**At the Court of Appeals**
**Jerusalem District**

**HCJ 1248/17**

In the matter of:

1. **_____ Dufish, ID No. _____**
2. **_____ Dufish, born 1999, ID No. _____**
3. **_____ Dufish, born 2001, ID No. _____**
4. **_____ Dufish, born 2003, ID No. _____**
5. **_____ Dufish, born 2006, ID No. _____**
6. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel, Adv. Sigi Ben Ari (Lic. No. 37566) and/or Benjaim Estejriba (Lic. No. 58088) and/or Hava Matras-Irron (Lic. No. 35174) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Abir Joubran-Dakwar (Lic. No. 44346) and/or Nasser Odeh (Lic. No. 68398) and/or Nadia Dakka (Lic. No. 66713) and/or Eliran Baleli (Lic. No. 73940).

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. **Population and Immigration Authority**
3. **Humanitarian Committee**

represented by counsel from the legal department
15 Kanfei Nesharim St., Jerusalem
Tel: 02-5489888, Fax: 02-5489886

**The Respondents**

# Urgent Petition for Order Nisi and Urgent Motion for Interim Order

The Honorable Court is hereby requested to issue an Order Nisi compelling the Respondents to appear and show cause as follows:

Respondents 1-2:

1. Why they should not retract their refusal to extend the petitioner's temporary status in Israel, which he has had for seven years, as part of a family unification process he has been under since 2000, pending the decision of the Humanitarian Committee established under Section 3a1a of the

Citizenship and Entry into Israel Law (Temporary Order) 2003 (hereinafter: the Humanitarian Committee) in the application submitted in his matter some 18 months ago.

2. Why it should not be established that anyone lawfully present in Israel pursuant to a family unification procedure, and said procedure is terminated as a result of domestic violence, divorce, the death of a spouse etc., shall have their status extended so long as their application for status in Israel on humanitarian grounds is pending before the Humanitarian Committee.

Respondents 1 and 3:

3. Why it should not respond to persons who make humanitarian applications within the timeframe stipulated in the law for responses to applications made to Respondent 3.

## Urgent Motion for Interim Order

4. The Honorable Court is requested to issue an Interim Order instructing the Respondents to continue to extend Petitioner 1's temporary residency permit **which is set to expire on February 9, 2017**. Petitioner 1 is the sole parent and provider for four minor children. The grounds for this motion are as follows:

5. Petitioner 1, originally a resident of the West Bank, entered Israel in 1997, and has lawfully lived in Jerusalem for some 17 years, as part of the family unification procedure he was under pursuant to his marriage to a permanent resident. Over the years, the couple have had five children, all of whom are permanent residents. The Petitioner has had temporary residency status since 2009.

6. The Petitioner and his wife divorced in 2015, and the Petitioner was awarded full custody of their five children. Following the divorce, in August 2015, the Petitioner filed an application with the Humanitarian Committee to have his current status regularized, given the termination of the graduated procedure owing to the divorce. Despite the time that has elapsed, the application has yet to be answered.

7. Following the divorce, in keeping with practice in cases of procedure termination, and where there is a pending application before the Humanitarian Committee, Respondent 2 continued to routinely extend the temporary residency permit the Petitioner had had prior to the divorce.

8. Recently, as he has done since his divorce, and after making the application with Respondent 3, the Petitioner contacted Respondent 2 with a request to extend his **current permit, which is set to expire on February 9, 2017. However, in a departure from its practice in the Petitioner's matter thus far, Respondent 2 denied the request.** With this decision, the Respondents leave Petitioner 1, the sole custodian parent of four minors, Petitioners 2-5, completely defenseless as he and his children are exposed to the threat of expulsion. Should Petitioner 1 be removed from Israel, his children would be left without a parent to care for them – a tragic, inconceivable, predicament.

9. For the full facts of the case, the Honorable Court is respectfully referred to the factual section of the petition.

10. We note that the requested order does not harm the public or the routine operations of the administration as Petitioner 1 has lived in Israel lawfully for many years and there are no security or criminal allegations against him.

11. In contrast, given that he is the father of four Israeli minors, a sole custodian and breadwinner, and given the serious impact failure to extend his permit would have on him and on his minor children, it is clear that the balance of convenience leans in favor of Petitioner 1 and his motion for an Interim Order. We further note that should his status not be extended, there is a strong chance that

the Petitioner would be unable to continue his work as a sanitation worker in an Israeli cleaning subcontractor company, and the family will lose its source of income.

