At the Jerusalem District Court **Adm. Pet. 283/05**
Sitting as the Court for Administrative Affairs

Before: The Honorable Justice Yehudit Zur 25 May, 2005

In the matter of:

1. **_____ H., Identity No._____**
2. **Jane Doe, ID No. _____**, minor
3. **Jane Doe, ID No. _____**, minor
4. **Jane Doe, ID No. _____**, minor
5. **Jane Doe, ID No. _____**, minor
6. **Jane Doe, ID No. _____**, minor

Petitioners 2-6 are represented by their mother and natural guardian, petitioner no. 1

7. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Saltzberger (R.A.)**

Represented by attorneys Osama Halabi et al

The Petitioners

- Versus -

1. **Minister of the Interior**
2. **Director of the East Jerusalem District Population Administration**

Represented by the Jerusalem District Attorneys

The Respondents

Judgment

1. Before me is a petition, which was filed by _____H. and her five children (minors; hereinafter: the "**petitioner**" or "**petitioners**") against the Minister of the Interior and the Director of the East Jerusalem District Population Administration (hereinafter: the "**respondents**"). In the petition the

petitioner requests that her five children be registered in the Israeli Population Registry. The petitioner claims that in light of the fact that the petitioners were minors below the age of 12 on the day of filing the application for their registration in the Israeli Population Registry and since they are children of an Israeli resident whose center of her life is in Israel, they should be given the status of their mother (the petitioner).

And this is the factual background required for our purposes

2. The petitioner is a permanent resident of Israel who is married to a resident of the territories. The couple has five children, all of whom were born in Jerusalem. The children were at the time of their births registered by their father in the Population Registry of the Region.

3. On 28 August, 2001 the petitioner filed an application to register her children in the Israeli Population Registry (appendix p/10 to the petition).

   On 17 June, 2002 the respondents informed her that her application to register the children would be heard within the framework of a family unification application for her husband, since they were registered in the registry of the region (appendix p/11 to the petition).

4. On 8 October, 2001 HaMoked: Center for the Defence of the Individual (hereinafter: HaMoked) applied on behalf of the petitioners to appeal the respondents' decision in the application to register the petitioner's children in the Israeli Population Registry. They attached documents to the appeal attesting to the center of her life.

   This application was not replied to, and on 26 December, 2003 HaMoked sent a reminder to the respondents with respect to its letter.

5. On 16 December, 2003 the respondents released the following response to HaMoked: "**Since the children of your client bear a different status (registered in the region) your application will be heard within the family unification framework**" (appendix p/14 to the petition).

6. On 1 January, 2004 HaMoked reapplied to the respondents with an application to handle the petitioners' application to register her children, in light of the fact that it had been filed before the Government Decision and before the passing of the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003 (appendix p/15 to the petition).

7. On 20 January, 2004 the respondents replied to HaMoked that the Citizenship (Temporary Order) Law applied to the minor (petitioner 2) and therefore since she was over the age of 12, it would not be possible to currently discuss her registration. As regards the other minor petitioners, it was stated that that a family unification application should be filed for them, which will then be examined (appendix p/16 to the petition).

8. HaMoked then took this case and applied to the HCJ department at the State Attorneys (letter dated 1 February, 2004 and reminder dated 14 April, 2004)

On 19 April, 2004, HaMoked received a reply from the legal office of the respondents which stated that the petitioner could file an application to resolve the status of all the children in light of the fact that her first application was made before the Temporary Order came into force and since at that time petitioner 2 was under the age of 12 (appendix p/19 to the petition).

9. On 19 April, 2004 HaMoked reapplied to the respondents with a request to register the petitioner's children in the Israeli Population Registry. The letter received no response.

On 14 June, 2004 HaMoked applied, once again to the HCJ department of the State Attorneys and requested that the hearing on the petitioner's application to resolve the status of her children be heard on the basis of the application to register the children, which was filed in August 2001, without requiring her to file a new application (appendices p/20 and p/21).

10. On 1 July, 2004 the legal department of the respondents replied to HaMoked that the handling of the application to resolve the status of the children of the petitioner "**would proceed on the basis of the application that was filed in August 2001**" (appendix p/22).

11. On 7 July, 2004 the respondents wrote to HaMoked that "**for the purpose of filing an initial application for a family unification you are requested to produce the following documents at our office",** and further on in the letter it detailed the documents for the years 2001-2004 which the petitioners were required to file (appendix p/23 to the petition).

