At the Supreme Court Sitting as the Court of Appeals on Administrative Affairs

AAA 5718/09

Before:	**Honorable Justice. E. Rubinstein** **Honorable Justice N. Hendel** **Honorable Justice U. Vogelman**
The Appellant:	State of Israel
	v.
The Respondents:	1. **_____ Srur** 2. **_____ Srur** 3. **_____ Srur** 4. **_____ Srur** 5. **HaMoked - Center for the Defence of the Individual**
Appeal from the Judgment of the Court for Administrative Affairs in AP 8890/08, dated June 8, 2009, delivered by Honorable Vice President, Justice Yehudit Tzur	
Session date:	18 Kislev 5771 (25 November 2010)
Representing the Appellant:	Adv. Y. Genesin; Adv. H. Gorni; Adv. R. Eidleman
Representing the Respondents:	Adv. Leora Bechor; Adv. A. Lustigman; Adv. N. Diamond

Judgment

Justice U. Vogelman

Appeal from the judgment of the Court for Administrative Affairs in Jerusalem (Honorable Vice President **Y. Tzur**) in which the court ordered the Ministry of Interior to grant Respondent 4 a permit for permanent residency in Israel.

The facts

1. Respondent 4 (hereinafter: **the Respondent**) was born in Jerusalem on September 30, 1991 to a mother who holds a permit for permanent residency in Israel and a father who is a resident of the Judea and Samaria Area (hereinafter: **the Area**). The Respondent was not registered as a resident in the Israeli population registry upon his birth. On March 26, 1996, he was registered in the population registry of the Area. The Respondent's family moved from time to time. From around the time of his birth until 1993, the Respondent lived with his family in Ni'ilin in the Area. Later, in 1993, the Respondent's family moved to Jordan, where they resided until 1997. The family then left Jordan and returned to live in the Area until 2002, at which time they moved to Jerusalem. Some two years thereafter, on January 26, 2004, the Respondent's mother, Respondent 1 in this petition, first filed an application with the Ministry of Interior to have the Respondent and four of her other children registered in the population registry in Israel. We note, and the importance of this shall become apparent below, that at the time the application was filed, the Respondent was 12 years and three months old (this application shall hereinafter be referred to as **the first application**).

2. The first application in the matter of the Respondent and his siblings was denied on April 20, 2004, for two reasons. First, some of Respondent 1's children, including the Respondent himself, were registered in the population registry of the Area and some were born outside Israel. Therefore, according to the Ministry of Interior, Respondent 1 should have filed an application for family unification rather than an application to have her children registered in the Israeli population registry. Second, an inquiry into the case of Respondent 1 and her children revealed that the children's center-of-life was not in Israel but rather in the Ramallah area.

3. It is parenthetically noted that at the times relevant to the date of submission of the first application, Section 3(1) of the Nationality and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: **the Temporary Order Law**) was in effect. The Section stipulated that the Minister of Interior or the Commander of the Area may "grant a minor resident of the region **who has not reached 12 years of age**, a license to reside in Israel for the purpose of preventing his separation from his guardian parent who lawfully resides in Israel" (emphasis added, U.V.). This section was one of the reservations to the blanket ban imposed by the Temporary Order Law on granting status in Israel to individuals who are considered "residents of the Area" as defined by the Law, including the granting of status under Regulation 12 of the Entry into Israel Regulations 5734-1974 (hereinafter: **Regulation 12** and **the Entry into Israel Regulations** respectively). We recall that this Regulation stipulates that a child who was born in Israel and who does not come under the Law of Return 5710-1950 (hereinafter: **the Law of Return**), shall receive the same status as his parents. At the time, the Temporary Order Law included no exception with respect to minor residents of the Area who are **over age 12**, so that these minors had no possibility of obtaining status in Israel. We shall address the amendments made to this provision over the years below. In any case, in view of this provision and noting the fact that at the time the application was filed, the Respondent was over 12 years old, the Minister of Interior lacked competence to grant him status in Israel at the aforesaid time.

4. On February 16, 2005, Respondent 1 filed another application to the Ministry of Interior to have two of her daughters, born in Jerusalem, registered in the Israeli population registry. Unlike the Respondent, Respondent 1's daughters were not registered in the population registry of the Area. This application was also refused on the grounds that they did not maintain a center-of-life in Israel. Later, following proceedings between Respondent 1 and the Ministry of Interior which need not be detailed here, the application for status for the two girls was accepted on September 19, 2005. They received a permit for permanent residency in Israel on November 9, 2005. The application was accepted mainly because the findings of a National Insurance Institute investigation indicated that not only were the girls born in Israel and not registered in the population registry of the Area, they had lived in Israel since birth. We further note that the permit for residency in Israel was granted to

Respondent 1's daughters in accordance to Ministry of Interior protocol no. 2.2.0020 entitled "Procedure for Registering and Granting Status to a Child only One of Whose Parents is Registered as a Permanent Resident of Israel" (hereinafter: **the child registration procedure**). We shall return to the specific provisions of this protocol. The important factor for our matter is that on September 13, 2005, in the course of processing the application to register Respondent 1's two daughters, the Ministry of Interior received the position of the National Insurance Institute on the family, which it had requested. This position stated that at the time the investigation was carried out, the Respondent and his family were living in Jerusalem. This information contradicted the finding that served as the basis for refusing the first application, namely that the Respondent's and his family's center-of-life was not in Israel. As we shall see, this fact was considered in the decision reached on the Respondent's case later.

5. In the interim, on August 1, 2005, Amendment No. 1 to the Nationality and Entry into Israel Law (Temporary Order) (Amendment) 5765-2005 was passed (hereinafter: **the 2005 amendment**). The amendment stipulated, *inter alia*, that a minor could receive a permit for permanent residency in Israel in order to prevent his separation from his parent who lawfully resides in Israel **up to the age of 14** rather than 12 as stipulated previously; and a minor who is **over 14 years of age** would be able to receive a stay permit for Israel for the same purpose, provided that the permit is not extended if the minor does not reside in Israel on a permanent basis. We further note that in the **2005 amendment**, the definition of the term "resident of the Area" was also changed, such that a resident of the Area is "a person who is registered in the population registry of the Area as well as a person who resides in the Area, notwithstanding the fact that he is not registered in the population registry of the Area and excluding a resident of an Israeli community in the Area." We shall return to these changes and their ramifications below.

6. In view of the change affected by the **2005 amendment** with respect to processing applications by children whose parents have status in Israel – the extension of the cut off age for receiving status in Israel from 12 to 14 – and in view of the fact that the inquiry into the Respondent's sisters' case indicated that the family's center-of-life was in Israel, the Ministry of Interior decided, *ex gratia*, to consider the Respondent as having submitted his application prior to age 12, for purposes of Section 3(1) of the Temporary Order Law, and to process his application for status in Israel. Notification of the approval of the Respondent's application was sent to counsel for the Respondents on March 15, 2003, and on April 9, 2006, the Respondent received an A/5 visa for temporary residency in Israel. The Respondent was, therefore, registered in the Israeli population registry under temporary resident status. On June 18, 2006, the Respondent's temporary residency permit was extended for a further year and on July 16, 2008, the Respondents applied to the Ministry of Interior to have the Respondent's status upgraded to permanent residency (hereinafter: **the upgrade application**). The upgrade application was rejected by the Ministry of Interior on October 2, 2008 on the grounds that the Respondent's family had resided in the Area and the Respondent was registered in the population registry thereof and on the grounds that at the time the upgrade application was submitted, the Respondent was over 14 years of age and as such, under the Temporary Order Law, his status could not be upgraded to permanent residency. In addition to the aforesaid, the Ministry of Interior determined that the Respondent would be able to continue to have his temporary residency status extended.

