At the Supreme Court **HCJ 5875/07**
Sitting as the Hugh Court of Justice

In the matter of:

1. **_____ Kassem , ID Number _____**
2. **_____ Kassem, Jordanian Passport Number _____**
3. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger**

Represented by attorneys Ido Blum (Lic. No. 44538)
and/or Yossi Wolfson (Lic. No. 26174)
and/or Abeer Jubran (Lic. No. 443464)
and/or Yotam Ben-Hillel (Lic. No. 35418)
and/or Hava Matras-Irron (Lic. No. 35714)
and/or Sigi Ben-Ari (Lic. No. 37566)
and/or Anat Kidron (Lic. No. 37665)

from HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger whose address for service of process is:
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555; Fax 02-6283555

The Petitioners

v.

1. **The State of Israel**
2. **Commanders of the Army Forces in the Occupied Territories**

The Respondents

Application on behalf of the Respondents for Summary Dismissal of the Petition Response to the Application for a Temporary Injunction

1. The petition deals with the petitioners' application, to grant petitioner 2 the status of a permanent resident in the region, where she has unlawfully resided ever since 1998, because of her marriage to petitioner 1, a resident of the region.
2. The honorable court is requested to summarily dismiss the petition while preserving the right of the petitioner to re-apply to the court in the future

whenever she is able to produce a proper cause for doing so after judgment has been passed in HCJ 3170/07 and after exhausting the administrative procedures.

And these are the reasons for the application:

Reasons for the application for summary dismissal

3. From the outset we would like to emphasize that the issue which is the subject of the petition has been placed before the honorable court in many cases in the past and the latter did not find it appropriate to interfere with the respondents' policy in this matter, in terms of which ever since the outbreak of hostilities in September 2000, and as a result of the breakdown that occurred in the relationship between Israel and the Palestinian Authority, **applications for family unification are not being handled by the Israeli side.** This position has been strengthened in recent times, among other things, as a result of Government Resolution No. 4780 of 11 April, 2006 on the freeze of contacts with the Palestinian Authority because of the election results in the Palestinian Authority and the rise to power of the Hamas Movement in the Palestinian Authority.

   And see in this matter, for example, the recent judgment of the honorable court in HCJ 8881/06 *Gazuna v. The Civil Administration in the Judea and Samaria Region* (unreported, dated 1 March, 2007), where it was established as follows:

   > **"…**
   >
   > **We cannot grant the petition. As is well established it is not the practice of this court to interfere with policy that has been adopted by government with regard to the security situation and the development of relations between the Palestinian Authority and the State of Israel with respect to the return of residence or applications for family unification that pertain to the region"**
   >
   > **(Emphasis added)**

See also in this matter HCJ 2231/03 *Alshlalda v. Commander of the Benjamin Region Takdin Elyon* 2003(3) 250. And see: HCJ 5957/02 *Aet'dal v. Commander of the Benjamin Region Takdin Elyon* 2003(2) 603, HCJ 897/*04 Netzer Bakar Faziz et al v. Commander of the IDF Forces in the West Bank Takdin Elyon* 2004(1) 1918, HCJ 4332/04 *Nancy Odeh et al v. Commander of the IDF Forces* (unreported).

4. This petition is one of more than 30 petitions that have recently been filed in the honorable court, which raise the exact same issue, and in principle it seeks to bring about a change to the consistent case law of the honorable court.

   In this context it should be noted that according to what we have been informed by the office of the legal adviser of the Judea and Samaria Region, by a conservative estimate there are thousands more people who live in the Region in a similar situation to the petitioners. Potentially therefore there is a possibility that many more petitions will be filed in the same matter.

5. The respondents do not dispute the rights of petitioners - especially a public petitioner – to try and change the existing law, however they are of the opinion that this move can and should be carried out within the framework of one general petition and there is no place for the filing of dozens of individual petitions.

   This position is based on the conception that in the event that it is decided at the close of a hearing on the general petition that there is no place for an amendment to the exiting law this will of its own accord remove the basis for the dozens of individual petitions.

   In the event that it is decided in the general petition that there is place to amend the exiting law then anyway there will be place for re-exhaustion of the administrative process in light of the amendment to the law. At the end of the administrative process a new decision will be reached. In the event that the petitioners shall seek to take advantage of the new decision they will have to do so within the framework of a new petition that deals with the content of the new decision which in turn reflects the amendment that has been applied to the law.