12. On 5 August, 2004 HaMoked directed the respondents' attention to the fact that in accordance with the state attorneys' guidelines there was no need to file a new application for family unification but rather to handle the application that was filed by the petitioner as far back as **August 2001**. Nonetheless in order to expedite the handling of her application, HaMoked attached to its letter all the documents that were required to prove that the petitioners' center of life was in Jerusalem (appendix p/24 to the petition).

The petitioners received **no** response to this letter and therefore the respondents were sent three reminders (dated 19 October, 2004; 10 November, 2004; and 12 December, 2004; appendices p/25, p/26, p/27).

13. On 27 December, 2004 the respondents informed HaMoked that they had decided to approve the registration of the petitioner's children as residents of Israel and they would receive a referral to the Civil Liaison Administration (hereinafter: CLA, appendix p/1 to the petition).

In response to this counsel for the petitioners applied on 4 January, 2005 to the respondents with an application to settle the petitioners' application to register her children in the population registry (as opposed to referring the petitioners to the CLA; appendix p/28 to the petition).

14. On 10 January, 2005 the petitioner appeared before respondent 2 where she was handed five documents that related to her children which were titled:

"**Approval to receive an exit permit to stay in Israel for the minor resident of the region according to the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003**" (appendices p/29, p/30, p/31, p/32 and p/33 to the petition).

The respondents' argumentation

15. In their letter of reply that the respondents filed with the court they declared that the working guidelines with respect to registering children had undergone change. According to their claim, it had now been determined that in an application to register children which deals with a minor, one of whose parents bears the status of a permanent resident whereas the other one does not have such status then there is a requirement to prove that the center of life of the permanent resident parent and the child is in Israel, and if the matter is proven – the child is granted the status of permanent resident. It was also established in that procedure that in a case where the minor is registered as a permanent resident of another place, before being registered as a permanent resident of Israel, he will be granted an Israeli residence permit, as a class A/5 temporary resident.

The respondents claim that in a case in which a child was born to a permanent resident within Israeli territory, but whose registration in Israel was not requested but was registered somewhere else (in the Area [the Territories}) and over the course of many years he did not act to register his child in the Israeli registry, there is justification for conducting a comprehensive inspection at the time of determining the center of his life and the status of the child and his parent. The respondents argue further that the registration of the children in the Registry of the Region establishes a presumption that the center of life of the family is being conducted outside of Israel. The respondents claim that in this case there is justification for conducting a comprehensive inspection when determining the center of life and status of the child and his parent. The respondents claim that the reason for granting the A/5 status for a two year period, according to the procedure, is in order to continue the investigation into the existence of the minor's and his parent's center of life in Israel.

In our case the respondents claim that the then minors were registered in the Population Registry of the Region. According to their claim, this fact finds support in the findings of an investigation by the National Insurance Institute which shows that up until 2002 the petitioners lived outside the sovereign territory. The respondents claim that pursuant to the new consolidated procedure, it is not possible to grant the petitioners the status of permanent residence as requested in the petition. Nonetheless, because of the fact that the petitioners' application was filed before the Temporary Order came into force, and since it was discovered that the petitioners complied with the conditions of the new procedure; they would be given the A/5 temporary status for a two – year period. After this period, subject to the proof of the center of their life, the petitioners would receive the status of permanent resident.

A summary of the petitioners' claims

16. The petitioners claim that the respondents' position flouts the law and the court's ruling. According to their claim, in the circumstances of the case there is no logical reason to prevent the registration of their children as permanent residents and already now they should be granted this status.

The petitioners claim that the interpretation given by the respondents to the judgment by the honorable deputy Chief Justice M. Arad in Adm.Pet 577/04 is incorrect. According to their claim, this case involves children who were born in Israel and therefore Regulation 12 applies to them. When it already has been proven that the minor's center of their lives in Israel, the status that should be given to them is the status of the Israeli custodian parent, namely a permanent resident. The petitioners claim that the respondents cannot narrow the applicability of Regulation 12 through interpretation since the court has repeatedly held that there is a need to amend the regulation. The petitioners claim that the respondent's reliance on a "query" that was referred to the National Insurance Institute (appendix D to the writ of Reply) is unsubstantiated. It involves a computer printout which includes "investigation findings" but does not go into detail how these findings were established. The petitioners presented the investigated persons' declarations and according to their claim there is no basis for the respondents' claim that the petitioner lived in the region in 2001. Nevertheless, so argue the petitioners, one may be satisfied that they have proved, according to the very requirements set by the respondents, that as from the beginning of 2002 the center of their lives was in Israel, together with their mother who is a permanent resident, and therefore they should be given the status of a permanent resident already now.