12. With respect to the legal tests for issuing interim orders, as established by this Honorable Court, the court is referred to HCJ 3330/97 **Or Yehuda Municipality v. State of Israel** IsrSC 51(3) 472.

13. In light of the aforesaid, the Honorable Court is hereby moved to issue an Interim Order to preserve the status-quo, ordering the Respondents to continue extending the temporary residency permit held by Petitioner 1 pending the outcome of the petition herein.

## High Court of Justice Petition

14. On March 2, 2008, the Order regarding Courts for Administrative Affairs (Amendment to the First Addendum of the Law) 2007 came into effect (published on December 6, 2007, file 6626 (hereinafter: the Order)). The Order stipulates that any decisions made by the authorities pursuant to the Entry into Israel Law 1952 and the Citizenship and Entry into Israel Law (Temporary Order) 2003 (hereinafter: the Temporary Order), with the exception of decisions made subject to Section 3a1 (decisions of the Humanitarian Committee) and 3c (persons who made a special contribution to Israel) shall come under the purview of the Court for Administrative Affairs. By inference, decisions made under Sections 3a1 and 3c, shall come under the jurisdiction of the High Court of Justice.

15. The petition herein concerns a Petitioner who holds a permit for temporary residency in Israel, has made an application to the Humanitarian Committee under the Temporary Order, in light of his divorce, and received no answer for many months. Despite this, the Respondents refuse to continue extending his permit for temporary residency in Israel pending the decision on the humanitarian application. In their refusal letter, the Respondents refer the Petitioner to the Humanitarian Committee, stating: "[A]ny communication/extension in the matter herein must be made to the Professional Advisory Committee to the Minister of Interior pursuant to Section 3a of the Citizenship and Entry into Israel Law (Temporary Order)". As such, this Honorable Court has jurisdiction to hear the petition herein.

16. Moreover, the Petitioners wish to call the attention of the Honorable Court to the decision made on October 5, 2017 [*sic*] by the Appellant Tribunal in Appeal [Jerusalem] 2649-16, wherein, the tribunal quashed an appeal against a decision made by Respondent 2 to deny extension of a residency permit held by a resident of the West Bank who had made a humanitarian application due to termination of the graduated procedure – as in the case at hand. The grounds for the decision were lack of material jurisdiction. The tribunal accepted the Respondent's argument (to which the Appellants in the case therein objected), that the appeal must be quashed since jurisdiction in the matter – the extension of a permit held by the Appellant prior to her separation from her husband pending the decision of the Humanitarian Committee – did not rest with the Appellate Tribunal, but with the High Court of Justice, pursuant to the Entry into Israel Law 1952 (Amendment 22) and the Entry into Israel Order (Amendment to Addendum) (Temporary Order) 2014.

    A copy of Appeal 2649-16, enclosures omitted, is attached hereto and marked **P/1**.

    A copy of the motion made by Respondent 2 to quash the appeal is attached hereto and marked **P/2**.

    A copy of the decision of the tribunal is attached hereto and marked **P/3**.

## Introduction

17. This petition is filed in view of Respondents' refusal to renew residency visas and permits issued to sponsored persons facing the predicament of Petitioner 1, namely, the family unification procedure

of which they were part for years terminated under various circumstances – death of a spouse, violence, divorce etc., while an application in their matter was pending before the Humanitarian Committee established pursuant to Section 3a1a of the Citizenship and Entry into Israel Law (Temporary Order) 2003.

18. The Petitioners maintain that the Respondents must continue to act as they have previously and extend the permits and visas held by humanitarian applicants pending the decision in their applications specifically because of the humanitarian circumstances that lead to applications to the Humanitarian Committee, and the fact that such applicants have lived in Israel lawfully, some for many years. The matter is all the more grievous considering that the refusal to extend permits and visas, coupled with the intolerably lengthy procedures before the Humanitarian Committee leave applicants under the constant threat of expulsion from their city and home so long as the Humanitarian Committee has not delivered its decision in their matter. Hence the petition herein.

## The facts

## The parties

19. **Petitioner 1** (hereinafter: the Petitioner), originally a resident of the OPT, has lawfully lived in Israel for many years as part of a family unification procedure which was terminated in 2015 following his divorce from his spouse, a permanent resident.