The proceedings before the District Court and its central findings

7. The Respondents filed a petition with the Jerusalem District Court in which they challenged, *inter alia*, the decision of the Ministry of Interior to reject the Respondent's application to have his status upgraded to permanent residency. The dispute between them and the Appellants focused on two issues: **first**, whether or not the Respondent is to be considered a "resident of the Area" who comes under the terms of the Temporary Order Law; **second**, whether, assuming the Respondent is a

resident of the Area, the decision of the Ministry of Interior not to grant him permanent status is lawful.

The judgment of the District Court includes an extensive review of all the legal arrangements relevant to these issues. We hereafter address its central findings. At the opening of its judgment, the court (Honorable Vice President **Y. Tzur**) refers to Regulation 12 which stipulates, as aforesaid, that the status of a child born in Israel who does not come under the Law of Return shall be the same as his parents. The court found that the Respondent comes under Regulation 12 because he was born in Israel, his mother is a permanent resident of Israel and there is no dispute that he maintained a center-of-life in Israel in the two years prior to submission of the first application. Having stated so, the court noted that before making a final ruling on the applicability of Regulation 12 to the Respondent, one must first examine whether he comes under the terms of the Temporary Order Law, since this law limits the Minister of Interior's ability to grant status in Israel to a person considered a "resident of the Area" under the provisions of the Law.

8. In order to rule on the applicability of the Temporary Order Law to the Respondent, the court was required, first and foremost, to determine whether the Respondent is a "resident of the Area" as defined in this law. The court decided that since the Respondent submitted the first application before the **2005 amendment** came into force, its determination would be made in accordance with the original definition of the term "resident of the Area" in the Temporary Order Law. The original version of the Temporary Order Law contained and inclusive definition of the term "resident of the Area". Section 1 defines "resident of the Area" as "including a person who resides in the Area notwithstanding the fact that he is not registered in the population registry of the Area and excluding a resident of an Israeli community in the Area". The court noted, based on the interpretation of Section 1 of the Temporary Order Law in AAA 5569/05 **Ministry of Interior v. 'Aweisat** (unreported, August 10, 2008) (hereinafter: **'Aweisat**), that since the Respondent is registered in the population registry of the Area, he is presumed to be a resident of the Area. However, this is not a conclusive presumption but rather a rebuttable one, and it has indeed been rebutted in the circumstances of the case at hand. In this context, it was noted that the Respondent was born in Israel, that his mother and some of his siblings are permanent residents of Israel, that he lived in the Area for only five of his 12 years and that his center-of-life is in Israel as he had been living with his family in Jerusalem in the two years prior to submission of the first application. "Therefore", the court ruled, "it appears that the applicant has several ties connecting him to Israel rather than to the Area, including maintaining a center of life in Israel at the time the application was submitted. Thus, it is highly doubtful that he could be considered a 'resident of the Area' as originally defined in the Temporary Order Law. Under these circumstances one must find that the Temporary Order Law does not apply to [the Respondent] and hence, the [Minister of Interior]'s discretion under Regulation 12 is not restricted, and [the Respondent] must be granted a permit for permanent residency in Israel in accordance with Regulation 12." (§17 of the judgment).

9. The court did not restrict itself to this finding and elsewhere in the judgment added that even if the Respondent could be considered a "resident of the Area" under the original definition of this term in the Temporary Order Law, given the fact that he is registered in the population registry of the Area and lived there for five years, there were nevertheless grounds to grant him a permit for permanent residency in Israel. The court reviewed the question of whether the Respondent should come under the arrangement in effect at the time of the first application, which allowed granting status in Israel to a minor **up to age 12**, or under the amended arrangement which allows granting a residency permit in Israel to a minor **up to age 14**. On this issue, it was found that the Ministry of Interior justifiably applied Section 3a(1) of the Temporary Order Law, namely, the amended Section allowing to grant status in Israel to children under the age of 14, as, at the time of the

amendment, the Respondent was under 14 years of age and therefore entitled to receive status in Israel pursuant to the amendment.

10. In addition to the aforesaid, the court held that the Ministry of Interior erred in its decision to grant the Respondent a permit for temporary residency rather than a permit for permanent residency. On this issue, the court noted that the Ministry of Interior followed the child registration protocol which stipulates that a child who had begun the graduated procedure for residency in Israel, but was over age 14 at the time of his application to upgrade his status from temporary to permanent, shall remain in temporary residency status. However, the practice of the Ministry of Interior to grant applicants who are over 12 years old temporary status in Israel for two years has long since been struck down by the Court for Administrative Affairs and for good reason. This protocol, the court ruled, is inconsistent with the purpose of the **2005 amendment** which was meant to provide the Minister of Interior with powers to grant children under the age of 14 **permits for permanent residency** in Israel. The court deduced this purpose from the language of the amended Section 3A(1). In the original version of this section, the Minister of Interior was given the power to grant a child either a permit for residency in Israel or a stay permit for Israel, whereas the new version of the Section refers to a residency permit and not a stay permit. This protocol, the court added, frustrates the purpose of Regulation 12 which is intended to prevent the creation of a gap between the status of an Israeli resident parent and his child who was born in the country but has no legal status in it. The practice of the Ministry of Interior, the court concluded, "…effectively leads to a situation whereby it is impossible to grant permanent status in Israel to applicants who are over the age of 12. They can only receive temporary status, in contrast to the status of their parents, who are permanent residents in Israel. Therefore, it appears that this practice of the Respondent is not implied by the language of the amended Section 3 and also contradicts both the purpose of Regulation 12 and the purpose of the Temporary Order Law and therefore, must be struck down" (§20 of the judgment). In light of all the above, the court held that the Ministry of Interior must grant the Respondent permanent status in Israel, whether pursuant to Regulation 12 or Section 3A(1) of the Temporary Order Law (§21 of the judgment).

Hence the appeal at bar.

Parties' arguments

11. Before we address the merits of the arguments in the appeal at bar, we note that the hearing of the petition was held during the state attorneys' strike. In order to advance the appeal process as much as possible, despite the strike, we have decided to hold the hearing on schedule. On that date, we heard the Respondents' arguments. In our decision of November 25, 2010, we ruled that the Appellants would be able to respond to the Respondents' summations and oral arguments in the response they submit. The aforesaid response was submitted on January 23, 2011. We now turn to the merits of parties' arguments.

12. In the Notice of Appeal served by the Appellants and in the Supplementary Response submitted following the hearing, the Appellants argue that the court had erred in the manner in which it examined the Respondent's ties to the Area in the context of the review of whether or not he is a resident of the Area. They contend that the **'Aweisat** judgment prescribes the fact that a minor who seeks status has any tie to the Area in addition to being registered in the population registry thereof, is sufficient for considering him a resident of the Area who comes under the terms of the Temporary Order Law; all the more so when the applicant minor has **a number of ties** to the Area, such as in the case at hand. On this issue, the Appellants stress that the Respondent resided outside Israel for most of his life; he resided in the Area for seven of his twelve years, studied in a school in the Area and his center-of-life was in the Area as well. As such, according to the Appellants, the Respondent has a myriad of ties to the Area, in addition to registration. These ties bring him under

the terms of the Temporary Order Law. The Appellants further argue that the manner in which the lower court reviewed the issue contravenes case law since in practice, the court reviewed the Respondent's and his family's ties **to Israel** and not **to the Area**. According to the Appellants, the court erred when it used the provisions of the child registration procedure to examine whether the Respondent is a resident of the Area. The latter provisions consider the minor's center-of-life in the two years prior to submission of the application for a permit for permanent residency in Israel. On this issue, the Appellants are of the opinion that the question of center-of-life as per the child registration procedure is entirely separate from the question of whether the minor seeking status is a resident of the Area or not. Finally, the Appellants recall that under the definition of the term "resident of the Area" in its post **2005 amendment** version, the Respondent is a resident of the Area.