   At this procedural stage there is, *prima facie*, no procedural utility or any other added value to the existence of dozens of individual petitions which seek to effect change to the existing law, alongside this general petition.

   In practice dozens of individual petitions are destined to be without cause (in the event that it shall be decided in the general petition that there is no place to amend the existing law) or without precedent (in the event that it shall be decided to amend the current situation). The fact that at this stage it is not even possible to

classify the petitions illustrates their inopportuneness and as a result thereof there is no justification for filing these at the same time as filing the general petition.

6. This is the place to note that the honorable court has given expression in some of its decisions to the inopportuneness of the individual petitions where a ruling has not yet been given in the general petition.

   The first petition that was filed in this matter, HCJ 3170/07 was set for a hearing before the panel of judges to be heard on 24 September, 2007. This petition in our view is the general petition. Since then, as stated, many other petitions have been filed on the same issue, some of which have been set for a hearing before the same panel as that that will have heard HCJ 3170/07.

   In a not insignificant portion of the additional petitions it has been determined that they will be set for a hearing after a decision has been made in HCJ 3170/07 and in some of the others the petitioners' response has been requested in the matter of the petition after a decision has been made in HCJ 3170/07

7. Therefore it is even the honorable court's contention that the individual petitions will only be ripe for a hearing – should the need even arise for a hearing –after it has delivered its judgment in the general petition.

   In the face of the inopportuneness of hearing the petitions at this stage, and given the fact that until today dozens of petitions have been filed and in light of the potential hundreds of more petitions as a result of the multitude of illegal residents in the region – the respondents are of the opinion that the judgment in these individual petitions including the present petition should be a summary dismissal while at the same time preserving the rights of the petitioners to reapply to the honorable court whenever they wish and whenever there is a need, if they have due cause after judgment has been delivered in the general petition (HCJ 3170/07).

8. We shall note that a similar course of action was adopted by the honorable court with respect to petitions that were filed for the purposes of receiving status in Israel in the wake of the enactment of the Citizenship and Entry into Israel Law (temporary provision) 5763 – 2003, when the motive at that time was rooted in a legislative order and not in case law.

Initially the honorable court established that the individual petitions would be heard after judgment had been delivered in the main petition which attacked the constitutionality of the temporary provision. At a certain stage, after dozens of petitions had piled up in the honorable court, the honorable court dismissed the individual petitions, and so for example the following was said in HCJ 7466/05 *Amna Yusef Jamal et al v. Minister of the Interior (Takdin Elyon 2005(3) 1864) :*

> **The petition before us concerns the petitioners' application for the court to order the respondents to show cause why their decision with respect to the dismissal of the petitioners' application for family unification, and why a residence and work permit in Israel will not be issued for petitioner 2 until a decision has been made in the petition. Likewise the petitioners seek a temporary injunction against the deportation of petitioner 2 from Israel.**
>
> **Petitioner 1 is an Israeli citizen and petitioner 2 is a citizen of Tul Karem in the Jenin district. The petitioners married in 1995. From a letter by respondent 2- the office of the population administration in Afula – it emerges that the petitioner's application was dismissed, in light of the provisions of the Citizenship and Entry into Israel Law (temporary provision) 5763 – 2003 (hereinafter: the Law)**
>
> **The petition is liable to be summarily dismissed in light of what is stated in the Law as was elaborated upon in the Citizenship and Entry into Israel Order (temporary provision) (extension of the validity of the law) 5764 – 2004, which established that at this point in time applications for family unification shall not be handled, but the petitioner's rights are preserved for them to reapply to the court, so long as they have cause for such action, if the legal situation shall be amended, after a court judgment has been delivered in the substantive petitions regarding the constitutionality of the above-mentioned law (HCJ 4022/02, 4068/02, and HCJ 7102/03 or if the Law's validity has expired.**
>
> **Therefore the petition is dismissed.**

For more on this matter, see HCJ 8916/04 *Amana Muhamd Ali Tabash et al v. Minister of the Interior Takdin Elyon* 2004(4) 223 HCJ 7468/05 *Nasir Abed El*

Rahman Masura et al v. Minister of the Interior et al Takdin Elyon 2005(3) 1850, HCJ 2431/05 *Mazuz Ali Abed Elrahamim et al v. Minister of the Interior et al Takdin Elyon* 2005 (2) 387.