20. **Petitioners 2-5** (hereinafter: the children or the minors) are the children of the Petitioner and his former spouse. The Petitioner is the sole custodian parent and provider for the four minors.

21. **Petitioner 6** is a registered not-for-profit association that has taken upon itself to provide assistance to persons who have fallen victim to abuse or discrimination by state authorities, including advocating for their rights in court whether on its own behalf as a public petitioner or as counsel to victims of rights violations.

22. **Respondent 1** is the minister vested with the power to accept or reject the recommendations made to him by **Respondent 3**, which is the Humanitarian Committee established under Section 3a1 of the Citizenship and Entry into Israel Law (Temporary Order) 2003.

23. **Respondent 2** is the Population and Immigration Authority (hereinafter: also PIA), which is subordinate to Respondent 1 (and together with same hereinafter referred to as: the Respondents), and is vested with the power to issue and extend permits and visas for residency in Israel.

## Factual background and exhaustion of remedies

24. The Petitioner, originally a resident of the OPT married Ms. _____ (Dufish, ID No. _____), a permanent resident of Israel in 1997. Since then, for twenty years, he has lived in Jerusalem. Over the years, the couple has had five children, all registered as permanent residents of Israel. The eldest daughter (born in 1998, ID No. _____), is not named in this petition as she has married and lives with her husband.

25. Since 2000, the Petitioner has been living in Israel under the family unification procedure. Until 2009, he received temporary stay-permits for Israel and has held a permit for temporary residency (A/5 visa) since May 2009, with the exception of a short period of time following his separation from his wife.

    A copy of the Petitioner's ID card, including the insert listing his children is attached hereto and marked **P/4**.

26. Toward the end of 2014, a dispute erupted between the spouses, and Ms. Dufish moved out of the home and into her parents' house. At the time, the children lived with the Petitioner in their home, and occasionally visited their mother. Due to the dispute with the Petitioner, Ms. Dufish did not apply to have his status in Israel extended and it expired in February of 2015.

27. The spouses ultimately decided to divorce, and the divorce was recorded on April 29, 2015. According to the divorce agreement, the Petitioner was awarded custody of the children. Additionally, the couple's marital home in Ras Khamis, in Jerusalem, was registered in the name of the Petitioner. The Petitioner's former wife remarried shortly after the divorce and moved in with her husband. As such, the five children continued to live with their father. Four of them, Petitioners 2-5 still live with him and he provides for them to this day.

    A copy of the certificate of the Petitioners' divorce from his former wife is attached hereto and marked **P/5**.

    A copy of the divorce agreement between the Petitioner and his former wife is attached hereto and marked **P/6**.

28. A social services report issued by the Jerusalem Municipality Welfare Department states that the family had been severely traumatized by the divorce; that the Petitioner is a central figure in the lives of the children, who had experienced a severe crisis and ongoing difficulties due to their parents' divorce and that legal status for the father would ensure the children's physical and mental wellbeing.

    A copy of the social services report on the Petitioner and his children, dated September 28, 2016 is attached hereto and marked **P/7**.

29. Following the divorce, as is standard practice in case of termination of the graduated procedure, the Petitioner contacted the Respondent, asking to have his Israeli residency permit extended until a decision was made in his forthcoming application to the Humanitarian Committee. The application for status in Israel on humanitarian grounds in the Petitioner's matter was sent to the Humanitarian Committee on August 24, 2015.

    A copy of the application to extend the Israeli residency permit is attached hereto and marked **P/8**.

    A copy of the humanitarian application is attached hereto and marked **P/9**.

30. On February 9, 2016, Respondent 2 extended the Petitioner's temporary residency permit until March 2, 2016. The permit was extended again, for six months, until August 21, 2016 and a third time, until February 9, 2017.

    A copy of the Petitioner's temporary residency permit, valid until February 9, 2017 is attached hereto and marked **P/10**.

31. Communications were sent to the Humanitarian Committee regarding Petitioner's application on September 7 and 24, 2015.

    Copies of the communications are attached hereto and marked **P/11**.

32. On September 17, 2015, the Humanitarian Committee sent confirmation that the Petitioner's application was in processing.

    A copy of the Committee's confirmation is attached hereto and marked **P/12**.