13. The Appellants dispute the court's finding that the power given to the Minister of Interior in Section 3A(1) of the Temporary Order Law is a mandatory power to grant only a permit for permanent residency. They contend that the term "residency permit" which appears in Section 3A(1) of the Temporary Order Law can be interpreted as referring to any one of the residency permits the Minister of Interior is empowered to grant pursuant to the Entry into Israel Law. This is since the purpose of Section 3A(1) of the Temporary Order Law and Regulation 12 – preventing the separation of a child from his guardian parent who lawfully resides in Israel – can be fulfilled by permits other than a permit for permanent residency, primarily by a temporary residency permit. In this latter context, it was stressed that granting a minor temporary residency status which is periodically extended does not compromise the interest of safeguarding the child and preventing his separation from his parents; not to mention that the minor is entitled to all the rights granted to an Israeli resident during the validity period of the permit, including an Israeli identity card, registration in the Israeli population registry and various social benefits. The Appellants also maintain that the interpretive reasoning which formed the basis for the court's decision was erroneous. In this context, they stress that the Minister of Interior's power to grant residency permits under the Entry into Israel Law includes broad discretion, whereas the lower court's interpretation of Section 3A(1) of the Temporary Order Law, whereby the Minister of Interior is obligated to grant permits for permanent residency, restricts this discretion and as such, raises difficulties. It was then argued that the child registration procedure which has been employed by the Ministry of Interior for years does not apply only to children who are residents of the Area, but to any minor who is not listed in the Israeli population registry and who was born to a parent who is a permanent resident of Israel. Against this backdrop, the Appellants argue that the lower court's judgment means that a minor resident of the Area who is under 14 years of age should receive a permit for permanent residency in Israel immediately, whereas, a minor who is a resident of another country has to meet the terms of the graduated procedure and would not be entitled to a permit for permanent residency immediately. Finally, the Appellants argue that the lower court's decision to upgrade the Respondent's status to permanent residency ignores the fact that the Respondent was **originally** granted temporary residency *ex gratia*.

14. The Respondents, on the other hand, support the judgment of the lower court. They contend that the court's interpretation of the term "resident of the Area" was appropriate, whereas the interpretation offered by the Appellants for this term and for the **'Aweisat** judgment is erroneous and inconsistent with previous rulings by the Court for Administrative Affairs. The Respondents further argue that the purpose of the amendment to Section 3A(1) of the Temporary Order Law, which can be deduced from the section's language, the amending bill and the legislative process, was to enable granting children under age 14 **a permit for permanent residency**. The Respondents contend that the child registration procedure effectively prevents granting permanent residency to children who were between 12 and 14 years of age at the time their application was submitted, and in so doing frustrates the legislator's intent. The Respondents further argue that the child registration procedure

has long since been struck down by the Court for Administrative Affairs. Moreover, the arguments raised by the Appellants with respect to the interpretation of Section 3A(1) of the Temporary Order Law and its purpose were not presented to the lower court but rather first raised in the appeal, and therefore, should not be considered. On the merits, the Respondents believe that the interpretation offered by the Appellants whereby the Minister of Interior may grant a minor under age 14 any of the permits indicated in the Entry into Israel Law, including a tourist visa, contravenes both the purpose of the law, which is related to security rather than demography, and the legislative history. They contend that the distinction the legislator makes in Section 3A between a permit for residency in Israel and a stay permit implies a presumption that children under 14 years of age will not be harmed by the Temporary Order Law and will receive permits for permanent residency in Israel.

Review and ruling

The normative foundation

15. The appeal before us addresses three issues disputed by the parties: First, whether the Respondent is to be considered a "resident of the Area" who comes under the terms of the Temporary Order Law; Second, the interpretation of the term "residency permit" in Section 3A(1) of the Temporary Order Law, namely whether it refers to various types of residency permits or to a permit for permanent residency alone; Third, the relationship between the child registration procedure and the statutory provisions on granting Israeli status to children whose parents have Israeli status. Before getting to the heart of these matters, we shall first ascertain the normative foundation required for making a ruling thereon. Some of the relevant statutes and arrangements were mentioned in the above summary. However, for the integrity of the review, we shall address them in detail.

16. As known, the Temporary Order Law imposes various restrictions on the Minister of Interior's power to grant status in Israel to residents of the Area. This law was enacted in the context of the security circumstances in which Israel found itself following the outbreak of the second intifada and in view of security officials' evaluations that the entry of residents of the Area into Israel and their free movement inside its territory constitute a security risk (see: Citizenship and Entry into Israel Bill (Temporary Order) 5763-2003 HC 31. See also: **'Aweisat**, §10 and HCJ 1905/03 **'Aqal v. State of Israel** (unreported, December 5, 2010), §9 of my judgment (hereinafter: **'Aqal**)). The central arrangement of the Temporary Order Law is prescribed in Section 2. This section, in its original version, stipulated that during the period in which the Temporary Order Law is in effect, any other law notwithstanding, "the Minister of Interior shall not grant citizenship to a resident of the Area under the Citizenship Law and shall not grant him a permit for residency in Israel under the Entry into Israel Law and the commander of the Area shall not grant such resident a permit to remain in Israel under security legislation in the Area". In view of the arguments made by the parties, we herein refer to two aspects of the Temporary Order Law: the first aspect relates to the definition of the term "resident of the Area" and the second aspect relates to the arrangements prescribed in the law for the status of children of individuals who have status in Israel. We first turn to the definition of the term "resident of the Area" and the changes that have been made to this definition in the times relevant to the appeal at bar.

17. As stated, the restrictions on entry into Israel which are imposed pursuant to the Temporary Order Law apply to individuals who are "residents of the Area" as defined in the Temporary Order Law. At the time of submission of the first application, the term "resident of the Area" was defined as follows:

> **Definitions** …
>
> "Resident of the Area" –including a person who resides in the Area notwithstanding the fact that he

is not registered in the population registry of the Area and excluding a resident of an Israeli community in the Area.

The interpretation of this definition was discussed in detail in **'Aweisat**, where the court noted that its language clearly indicates that the provisions of the Temporary Order Law apply to anyone residing in the Area, even if they are not registered in the population registry thereof. However, it does not contain an explicit reference to a situation in which an applicant for status in Israel argues that he has no ties to the Area other than his being registered therein (*ibid.*, §12). In view of this lacuna, the court was required to interpret the definition. The conclusion was that the language of the definition contained in the Temporary Order Law is consistent both with an interpretation whereby the term "resident of the Area" fundamentally means anyone who is **registered** in the Area and with the interpretation whereby it means anyone who **resides in the Area**. The word "including" is designed to clarify that persons not registered in the population registry of the Area will also be considered residents of the Area inasmuch as they reside inside the Area (*ibid.*). However, it was later held that of the two possible interpretations, only the second interpretation is consistent with the security purpose of the law on the one hand and the desire to reduce the human rights infringements inherent thereto to a minimum on the other hand (*ibid.*, §§13-14).

In the context of the foregoing, it was held that the definition of the term "resident of the Area" is to be interpreted such that it does not apply automatically simply because a person is registered in the population registry of the Area. Registration in the population registry of the Area, it was ruled, establishes a **prima facie presumption** that the applicant seeking status in Israel has **additional** ties to the Area other than registration. Therefore, in circumstances that include registration in the Area and in the absence of other facts, the Ministry of Interior would be permitted to rely on the registration and find that the applicant seeking status in Israel comes under the provisions of the Temporary Order Law. The aforesaid notwithstanding, the Minister of Interior must allow the applicant seeking status to persuade it, by presenting administrative evidence, that "aside from registration in the registry, he lacks any other connection to the Area", such that the Temporary Order Law does not apply to him. Where an applicant for status has already discharged this burden, the usual arrangements for receiving status in Israel shall apply, and where the applicant is a minor, the arrangement prescribed in Regulation 12 of the Entry into Israel Regulations shall apply (**'Aweisat**, §15).

