At the Jerusalem District Court **Adm. Pet. 783/03**
Sitting as the Court for Administrative Matters

In the matter of:

1. _____ **Ziyad**, has no identity number, of Abu Tor, Jerusalem
2. _____ **Ziyad**, of Abu Tor, Jerusalem
3. _____ **'Id**, of Abu Tor, Jerusalem
4. _____ **Ziyad**, of Abu Tor, Jerusalem
5. _____ **Ziyad**, of Abu Tor, Jerusalem
6. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (Reg. Assoc.)**
   of 4 Abu Obeidah Street, Jerusalem 97200

all represented by attorneys Adi Landau (Lic. No. 29189) and/or Yossi Wolfson (Lic. No. 26174) and/or Leena Abu-Mukh Zuabi (Lic. No. 33775) and/or Manal Hazzan (Lic. No. 28878)
whose address for service of process is
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555; Fax 02-6276317

The Petitioners

v.

The State of Israel:

1. **The Minister of the Interior**
2. **The Director of the Population Administration Office**
3. **The Director of the Population Administration Office in East Jerusalem**

all represented by the Jerusalem District Attorney's Office
4 Uzi Hasson Street, Jerusalem 94152
Tel. 02-6208177; Fax 02-6222385

The Respondents

Petition for Order Nisi

A petition is hereby filed for an Order Nisi directed to the Respondents and ordering them to give reasons for why they will not put Petitioner 1's status in Israel in order, by way of authorizing his registration in the Populations Registry as a holder of a permanent residence license of the State of Israel.

Motion to Schedule an Urgent Date for a Hearing

1. A young person's right to status in a country underlies this petition. Petitioner 1 is in an unbearable situation due to his being without status, without any number or identifying certificate or any status in any country in the world. In the absence of an identifying certificate the Petitioner's life bears no resemblance to that of a human being. He is exposed to repeated arrests which stems from the unlawfulness of his existence. He lives under the threat of deportation, although in every place to which he will be deported his residency shall be illegal.

   The Petitioner is deprived of elementary rights which every human being as such deserves. He lives without security or liberty, in absolute absence of freedom of movement, without an opportunity to earn a living or to acquire an education and without any social rights, including the right to health insurance – all through no fault of his own.

   The Respondents have demonstrated hardheartedness at the Petitioner's heartbreaking situation: first they denied his applications for family unification with his brothers, without giving any reasons. Subsequently they delayed their decision on his case for a long time, and as of today, after an exceptions committee convened on this matter, it has been decided to deny the application "in view of the invitee's illegal residency and criminal past".

   The Petitioners shall assert that the Respondents' decision to refuse to grant the Petitioner status radically deviates from the bounds of reasonableness is unconstitutional and inhuman.

   Therefore, the Petitioners request that the Honorable Court order an urgent hearing on the main petition.

Set Forth Below are the Grounds of the Petition

2. This petition concerns the Respondents' obstinate and consistent abstention from putting in order the status of Petitioner 1 (hereinafter: the Petitioner or S.), the son of an Israeli resident, who due to neglect by his parents, was not given any identifying number close to his birth. The Respondents denied applications to give the Petitioner status in the context of family unification proceedings which his brother, Petitioner 2, filed for him, and an application to grant the Petitioner status in Israel – being the son of a permanent resident and the brother of permanent residents, without any status whatsoever in any country in the world and having a link to the State of Israel, and only to the State of Israel.

3. In the Respondents' consistent decisions to refuse to put the Petitioner's status in order, the Respondents have ignored the Petitioner's objective situation and his strong subjective link to Israel, and created a grave, immoral, and socially dangerous imparity, between the Petitioner's actual situation for years and the lack of any formal status in the world.

   The Respondents are thus sentencing the Petitioner to a life without status, security and belonging, entirely humiliated, without rights that every person deserves.

The Petitioners

4. The Petitioner is a young person about 25 years old, who has resided in the State of Israel with his family, residents of the State, since his childhood. Despite attempts and efforts on the part of his family to put his status in Israel in order, the Petitioner's status has never been put in order. The Petitioner has no status whatsoever in any place in the world.

5. Petitioner 2, a Jerusalem resident, is the Petitioner's brother who has acted as his guardian since his childhood and as his formal guardian since 1994. By virtue of his long-term responsibility *vis-à-vis* the Petitioner and in the absence of the presence of a father, father-son relations were formed between the Petitioner and his eldest brother. Petitioner 2 has been trying for years to put the status of his brother in order through a family unification application and by turning to Petitioner 6 and additional entities. His brother's grave concern and his identification with his suffering radiates upon Petitioner 2's life, as it does on the rest of Ziyad's family, Petitioners 3-5.

6. Petitioners 3-5, the brothers, who are also residents of Jerusalem, took part in raising and educating S. during his childhood. Petitioners 3-5 are also attached to their brother S. today and feel a considerable responsibility for his fate. However, so long as his status is not put in order, their hands are bound.

7. Petitioner 6, a registered association with offices in East Jerusalem, seeks to assist people who fall victim to harsh treatment or discrimination on the part of the State authorities, including protecting their rights before legal instances, whether in its name as a public petitioner or as a representative of people whose rights have been violated.

Factual Background

8. S. was born on 1 February 1978 to a father who was a resident of Israel (_____Ziyad) and a mother who was a resident of the West Bank (_____Badr), in his mother's birth village, Beit Liqya. His parents married a year prior to his birth and

divorced a year after he was born. During their marriage the couple lived in Jerusalem. And indeed, in the divorce contract it is stated that the Petitioner's mother is from Beit Liqya in the West Bank, but is a resident of the Shu'fat neighborhood.

A photograph of S. is attached hereto and marked P/1 A. Copies of the parents' marriage and divorce contracts and of my client's birth certificate without an identification number are attached hereto and marked P/1 B-D.

9. About one year after the divorce, the Petitioner's father traveled to Jordan, where he has lived since, and remarried. The Petitioner's mother also remarried, and abandoned him. After staying for some time with his maternal grandmother in Beit Liqya, the Petitioner moved to live with his paternal brothers in Jerusalem.

10. S. integrated into the family of Petitioners 2-5 in the Abu Tor neighborhood, and was placed in the Dar al-Aytam school in East Jerusalem. When he was in second grade S. tried to run away to his grandmother's house, fell and was injured. As a result of this incident his brothers agreed that he return to live in the village in which his grandmother lived.

A copy of the school's confirmation is attached hereto and marked P/2.

11. After leaving the school in Jerusalem S. would occasionally come to his brothers' house in Abu Tor, for varying periods. He was sent by his maternal grandmother to work in the fields and in kibbutzim, and suffered serious neglect.

12. When S. was about thirteen years old he moved to live again in his brothers' house in Jerusalem, which has been his permanent address since.

13. Petitioner 2, his older brother, acted as his actual guardian, and in 1994 received formal guardianship of the Petitioner from the Shar'i Court in Jerusalem.

A copy of the guardianship judgment and the Jerusalem Mukhtar's confirmation of the Petitioner's living in the city are attached hereto and marked as Appendices P/3 A-B.

14. At a young age the Petitioner dropped out of school, and worked in various jobs in the Mahane Yehuda market in Jerusalem and in random jobs in other places in the country, mainly in the Ramla and Lod region. It is reasonable to assume that the abandonment of the Petitioner by his parents and his being without an identification number effected his failure to integrate into a formal framework.