33. [Reminders were sent to the Humanitarian Committee] on November 1, 2015; December 1 2015; January 7, 2015; February 8, 2015; March 10, 2015; April 18, 2015; September 29, 2016 (attaching social services report on the family, as requested by the Committee); October 31, 2016; November 30, 2016; January 23, 2017 (attaching curriculum vitae form as requested by the Committee).

Copies of the reminders sent to the Humanitarian Committee are attached hereto and marked **P/13**.

34. Despite the many reminders, and **though some 16 months had elapsed since the Petitioner's application was made, Respondent 1 has yet to deliver a decision in the matter.**

35. On January 15, 2017, a request was sent to Respondent 2 to extend the Petitioner's permit for temporary residency in Israel, which is set to expire on February 9, 2017.

36. On January 18, 2017, a response denying the request to extend the Petitioner's temporary status was received, reading as follows:

> … We do not have the power to extend Mr. Dufish's temporary status pending the decision of the aforesaid Committee, which has jurisdiction to review the matter. Therefore, your request to extend the above individual's residency visa is denied.

It was also noted that the decision could be appealed with the Respondent within 21 days.

A copy of the application dated January 15, 2017 and the refusal dated January 18, 2017 is attached hereto and marked **P/14**.

37. On January 25, 2017, an appeal against the refusal to extend the Petitioner's residency permit pending the decision of the Humanitarian Committee was submitted to the director of Respondent 2's branch.

38. On January 26, the following response to the appeal was given:

> The procedure named in the Petitioner's application, taking place in our office, was terminated upon the couple's divorce. Pursuant to the provisions of the Citizenship and Entry into Israel Law (Temporary Order), any communication/extension in the matter herein must be made to the Professional Advisory Committee to the Minister of Interior pursuant to Section 3a of the Citizenship and Entry into Israel Law (Temporary Order).

Copies of the appeal dated January 25, 2017 and the response dated January 26, 2017 are attached hereto and marked **P/15a-b**.

39. It is not superfluous to note, as Respondent is well aware, that the humanitarian application in the Petitioner's matter was submitted to Respondent 3 many months ago. However, Respondent 3 has no power to grant an applicant temporary remedy in the form of an extension to a residency permit before the minister makes a final decision. This power is vested with Respondent 1 and Respondent 2, which has formalized the issue in its procedures, and had, until recently, implemented same with the changes warranted in the matter of OPT residents in humanitarian circumstances, as detailed below.

40. Thus, the Petitioner, who will soon remain with no legal status in Israel, was left with no choice but to turn to this Honorable Court for relief.

## **The law**

## Introduction

41. This petition focuses on the Respondents' refusal to continue extending the temporary residency permit held by the Petitioner, a single custodian parent and sole provider of four minors who are residents of Israel, whilst a humanitarian application to grant him status – given the termination of the graduated procedure he had taken part in for 17 years – is pending before the Respondent, as it has for more than 16 months!

42. The Petitioners will argue that in refusing to renew the Petitioner's temporary Israeli residency permit pending a decision in his humanitarian application, and others in the same predicament, persons whose graduated procedure was terminated due to divorce, death of a spouse or domestic violence – the Respondents are breaching the relevant procedures and the rationale for them. In addition, their actions discriminate against OPT residents who make humanitarian applications in an extremely unreasonable fashion, violate their right to family life and defy the principle of the child's best interest.

## Respondents' procedures and the rationale for them necessitate renewing visas given to persons who had filed humanitarian applications due to termination of the graduated procedure

### Procedure regarding termination of graduated procedure for the foreign spouse of an Israeli

43. The Procedure regarding Termination of the Graduated Procedure for Foreign Spouse of an Israeli (Procedure No. 5.2.0017, hereinafter: the termination procedure) regulates, among others, processing of cases in which a spousal relationship ends due to divorce from the Israeli spouse, and where the spouses have children.

    A copy of the Procedure regarding Termination of the Graduated Procedure for Foreign Spouse of an Israeli is attached hereto and marked **P/16**.

44. According to the procedure, when a spousal relationship ends as a result of divorce, and the spouses have children, the matter of the foreign spouse will be transferred to the Inter-Ministerial Advisory Committee on Status in Israel on Humanitarian Grounds (hereinafter: the Inter-Ministerial Committee), given the following conditions:

    a. The foreign spouse had been in a genuine, honest spousal relationship and had filed an application for status in Israel pursuant to said spousal relationship;

    b. The foreign spouse had received a temporary residency A/5 visa as part of the graduated procedure;

    c. The foreign spouse had finished more than half the term of the graduated procedure;

    d. The spouses have children who are in the custody of the foreign spouse, or the foreign spouse has a close and consistent relationship with them and provides for them and their needs.