9. In the respondents' opinion, under these circumstances, where the central issue common to all the petitions shall anyway be clarified in the future by the honorable court no practical purpose is served by allowing all the remaining petitions on this issue while they are still pending before the honorable court.

   In any event it is clear that whatever the decision is in HCJ 3170/07, it will also directly affect the remaining petitions, and they will have to operate in accordance with the decision that is reached there.

10. It appears that practically all the petitions that have been filed relate to the matters of individual petitioners, primarily for the purpose of issuing an individual temporary injunction which shall prevent their removal from the region. Thus this is what petitioner 2 seeks in this petition, and what the other petitioners seek in their respective petitions. We shall address the issue below.

    At the outset we must point out that there is no justification for leaving the petition pending solely because of the petitioner's wishes to ensure her continued stay in the region, for which there is no justification by law.

    Nonetheless the respondents have consolidated a general and egalitarian position with regard to applications for temporary injunctions which shall apply both to the person who has applied to the honorable court and those who will apply to the legal adviser of the Judea and Samaria region.

    Under the current situation the respondents' position has been reinforced that there is no place to leave the dozens of individual petitions which have already been filed in the honorable court pending, and they should be dismissed.

The position with regards to the application for a temporary injunction

11. The respondents are of the opinion that there is no place for issuing a temporary injunction in the individual petitions. In this context the respondents declare that at this time they have no intention to work towards the removal of petitioner 2 from the region.

In the event that there is a change to the circumstances of petitioner 2's case (for example if the petitioner is apprehended and it is discovered that she is a candidate for deportation) she will then be given a time period of 14 days for the purpose of applying to the honorable court with the appropriate application, which shall be examined on its merits taking into account the information in possession of the respondents at that time.

As stated this position is general and egalitarian in the sense that it has even been given over to the office of the legal adviser of the Judea and Samaria region to the remaining applicants in the same issue **even if a petition in their matter has not yet been filed.**

12. The opposition to issuing a temporary injunction is based on the conception that in light of the clear legal situation – as has also emerged from the honorable court's judgments that are detailed above – in practice, ever since the petitioner's visitor's permit has expired she resides in the region unlawfully, while interpreting the law in her own way, and there is no due cause that permits her residence in the region at this time.

    Under these circumstances and especially against the backdrop of explicit court rulings on the one hand, and the conduct of the petitioner who continues to unlawfully reside in the region for many years on the other hand, the respondents are of the opinion that there is no justification to grant the petitioner the temporary injunction as requested by her, and it is precisely because of this that a petition has been filed by the petitioner seeking to challenge the current legal situation

13. In light of the aforesaid and against the backdrop of the fact that the central issue that is being attacked in the present petition will in future be clarified by the honorable court within the framework of HCJ 3170/07, and in any event it is the respondents intention to act in the petitioner's matter as has been detailed above in paragraph 11, the respondents are of the opinion that there is no reason or justification to allow the petition to remain pending, and therefore the honorable court is requested to summarily dismiss.

14. In light of this, the respondents are of the opinion that in the circumstances of the case, and as long as the honorable court has not deemed it necessary to dismiss

the current petition out of hand there is no place to issue a temporary injunction in this petition and there is also no need to do so – against the backdrop of the respondent's position as has been detailed in paragraph 11 above.

15. The respondents wish to point out before the honorable court that a response in this spirit has been filed in each one of the petitions that have been filed until now on this matter. Until now the court has decided not to issue a temporary injunction in these petitions, after receiving the respondents' response.

    A copy of the court's decision in HCJ 5706/07 is enclosed and marked MS/1

16. In conclusion, and in light of the aforesaid the honorable court is requested **to summarily dismiss the petition** or alternatively to **dismiss the petitioners' application for a temporary injunction** subject to the commitment of the respondents in paragraph 11 above.

Today: 19 Elul 5767

2 September 2007

Chani Ofek	**Itay Ravid**
(signed)	(signed)
Senior Deputy to the State Attorney	**Assistant to the State Attorney**