15. In the context of his work, policeman Y. Daniel from the Minorities Department in Jerusalem became acquainted with the Petitioner. Mr. Daniel knows the Petitioner

and remembers him from his work in Jerusalem at the beginning of the nineties, as a teenager without identifying papers, residing with his family in the Abu Tor neighborhood. Mr. Daniel informed Att. Wolfson on behalf of Petitioner 6 that he had tried to help the Petitioner and that not once he explained his story to policemen from the Tel Aviv Police who would detain the Petitioner after he was unable to present an identifying certificate.

The affidavit of Att. Wolfson on behalf of Petitioner 6 is attached hereto and marked P/4.

16. Whilst still a teenager the Petitioner moved to Tel Aviv and the vicinity thereof. During part of the period he worked in random jobs in Tel Aviv and the surrounding towns such as Ramla. He was not able to integrate into permanent employment due to not having an identity card. For this reason the Petitioner also does not hold any authorization regarding employment during the same period.

17. Over the years the Petitioner's brothers pleaded with him to live at the family home in the Abu Tor neighborhood in Jerusalem on a permanent basis. The brothers built the Petitioner his own residential unit in the family home and made attempts to integrate the Petitioner into places of work or a professional studies framework in Jerusalem. However the Petitioner's suffering in view of the many detainments by the security forces in Jerusalem, the arrests and the humiliation had defeated him and prevented him from persisting and settling in Jerusalem for long periods.

There is more regarding Petitioner 1's wandering during his childhood in the affidavits of his brothers, Petitioners 2-4, which are attached hereto and marked P/5 A-C.

18. As of today, the Petitioner stays the majority of the time in Tel Aviv. He sleeps at places of work, with friends that he has made, in public gardens and on the streets. Often, when his money runs out, the Petitioner comes to Jerusalem where he sleeps at his father's family house where his paternal brothers, Petitioners 2-4, live.

Further attached hereto:

Two affidavits of Tel Aviv residents: Mr. Ben Gur, who employed the Petitioner for a certain period and put him up at his house, and Mr. Harson who made many efforts to help the Petitioner to obtain an identity card and/or to integrate into a rehabilitative framework – marked as Appendices P/6 A-B.

In 1997 S. suffered from depression due to the detainments and humiliation that he received from the security forces which became more frequent as he got older and

with the deterioration of the security situation. One evening, after being caught by policemen and beaten, the Petitioner thought about his situation and his parents who had abandoned him, and in a moment of desperation decided to give up on his life. A Magen David Adom report dated 25 August 1997 which attests to a call for an ambulance for the Petitioner who had slit his veins – is attached hereto and marked P/6 C. The affidavits of the brothers, Petitioners 3-5 [sic]

The Applications to the Respondents – the Petitioners' Activity to Put the Status of S. in Israel in Order

19. The Petitioner's brothers attempted, whilst he was still a minor, to obtain permanent residency status for him. After receiving formal guardianship of the Petitioner, Petitioner 2 submitted two family unification applications for him (no. 3401/94 and 614/95).

20. The first application, of 1994, was denied in January 1995, approximately one month after being submitted, while Petitioner 2 was informed in a standard letter from Respondent 3:

> ***Unfortunately we have not found it possible to grant it [the application]***.
>
> (My emphasis – A.L.)

The Respondent's answer is attached hereto and marked P/7.

21. In the same year Petitioner 2 submitted an additional family unification application for S. This application was also denied by Respondent 3, in the same year, in a standard letter. It appears, and this shall expanded upon below, that the two applications were denied automatically, without the circumstances of the individual case being examined, while the Respondents realized that this was an application of a brother for his brother and not the standard case of a parent for a child or a spouse for his spouse.

22. After the Respondents denied the family unification application in late 1995, the brothers of S. continued applying to Respondent 3 and requested that its decision to deny the application be reconsidered. Thus, for example, in January 1998, Petitioner 4 approached the Jerusalem Magistrate's Court, declared before the court that he is the brother of S. and filed a formal motion to grant S. status.

Petitioner 4's motion is attached hereto and marked P/8.

23. In the same year the journalist Mr. Semama was also in contact with Mr. Cohen, the former head of the Population Administration, regarding the Petitioner's case. On 14 May 1998 Mr. Semama wrote a letter to Respondent 2 requesting that he handle the matter of putting the status of S. in order and emphasized that without status "his life is impossible".

Semama's letter to Respondent 2 is attached hereto and marked P/9.

24. On 21 February 1999, in reply to the family unification applications and the Petitioners' applications to reconsider the denial of the applications, Karen Abutbul's letter was sent from Respondent 1's legal bureau, according to which the family unification applications did not meet the Ministry of the Interior's criteria for family unification.

In Ms. Abutbul's letter, the Petitioner's connection to his father was questioned. It states that late registration of a birth in the Population Registry requires a declaratory judgment in which it shall be stated that S. is the son of an Israeli resident. Only then, according to Ms. Abutbul, will S. be entitled to submit an application for an Israeli identity card.

Ms. Abutbul's letter is attached hereto and marked as P/10.

25. On 27 October 1999, in accordance with Ms. Abutbul's instructions, the father of Petitioners 1-5, who resides in Jordan, approached the [Muslim] Shar'i Court, where he declared that he is the father of S. and requested that such notice be given formal validity. The judge of the court decided to accept this notice and to give it sanction as a judgment.

The declaratory judgment of the Shar'i Court is attached hereto and marked P/11.

26. In addition, in accordance with Ms. Abutbul's instructions, Petitioner 6 filed a claim on behalf of the Petitioners with the Jerusalem Family Court for issuance of a declaratory judgment to the effect that the Petitioner is the son of M. Ziyad, Jerusalem resident. As a result of Petitioner 6's claim, on 10 December 2000 a declaratory judgment was issued attesting to the Petitioner being the son of a Jerusalem resident. In the agreed judgment it was determined as follows:

> **It is hereby declared that the plaintiff is the son of M. Ziyad, holder of an Israeli identity number**.
>
> **The declaration is given for the purpose of considering the inclusion of the plaintiff in the Population Registry, and for this purpose alone**.

The Jerusalem Family Court's declaratory judgment on this matter, in accordance with Ms. Abutbul's instructions, is attached hereto and marked as Appendix P/12.

27. On 4 April 2001, after a declaratory judgment was issued according to which the Petitioner is the son of a Jerusalem resident, Petitioner 6 submitted an application to reconsider the Petitioner's family unification application.

Petitioner 6's letter is attached hereto and marked P/8.

28. On 9 July 2001 Respondent 3 sent its answer to the family unification applications, according to which the Ministry of the Interior's Inter-ministerial Committee had decided to deny the applications. In the denial letter it was further stated that the Petitioners are to see this answer *as final*.

Respondent 3 did not conduct a hearing process in order to allow the Petitioner to voice his claims before the Committee on such a fateful matter and did not even bother to accompany its decision with any reasons.

Respondent 3's letter dated 9 July 2001 is attached hereto and marked P/14.

29. On 16 July 2001 Petitioner 6 approached Respondent 3 in an application to be given reasons for the denial of the application and a copy of Petitioner 1's file.

