistency of administrative action is many times more important because it involves actions relating to the family life of the Petitioners, the couple and their six minor children: to their place of residence, their ability to earn a livelihood, the schools in which their children study, and the couple's relations with their parents and children. All these areas cannot be subject to the mercy of a governmental authority that changes its promises and operational procedures from one day to the next.

Retroactive application of the decision

107. In the present case, the Petitioners submitted a request to extend the permit allowing the Spouse to stay lawfully in Israel, in accordance with the rules that were in place at the time the request was submitted, one year and seven months *before* the decision not to upgrade the permits. At the time of approval of the application for family unification, the Petitioners were promised that, if they meet the conditions of the graduated arrangement, the Spouse would be given temporary residence after 27 months pass.

108. Respondent 3 overlooked the Petitioners' request. As a result, the Petitioners were given an explicit administrative promise that, at the time of approval of the application, due shortly, the Spouse will be entitled to a temporary-resident identity card that grants him social rights, including the right to health insurance. This promise was given about seven months prior to the government's decision.

Thus, retroactive application of the government's decision in the Petitioners' case is improper and unfair.

109. Indeed, according to the common law, administrative orders and directives are not to be applied retroactively. Only special cases, in which retroactive application is necessary to attain a proper purpose, and is reasonable, may the authority properly enforce the directive retroactively.

> See HCJ 769/90, *Zidan v. Minister of Labor and Social Welfare, Piskei Din* 46 (1) 447; HCJ 142/86, *Dashon, A Cooperative Settlement v. Minister of Agriculture, Piskei Din* 40 (4) 523; HCJ 135/75, *Sytex Corporation Ltd. v. Minister of Trade and Industry, Piskei Din* 30 (1) 673.

110. In the present case, there is no substantive purpose that justifies retroactive application, which breaches the administrative promise on which the Petitioners relied: Respondent 3 examined the Spouse's request for some four years before approving it, and following approval, more than three years passed before the time came for him to obtain a permit to stay in Israel as a temporary resident, and it was found that the Spouse's stay in Israel does not constitute a danger to the state or to the public. The opposite is true. The Spouse met all the requirements set by Respondent 3; thus, his requests made in the context of the relevant arrangement were approved. Therefore, it appears that there is no purpose that justifies deviation from the principle that directives are not to be applied retroactively.

As regards the demand that a proper and proportionate purpose exist when applying a policy retroactively or immediately, and the need for a transition period, see: HCJ 232/96, *Banai v. National Council of the Israel Bar Association, Takdin Elyon* 96 (2) 20; HCJ 2933/94, *Airports Authority v. National Labor Court et al., Piskei Din* 50 (3) 837, 863-864; HCJ 1715/97, *Israel Investment Managers Association et al. v. Minister of Finance et al., Takdin Elyon* 97 (3), Paragraph 53 of the opinion of President Barak.

Reliance of the Petitioners' family on the promise of Respondent 3

111. The relatives of the Petitioners relied on the promise of the Respondents regarding the Petitioners being allowed to take part in the family unification process that would lead to entitlement to permanent residency as early as 1995, when they heard the women residents were also allowed to submit applications for family unification and to arrange a lawful status in Israel for their spouses upon approval of the application for family unification.

112. The family members relied on the Respondents' promise as regards the manner in which the process would be conducted in the course of the period of five years and three months that was set: in the first two years, the stay of the Spouse would be

arranged by means of D.C.O. permits, and then, for three years, by A/5 visas, and, if they meet the conditions of the arrangement, upon expiration of the period, the Spouse would be given the status of permanent resident.

113. It should be noted that the "graduated arrangement" was only established in 1997. Until then, the family unification process was much simpler. Thus, when the Petitioners submitted their application in 1995, they relied on the process that was in place at the time they submitted the application. That process provided that, following its approval, the Spouse would obtain a permanent status in Israel, like that of his wife and children. However, as mentioned, in 1997, Respondents 1-3 changed the period and nature of the process and established the "graduated arrangement," as described in Sections 72-76.

See Appendix P/40, above.

114. The significance of the change and of the graduated arrangement, as then announced, for the Petitioners was this: the Spouse would receive a permanent status some nine years and three months after submission of the application. Furthermore, when the application is approved, the Petitioners were promised that within two years and three months, the Spouse would be given a temporary status and then, following a period of five years and three months, a permanent status. The persons taking part in the process were also promised that, during the five-year period from the day of approval of the application for family unification – provided that they meet the conditions that were set – the invited persons would be allowed to stay legally in Israel.

115. In addition, the relatives relied on the administrative promise given to them by the relevant official, whereby despite the delay by the Ministry of the Interior, the Spouse would be given an A/5 visa.

