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At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

HCJ 6615/11
To be heard on November 14, 2011

In the matter of: **_____ Salhab, ID _____ et al.**

represented by counsel, Adv. Sigi Ben Ari et al.
of HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Minister of Interior**
2. **West Bank Military Commander**

represented by the State Attorney's Office
29 Salah a-Din St., P.O.B 49029
Jerusalem
Tel: 02-6466194; Fax: 02-6467011

The Respondents

Preliminary Response to Petition and Motion to Cancel Hearing

In accordance with the decision of the Honorable Court, the Respondents hereby submit their preliminary response to the petition.

1. The petition concerns the Petitioners' request that it be held that a resident of the Judea and Samaria Area (hereinafter: **the Area**) whose application for family unification in Israel has been approved by the Minister of Interior and whose presence in Israel is regulated by virtue of DCO permits (hereinafter: **a Palestinian undergoing family unification**) would be able to work in Israel without any further procedure or coordination and without restriction.

   Alternatively, the Petitioners seek a ruling that Palestinians undergoing family unification be granted work permits routinely, concomitant with the permits granted for entry and presence in Israel (hereinafter: **stay-permits**)

In addition, the Petitioners ask the Honorable Court to instruct the Respondents to disclose all normative arrangements pertaining to employment in Israel by Palestinians undergoing family unification.

2. As detailed below, the Respondents maintain that the petition should be rejected *in limine*.

3. In their petition, the Petitioners present a long list of matters in which Palestinians undergoing family unification are discriminated against, as compared to other foreign nationals undergoing family unification in Israel. The Petitioners note, for example, that Palestinians undergoing family unification must obtain a permit for the purpose of employment and that the permits granted to them are restricted to certain sectors and that they are unable to engage in self-employment.

4. First and foremost, we note that many of the arguments raised in the petition are inaccurate, as follows:

5. **First – Palestinians undergoing family unification may engage in self-employment in Israel**. In the absence of any legal provision prohibiting them from doing so, there is no impediment to self-employment in Israel by Palestinians undergoing family unification. We note that in this matter, Palestinians undergoing family unification **are at an advantage** compared to other foreign nationals who are present in Israel with a visa that does not allow them to work and who may not work in Israel even as self-employed, in breach of the terms of their visa. Palestinians undergoing family unification who have received DCO permits are exempt from obtaining visas, according to the provision of the Order regarding Entry into Israel (Exemption for Residents of Judea and Samaria, the Gaza Strip and North Sinai, Central Sinai, Sholomo Area and the Golan Heights), 5728-1968 (hereinafter: **the exemption order**), and they may, therefore, work in Israel as self-employed with no need for further visas.

6. **Second – Palestinians undergoing family unification may work in any sector in Israel**. Section 1.13(2) of the Foreign Workers Law, 5751-1991 (hereinafter: **the foreign workers law**) stipulates that work visas are to be granted to foreign nationals with attention, *inter alia*, to the nature of the labor market in the various sectors and areas of employment. According to this section, and to government policy on the employment of foreign workers in general and Palestinian foreign workers in particular, work permits are granted to foreign workers only in a small number of sectors. **However, Palestinians undergoing family unification who are granted personal DCO permits may work in Israel, in any sector, and their employment is not limited to the sectors in which foreign workers may be employed.** Israeli employers may receive a permit to employ Palestinians undergoing family unification in any sector.

7. **Third – Palestinians undergoing family unification are not subject to employment quotas**. According to the provision of section 1.13(2) of the aforesaid foreign workers law, and according to government policy, permits are granted to foreign and Palestinians workers subject to quotas and protocols pertaining to the recruitment and employment of such workers, which are normally determined by government decision. Palestinians undergoing an approved family unification process are not subject to the permit quotas for employing Palestinians and the employer permits given to their Israeli employers, inasmuch as such were requested, are not counted as part of the aforesaid quota.

8. The aforesaid policy, which **favors** Palestinians over other foreign nationals, has been implemented by the Population Authority, and previously by the Foreign Workers Support Unit and the Ministry of Industry, Trade and Labor and the Payment Department of the Employment Service, for at least

15 years, as the state notified the Honorable Court of this as far back as July 22, 1998, in its notice in HCJ 3945/98 **Shakir v. Minister of Interior**, as follows:

> 9. Moreover, with respect to residents of the Area who are registered in the population registry of the Area and whose application for family unification has been approved, an agreement was reached with the Employment Service, whereby their employers would not have to undergo the usual process that applies to workers from the Area who are not entitled to reside in Israel; namely – **while, with respect to an "ordinary" resident of the Area whom an Israeli employer wishes to hire, the employer is required to apply to the Employment Service Office and meet the criteria for employing a worker from the Area, such as: there is no possibility to hire Israelis etc., with respect to a spouse of an Israeli resident whose family unification application has been approved, the employer requires the approval of the Employment Service solely for the purpose of having the Employment Staff Officer in the Area issue a permit to work in Israel for a specific employer and ensuring that the Israeli employer follows the provisions of Israeli law with respect to upholding the rights of said worker.**
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> 10. **The employment service law also does not preclude a spouse who is a resident of the Area from opening his own business in Israel.** Inasmuch as the spouse wishes to open a business in Israel, he is not precluded from doing so, subject to adherence to Israeli law (opening a business lawfully, etc.)
> With respect to a salaried employee who is not registered in the Israeli population registry and for as long as such person is not registered in the registry, the provisions of the employment service law apply, whether he receives a B-1 type visa (stamped on the passport, with respect to a Jordanian, Russian, or any other national) or permits from the District Coordination Office.
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> (Emphases added by the undersigned)

R/1 The notice submitted in HCJ 3945/98 on July 22, 1998 is attached hereto and marked **R/1**.

9. For this reason, the Respondents maintain that the factual infrastructure presented in the petition is erroneous, and therefore, the petition must be rejected *in limine*.

10. Beyond necessity, it shall be noted that recently, following discussions held in the Ministry of Justice with representatives from the relevant ministries, a decision was made to change the wording on the stay-permit granted to Palestinians undergoing an approved family unification process, such that it reads: "This permit allows its holder to work in Israel". In addition, it has been decided to consider the rephrased stay-permit as obviating the need for an employer permit (for the Israeli employer) and in any case, Palestinians holding a stay-permit pursuant to a family unification process would be able to work in Israel as salaried employees without the employer wishing to hire them having to obtain an employer permit from the Population and Immigration Authority.

11. The implementation of this decision requires the Population Authority and the Head of the Administration of Services for Employers and Foreign Workers therein to formulate instructions with the approval of the relevant officials. The decision is scheduled to enter into effect on January 1, 2013, subject to the formulation and publication of said instructions.

12. It is superfluous to note that an Israeli who employs a Palestinian undergoing family unification must follow all legal provisions and relevant regulations. In particular, the employer is required to grant his employees the full social benefits provided for in law and regulation.

13. In these circumstances, the Respondents believe that the petition has become moot and that it must be struck. In any case, the Respondents believe there is no need to hold the hearing that is scheduled for November 14, 2012.

Today, Tuesday, 21 Cheshvan 5773 (November 6, 2012)

[signed]
Yitzhak Bert
State Attorney's Office, Deputy