The normative side

17. The Entry into Israel Law 5712-1952 (hereinafter – the "Entry into Israel Law") does not establish a right to permanent residence in Israel "by virtue of birth". Regulation 12 of the Entry into Israel Regulations, 5734-1974 (hereinafter: "Regulation 12") should be interpreted in a way that complies with the primary act of legislation by virtue of which it was enacted – the Entry into Israel law – and in accordance with its underlying purpose. In the judgment in HCJ 979/99 **Pabaloya Carlo (minor) et al v. Minister of the Interior** the Supreme Court held (per the honorable Justice Beinish) the following in this regard:

> "**It appears that the situation with which the secondary legislator was faced, and which he sought to prevent, was the creation of a detachment or chasm between the status of the parent whose residence is in Israel by virtue of the Entry into Israel Law, and between the status of his child who was born in Israel, but whose mere birth in the country does not confer upon him legal status within it. As a rule, our legal theory recognizes and honors the value of the integrity of the family unit and the interest of protecting the welfare of the child, and**

> **therefore one must avoid creating a chasm between the status of the minor child and his parent who has custody over him or who is entitled to have custody over him. Even from the perspective of granting Israeli resident permits it appears that there is no justification for creating a chasm such as this, since the justifications that underlay the granting of a residence permit to the parent shall generally also apply to his child who was born in Israel and is living together with him**" (*Takdin Elyon* 99(3) 108).

The court noted that it was appropriate that the respondent set his mind to the possibility of amending the wording of Regulation 12 "**in a way that would suitably accord with the principle of equality and would accurately clarify the scope of the Regulation's spread**". This type of thing has until today not been done.

18. In the judgment in Adm. Pet. (Jerusalem) 577/04 **Alqurd v. Minister of the Interior** (per the honorable Deputy Chief Justice M. Arad: hereinafter "the Alqurd judgment") the court held that there is no place for the respondent to limit the applicability of Regulation 12 through interpretation. In that same case the court accepted the petition and ordered the respondent to examine the application to register the children including the question of the center of life of the family within the framework of the provision in Regulation 12, despite the fact that the application was filed a long while after the birth of the children, for whom registration was being requested.

19. In the wake of the Alqurd judgment the respondents released (on 20 March, 2005) "**a clarification of a working guideline with regard to granting status to children within the framework of Regulation 12 of the Entry into Israel Regulations – Amendment**". For our purposes paragraphs 3 and 4 are most relevant:

> **"3. Where one parent is a permanent resident and the second parent has no status in Israel, after it has been proven that the center of life of the permanent resident parent and his child is in Israel, the child shall be granted the status of permanent resident.**
>
> **4. Where the child is registered as a resident of another place at the time of filing the application, if it is discovered that he complies with the conditions of paragraph 3 above, the child shall be granted during the first phase the status of a (A/5) temporary resident for a two year period in order to test the continuous existence of the center of life in Israel and after that he shall be given the status of a permanent resident"**

In this case the petitioners argue that the working guidelines cannot overrule secondary legislation which for our purposes refers to Regulation 12. According to their claim, the respondents did not have the foresight to implement the consistent ruling of the court and to avoid interpreting regulation 12 in a way that narrowly limits its applicability instead of working towards amending it.

From the general to the particular

20. Our case involves an application to register children, which was filed with the respondent as far back as **August 2001**. At the time of filing the application, the two children were **under the age of 12.** There was good for the fact that I detailed in the first chapter of this judgment the whole series of "back and forth" that the petitioners underwent until they were forced to file a petition before me. From a study of the correspondence between the petitioners and the respondents there merges a forlorn and harsh picture of the conduct on the part of the respondents, which contravenes an orderly and proper administration. The respondents repeatedly made baseless demands of the petitioners in contravention of the law, and continued to do so even after applications were made to the State Attorneys and to the legal adviser who instructed them to change their position. There was no justification whatsoever for the fact that the petitioners' application had to contend with so many obstacles, over the course of so many years. This involved an application which was filed by minors under the age of 12 many years ago, a long time before the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003 came into force. In these circumstances there was no justification whatsoever to apply the Temporary Order on all or some of the petitioners or to demand from them to file a "new" family unification application. Likewise there was no justification whatsoever; after the minors had proven that the center of life was in Israel with their mother (a resident of Israel) to refer them to the Civil Liaison Administration (CLA) instead of registering them in the Israel Population Registry.