18. We reiterate that on August 1, 2005, the **2005 amendment** to the Temporary Order Law was officially published. The **2005 amendment** included a change to the definition of the term "resident of the Area", such that the application of the Temporary Order Law was expanded. It explicitly stipulated that anyone registered in the population registry of the Area will be considered a "resident of the Area" under the terms of the Temporary Order Law:

Definitions …

"Resident of the Area" – a person who is registered in the population registry of the Area as well as a person who resides in the Area notwithstanding the fact that he is not registered in the population registry of the Area and excluding a resident of an Israeli community in the Area.

This amendment tells us that "a 'resident of the Area' is one of two – a person who is registered in the population registry of the Area, **and an examination of his actual ties to the Area is of no**

consequence for this matter, or a person who is present in the Area but is not registered therein. For the latter, a substantive examination – according to the test of "most ties" – with respect to the actual residency of the person seeking status – will naturally be required". (AAA 1621/08 **Ministry of Interior v. Hatib** (unreported, January 30, 2011) §12 (hereinafter: **Hatib**).

It is agreed that this amendment does not apply to our case and therefore there is no need to consider it beyond the aforesaid.

19. Having clarified who is a "resident of the Area" to whom the Temporary Order Law applies, we shall now review the individual arrangements pertaining to minors who are residents of the Area pursuant to this law. As noted above, the Temporary Order Law prohibits granting status in Israel to persons defined as "residents of the Area" under the law. In addition to the blanket ban, and in view of the resulting significant infringement of constitutional rights, the law contains a number of exclusions allowing a departure from the prohibition in certain cases (see: HCJ 7052/03 **Adalah – Legal Center for Arab Minority Rights v. Minister of Interior** (IsrSC 61(2) 202, 383-384 (2006) (hereinafter: **Adalah**) and **'Aqal**, §9 of my judgment). One of the exclusions relates, as stated, to granting status in Israel, under predetermined limitations, to residents of the Area who are minors.

20. As a rule, the issue of granting status to a minor who was born in Israel and one of whose parents has status in the country is regulated by Regulation 12 of the Entry into Israel Regulations. This regulation, enacted pursuant to the Entry into Israel Law 5712-1952 (hereinafter: **the Entry into Israel Law**) sets forth as follows:

The status of a child born in Israel	The Israeli status of a child who was born in Israel, but to whom section 4 of the Law of Return 5710-1950 does not apply, shall be the same as the status of his parents; should the parents not share one status, the child shall receive the status of his father or of his guardian, unless the second parent objects to this in writing; should the second parent object, the child shall receive the status of one of the parents, as shall be determined by the Minister.

The language of the regulation indicates, *inter alia*, that the status of a child born in Israel is to be determined, as a rule, according to the status of his parents. However, where the parents of a child do not have identical status, his status shall be determined according to the status of his father or his guardian. It should be noted that in light of criticism of the language of the regulation which was presented in this court, the regulation is implemented by the Ministry of Interior such that where the parents have different status, the child is given the status of the parent with whom he maintains a center-of-life, even if said parent is the child's mother rather than his father (see **'Aweisat**, §17; HCJ 979/99 **Pabaloya v. Minister of Interior** (unreported, November 23, 1999) (hereinafter: **Pabaloya**); AP (Jerusalem District Court) 379/04 **Mansour v. Ministry of Interior – Population Administration Jerusalem** (unreported, June 3, 2006), §8).

21. This provision in Regulation 12 is subject to the arrangement stipulated in the Temporary Order Law. In its original version, prior to the **2005 amendment**, Section 3(1) of the Temporary Order Law set forth that the Minister of Interior or the commander of the Area may grant a resident of the

area who is a minor **under the age of 12** a permit for residency in Israel or a temporary stay-permit for Israel in order to prevent his separation from his parent who lawfully resides in Israel:

Reservations 3. The provisions of Section 2 notwithstanding:

1. The Minister of Interior, or the commander of the Area, as the case may be, may grant a resident of the Area a permit to reside in Israel, or a stay-permit for Israel, for a fixed period, for the purpose of employment or receiving medical treatment, as well as some other temporary purpose - for a cumulative period of no more than six months, **as well as a permit for residency in Israel, or a stay-permit for Israel in order to prevent the separation of a child under the age of 12, from a parent who lawfully resides in Israel**; [emphasis not in original – U.V.]

This section effectively limited the application of Regulation 12 of the Entry into Israel Regulations to children who are residents of the Area and allowed only minors under the age of 12 to receive status in Israel or temporary stay-permits for Israel. This exclusion was expanded in the **2005 amendment**. The amended Section 3A provides that the Minister of Interior may grant a permit for residency in Israel to residents of the area who are **under 14 years of age** and approve temporary stay-permits for Israel for residents of the area who are **over 14 years of age**.

Child permits Notwithstanding the provisions of Section 2, the Minister of Interior may, using his discretion:

1. **Grant a minor resident of the Area who is under 14 years of age, a permit for residency in Israel** [emphasis not in the original – U.V.] in order to prevent his separation from his guardian parent who lawfully resides in Israel;

2. **Approve an application to grant a stay-permit for Israel by the commander of the Area to a minor resident of the Area who is over 14 years of age** [emphasis not in the original – U.V.] in order to prevent his separation from his guardian parent who lawfully resides in Israel, provided that the permit is not extended if the minor does not reside in Israel on a permanent basis.

The amendment means that minors whose guardian parent lawfully resides in Israel would be granted either a residency permit or stay permit for Israel with a distinction between minors under the age of 14 and minors over the age of 14. In contrast, the previous version restricted granting residency or stay permits to minors up to the age of 12 only (this arrangement will be hereinafter referred to as **the amended arrangement**).

22. In addition to the provisions of Regulation 12 and the Temporary Order Law, the Ministry of Interior applies the child registration procedure in this context. This procedure is designed to regulate the processing of applications for status in Israel for minors only one of whose parents is registered as a permanent resident of Israel. It details the criteria for determining a minor's eligibility for status in Israel, the methodology for examining the application and the type of status he is to be granted. The granting of status is subject, *inter alia*, to establishing that the minor's and his parents' center-of-life was in Israel in the two years prior to submitting the application. The procedure applies to every minor one of whose parents is registered as a permanent resident in Israel and refers, among others, to minors who are residents of the Area. The procedure stipulates a graduated process for granting status. According to this process, a minor who is registered in the Area or resides in the Area without being registered therein and is under 14 years of age **at the time the application is submitted**, will receive temporary status, type A/5 for two years, after which he would be granted permanent status. This provided his center-of-life in the two years preceding the application is found to have been in Israel (Section C.7.2.7 of the procedure). If the minor turns 14 while still on temporary residency status, he will remain in that status without an upgrade to permanent status (Section C.7.2.8 of the procedure). The procedure further provides that a minor who is registered in the population registry of the Area or resides therein without being registered and submitted an application for status in Israel when he was over the age of 14, will receive a stay-permit only (a DCO permit), subject to the position of the relevant officials and inasmuch as center-of-life in Israel has been established.

23. We shall summarize the picture that arises from all the arrangements reviewed above. In general, in view of Regulation 12 of the Entry into Israel Regulations, the status of a minor who was born in Israel but is not entitled to legal status therein pursuant to the Law of Return is determined according to the status of his parents. The arrangement is different with respect to a child who is a resident of the Area under the definition of the term in the Temporary Order Law, which, as aforesaid, has been amended. In our matter, the original definition shall apply, as interpreted in the rulings of this court. A minor who comes under the terms of the relevant definition of resident of the Area is subject to the provisions of the Temporary Order Law. Until the **2005 amendment**, such a minor who was under 12 years old was able to receive a permit for residency in Israel or a temporary stay permit for Israel; the **2005 amendment** raised the cut-off age such that a minor could receive a permit for residency up to the age of 14 and a minor over the age of 14 could receive a temporary stay permit only. Having reviewed all the arrangements relevant to our matter, we turn to examining parties' arguments on their merits.