45. The Petitioner meets all the terms of the procedure, and therefore, his matter should have been transferred for review by the Inter-Ministerial Committee. However, given that the Temporary Order applies to the Petitioner, as he is originally a resident of the West Bank, he must file a humanitarian application with the Humanitarian Committee established pursuant to said law. In keeping with the principle of equality, and as detailed below, the Petitioner's humanitarian application must be reviewed using the same tests and criteria established in the Respondents' procedures specific to cases of termination of the graduated procedure.

### The Inter-Ministerial Committee operating procedure

46. The procedure regulating the operation of the Inter-Ministerial Advisory Committee on Status in Israel on Humanitarian Grounds (Procedure No. 5.2.022 hereinafter: the Inter-Ministerial Committee operating procedure), stipulates how applications for status in Israel filed by foreign nationals are processed. As stated, applicants to the Inter-Ministerial Committee include, among others, spouses who had taken part in a graduated family unification procedure which terminated for various reasons such as divorce, the death of the Israeli spouse or violence on the part of the Israeli spouse (Procedure 5.2.0017a). As set out in Section A of the procedure, the Inter-Ministerial Committee is "an advisory committee to the director of the Population and Immigration Authority for the process of reviewing applications for status in Israel under the Entry into Israel Law 5712-1952, that do not meet the criteria set in various PIA protocols".

    A copy of the Inter-Ministerial Committee operating procedure is attached hereto and marked **P/17**.

47. With respect to the status of an applicant during the time his or her application is under review, the procedure stipulates: "**inasmuch as the applicant holds a valid stay-permit of any kind, said permit shall be extended periodically pending a decision in his application**" (Section f.4 of the procedure; emphasis added by the undersigned). In other words, **the procedure stipulates that anyone applying to the Inter-Ministerial Committee who has any type of valid permit shall have that permit extended.**

48. The rationale for this section is clear: the Inter-Ministerial Committee, by definition, deals with humanitarian cases and as such those making applications to it, certainly those meeting the minimum criteria set in the family unification procedure termination procedure, must be allowed to renew the permit they had at the time the family unification procedure terminated in order to prevent serious harm to the applicants and their families – harm which the committee was set up to prevent.

49. We note that the same rationale also underlies the procedure for termination of the graduated procedure in case of violence (Procedure regarding Termination of the Graduated Procedure for the Arrangement of Status for Spouses of Israelis as a result of Violence on the part of the Israeli spouse, Procedure No. 5.2.0019), which sets out, in Section c.5 that: "**The foreign national will not be required to leave the country immediately, <u>pending a decision in the application</u>. If necessary, the officer will extend the visa held by the foreign national for the required period, in accordance with procedure, pending a decision in the application**".

    A copy of the Procedure regarding Termination of the Graduated Procedure for the Arrangement of Status for Spouses of Israelis as a result of Violence on the part of the Israeli spouse is attached hereto and marked **P/18**.

**<u>The principle of equality demands the application of the Inter-Ministerial Committee's operating procedure to the Humanitarian Committee established under the Temporary Order.</u>**

50. The Humanitarian Committee, established under the Temporary Order also handles applications for Israeli stay permits for special humanitarian reasons. According to the Temporary Order, humanitarian applications from Area residents are referred to the Humanitarian Committee (rather than the Inter-Ministerial Committee).

51. There are clearly many similarities between the work of the two committees – the inter-ministerial and the humanitarian. Both handle special humanitarian cases that are not eligible for status under any "ordinary" procedure. Both also handle applications for Israeli residency permits following termination of the graduated procedure.

52. In light of all this, the provision of the procedure that an applicant's stay permit shall be extended during processing of a humanitarian application by the Inter-Ministerial Committee should equally

apply to applications submitted to the Humanitarian Committee established under the Temporary Order. The rationale for this provision – that a person should not be deprived of a residency permit they already have, particularly when they are making a humanitarian claim, is equally valid in cases handled by the Humanitarian Committee.