Only after filing the petition, about **five years** after filing the application did the respondents change their position and now they are prepared to grant petitioners 2 and 3 the status of A/5 temporary resident for a two-year period after which the petitioners' center of life will once more be examined and pursuant to the findings of the investigation it will be decided whether to register them in the Israel Population Registry.

21. In the special circumstances of the case before me it appears to me that this result is unreasonable and does not take into account the long time that has elapsed – without justification – from the time of filing the application, where no one disputes – even not the respondents – that for at least the last three years the center of the petitioners' lives was in Israel, together with their mother.

22. The purpose of regulation 12 is to enable a child to receive the status of the parent with whom he conducts the center of his life, with the aim of avoiding a detachment or chasm between the status of the parent who is a permanent

resident in Israel and between the status of the child who was born in Israel and who shares the center of his life with his parent in Israel.

Therefore if it has been proven that the child's center of life is in Israel with his Israeli resident parent, he should also be granted the status of permanent resident.

When it involves a child who has been registered in the region, like in our case, the respondents are correct in adopting the position of arranging a comprehensive investigation with regards to the center of life of the child in Israel since *prima facie* the registration demonstrates otherwise. Nonetheless, when it has been proven that the children's center of their lives is in Israel, the respondent should act pursuant to the provisions of Regulation 12 and grant the child a status that is identical to that of the custodian parent. In this regard the respondents changed the guidelines and held that in this case, during the first phase the child (under the age of 12) would be given the status of a temporary resident for the course of two years, after which he would be given the status of permanent resident. I have no need to decide the petitioners' claims that this provision does not conform to the purpose of Regulation 12 nor to the court's ruling, since in the special circumstances of our case there was no practical justification whatsoever not to approve the application to register the petitioners'' children in the Population Registry in Israel; and to apply an additional "test" period.

23. The petitioners filed their application many years ago and proved that for a number of years the center of life was together with their mother in Israel. The respondents counterclaimed that according to the findings of an investigation carried out by the National Insurance Institute, until 2002 the petitioners lived outside Israeli territory. This argument is unsubstantiated and should be dismissed. The respondents applied to be able to rely for this purpose on a "query" that was referred to the National Insurance Institute (appendix D to the Writ of Reply). The administrative authority needs to base its decision on a detailed and properly grounded factual foundation. The "query" presented by the National Insurance Institute cannot serve as a fitting factual foundation. It involved an excerpt only of the investigation which was carried out by a different body. Therefore the respondents should have asked for the contents of the investigation upon which the "query" is based. The contents of the investigation were filed with the court by the petitioners and a perusal of it shows that there is no proof for the allegation that the petitioners lived outside the territory until 2002.

Moreover if the respondents are seeking to rely on the "query" by the National Insurance Institute, it would have been appropriate had the petitioners been given the right to respond to it. This is the way the respondents have traditionally acted in other cases and they should have acted likewise in this case. Nonetheless, even if we adopt the respondents' approach, the petitioners have proved that the center of their lives has been in Israel with their mother for at least the last three years. We are dealing with minors under the age of 12 who filed their application to be registered in the Israel Population Registry many years ago, but the handling of their application was in contravention of an orderly and proper administration, both from the perspective of the drawn

out time it took to handle the application and from the perspective of the negative responses received by the petitioners, without any basis in law and in contravention of the guidelines that were provided to them by the State Attorneys and by the legal adviser.

Taking into account these special circumstances, and since the petitioners have already proved that over the course of a number of years the center of their lives was in Israel, with their Israeli resident mother, they have a right to be registered in the Israel Population Registry by virtue of Regulation 12.

I therefore hereby decide to accept the petition and order the respondents to register the children of the petitioners (petitioners 2 and 3) in the population registry in Israel and grant them the status of permanent residents in Israel.

The respondents shall bear the costs and attorney fees of the petitioners in an amount of NIS 5, 000 at their current value.

The secretariat shall send a copy of this judgment to both parties

Given today, 16 Iyar, 5765 (25 May, 2005)

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Yehudit Zur, Judge