Petitioner 6's letter is attached hereto and marked P/15.

30. Despite telephone and written reminders to Respondent 3's office, Petitioner 6's application was not granted.

Reminders on behalf of Petitioner 6 are attached hereto and marked P/16.

Exhaustion of Administrative Remedies

31. After being contacted by the Israeli Police at her office, Ms. Weiss, the head of the family unification branch in Respondent 3's office, approached Petitioner 6 on 22 July 2002. Ms. Weiss spoke with the undersigned, who explained about the situation of S. The undersigned further stated that after a year of applications by Petitioner 6 to Respondent 3 without any response, Petitioner 6 intends to file a petition with the court within a number of days. Ms. Weiss requested to summon the Petitioner to an inquiry at the office before a petition is filed and added that she understands that it is necessary to examine the case of S.

32. On 8 August 2002 an additional telephone conversation was held between the undersigned and Ms. Weiss, in which Ms. Weiss stated that the Petitioner would be summoned to a hearing at the office immediately after the holidays, in September 2002. Ms. Weiss informed the undersigned that the Ministry of the Interior agrees to

positively consider granting the Petitioner status. Therefore, Petitioner 6 sent Respondent 3 a letter in which it put into writing the contents of the undersigned's conversation with Ms. Weiss, and requested written confirmation that the Petitioner would be summoned to Respondent 3's office for an inquiry with regards his status.

Petitioner 6's letter is attached hereto and marked P/17.

33. Accordingly, on the same day, Ms. Weiss sent Petitioner 6 a letter via fax, in which she notified it of her willingness to reconsider the decision to refuse to grant status to S. and of the expected summons to an inquiry at the Population Administration Office.

Respondent 3's letter is attached hereto and marked P/18.

34. On 12 February 2003 an inquiry was held at Respondent 3's office at which S., Petitioners 4 and 5, Ms. Weiss and the undersigned were present. Respondent 3 was also present for part of the hearing. Ms. Weiss spoke separately with S., with Petitioner 4 and with Petitioner 5, regarding the life of S. from his childhood and up until today. At the end of the clarification conversation, Ms. Weiss, at the undersigned's request, provided a letter according to which the matter of the status of S. will be examined at Respondent 3's office and shall be referred to an Inter-ministerial Committee to be decided upon.

Ms. Weiss's letter is attached hereto and marked P/19.

35. On 24 February 2003 Petitioner 6 sent Ms. Weiss a letter in which it requested the Respondents' decision on the matter of S. as soon as possible.

Petitioner 6's letter is attached hereto and marked P/20.

36. On 24 April 2003 the decision of the Inter-ministerial Committee was delivered, according to which the Petitioners' application to obtain status in Israel for S. is denied.

The Committee's decision is attached hereto and marked P/21.

The Situation of S.

37. Since he was a baby S. has lived in conditions of absolute neglect. Due to the said neglect his status was not even put in order close to his birth. From being a small child, until he reached 13 years of age, the Petitioner lived alternately in his grandmother's village, Beit Liqya, and at his brothers' house in the Abu Tor neighborhood of Jerusalem, without having a permanent place. Since moving to live in Jerusalem his brothers have not succeeded in having an influence on changing the

Petitioner's wandering habits, and in the absence of an identity card they will not be able to find a rehabilitative framework for him. Thus, the Petitioner continued to work in different places in the country. Despite his personal difficulties the Petitioner integrated into the Israel society and speaks Hebrew fluently. The majority of his acquaintances and friends are Jewish, Israeli and in fact since the death of his grandmother, he does not know anybody outside of Israel well.

38. In the past year, due to the security situation, S. has frequently been arrested and detained in custody due to illegal residency. The detention judges and the security forces remain helpless in respect of S.'s case since there is no place to which it is possible to deport him, and there is no place in which the Petitioner can reside legally.

39. An Officer at the Yarqon precinct by the name of Robbie told the undersigned that recently S. has been arrested by the police for a number of days each week. Thus, these days, S. spends most of his time in the detention facility, detained due to illegal residency. However, S. does not agree to his brothers' pleadings and hide, as if under house arrest, at their house in Jerusalem. According to him, if this is the authorities' way of dealing with a person in his situation, then he will be in prison.

40. We should point out that apart from the criminal records regarding illegal residency, S. was arrested three years ago for setting fire to a door during a dispute on romantic grounds (for which he was sentenced to eight months imprisonment) and for possession of soft drugs for personal use. A year ago S. was arrested for six months for drug dealing after an undercover policeman asked him how he could purchase drugs for NIS 40 and S. showed him from whom he could purchase them. The Petitioner is not a violent person and the fact that he has not been in trouble with the law despite his frequent stays in custody, his unstable mental condition, *inter alia* due to those arrests, and his living on the streets and in prison, attests to the human potential in him if he will be given rehabilitation and direction. As aforesaid, without an identity card, it will not be possible to offer S. help.

Examples of Petitioner 6's letters in an attempt to locate S. in the detention facility, to explain his situation to the arresting policemen, its letter to the psychiatrist of the Abu Kabir detention facility for a request to receive mental help for him whilst detained, and Petitioner 6's letter to the arresting authorities which bears S. as an alternative to an identifying certificate, are attached hereto and marked P/22.

The Respondents' Policy Regarding Granting Permanent Residence Licenses and Visas to Foreigners

41. Until recently the Respondents' policy was not to grant permanent residence visas to foreigners other than in exceptional cases in respect of which there are special considerations. In accordance with this policy, Respondent 1 only grants a permanent residence license and visa in exceptional cases according to the following general criteria:

    a. **A spouse through lawful marriage to an Israeli citizen or permanent resident of the State of Israel who resides in Israel**

    b. **An elderly single parent of a citizen or permanent resident of Israel, who has no other children or spouse outside of Israel.**

    c. **A minor child, accompanied by a parent who obtained a right to permanent residence in Israel or Israeli citizenship, if said parent has lawful custody of the minor for a period of at least two years in proximity to arriving in Israel with him.**

    d. **Exceptional cases for humanitarian reasons or when the State of Israel has a special interest in giving the permanent residence license.**

    The criteria are specified in a document that was sent to Petitioner 6 at its request, and which to the best of the Petitioners' knowledge has not been published in any official context whatsoever. A copy of the document is attached hereto and marked P/23.

42. As appears from the above criteria, the Petitioner's life circumstances, also according to these broad criteria, constitute circumstances that justify the granting of a permanent residence license and visa.

43. Notwithstanding, in an article published on 4 May 2003 in the newspaper Yedioth Ahronoth, Respondent 1 made the following statement on the legal status of children of foreigners residing in Israel illegally since childhood:

    Whoever is past the age of adolescence may stay in Israel as far as I am concerned, since he is already an Israeli for all intents and purposes. I do not intend to deport a son of foreign workers who has reached 17 and the State of Israel is the only thing he knows…

In reference to the question of Yedioth Ahronoth as to what he intends to do with the small children of the population of foreign workers Respondent 1 said that there is no problem in deporting them with their parents.