From the general to the specific

Is the Respondent a resident of the Area?

24. As indicated from the above review, the parties at bar are in dispute as to the question of whether the Respondent should be considered a resident of the Area or not. Before we address their arguments on this issue, we clarify that the parties do not dispute the fact that as the first application was submitted on January 26, 2004, namely **before the 2005 amendment came into effect**, the original definition, which was in effect at the time the first application was submitted, should be applied to the Respondent. Thus, in view of parties' agreement (and without being required to rule on this question), this shall be the agreed premise for the interpretive review.

25. As noted, the interpretation of the original definition of the term "resident of the Area" was discussed in detail in **'Aweisat**. The dispute between the parties focuses on the question of its application in the Respondent's case. The Appellants believe that the manner in which the District Court implemented the rule set down in **'Aweisat** was erroneous, since it reviewed the Respondent's ties to Israel rather than examined his ties to **the Area**. In my view, this argument has

substance. The judgment in **'Aweisat**, whose major findings we have addressed above, focuses on the ties of the person seeking status to the Area rather than Israel. Pursuant to this judgment, a person who is seeking status and who is registered in the population registry of the Area must prove that he has no tie to **the Area** other than the registration rather than prove that he has ties of one sort or another to **Israel** (see also **Hatib**, §9). Indeed, the fact that a person seeking status might have some ties to Israel does not negate the possibility of his being defined as a resident of the Area. This is so as he may have ties to the Area other than the registration in addition to his ties to Israel.

26. The foregoing leads to the conclusion that the manner in which the district Court analyzed the question of the Respondent's status as resident of the Area raises difficulties. The analysis conducted by the court focused on the Respondent's ties to Israel rather than on whether he has ties to **the Area** other than registration. In so doing, the court departed from the ruling in **'Aweisat**.

    In this context, I shall add and stress that although maintaining a center-of-life in Israel is a condition for receiving status in Israel under the child registration procedure, this does not mean that anyone who spent two years in Israel prior to submitting his application is no longer a "resident of the Area". The condition of a two year residency in Israel prior to submitting an application is a general condition which applies to anyone seeking status in Israel, including individuals who are not residents of the Area. Requiring a center-of-life in the two years prior to submission of an application is not designed to rule out a minor's being a resident of the Area, but rather to ensure that the foreign minor seeking residency in Israel, whether or not he is a resident of the Area in the meaning of the term under the Temporary Order Law, has indeed lived in Israel during the relevant time.

27. From the general to the specific. The Respondent herein lived in the Area with his family for a period of time that cannot be said to be insignificant. The parties are indeed in dispute as to the length of the Respondent's residency in the Area; however, in the circumstances of the matter, it need not be accurately defined, as the gap between the parties' positions is relatively marginal and it is clear, in any case, that the Respondent did reside in the Area for a significant period of time. During this period, the Respondent studied in a school in the Area and his father is a resident of the Area. In view of the Respondent's overall personal details, and without expressing a decisive opinion on the circumstances in which a person who is registered in the population registry of the Area can be said to have other ties to the Area, it is impossible to say that the Respondent has no ties to the Area other than registration. In these circumstances and in view of the rule laid down in **'Aweisat**, he must be deemed a "resident of the Area" who comes under the Temporary Order Law.

The Respondent's eligibility for status in Israel under the Temporary Order Law

28. Having ruled that the Respondent must be deemed a "resident of the Area" for the purpose of applying the Temporary Order Law, one must continue to examine whether he is entitled to status pursuant to this law: inasmuch as the answer to this is affirmative, one must proceed to examine what type of status this shall be. The District Court ruled, and rightfully so, that the decision of the Minister of Interior to apply the amended arrangement to the Respondent was justified. Thus the premise for the review before us is that the Respondent is entitled to a permit for residency in Israel pursuant to the amended arrangement. The question of whether the term "permit for residency" in this context means that the Minister of Interior may grant the Respondent any type of permit for residency or that his power is limited to granting a permit for **permanent residency** in Israel only, is a separate question and the focus of the dispute between the parties.

29. Before we proceed to examine this question in detail, we shall address the Respondents' preliminary argument, namely that the Appellants' arguments regarding the interpretation of the term "permit for residency" were not presented to the District Court and are being raised for the

first time in the context of the appeal submitted to this court. The rule is that an appellate court does not review arguments which were not presented to the court of first instance, other than in exceptional circumstances (see: CA 499/85 **Estate of Ahuva (Adela) Spier, Deceased v. Director of Land Betterment Tax, Haifa**, IsrSC 44(3) 256 (1990)). The aforesaid notwithstanding, in cases where the argument which is first made before the appellate instance concerns legal interpretation and is based on undisputed facts, it is possible to allow for it to be presented despite the accepted rule (see: CA 11172/05 **Alon v. Hadad** (unreported, October 21, 2009), §30; CA 59997/92 **Melek v. Director of the Estate of Rabbi Yehoshua Deutch, Deceased** 51(5) 1, 19 (1997); CA 10704/05 **Lugasi v. Ashkelon Tax Assessment Official** (unreported, July 10, 2008), §6). In our matter, the Appellants' arguments with respect to the interpretation of the term "permit for residency" indeed were not included in written submissions to the lower court, at least not in the comprehensive and detailed manner in which they were argued in the appeal before us, although the state contends that the arguments were made during the hearing. However, these are legal arguments concerning the legal lower court's interpretation of a statute. In these circumstances, I see no reason not to address the arguments on their merits. Having so stated, we turn to examine the question on which we are required to rule, namely what is the appropriate interpretation of the term "permit for residency" in the amended arrangement?

The interpretation of the term "permit for residency"

30. The question of the interpretation of the phrase "permit for residency in Israel" which appears in the amended arrangement has yet to be reviewed in the rulings of this court. The language of the section of the statute in which it appears forms the premise for our review (see: CA 65/82 **Director of Land Betterment Tax v. Hershkowitz**, IsrSC 39(4) 281, 289 (1985); CA 1900/06 **Talamachio v. Administrator General** , IsrSC 53(2) 817, 827 (1999); HCJ 962/07 **Liran v. Attorney General** (unreported, April 1, 2007), §33 of the judgment of Justice **A. Proccaccia**). The interpretive possibility suggested by the Appellants, according to which the phrase "permit of residency" should not be read as saying "permit for permanent residency" is obviously anchored in the language of the section. As known, Section 2(A) of the Entry into Israel Law lists many types of permits for residency in Israel and the permit for permanent residency is only one of them. Once the phrase "permit for residency in Israel" does not clearly limit itself exclusively to a permit for permanent residency, there is no prima facie basis for the ruling of the District Court, which the Respondents support, that the minister's power is limited to granting a permit for permanent residency only. However, I am prepared to assume, for the sake of the review and in the Respondents' favor, that the language of the law also contains a basis for the interpretation they profess. As such, we shall proceed to examine the statutory provision which is at the heart of our review.

31. We first turn to the subjective purpose which concerns the goals, values and policy the legislator sought to achieve through the law. The subjective purpose is deduced, *inter alia*, from the language of the statue and its legislative history (see: Aharon Barak, **Interpretation in Law**, Vol. 2 – Interpretation of Legislation, [in Hebrew] 202 (1993) (hereinafter: **Barak**). The subjective purpose of the Temporary Order Law and its legislative history were discussed in detail in the judgment rendered in **'Adalah**, where it was held that the purpose of the law was security (see: **Adalah**, §24 of the judgment of Vice President **M. Cheshin**; **'Aweisat**, §10). The language of the exclusion that allows granting status to a minor resident of the Area – both before the **2005 amendment** and thereafter, clarified that the purpose was to prevent the separation of a minor resident of the Area from his parent who lawfully resides in Israel. More broadly, and in the context of the overall provisions of the Temporary Order Law and the purposes at its foundation, one can say that the purpose of this exclusion is to uphold the security purpose which the

Temporary Order Law was designed to promote in a proportionate manner and whilst minimizing the infringement on human rights as much as possible. This purpose is also indicated by the explanatory notes to the **2005 amendment**:

> ... in accordance with decision no. 2265 of the government… and in view of the remarks of the High Court of Justice in petitions that were filed with regard to the Temporary Law... it is proposed that alongside the extension of its validity, the temporary provision should be amended such that the exclusions to the application of the restrictions therein should be expanded. This expansion should be made with regard to population groups which, according to the assessment of the security authorities, have a reduced security risk potential, such that the purpose of the Temporary Order is achieved, on the one hand, and we ensure that this purpose is achieved in a more proportionate manner, on the other.
> (see: Citizenship and Entry into Israel Bill (Temporary Order) (Amendment) 2765-2005).