53. Moreover, any distinction between cases handled by the Inter-Ministerial Committee and the Humanitarian Committee with respect to extending a person's permit while their application is under review would be illegitimate and discriminatory. Non-application of the provisions on the extension of existing residency permits followed by the Inter-Ministerial Committee to applications to the Humanitarian Committee means discrimination between humanitarian cases of Palestinian residents of the Area (processed by the Humanitarian Committee) and humanitarian cases of persons who are not Palestinian residents of the Area (processed by the Inter-Ministerial Committee). Such discrimination has no justification and cannot be accepted.

54. Support for the argument that residents of the OPT who make applications to the Humanitarian Committee must receive the same treatment as persons who are not residents of the OPT and make applications to the Inter-Ministerial Committee can be found in statements made by Adv. Yochi Genessin, former director of the Administrative Affairs Division at the High Court Department of the State Attorney's Office. These statements were made during a session of the Knesset Internal Affairs and Environment Committee held on January 8, 2007 (Transcript No. 89), with regards to persons whose graduated family unification procedure was terminated following the death of the Israeli spouse:

> The Ministry of Interior has a protocol that refers to a widow who has children. **The protocol on a widow with children, whether she is a resident of the Palestinian Authority or not, allows her to obtain status.**

A copy of p. 22 of the transcript, where this statement appears, is attached hereto and marked **P/19**.

The full transcript of the Knesset committee session dated January 8, 2007 can be downloaded from the Knesset website here (Hebrew): http://www.knesset.gov.il/protocols/heb/protocol_search.aspx

55. Note that the Respondents' procedure on the Humanitarian Committee established under the Temporary Order (Operating procedures for the public committee for reviewing applications for temporary residency permit/visa on humanitarian grounds", Procedure No. 1.14.001 hereinafter: the Humanitarian Committee procedure) addresses only procedural matters relating to the work of the committee and contains no instructions or criteria for handling applications submitted following the cessation of the graduated procedure due to a severed relationship with the Israeli spouse. These issues, as noted, are addressed in the specific procedures mentioned previously.

**Does the Temporary Order preclude extending the petitioner's temporary status?**

56. First and foremost, we reiterate that Respondent 2, who claims the Temporary Order precludes it from extending the Petitioner's residency permit in Israel while his humanitarian application is pending, has extended his permit following the divorce and the termination of the graduated procedure, from September 2, 2016 until February 7, 2016, and has done the same for all Humanitarian Committee applicants who had a residency permit before their graduated procedure was terminated. The question is, therefore, what was the source of Respondent 2's power to do so until recently, or whether, heaven forbid, it has done so ultra vires until now. Another question to be answered is what caused Respondent 2 to change its mind and decide to leave the Petitioner without status in Israel after 17 years.

Renewal of Petitioner's residency permit under Section 3c of the Temporary Order

57. Beyond requirement, and without prejudice to the arguments related to the application of the procedure for termination of the graduated procedure as a result of violence, Respondent 2 has the power to renew Petitioner's residency visa based on Section 3c of the Temporary Order, which stipulates the following:

> Notwithstanding the provisions of section 2, the Minister of the Interior may award citizenship or grant an Israeli resident's permit to a resident of the region or to a resident of a country listed in the schedule […] if the granting of an Israeli resident's permit or the granting of a permit to stay in Israel, as the case may be, **is in the special interests of the state**; in this paragraph, "family member" – spouse, parent, child

58. The Petitioners believe that the best interest of the children is undoubtedly of special interest to the state and their father must be allowed to continue raising them and providing for them by way of extending his Israeli residency permit. The same must be done for others in his situation.

**Unreasonable refusal given the operation of the Humanitarian Committee**

59. Section 3a1 of the Temporary Order stipulates as follows:

> (A) Notwithstanding the provisions of section 2, the Minister of the Interior, for special humanitarian reasons, and upon the recommendation of a professional committee appointed for this purpose (in this section – the "committee") may –
>
> (2) approve the application to grant a permit to stay in Israel under the custody of the region commander to a resident of the region whose family member lawfully resides in Israel.
>
> (D) The Minister of the Interior shall present his decision, in writing, whether to grant a permit or to approve an application, as the case may be, as aforesaid in subsection (A), **within six months from the day all the required documents were produced to the committee**; the minister's decision shall be reasoned.
>
> (emphasis added by the undersigned)

60. The fact that there is an express statutory provision guiding the Respondents' discretion with respect to humanitarian applicants, and stipulates a schedule for delivering a decision on applications of this nature renders the long delay in responding to Petitioner's application – it has been 16 months since the application in his matter was filed – egregious and outrageous.