> **But it is not possible to do it to youngsters who have passed the age of adolescence.**

According to the article, these days the Respondents are checking whether to grant such children, who have attained majority, permanent residency status or citizenship and this is:

> **Not only children who were born in Israel but also those who came to Israel at a very young age and do not know any other country for living in.**

Nurit Falter's article in Yedioth Ahronoth is attached hereto and marked P/24.

44. It therefore appears, that according to Respondent 1, the Petitioner's life circumstances are included in "exceptional cases in respect of which there are special considerations" that justify the granting of permanent residence status. This is also true according to the general criteria which deal with the child of a permanent resident or citizen and humanitarian applications, and also according to Respondent 1's declaration in respect of children of foreign workers, the rationale behind which certainly applies to this case.

45. From the aforesaid it appears that Respondent 1's current declared policy is to see a foreign citizen who resides in Israel for many years as a minor and for whom Israel is his life center, as a person who is entitled to permanent residency status, or even citizenship, when he reaches maturity. It is therefore grave that this policy is not also applied to a person who is not a foreign citizen, and is not a citizen of any country, whose family members are Israeli residents and who has no link to, identity card or travel certificate from any other place.

46. Thus, Respondent 1 in the very same month both declares its willingness to put in order the status of hundreds of children whose situation is similar to the Petitioner's situation, except for the fact that they are not without citizenship on the one hand, and denies the individual humanitarian application of S., who is without status on the other hand.

47. This discriminatory approach raises a considerable fear regarding the quality of the discretion used in the Petitioner's case.

The Legal Argumentation

48. The Petitioners shall assert that the Respondents are under a duty to use their discretion reasonably and whilst considering humanitarian considerations and the circumstances of the Petitioner's individual case – and to grant him permanent status in the State of Israel.

The Petitioners shall further assert that the Respondents are violating the Petitioner's right to status in the only place to which he has ever belonged:

a. Thus the Respondents are violating the Petitioners basic rights and are acting contrary to the Israeli constitutional law.

b. The Respondents are acting contrary to the international law to which the State of Israel is committed, and contrary to human norms of morality.

c. The violation of the Petitioner's right to status deviates from the bounds of reasonableness and does not meet the tests of purposefulness, proportionateness and fairness, according to which a proper Administration is bound to act.

Status in the State of Israel

49. The conferral of legal status, temporary or permanent, upon a person who is not entitled thereto by virtue of the provisions of the Law of Return is done according to the provisions of Hoq ha-Ezrahut [Citizenship Law], 5712-1952 and the provisions of Hoq ha-Kenisa le-Yisra'el [Entry into Israel Law], 5712-1952.

50. There is no doubt that whilst he was still a minor the Petitioner had the right and there was even a duty to register him in the Population Registry. According to Regulation 12 of the Entry into Israel Regulations 5734-1974:

> **A minor who was born in Israel will receive his parents' status. If his parents do not have one status, he will receive the status of his guardian ….**

Thus, the Petitioner was entitled to status in Israel during his childhood, due to his father being an Israeli resident, but his father abandoned him without putting his status in order. Later he was entitled to residency in Israel since his guardian was an Israeli resident and his life center was in Israel, but the Respondent unlawfully denied this application. Nevertheless, Ms. Abutbul, from the department of the legal advisor of the Ministry of the Interior, instructed Petitioner 6 in respect of the manner in which it is possible to put the Petitioner's status in order, namely, by obtaining a declaratory judgment which constitutes evidence of his being the son of a Jerusalem resident and subsequently turning to the Respondents again with an application to put

the status of S. in order. The Petitioners acted in accordance with Ms. Abutbul's instruction, but the Respondents decided to deny the Petitioner's application anyway, without giving any reasons, and subsequently, to deny his application "in view of his illegal residency and criminal past".

51. Article 1 of Hoq Mirsham ha-Ukhlosin [Population Registry Law], 5725-1965 (hereinafter: the Law) defines who is a resident in Israel:

> **a) …Whoever is in Israel as an Israeli citizen or according to a new immigrant visa or new immigrant certificate, or according to a permanent residence license.**
>
> **b)** ***For the purposes of this law, another person living in Israel lawfully shall also be deemed a resident*****, but a person who lives therein according to a transit residence or a visiting residence license or according to a** ***diplomatic*** **foreign passport shall not be deemed a resident** (My emphasis A.L.).

As the son of a permanent resident of the State of Israel, S. stayed in Israel legally during the first year of his life, whilst living with his parents in Jerusalem. After his abandonment by his parents, S. lived in Israel legally when his paternal brothers, residents of the State of Israel, took him under their wings and certainly after Petitioner 2 was appointed as his formal guardian. Thus, the Respondents were also required to consider the Petitioner a resident pursuant to the Population Registry Law.

52. Pursuant to Article 24 of the Population Registry Law, "a resident in Israel who is 16 years old *must* receive an identity card; if he is not yet 16 years old he is entitled to receive it with the consent of his representative within the meaning of this term in Article 80 of Hoq ha-Kashrut ha-Mishpatit weha-Apotropsut [Legal Capacity and Guardianship Law], 5722-1962, or with the authorization of the Chief Registration Official" (My emphasis A.L.).

53. The Petitioners shall assert that from the articles of the law mentioned it appears that the authority is required to issue an identity card to every person who is in Israel lawfully and does not hold one of the residency visas specified. Therefore, the Respondents were required to put the Petitioner's status as permanent resident to order.

54. It should not be forgotten that the Petitioner did not infiltrate or enter Israel illegally, that he has lived most of his life therein by virtue of his being the son of an Israeli resident and the brother of Israeli residents. The Petitioner has resided since his

childhood in Israel since it is the country of his father in which his brothers live, the only human beings who agreed to take care of him and look after him. It was not the Petitioner's choice to grow up with his brothers without having a parent to look after him, and it was not he who chose as a child to live in Jerusalem of all places. This was forced upon him, after his parents abandoned him, having no other soul to look after him.

Status in the West Bank

55. In the past the Respondents proposed, as a possibility, that the Petitioner request to obtain status in the West Bank, claiming this to be the appropriate solution to his problem. The Petitioners shall assert that there is no practical possibility of registering the Petitioner in the West Bank, although even if such a possibility existed, the proposal to isolate the Petitioner from the only members of his family that support him, to uproot him from the only country he knows and to send him to the West Bank, is unreasonable, unconstitutional and inhuman.

    See Appendix 10 hereto above.

56. In 1995/1996, with no other choice, attempts were made to put the Petitioner's status in the [West] Bank in order. However, due to his age these attempts failed. In any event, as of recent years, the discussion on the Respondents' proposal is a barren discussion, since as the Respondents themselves also know, for approximately three years relations between the Israeli and the Palestinian Coordination and Liaison Offices are absolutely paralyzed; in other words, no such relations exist. Since population registration in the West Bank and specifically special applications, involves coordination between the two bodies, the Respondents' proposal, even if it had met the test of reasonableness, is impossible in the current situation.

57. The Petitioners shall state that the situation described, according to which there is no coordination between the Palestinian Authority and the Israeli bodies and that applications for late registration are not authorized, is known to the Respondents and they also participated in making these decisions.

58. It is important to clarify that since the Petitioner has lived in Israel since being a child and consecutively from the age of 13, he does not know anyone in the West Bank. Moreover, as is known, in the current political security situation it is not possible to roam between West Bank territories and the territory of the State of Israel, such that deportation of the Petitioner will sentence him to absolute separation from his family in Jerusalem without even the possibility of visiting them.