32. It seems that this purpose guided the legislator with respect to the changes made to Section 3A of the law. In this context it shall be noted that the proposed **2005 amendment** did not raise the cut-off age for eligibility for a permit for residency from 12 to 14 and left the possibility of granting a **stay permit** and not just a permit for residency to minors who are under 12 years of age. The bill included an unchanged version of Section 3(1) and in addition, proposed to grant stay permits in Israel to minors over the age of 12. The final form of Section 3A was shaped in the discussions of the bill held by the Knesset's Internal Affairs and Environment Committee (hereinafter: **the Committee**). The Committee's discussions focused, *inter alia*, on the type of status to be given to minors under the age of 12 as opposed to minors over the age of 12 and on an examination of raising the cut-off age below which minor residents of the Area would be granted a permit for residency in Israel and above which they would be given a stay permit for Israel only, subject to the security purpose underlying the law. Following these discussions, it was decided that a permit for residency in Israel could be granted to minors under the age of 14 and that the commander of the Area would be empowered to grant minors over this age a stay permit for Israel. A study of the protocols documenting the Committee's sessions reveals the rationales behind these changes. The protocols mention the need to grant children under 14 years of age status which is identical to the status of their parents who live in Israel, not immediately, but rather after a probationary period of a number of years, during which the child would be granted temporary status in order to ensure that these children indeed live in Israel on a permanent basis (see: Protocol, 466th Session, 16th Knesset, 17-19, 23, 25 (July 11, 2005) (hereinafter: **protocol 466**) which refers to granting permanent status following a graduated procedure. See also Protocol, 486th Session, 16th Knesset, 12 (July 25, 2005) (hereinafter: **protocol 486**) which addresses raising the cut off age from 12 to 14). There is further mention in the Committee sessions of the need to ensure that children under 14 years of age could gain status which includes "social benefits" as opposed to a stay permit for Israel which does not confer such rights (see protocol 466, at 26-27 and protocol 486 at 12). As for children over the age of 14, it was mentioned that they would not be granted residency but only a stay permit for Israel in order to prevent their separation from their parents who lawfully reside in Israel, subject to a security check (protocol 466, at 23, 29-37 and protocol 486 at 12-20).

33. At this stage, it is possible to summarize and state that the language of the section, both original and amended, and the legislative history, indicate that considering the general security purpose of the Temporary Order Law and the desire to protect the integrity of the family unit and the child's best interest, the legislator sought to allow the status of a minor resident of the Area under the age of 14 to be compared to the status of his guardian parents, as much as possible. The aforesaid

notwithstanding, the legislator sought to leave a margin for discretion by the Ministry of Interior and allow for a graduated procedure.

34. We now proceed to examine the objective purpose which concerns the fundamental values of the legal system in a modern, democratic society (see **Barak**, at 201-204). The objective purpose is examined, *inter alia*, against the background of the essence of the statute, overall legislation and the fundamental principles of the legal system (see Barak at 249-251). The fundamental values of the legal system include the protection of human rights and the interpretive rules in effect in our legal system require that a statute be interpreted in a manner which is consistent with the protection of these rights whilst reducing the infringement upon them to the extent possible (see **Hatib**, §§5, 10). In our matter, case law has acknowledged the right to family life as a right which derives from the fundamental right to dignity, enshrined in Basic Law: Human Dignity and Liberty (see: **'Adalah**, §§30-38 of the Judgment of President **A. Barak** and §§1, 6 of the judgment of Justice **A. Procaccia**; CA 7155/96 **A v. Attorney General**, IsrSC 51(1) 160, 175 (1997); HCJ 4293/01 **New Family v. Minister of Labor and Social Services** (unreported, March 24, 2009)). As mentioned, Section 3A proclaims itself as meant to prevent the separation of a child who is a resident of the Area from his parent who lawfully resides in Israel. Thus, one of the objective purposes of this arrangement is protecting the constitutional right to family life, subject to established limitations, and more specifically, the right of a parent who is a resident of Israel to raise his child in Israel and the right of a child to family life with his parents (see: **'Adala** §§26, 28, 32-34 of the judgment of President **A. Barak** and §§11-15 of the judgment of Justice **S. Joubran** and **'Aweisat**, §14; on the issue of the parent's right to raise his child and the child's right to grow up with his parent in other contexts see: LCA 3009/02 **A v. B**, IsrSC 56(4) 872, 893-894 (2002); CFH 6041/02 **A v. B**, IsrSC 58(6) 246 (2004); HCJ 11437/05 **Kav LaOved – Worker's Hotline v. Ministry of Interior** (unreported, April 13, 2011) §§38-39 of the judgment of Justice **A. Procaccia** (hereinafter: **Worker's Hotline**)).

35. Another of our legal system's fundamental values, which permeates the judgments of this court, is the best interest of the child. This principle guides the court in any proceeding which centers on issues concerning minors, even when the case concerns the exercise of administrative power (see: AAA 10993/08 **A v. Ministry of Interior** (unreported, March 10, 2010), §4 of the judgment of my colleague, Justice **N. Handel**. On the applicability of this principle in other contexts see: CrimA 49/09 **State of Israel v. A** (unreported, March 8, 2009), §20 of the judgment of Justice **Y. Danziger**); see also Article 3 of the Convention on the Rights of the Child (signed in 1990). The term "the best interest of the child" is broad and vague and may have different meanings and interpretations in different contexts, depending on the case before the court (see LAA 10060/07 **A v. B** (unreported, October 2, 2008), §30 of the judgment of Justice **Y. Danziger**). In the matter at bar, this principle is expressed in the need to preserve the natural bond between parents and children as it is most fundamentally in the best interest of the child to grow up with his parents and be educated by them (see **Adalah**, §11 of the judgment of Justice **S. Jubran** and the references therein; **Kav LaOved**, §20 of the judgment of Justice **A. Proccacia**).

36. The combination of the right to family life and the principle of the best interest of the child is the source of the importance of equating the civil status of a child to that of his guardian parent:

> Israeli law recognizes the importance of making the civil status of the parent equal to that of the child. Thus, s. 4 of the Citizenship Law provides that a child of an Israeli citizen shall also be an Israeli citizen, whether he is born in Israel (s. 4A(1)) or he is born outside it (s. 4A(2)). Similarly, r. 12 of the Entry into Israel Regulations, 5734-1974, provides that 'A child who is born in Israel, to whom s. 4 of the Law of Return, 5710-1950, does not apply,

> shall have the same status in Israel as his parents.
> (**Adalah**, §28 of the judgment of President **A. Barak**).

And elsewhere:

> As a rule, our legal system recognizes and respects the value of keeping the family unit whole and the interest of safeguarding the child and therefore **one must avoid creating a gap between the status of a minor child and that of his guardian parent or his parent who is entitled to custody** (emphasis not in original – U.V.). From the point of view of granting permits for residency in Israel also, there seems to be no justification for creating such a gap as the reasons underlying the granting of the residency permit to the parent shall generally apply also to his child who was born in Israel and resides with him." (see: **Pabaloya**, §2 of the judgment of Justice (as was her title then) **D. Beinisch**).