116. The Petitioners' reliance on the promise was reflected, inter alia, by their establishing their home in Jerusalem, despite the hardship that it entailed, knowing that the hardship would be temporary and would last until approval of their application for family unification; severing themselves from the West Bank, in that the Spouse would not have been able to live in Israel if he maintained ongoing contact with the West Bank, because of the difficulties in crossing the checkpoints; registering their children in kindergartens and schools in the city, and the like.

Had they known what was awaiting them after approval of their application for family unification, it is doubtful that they would have undergone the hardships and suffering following the helplessness of the Respondents in arranging a status for the Spouse

over all the years. However, eight years have passed since the Petitioners submitted their application, and time cannot be regained.

Obligation of the authority to act with due dispatch

117. The Respondents have the obligation to handle the Petitioners' matters in a fair and reasonable manner and with due dispatch. Section 9(b) of the Administrative Procedure Amendment (Decisions and Reasons) Law, 5719 – 1958, indeed exempts the Respondents from the provisions of the said law; however, its provisions do not exempt them from the obligations imposed on every public authority – to treat every person in a fair and reasonable manner.

> Thus, in HCJ 6300/93, *Rabbinical Court Pleaders Preparatory Institute v. Minister of Religious Affairs et al., Piskei Di*n 48 (4) 441, 451, the Honorable Justice Heshin stated:
>
> > **The competent authority must act in a reasonable manner. Reasonable also means meeting a reasonable time schedule.**
>
> On this matter, see also HCJ 758/88, *Kandel et al. v. Minister of the Interior, Piskei Din* 46 (4) 505; HCJ 4174/93, *Vialeb v. Minister of the Interior* (unpublished), in Section 4 of the judgement; HCJ 1689/94, *Harari et al. v. Minister of the Interior, Piskei Din* 51 (1) 15.

118. The Respondents obligation to act in the Petitioners matter with due dispatch is also enshrined in Section 11 of the Interpretation Law, 5741-1981, which states:

> **Any empowerment, and the imposition of any duty, to do something that shall, where no time for doing it is prescribed, mean that it shall or may be done with due dispatch and be done again from time to time as required by circumstances.**

119. The duty to act within a reasonable time, and not to neglect and drag their feet in handling pending requests, is an elementary precept of proper administration.

> On this point, see Civ. App. 4809/91, *Jerusalem Local Planning and Building Committee v. Kahati et al., Piskei Din* 48 (2) 190, 219.

The Supreme Court stated this duty in HCJ 3680/95, *Tiveria v. Ministry of the Interior, Takdin Elyon* 96 (1) 673. In that matter, the Court deemed reasonable the Respondent's policy of examining in certain cases the candor of the marriage prior to

registering a person in the Population Registry as "married" where that individual presents a marriage certificate. The check was found to be reasonable, but the Court added that:

> **It is to be hoped that it [the check] is done efficiently and with due dispatch, and it is assumed that in the case before us as well, the check will not be prolonged.** (From the opinion of President Barak, at page 673)

120. Respondent 3 dragged his feet in handling the Petitioners' application by failing to approve it for one year and seven months. It should be recalled that, despite his procedures, the Respondent must examine a request to arrange the stay of a person in Israel, which is submitted annually during the course of the graduated arrangement, within two months. Also, the contempt shown by Respondents 3 and 4 in refraining from responding to the inquiries of Petitioner 9 over a period of two months violates the rules of proper administration. The consequences of the Respondents' foot dragging on the family of the Petitioners were extremely grave, and their distress continues to grow.

121. Undoubtedly, the Respondents' handling of the Petitioners' matters was neither speedy nor efficient, but was done in a manner that sharply deviated from the conduct of reasonable administrative authorities, which are entrusted with significant aspects of the lives of persons requiring their services.

Lack of reasonableness and fairness

122. The Petitioners will argue that the failure of Respondent 3 to handle and reach decision in the matter of the application for family unification, and his negligent handling of the application, are inconsistent with the rules of proper administration and deviate from all criteria of reasonableness, with which an administrative authority must comply.

As a result of the conduct of Respondent 3, despite the undoubted candor of the Petitioners' marriage, their center of life in Jerusalem, and their unblemished criminal and security past – for three years after approval of the application for family unification, the Spouse has been compelled to live unlawfully in Israel.

123. The current situation is that, on the one hand, the Petitioners submitted to Respondent 3 extensive proof that indicates beyond the shadow of a doubt that Jerusalem is the

center of their life. On the other hand, *no substantive reason* has been given to justify the failure to arrange the Spouse's lawful stay in the country.