Life without Status – Violation of Human Dignity

59. The right to citizenship is a basic right intertwined with a basic human right to dignity and liberty. By refusing to put the Petitioner's status in order the Respondents are acting in absolute contradiction to their duty as a governmental authority to protect human life, body and dignity. See Articles 4 and 11 of Hoq Yesod: Kevod ha-Adam we-Heruto [Basic Law: Human Dignity and Liberty].

60. The absence of status in the world is an inhuman situation for any person. The absence of status in Israel causes extreme consequences for a person of Arab nationality. The Respondents are consequently very gravely violating the Petitioner's rights that are entrenched in Basic Law: Human Dignity and Liberty.

The human dignity of S. is trampled upon every day due to the repercussions of the non-recognition of his existence, such as humiliation by the security forces, very frequent arrests and the absence of minimal rights.

A person that stays in Israel without status or a residency permit is in constant danger of having **his liberty** being denied by arrest and deportation by virtue of Article 13 of the Entry into Israel Law. The Petitioner is indeed arrested approximately every week by the security authorities due to illegal residency. Several times the Petitioner was about to be deported but there is no place to which it is possible to deport him. There is no place in which the Petitioner can reside legally.

S. is sometimes deported illegally to the West Bank territories. Since S. has no identity card on which his official place of residence is written, the Petitioner is sent by the security forces between the various barriers, as they please. Thus, for example, one time after being released from prison the security forces left S. beyond the barrier in Jenin. The Petitioner, who is not acquainted with the Jenin region, does not know anyone there and does not even speak the dialect, appears to be a foreigner in Jenin, and was scared that he would be caught there as an undercover soldier or a collaborator. In absolute fear, without money or food, S. made his way on foot to his brothers' house in Jerusalem.

S is not entitled to **social rights** including the right to health services according to Hoq Bituah Beri'ut Mamlakhti [National Health Insurance Law] and the support of the National Insurance Institute. The Petitioner is required to pay for all medical treatment himself, but he is not authorized to work, thus there is no way he is able to fund such treatment. Due to his difficult life he requires mental therapy, but although his mental condition is deteriorating, there is no way to find a rehabilitative framework for him.

He is not able to exercise the right to **freedom of occupation** in Israel. When he finds random jobs at starvation wage and without conditions he risks denial of his liberty by additional arrest, and feels feelings of guilt in respect of his employers who are taking a risk by employing him.

S. suffers due to the absence of the right to **freedom of movement** in the country and in general. Free movement within the country exposes the Petitioner to detainment and arrest. In order to avoid this, the Petitioner needs to stay under permanent house arrest. In addition, without an identifying certificate he is not able to obtain a passport or a laissez-passer and today to also be a passenger on a bus, in a taxi or to hitchhike.

61. The Petitioner is entitled to permanent status in the country in which he grew up, in the only place that he knows. And what is the Petitioner requesting – to roam as a freeman in the country in which he grew up and in which his family is located, the possibility to work and to earn a living, to roam from town to town without fear of arrest having committed no wrong, and to receive health services if and when he should need them, **like every human being**.

The International Law

62. Not putting the Petitioner's status in Israel in order is contrary to the State's international commitments.

63. In Article 24(2) of the International Covenant on Civil and Political Rights, 1966, which was ratified by Israel on 18 August 1991 and became valid in respect of Israel on 3 January 1992, it is determined that:

> **Every child shall be registered immediately *after* birth and shall have a name**

The duty to register the child, therefore, is the authority's duty. This duty is not contingent upon the parents' cooperation.

64. The international law determines that it is necessary to improve and put in order the status of stateless persons. Thus in Article 27 of the Convention relating to the Status of Stateless Persons, *Ketav Amana* 213, dated 28 September 1954 (signed by Israel on 1 October 1954), it was declared that:

> **The *Contracting States shall issue identity papers to any stateless person in their territory* who does not possess a valid travel document.**
> (My emphasis A.L.)

The State further undertook in Article 32 of the Convention that:

> **The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.**

According to Article 12 of the Convention:

> **The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.**

65. The Respondents did not act in this manner in respect of the application of S. to obtain status in the State of Israel. On the contrary, the Respondents arbitrarily denied the family unification application that Petitioner 2 submitted for S. whilst he was still a minor and now they have decided to refer to his criminal past which is insignificant, particularly in view of his gloomy life circumstances, and more seriously, to the fact of his actual illegal residency, as a reason to continue to deny the application.

66. In Article 1 of the Convention relating to the Status of Stateless Persons, a person without citizenship is defined as:

> **a person who is not considered as a national by any State under the operation of its law.**

Subsequently those to whom the Convention will not apply are defined. In Sub Article (3) it is written that:

> **[The Convention will not apply] To persons with respect to whom there are serious reasons for considering that:**
>
> **(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;**
>
> **(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;**
>
> **(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.**

Nevertheless, the Respondents see the criminal offenses in respect of which the Petitioner was sentenced to imprisonment for only a number of months and his unavoidable illegal residency in Israel, as being sufficient reason to leave him without status in the world. The Petitioners will assert that it is for good reason that the Convention chose to expressly relate solely to offences at the level of crimes against humanity and war crimes as reasons that justify its non-applicability to persons without citizenship.

67. Moreover, by refusing to allow the Petitioner to obtain status in Israel the Respondents are violating the most basic of freedoms which Israel undertook to protect when it signed and ratified the International Covenant on Economic, Social and Cultural Rights, which was ratified by Israel on 3 October 1991.

In Article 6 of the Covenant:

> **The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.**

Pursuant to Article 9 of the Covenant:

> **The States Parties to the present Covenant recognize the right of everyone to social security…**

And in Article 12 of the Covenant:

> **The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.**

68. In addition, the Respondents are breaching their undertaking pursuant to the International Covenant on Civil and Political Rights (Article 63 above).

Pursuant to Article 16 of the Covenant:

> **Everyone shall have the right to recognition everywhere as a person before the law.**

Pursuant to Article 26 of the Covenant:

> **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and**

> **guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

In Article 9(1) of the Covenant:

> **Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.**

69. The Respondents are ignoring and breaching their international commitments and turning the State's declarations – given upon execution of the conventions and in the majority of cases also ratified and valid in Israel – into empty promises.

The Discretion that the Respondents Used

70. Much has been written on the broad discretion given to Respondent 1 by virtue of the Entry into Israel Law, so much so that there is no longer any dispute that this discretion, even though it has not once been labeled "absolute", is not absolute at all, and that it is also "subject to judicial review like the discretion of any other authority" (Justice Beinish in HCJ 3403/97 *Ankin v. The Ministry of the Interior, Piskei Din* 51(4) 522, 525):

> **As deeply as I have delved into the matter I know not why the Minister of the Interior's discretion in the Entry Law won – or why it was burdened with – the title of 'absolute' discretion. 'Absolute' discretion means, simply, discretion that is free of review, discretion after which there is in fact nothing… Consequently we find that the same 'absolute' discretion is not absolute at all and the number of grounds to review it is equal to the number of grounds to review any other discretion which is not 'absolute'** (Justice Cheshin, HCJ 758/88 *Kendell v. The Minister of the Interior*, *Piskei Din* 46(4) 505, 527-528).