As aforesaid, Section 3a limits the application of Regulation 12 with regard to residents of the Area and does not directly refer to the principle of equating the status of a minor to the status of his guardian parent, but rather only to the desire to prevent the separation of a child from his parent who is present in Israel. However, according to accepted rules of interpretation, this section must be interpreted in light of this guiding principle to the extent possible. Another objective purpose underlying Section 3a is fulfilling the general security purpose of the Temporary Order Law which requires imposing certain restrictions on human rights for the security of the citizens of the State of Israel. As aforesaid, setting a cut-off age below which a minor is to be given a permit for residency in Israel and above which he will be given a stay-permit only is based on these security considerations (see also Section 3d of the Temporary Order Law which addresses security preclusions to granting status to residents of the Area).

37. Another general principle which guides the interpretation of legislative acts is the fundamental principle whereby a state has sovereignty over who is to enter its territory and, accordingly, the Minister of Interior, who is the competent official in this matter, has broad discretion (see AAA 4614/05 **State of Israel v. Oren** (unreported, March 16, 2006); **'Aweisat**, §19; HCJ 758/88 **Kendle v. Minister of Interior**, IsrSC (46(4) 505, 520 (1992), hereinafter: **Kendle**, **'Aqal**, §10 of my judgment), though he is required to exercise it subject to the rules of administrative law and while giving due consideration to preserving the family unit and fulfilling the purpose of Regulation 12 (on the issue of the range of discretion given to the Minister of Interior see: AAA 993/03 **Hamdan v. Government of Israel**, IsrSC 59(4) 134, 140 (2005); HCJ 4156/01 **Dimitrov v. Ministry of Interior**, IsrSC 56(6) 289, 293-294 (2002); HCJ 3403/97 **Enkin v. Ministry of Interior**, IsrSC 51(4) 522, 525 (1997); AAA 1038/08 **Ghabis v. State of Israel** (unreported, November 8, 2009), §§11-12 of the judgment of my colleague, Justice **E. Rubinstein**; on the consideration of preserving family unity in the context of discretion see **'Aweisat**, §§19-20). It is therefore possible to say that in examining the objective purpose of Setion 3a(1) of the Temporary Order Law, one must also consider the discretion granted to the Minister of Interior.

38. As noted, the purpose of a section of law may be deduced, *inter alia*, from its legislative environment, as a law is not passed in a vacuum, and the legislative environs of a law affects its interpretation (see **Barak** pp. 327-332). It follows, that the interpretation of the arrangement set forth in Section 3a(1) of the Temporary Order Law may be deduced also from other arrangements included in the Temporary Order Law. A reading of the Temporary Order Law indicates that in other contexts in which the legislator sought to restrict the Minister of Interior's discretion to granting only a certain type of residency permit, he noted this in the law itself. Thus, for example,

the provision of Section 3a1(a)(1) of the Temporary Order Law empowers the Minister of Interior to grant a permit for **temporary residency only** in special humanitarian cases; and the provision of Section 4(2) of the Temporary Order Law empowers the commander of the Area to grant a stay permit for Israel to a resident of the Area who filed a naturalization application or an application for a residency permit in Israel and expressly stipulates that he shall not be granted citizenship under the Citizenship Law or a permit for temporary or permanent residency. These two arrangements illustrate that where the legislator wished to clarify that a certain arrangement in the Temporary Order Law allows granting residency permits of a certain type only – he took pains to note as much explicitly. We thus conclude by saying that the objective purpose of Section 3(a)1 is composed of a number of different purposes, all of which should be taken into account in the framework of interpreting the term "permit for residency".

39. Having so said, we must examine which of the possible textual meanings best fulfills the purpose of the statute and this shall be the legal meaning of the statutory provision (see HCJ 6824/07 **Mana' v. Tax Authority** (unreported, December 20, 2010) §19 of my judgment). We observed that the subjective purpose of Section 3a(1) of the Temporary Order Law was to prevent separation between a parent who lawfully resides in Israel and his child who is a resident of the Area, while maintaining the overall security purpose of the Temporary Order. We emphasized that the status of the minor should be equal to that of his guardian parent to the extent possible, while allowing the Ministry of Interior to conduct a graduated procedure and ensure that the minor indeed permanently resides in Israel. We subsequently observed that the objective purpose of Section 3a(1) also seeks to protect, to the extent possible, the right to family life and the best interest of the child and to advance the aspiration to bring the child's status on par with that of the parent and prevent an undesirable gap between their statuses. At the same time, we noted the general principles relating to the discretion the Minister of Interior has on the matter of entry into Israel. We also noted that the Entry into Israel Law indicates a variety of residency permits which the Minister of Interior is empowered to issue and that where his power was restricted to issuing a specific type of residency permit, this was expressly noted in the relevant section in the Law. It therefore appears that the subjective and objective purposes are internally consistent and it remains to examine which of the two suggested interpretations best fulfills them.

40. Based on the aforesaid, it appears that the interpretation of the term "residency permit" proffered by the Appellants is more consistent with the purposes of Section 3a(1) of the Temporary Order Law. Indeed, the interpretations suggested by the Appellants and the Respondents both satisfy the right to family life in that they prevent the separation of a minor from his parent who lawfully resides in Israel by granting the minor status which bears rights. Both also allow bringing the minor's status on par with that of the guardian parent. The aforesaid notwithstanding, the narrow interpretation which refers only to a permit for permanent residency does not conform to principles developed in case law with respect to the Minister of Interior's broad discretion on the issue of entry into Israel or with the fact that this discretion was not restricted by Section 3a(1) of the Law, unlike other sections in which such a restriction was expressly imposed. Moreover, circumscribing the Minister of Interior's discretion does not necessarily serve the statute's purpose. Thus, for example, in cases where the guardian parent resides in Israel with a temporary resident status, forcing the Minister of Interior to grant the child permanent residency status (i.e. a status which is not equal to that of the parent), does not serve the purposes which we observed.

41. It is therefore possible to conclude by saying that among the suggested textual possibilities, the broad interpretation which **does not** limit the Minister of Interior's power to granting a permit for permanent residency only is the one which best fulfills the various purposes underlying Section 3a(1) of the Temporary Order Law and properly balances between them. This interpretation recognizes the parent's right to raise his child in Israel and the minor's right to live with his

guardian parent and allows comparing the minor's status to that of his parent without compromising the security purpose underlying the Temporary Order Law and without preventing the Minister of Interior from exercising his discretion as to the status a minor is granted. My conclusion is, therefore, that the Minister of Interior's power to grant minor residents of the Area who are under 14 years of age a residency permit is not limited to permanent residency permits only and that the Minister of Interior is empowered to grant minor residents of the Area different types of residency permits. It is superfluous to note that the Minister of Interior must exercise his discretion according to the purposes underlying this provision as we have observed them to be. We shall address this below.

Allegations regarding the child registration procedure

42. This is the place to examine the Respondents' arguments with respect to the provisions of the child registration procedure in the context of the normative foundations which we outlined. As recalled, the procedure stipulates that a minor resident of the Area who was born in Israel, who was under **14 years** of age at the time the application was submitted and has been proven to have a center-of-life in Israel in the two years prior to submission of the application, would be able to receive temporary residency status for two years and an upgrade to permanent status thereafter. In addition, the procedure also stipulates that if the minor is over age 14 at the end of the two years in which he held a temporary residency permit, then, in view of the restrictions imposed by the Temporary Order Law, his status would not be upgraded to permanent residency. Such a minor would, therefore, remain with temporary residency status which would be periodically extended, subject to continued center-of-life in Israel.

43. The effective result of the child registration procedure is that a minor who submitted an application for status in Israel when he was between 12 and 14 years of age is entirely unable to receive permanent status in Israel. As such, the procedure denies these minors the possibility of receiving status which was given to them in the primary legislation. This is a substantive and direct violation of their right, which does not conform to the statutory arrangement.