124. As regards the state's obligation to act in a reasonable and fair manner, see the comments of Justice (as his title was at the time) Barak in HCJ 840/79, *Contractors Center v. Government of Israel and the Builders in Israel, Piskei Din* 34 (3) 729, especially pages 745-746:

> **The state, through those acting in its name, is the public's trustee, and it holds the public interest and public property for use that benefits the public… This special status is what imposes the duty on the state to act reasonably, honestly, with integrity, and in good faith. The state is forbidden to discriminate, act arbitrarily, or without good faith, or be in a conflict of interest. In brief, it must act fairly.**

125. In neglecting the request of the Petitioners to live together lawfully, as a family, for such a long period, the failure to respond to the inquiries of Petitioner 9, and the breach of the administrative promise, the Respondents acted in a grossly unreasonable manner. The Respondents' failure, to this very day, to arrange the Spouse's lawful stay in Israel by issuing him an A/5 visa is unfair, so much so as to be abusive and a violation of the Petitioners' human dignity.

Conclusion

126. The Petitioners sought to establish a family and settle in the Petitioner's homeland, in Jerusalem. Their aspirations are elemental: to grant their children a warm, stable, and secure family unit As long as agreement in principle is given for the unification of the family, but the possibility of the family to live together is withheld, the family is prevented from maintaining a normal family life in the most basic meaning of the term.

127. Respondent 3 must exercise the powers granted him by the administrative law, including the constitutional limitations on exercising authority that infringes fundamental rights. In the present case, the injustice caused to the Petitioners' family is blaring: because of the Respondents' discriminatory policy, they were prevented from submitting an application for family unification until 1994; their application for family unification, filed in 1995, was not approved until 1999, *some four years* after it was submitted; this coming May, in a few days, the Spouse was supposed to hold in his hand for the *fourth* time, a permit to stay in Israel as part of the family unification process – however, despite *this four-year period* that has passed since *approval* of the

application for family unification, his lawful stay in Israel has not been arranged and he has not been given a clear explanation of why his status has not been arranged.

128. The Petitioners were never involved in acts of a security or criminal nature, nor were they suspected of committing such acts. The National Insurance Institute recognized the family's residence in Jerusalem, as did the Ministry of the Interior, years ago, when approval was given for the application for family unification and for the Petitioners' request to register their children in the Population Registry. Therefore, it is unclear why the lawful stay of the Spouse in Israel has not been arranged.

On the other hand, the grave consequences of negligent handling by the Respondents are clear. The handling of the application for family unification violates the right of the Petitioner, her husband, and their minor children to live together as a family. Every time the Spouse leaves his house to earn a living for his wife and children and to care for their needs entails the risk of delay, arrest, and expulsion. The family lives an unstable existence and is constantly unsure about the future because of the fear that the father of the family will not be able to live with them any longer. The constant fear of forced separation from the Spouse hovers over the family. The Respondents' conduct infringes the Petitioners' rights to maintain a family life, to stability, and to fair and equal treatment.

129. The Respondents' changing policy, decisions, and promises, as well as the failure to relate to the requests to obtain an explanation of their changing decision, aggravate the harm suffered by the Petitioners.

It appears that the steady occurrence of mistakes and failures entailed in the failure of Respondent 4 to relate to the request to examine the reason for security grounds preventing granting of the Spouse's request, overlooking for one year the Petitioners' application in the office of Respondent 3, the failure to exercise discretion at the time of making of the decision to break the administrative promise given to the Petitioners, and to apply the government's decision retroactively to the application, and the apparent total neglect, by many state officials, of the inquiries made by Petitioner 9, are the source of the suffering and injustice to which the Petitioners have been subjected.

The harm to the Petitioners' family unit contravenes Israeli domestic law, international law, and violates the human dignity of the Petitioners.

The relief requested

130. According to the graduated arrangement, 27 months after obtaining approval of an application for family unification, the applicant will obtain an A/5 visa if the applicants meet all the requirements of the Ministry of the Interior. This status entitles the holder to social benefits, including health insurance. Based on the graduated arrangement, whose requirements have been met by the Petitioners, *the Spouse was supposed to receive an A/5 visa more than a year ago, some five months before the government's decision.* Therefore, the Petitioners request that the Honorable Court order the Respondents to approve in expedited manner their request to extend the Spouse's permit to stay in Israel, whereby he is given an A/5 visa. This is the second time that the Spouse should have received this visa, were it not for the negligent handling of his matter by Respondent 3.

131. Putting an end to the Respondents' prolonged abuse by making the Spouse's stay in Israel lawful – by issuing the A/5 visa – will prevent the destruction of the family and irreversible damage to the family's minor children.

For these reasons, the Honorable Court is requested to issue an order nisi as requested at the beginning of this petition, and after receiving the Respondents' response, make it absolute, and also to order the Respondents to pay the costs of suit and attorney's fees.

Jerusalem, today, 24 April 2003

[signed]
Adi Landau, Attorney
Counsel for Petitioners