See also: HCJ 282/88 *'Awad v. The Prime Minister*, *Piskei Din* 42(2) 424, 434.

71. Thus, Respondent 1 is subject to the primary duty to use his discretion in respect of the question of whether it is necessary to use his authority to give status, and to the

duty to conduct a fair hearing on an application to grant status, without prejudice, whilst carrying out a pertinent, fair and methodical inquiry before reaching the decision (see: HCJ *Berger v. The Minister of the Interior*, *Piskei Din* 37(3) 29). The Petitioners shall assert that the Respondents did not fulfill this duty, as evidenced by the fact that the application was denied a number of times without a hearing being conducted for the Petitioner, immediately and without any reasons being given, and recently a main reason that was given for the denial is the actual illegal residency in Israel of the Petitioner, who has no citizenship. The Petitioners will assert that this reason raises considerable fears in respect of the quality of the discretion that the Respondents used in the Petitioner's case.

72. The Respondents are also subject to the rules that the Court has determined regarding flaws in the administrative discretion. They are required to act reasonably, in good faith, fairly, without extraneous considerations, arbitrariness or discrimination (see: Ra'anan Har Zahav, *Ha-Mishpat ha-Minhali ha-Yisre'eli* [Israeli Administrative Law] (5757), 106-109). The Petitioners shall assert that the Respondents' policy, which ignores the uniqueness of the Petitioner's life circumstances and does not ascribe any weight to the fact that all of the Petitioner's links since his childhood are to Israel, is arbitrary, unreasonable and contrary to the goal of the Entry Law, in the context of which the Respondents must use their discretion. Reinforcement for this claim derives from the Respondents' willingness, parallel to their decision to deny the Petitioner's application, to put to order the status of foreign workers' children, who are in a very similar situation to that of the Petitioner, apart from the fact that they have citizenship in their countries of origin, they have families in their countries of origin and are a group which indeed constitutes, in the opinion of the Petitioners, a category deserving humanitarian treatment, but is not an individual and unique case like that of S.

See HCJ 953/87 *Poraz v. The Mayor of Tel Aviv*, *Piskei Din* 42(2) 309, 324).

73. The Legislation is presumed to be designed to give effect to the basic values of the system, besides the concrete goal which underlay the enactment thereof. Therefore, the goal of the legislation also includes the principle of preservation of human rights and the rule of law, the existence of the State and preservation of its democratic character, assurance of public peace and the public's personal security, assurance of places of employment in various branches of the economy, and so forth. The goal of the law also includes the desire to achieve proper administrative conduct such as sensibleness, reasonableness, fairness and good faith (see: Aharon Barak, *Parshanut ba-Mishpat* [Interpretation in Law], volume 2, *Parshanut Huqqatit* [Constitutional Interpretation] (Nevo, 5753), 152).

74. If this is the case, what is the goal of the provisions of Article 2 of the Entry into Israel Law, which the Respondents are required to realize when they come to consider the Petitioners' application to grant a permanent resident visa? The concrete goal of the Entry into Israel Law is to govern the entry of foreigners into and their stay in Israel, temporarily or permanently. The variety of visas that the Respondents have the authority to grant is intended to confer upon them flexibility when using their discretion and to ensure that the stay of foreign citizens in Israel will be regulated with reasonableness, fairness and good faith, whilst preserving human rights and whilst considering national and economic interests. The variety of visas, therefore, ensures that the Respondents will be able simultaneously to realize the concrete goal and the general goal of the Entry Law.

75. Only consideration of the personal circumstances of the person applying for the visa, together with the public interest, will constitute educated use of the Respondents' authority and will ensure full achievement of the goal of the law. As will be clarified below, the Respondents are not taking the Petitioner's personal circumstances into account at all, and are also mistaken in their assumption that by their deciding to deny his application they are serving the public interest. The public interest, like the Petitioner's life circumstances, requires that permanent status in Israel be granted to S.

The Respondents' Policy is Unreasonable

76. The Petitioners will assert that not giving weight to the unique life circumstances of S. reflects an improper balance between the various interests which underlie the goal of the Entry into Israel Law and which are supposed to guide the Respondent when he comes to use the authority vested in him by virtue of this law.

77. Preservation of the moral character of the State of Israel as a democratic country is the general public interest which is on the agenda in this case, which requires consideration of the unique life circumstances of S. and constitutes a central tier in establishing the Respondent's duty to grant S. legal status in Israel. A person who lives in a country for a long time without any legal status - becomes a second class, inferior person without social and civil-political rights. Such a situation is unjustified, immoral and dangerous to democracy (see: Yaffa Zilbershats, “Reconsidering the Concept of Citizenship,” 36 *Texas International Law Journal* 689 (2001), Pp. 710-711).

78. The Respondents' decision which ignores the Petitioner's personal interest, which stems, *inter alia*, from the extended period of time during which he has lived in Israel, is contrary to the great importance which the legislator, and as a result thereof the

Supreme Court, ascribed to the existence of a continuous and consistent connection between the individual and his place of residence and his settling therein, when they came to define the concept of residency. Therefore, this decision prevents full realization of the purpose of the law.

79. In order that the Respondents will be able to serve the purpose of the Entry Law and to use their discretion reasonably, they are required to take into consideration the Petitioner's link to Israel. As aforesaid, insofar as a person lives in a country for a longer time, his links thereto increase and his feeling of belonging thereto intensifies. This is particularly true in the case of a stateless person, without another country. The importance of the existence of a connection between the person applying for status in Israel and the centrality of the connection in forming the status, are expressed in the provisions of the Entry into Israel Law and the Court's judgment on his matter:

> ***A permanent residence license* – as distinguished from the act of naturalization – is a hybrid. On the one hand it has a constitutional character which establishes the right to permanent residence; *on the other hand it has a declarative nature that expresses the reality of permanent residence… indeed "permanent residence" by its mere nature means reality of life. The license, once given, gives legal validity to this reality***. Justice Barak in HCJ 282/88 '*Awad v. The Prime Minister*, *Piskei Din* 42(2) 424,426 (my emphasis – A.L.).

In accordance therewith, the Court has not once determined that once this reality disappears, the permanent residence license automatically expires (see: Justice Barak, *id.*, page 427).

80. The legislator's assumption is that living in a foreign country for a long time, or in the language of the law, settling therein, irrespective of whether accompanied by the granting of formal status, by its very nature creates sentimental ties between the individual and the same country and its residents. When we are dealing with an extended period of time spent living in a foreign country, this may attest to the severance of the connection between him and the State of Israel and justify the cancellation of his status as a permanent resident.

81. The Petitioners will assert that an analogy should be drawn from the tests that were determined regarding severance of the residency link of people who have stayed outside of Israel for a long period of time, to the determination of the tests according to which a residency link is created. The reality of life – long-term residence in Israel

from childhood until adulthood, the absence of another country, adoption of the language and the culture and setting the life center therein – all teach of a residency link which requires a permanent residence license to be given, and which express, according to Justice Barak in the case of *'Awad*, "the reality of permanent residence".