44. The provisions of the child registration procedure are also inconsistent with the purpose of Section 3a(1) of the Temporary Order Law. As noted, the purpose of the arrangement contained in Section 3a(1) is to allow a minor resident of the Area to live with his guardian parent in Israel and equate, to the extent possible, the minor's status to that of his parents. This, while maintaining the general security purpose of the Temporary Order Law. As clarified, following prolonged deliberations in the Knesset's Internal Affairs and Environment Committee, a decision was made to allow minors under the age of 14 to receive a permit for residency in Israel, including a permit for permanent residency. This was based on the viewpoint that this group requires true proximity to the guardian parent on the one hand and on the other, the potential security risk it poses is low. Despite this, in practice, the procedure does not allow those who meet the required conditions and whose age was under 14 at the time their application for status was submitted to receive status comparable to their parents'.

45. This result raises a real difficulty. Stipulating conditions and directives comes under the discretion of the Minister of Interior of course; however, this discretion is not immune to judicial review and administrative directives must fulfill the purpose of the statue and conform to the rules of administrative law (see: AAA 4515/08 **State of Israel v. Neeman** (unreported, October 6, 2009), §16 of the judgment of Justice **E. Arbel**), **'Aqal**, §11 of my judgment). Directives, conditions and procedures must, first and foremost, conform with the provisions of the statute which empowers the administrative authority to issue them and with its purpose (see: AAA 9187/07 **Luzon v. Ministry of Interior** (unreported, July 24, 2008), §41 of the judgment of Justice **Y. Danziger**). Inasmuch as the directives do not fall squarely within the limits of the statue under which they are issued, or

impinge on fundamental rights without express authority in the statute, they must be struck down (see: HCJ 355/79 **Qatlan v. Israel Prison Service**, IsrSC 34(3) 294 (1980); HCJ 337/81 **Mitrani v. Minister of Transport**, IsrSC 37(3) 337 (1983); cf: **Mana'**; see also, Itzhak Zamir, **Administrative Powers**, Vol. B 779 (1996); Yoav Dotan, **Administrative Directives** 180 (1990)).

46. In my view, the Minister of Interior does not have the authority to create, out of thin air, a distinction between minors under the age of 12 and minors between the ages of 12 and 14 for the purpose of receiving status in Israel. Such a distinction has no mention in the language of the Temporary Order Law and Regulation 12 or the legislative history that preceded them and it is also inconsistent with the purposes underlying them. This was the context for the District Court's repeated rulings that, for the purpose of granting a residency permit under Section 3a(1), the Ministry of Interior must examine the age of the minor at the time the initial application for status in Israel was submitted rather than at the end of the two years during which the minor had a temporary residency visa. The district courts were of the opinion that only in this manner would the provisions of the Temporary Order Law and Regulation 12 and the purposes underlying them be fulfilled (see statements in AP (Jerusalem District) 8295/08 **Mashahara v. Minister of Interior** (unreported, November 24, 2008), §§12-14 of the judgment of Justice **Y. Adiel**; and AP (Jerusalem District) 8336/08 **Zahaika v. Minister of Interior** (unreported, December 2, 2008).

47. I too accept this position. In my opinion, the proper manner of implementing the procedure is that where the Ministry of Interior decided that a certain minor, who is under 14 years of age, meets the criteria stipulated for receiving status in Israel, the decisive date with respect to the minor's age under Section 3a(1) of the Temporary Order Law shall be the date on which the initial application was submitted. This would enable the graduated procedure, whose importance the Ministry of Interior stresses, both with respect to minor residents of the Area and other groups, without detracting from the possibility of granting the minor permanent status upon termination of the graduated procedure, provided that at the time of the initial application, the minor was under 14 years of age. This interpretation is consistent with both the right of Israeli residents and their minor children who are residents of the Area to lead a shared family life, and with the provision of Section 3a(1) which allows granting a residency permit to a minor resident of the Area in a manner which minimizes, as much as possible, the infringement upon his rights which is a result of the security purpose of the Temporary Order Law. Considering the aforesaid normative framework and particularly the absence of a statutory basis for limiting the possibility of minors under 12 years of age receiving a permit for permanent residency, which is diametrically opposed to the arrangement in Article 3a(1) of the Temporary Order Law, my conclusion is that the child registration procedure, in the manner in which it is currently implemented by the Ministry of Interior, cannot stand. The rulings of the District Court on this issue are sound. We presume that the Ministry of Interior will correct the provisions contained in the procedure such that it conforms to our ruling with due haste.

From the general to the particular

48. As the Respondent filed his first application prior to reaching the age of 14, it is not possible, as explained, to deny him the possibility of receiving permanent residency status solely due to the fact that he was older than 14 at the time he submitted the application for an upgrade from temporary to permanent residency as part of the graduated procedure. In approaching the decision on what type of residency permit the Respondent would be given at the end for the graduated procedure, the Minister of Interior should have exercised his discretion in accordance with the principles handed down in case law and which we detailed above. As stressed, Israeli law strives, to the extent possible, to prevent a gap between the status of a minor child and that of his parent who has custody over him or who is entitled to custody. This concept remains intact, as clarified, both in decisions under Regulation 12 and in decisions in cases where the provision of Section 3a(1) of the Temporary Order Law applies.

49. Having found that the Respondent's mother is a permanent resident; having found that following the implementation of the graduated procedure the Respondent's center-of-life is in Israel and since no other preclusion arose in his case, a proper exercise of powers, in the concrete circumstances of the case at bar, leads to the conclusion that he is entitled to permanent residency status in Israel, subject to his center-of-life remaining in Israel.

Conclusion

50. On the basis of my aforesaid conclusion, I shall suggest to my colleagues to reject the appeal. In my view, there is no room for intervention in the result reached by the District Court, even if my reasoning followed a different path from that that of the District Court. Should my opinion be accepted, I shall suggest to instruct the Appellants to pay the Respondent's costs to the sum of 10,000 ILS.

Justice

Justice E. Rubinstein

A. I concur with the opinion of my colleague Justice Vogelman in his interpretive journey. The need to put together a complex and complicated puzzle, as evident from the opinion, and to extract a result from difficult legal and factual data, as evidenced by the different reasoning provided by the courts for administrative affairs and this court, not to mention the position of the state, which, even if not accepted, was not devoid of substance, illustrate the impossible reality in which we live. There is among us, a large population of mostly Arab residents of East Jerusalem who have not accepted citizenship despite the implementation of Israeli law in 1967, but are entitled to a range of rights in Israel, including significant financial social rights, labor rights, rights to movement etc. In view of these rights, many use the courts to battle for the status of permanent resident which confers all these rights yet imposes few duties, and one need not say more. The security and other issues which are a result of this situation are well known and receive expression in various ways in statute and case law, and primarily in reality, including ties of one sort or another to the Palestinian Authority. At this time, and until there is a permanent settlement with the Palestinians, and perhaps also thereafter, the populations are inextricably connected, which results in complicated patchwork arrangements, which perhaps cannot be avoided in these unfortunate circumstances of life and therefore, the intricate interpretation presented by my colleague is required. The work of the authorities is extremely difficult for a reason. The answers lie with peace makers, and until then, with the legislator. I shall add that in cases such as the one at bar, though the family moved from one place to another, Jordan, the Area, Israel, at the end of the day, there is not much point in reaching different results for different children in the family. As stated, even if accompanied by a sigh of discontent at the present situation, I cast my vote alongside my colleague's.

Justice

Justice N. Hendel

I concur with the opinion of my colleague Justice Vogelman as well as with the comments of my colleague Justice Rubinstein.

Justice

It is therefore decided as stated in the judgment of Justice U. Vogelman

Given today, 23 Nissan, 5771 (27 April 2011)

Justice Justice Justice