82. The goal of the legislation is not only learned from its language, but also from broader normative circles, including other laws that deal with identical or supplementary issues. In the present case, it is possible to point to laws from the social legislation field, such as the National Insurance Law and the National Health Insurance Law, and to laws from the fiscal legislation field, such as Pequddat Mas Hakhnasa [the Income Tax Order]. These laws also use the term "resident" and were intended to govern the rights and duties of whoever has been recognized thereby as "residents". When we come to determine whether the Respondent is implementing a reasonable policy which is consistent with the language of the Entry into Israel law and is achieving the goal thereof, we are also aided, *inter alia*, by various tests regarding the residency which were formed in these supplementary fields.

83. The definition of residency in the social legislation field was shaped by the Labor Court. The court, which has not once deliberated the issue of whether or not a certain person meets the definition of a resident as it appears in the social legislation, formulated over the years a number of subtests, the accumulation of which establishes the link required to recognize a person as a resident.

84. Set forth below, in a nutshell, are the tests that were set in the Labor Court's judgment:

a. **The "actual link" test**: a test which checks the actual link to the place of residence as opposed to a link ***to the country*** of citizenship or country of birth (see: LCH 04-73/45 '*Aida Saquqa – The National Insurance Institute*, *Piskei Din Avoda* 17 79, 84-85; LCH 140-0/51 *Musa Taha – The National Insurance Institute*, *Piskei Din Avoda* 24 382; LCH 688-0/56 *Mandul Mati – The National Insurance Institute*, *Avoda Azori*, Volume 9, 976; LCH 2-04/53 *The National Insurance Institute – Jabrin Muhammad Abu Hani*, *Piskei Din Avoda* 26 122).

b. **The "duration of time" test**: Similarly to the case law which discusses permanent residency status pursuant to the Entry into Israel Law, the judge-made test has also been determined here which examines whether the residency link has been severed as opposed to its being created. According to this test the court examines the duration of time during which the plaintiff

stayed outside of Israel. The court determined that a residency of 6-7 years outside of Israel causes severance of the residency link (see: LCH 374/0/55 *Rewah – The National Insurance Institute*, *Avoda Azori*, Volume 5, 218).

c. **The permanent residence test**: This test is inextricably linked to the actual link test and the duration of the residency in Israel test. A resident is a person whose permanent place of residence is in Israel. A change is his status only occurs if the person severs his residence ties in Israel and acquires a permanent place of residence for himself abroad (see LCH 568-0 /56 (Jerusalem) *Jabarin Saida – The National Insurance Institute*, *Avoda Azori*, Volume 9, 263; LCH 620-0 /56 (Tel Aviv) *Nisan Shelomo – The National Insurance Institute*, *Avoda Azori*, Volume 4, 614).

85. The residency issue is discussed in the fiscal field, as aforesaid, in the context of the Income Tax Order. Article 1 of the Order determines, commencing 1 January 2003, auxiliary tests in respect of the question who is a resident, as follows:

> **In respect of an individual – a person whose life center is in Israel; and for this purpose these provisions will apply**
>
> ***In order to determine the place of the life center of an individual, the totality of his family, economic and social connections will be taken into account, including, inter alia,***
>
> ***His permanent abode;***
>
> ***His and his family members' place of residence;***
>
> ***His ordinary or permanent place of occupation or his permanent place of employment;***
>
> ***The place of his active and material economic interests;***
>
> ***The place of his activity in various organizations, unions or institutes;***
>
> ***The assumption is that the life center of an individual in the tax year is in Israel –***
>
> ***If he stayed in Israel for 183 days or more in the tax year…***

86. The auxiliary tests which only recently became valid entrench in legislation that which was determined prior thereto by the court when the need arose to give content to the minimalist definition that appeared up until now in the Order for the term resident:

> ***… it appears that in practice the case law has adopted the test of the place in which the life center of a person is found, which is a much more complicated test than the test that relates to the ratio between the days in which he stayed in Israel to the days in which he was absent therefrom… on checking where a person's life center is found, it is necessary to take into account two criteria, the one physical: where the majority of the person's links are found and the second subjective, what was the person's intention and where he see his life center*** (ITA (Haifa) 2004/98 *Gonen v. Haifa Assessing Officer*, *Taqdin Mehozi* 2001(4), 1036 (hereinafter: the *Gonen Case*)).

See also: ITA 943/59 *Student v. Haifa Assessing Officer*, *Pesaqim Mehoziyyim* 53 260; ITA 300/91 *Raz v. Tel Aviv Assessing Officer 1*, Taxes 104/10.

87. In the *Gonen* Case, the court states that the life center test has also been adopted in other legal fields in which an issue of residency arises, including the extradition laws field, entitlement to payments pursuant to Hoq nekhe Redifot ha-Nazim [Nazi Persecution Invalids Law], 5717-1957, membership in local council and religious council and the Entry into Israel Law.

88. It should be emphasized that the Petitioners are not asserting that an extended period of time living within the State of Israel is sufficient in order to justify the granting of permanent resident status. This is one factor, central although not exclusive, out of the totality of factors that justify the Petitioners' application being granted. Additional factors that support the granting of status to S. are his being without status, the fact that his illegal residency in Israel was not his fault, not to say forced upon him when he was a minor due to his life circumstances, the absence of another legal place in which he can reside and in actual fact he has no other home in the entire world other than the State of Israel.

89. The Petitioners are acquainted with the Supreme Court's past case law according to which long residence in Israel does not in itself justify the granting of a permanent residence license (see HCJ 656/87 *Menazzeah v. The Minister of the Interior*, *Taqdin Elyon* 88 (1) 70; HCJ 2400/00 *Limkol v. The State of Israel*, *Dinim Elyon*, Volume 61, 65). However this case law deals with adults who chose to stay in Israel unlawfully, whereas this case, as aforesaid, concerns a minor who was born into a reality beyond

his control, a reality in which, upon attaining majority, he became an illegal resident everywhere, against his wishes.

90. To emphasize, this is not an insignificant difference. From a value-moral perspective, it is obvious that the Petitioner has done no wrong. He is not to blame for his illegal residency, and it is grave that this fact serves against him in the context of the Respondents' considerations in respect of whether to grant his application. From a social perspective, this obviates the fear that granting his application will serve to give legitimacy and encouragement to others to break the law, and due to the unique circumstances of the case, there is not even a fear that authorization of the application will constitute a precedent which will impact on the State of Israel in an undesirable fashion.

91. Since they denied the Petitioner's family unification application with his brother, due to his insignificant criminal past and his illegal residency, according to the criterion called for by the nature of the right and the gravity of the violation thereof, the Respondents used unreasonable discretion and their decision is to be disqualified. The decision to deny the application of a stateless person who has been trying to put his status in order before the Respondents for years without success, due to the reason that he stayed in Israel illegally, raises great doubt as to the real examination of the case, a necessary examination for the reasonable exercise of discretion.

Lack of Proportionateness and Purposefulness

92. The Respondent is required to use his authorities pursuant to the administrative law, which includes constitutional restrictions on the use of authority which violates basic rights.

93. The Respondents did not use their discretion according to the criterion called for due to the person's right to status being a basic human right; and they did not give appropriate weight to the injury which the Petitioner will sustain.

The Honorable President Barak ruled with regards to the test of proportionateness in respect of a violation of basic rights:

> ***The governmental act is only proportionate if it realizes the proper goal by suitable means, which violates human rights to the smallest degree in proper proportion to the benefit they contribute in achieving the goal. This stems from the constitutional status of human rights, which a governmental act is not entitled to violate unless it is "for a proper goal and***

> ***to an extent no greater than is required" (the restriction clause in the Basic Laws regarding human rights). This is also called for by our interpretive conception, according to which the realization of human rights is the (general) goal of every governmental act (see HCJ 953/87 Poraz v. The Mayor of Tel Aviv – Jaffa, Piskei Din 42 (2) 309, 329; HCJ 693/91 Efrat v. The Population Registry Commissioner, Piskei Din 47 (1) 729. Only if the governmental act violates human rights to the smallest (most moderate) extent, and its violation of human rights is in proper proportion (which is not excessive) to the proper goal can it be said that the goal of the governmental act – the general goal of which is to realize human rights and the specific goal of which is to achieve the specific goals that underlie it – is realized to the proper extent. In terms of reasonableness it could be said that a governmental act which realizes a proper goal through means which violate human rights beyond the extent required is unreasonable. The reasonableness requires that the governmental means be proportionate. Only thus is the proper balance between the conflicting values, that underlies the principle of reasonableness, assured in practice.***
>
> HCJ 4330/93 –*Hayyim Landau v. The District Committee of the Bar Association*, *Piskei Din* 50(4), 221 pages 232-233.

94. The Respondents' decision to deny the family unification application that the Petitioner's brother submitted for him is not the way which prejudices the individual to the smallest extent. This decision severely violates and continuously the Petitioner's most elementary basic rights, to identity, liberty and security. Such a violation bears no proportion to the benefit that is supposed to derive therefrom.

The Respondent's Decision is Unfair

95. The Honorable Justice Barak (as was his title then) ruled in HCJ 840/79:

> **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.**

HCJ 840/79, *The Contractors and Builders Center in Israel v. The Israeli Government*, *Piskei Din* 34(3), 729, on pages 745-746.

96. Moreover, the Respondents are bound to consider humanitarian considerations when they come to use their discretion.

In HCJ 794/98 *Sheikh 'Abd al-Karim 'Ubeid et al. v. The Minister of Defence*, *Piskei Din* 55(5), 769, pages 773-774, President Barak ruled:

> ***The State of Israel is a law-abiding state; the State of Israel is a democracy which respects human rights, and seriously considers humanitarian considerations. We consider these considerations because of the compassion and humanism inherent in our nature as a Jewish and democratic state; we consider these considerations since in our eyes, the dignity of every human, even if he is counted among our enemies, is precious*** (compare with HCJ 320/80 *Qawasima v. The Minister of Defence*, *Piskei Din* 35(3), page 113, 132).

The Petitioners will assert that the Respondents' decision to refuse to put the status of S. in order due to his criminal past and his illegal residency is clearly contrary to its said obligations.

Summary

97. S. is a person without status who grew up in Israel, which is his only home. The only relatives with whom he is in contact are found here. He does not know another country apart from Israel. The Respondents consistently refuse to put his status in order and he has lived, throughout his life, without an identifying number and without any status at all. This situation has caused S. to live an inhuman existence. Due to the Respondents' cold refusal to grant the family unification applications that have been submitted for S. his most basic human rights have been violated including the right to identity, security, liberty, freedom of movement and occupation, the right to property and the right to medical treatment.

In the absence of an identity card, the security authorities see S. as a criminal and the civil authorities such as the Ministry of the Interior and the National Insurance Institute prefer to simply ignore his existence. The way in which the Respondents deal with a person who has grown up and lives in Israel – whose father, who

abandoned him, is an Israeli resident and whose brothers and guardians are also Israeli residents who raised him here – amounted over the years to a laconic denial of an application to grant status without giving any reasons. According to the Respondent's fifth answer to the Petitioners' application, it has been decided to deny the application "due to the invitee's illegal residency and criminal past". With these few words the Respondents shed any responsibility for the desperate situation of S., who has no citizenship. The Petitioner's parents' negligence and neglect, due to which he was not registered upon his birth, do not in any way justify the Respondents' refusal to put his status in order and were it not for his parents' negligence, the Petitioner would have been registered in the Israeli Population Registry by his father, close to his birth, pursuant to the Entry into Israel Law and the regulations promulgated by virtue thereof.

98. The Petitioner has no place to which he can belong with the exception of Israel. He has no identity and due thereto, on the one hand he is denied all human rights, being non-existent and on the other hand he is arrested, beaten and humiliated by the authorities as if he were a criminal.

99. S. is forced every day, and without the Court's intervention will continue until the day he dies, to deal with detainments, arrests and threats of deportation whilst there is no legal place to which it is possible to deport him. He is not entitled to any social right, medical treatments, freedom of movement and certainly not "luxuries", a person's right in modern society, such as the right to an education and freedom of occupation. As a consequence thereof, S. leads a life that bears no resemblance to that of a human being and his personal situation is deteriorating.

The Respondents are ignoring in their decision the Petitioner's situation which has been presented to them in detail and have decided to leave the existing situation as it is.

100. The Respondents' said decision is not only unreasonable, unfair and disproportionate, but it is also contrary to the interests of the State, which invests resources in the Petitioner's arrest, the appointment of defence counsel for him, and in fact in the deterioration of his situation instead of in his rehabilitation. Moreover, since there is no place to which it is possible to deport the Petitioner, he has no other country or acquaintances in other places, he is sentenced to his situation remaining as it is today. In other words, the Petitioner will continue to spend his life without rehabilitation, between the Israeli streets and the Israeli prisons, and the Israeli Population Registry will continue to not reflect reality.

101. The Petitioners will assert that the Respondents' decision to deny the family unification application that was submitted for S. by his family shows untold insensitivity, disproportionateness, extreme unreasonableness and sins against the rules of natural justice. The Respondents' consistent refusal to put the status of S. in order is contrary to Basic Law: Human Dignity and Liberty, the international law and the decrees of humanism.

102. Therefore, the Honorable Court's intervention is required in order for the Petitioner's family's family unification application to be granted, or alternatively for his registration in the Population Registry to be authorized as late registration or for humanitarian reasons, in order to liberate S. from the impossible and illegal situation in which he is found.

The Requested Remedy

103. The Petitioner finds himself, against his interests and through no fault of his own, in a difficult situation and has come to be a nomad in Israel where he is persecuted and denied basic rights. The Respondents' decision is not to recognize the Petitioner's distress and his unique life circumstances as a reason that justifies the granting of a permanent residence license and visa. When we come to examine the Petitioner's link to Israel, his personal interest and the public interest, we find that putting the Petitioner's status in Israel in order by giving a permanent residence license is the only reasonable and moral solution to the achievement of the goal of Basic Law: Human Dignity and Liberty, the Entry into Israel Law and Israel's international commitments. Any other solution is unreasonable and entails fateful social consequences.

Therefore, the Honorable Court is moved to issue an *order nisi* as requested at the start of this petition, and after receipt of the Respondent's answer to the *order nisi*, to make it absolute and to charge the Respondent with payment of the Petitioners' expenses and legal fees.

Jerusalem, Monday, 19 May 2003

__[signed]__

Adi Landau, Attorney

Counsel for the Petitioners