61. Ever since the establishment of Respondent 3, whose purpose is partly to act as a valve that allegedly justifies and legitimizes the severe harm caused by the Temporary Order, many applicants, some with the help of Petitioner 6, have had to take to this court owing to the conduct of this committee and the foot dragging it practices.

62. The fact that Respondent 3 falls far short of meeting the timeline provided for in the law – six months – and that it does not respond to many applications for many months has been an open secret for some time. So, for instance, as early as some six years ago, on October 25, 2010, the deficiencies in the committee's operations were put on the agenda of the Knesset Internal Affairs and Environment Committee. During the session, attended by Mr. Amos Arbel, Director of the

Registration and Status Branch of Respondent 2, allegations regarding foot-dragging and prolonged proceedings by and in the committee were not denied:

> Chair David Azulai:
>
> A person contacts the Humanitarian Committee, a review is held. How long can it take from the time the person applies until he gets a positive or negative response?
>
> Amos Arbel:
>
> If the case is simple, it could take three to four months and then we finish it and he gets a negative response because there is only the spousal relationship and nothing humanitarian. **With the more complicated cases, we can run even up to nine months, ten months.**
>
> Chair David Azulai:
>
> Amos, does that seem like a reasonable amount of time to you? So long to get an answer? And I'm not talking about the content, just the answer.
>
> Amos Arbel:
>
> The committee has a very heavy workload. The committee chair hardly makes it to two committee sessions a week – of work during her free time, her personal time. You have to remember that all the members of the committee fulfill this function on top of their positions. On a day like that, convening all five members of the committee, in terms of scheduling, taking time away from their duties and make it…
>
> We know we have a heavy workload and that there is a backlog.

A copy of the relevant part of the transcript is attached hereto and marked **P/20**.

63. Later during the Knesset committee session, a representative of Petitioner 6, who was in attendance, commented that many applications made to the Respondent receive no response at all, which necessitates filing a petition with the Honorable Court on the matter. At the conclusion of the session, the committee chair emphasized the importance attached to the proper functioning of the committee. The chair also determined that the Knesset Internal Affairs and Environment Committee would:

    a. Contact the director of the Population Administration to have the committee provided with extra personnel until the backlog of files reviewed by the committee is handled;

    b. Demand that the exceptions committee follow its mandatory procedures;

    c. **Demand that responses are given to applications within six months, as required in the procedure**.

A copy of the press release with a summary report regarding the session held on October 25, 2010 and the decision made thereafter is attached hereto and marked **P/21**.

64. In the years that have passed since that Knesset Internal Affairs and Environment Committee session, the committee's processing of humanitarian applications and the duration of processing has only grown worse, presenting severe harm to the applications. This matter is evidenced in the response provided by Respondent 2 to a Freedom of Information Application submitted by Petitioner 6 in 2012, stating that the average wait time for a response to humanitarian applications was an entire year!

A copy of the relevant section of the response of Respondent 2 to the Freedom of Information Application made by Petitioner 6 in 2012 is attached hereto and marked **P/22**.

65. Moreover, during proceedings in AP (Jerusalem) 40092-01-06 **HaMmoked: Center for the Defence of the Individual v. Population and Immigration Authority et al.**, filed by Petitioner 6 with respect to the operation of Respondent 3, Respondent 2 admitted, in its preliminary response, that Respondent 3 is woefully understaffed and that other than the committee chair, it employs only two students on a part time basis.

A copy of the relevant sections of the preliminary response of Respondent 2 is attached hereto and marked **P/23**.

66. Non-response to applications such as the Petitioner's is unacceptable. Aside from the fact that it contravenes the principles of good governance, it violates substantive rights and forces applicants to take to the court as a condition for exercising their basic rights. The court is meant to provide judicial review over the decisions made by the Respondent and the grounds for them. A situation where a court petition is required simply to get a response to an application and where individuals who cannot obtain or afford legal counsel would have their rights trampled upon cannot be tolerated:

> It is the court's duty to see to that the principle of service is entrenched and that state authorities adhere to it. This principle obliges the court to prevent unnecessarily prolonged procedures at the expense of service recipients. This principle demands a serious approach to applications made by individuals, prevention of abuse, assimilation of the value of equality, and the elimination of privilege afforded to persons in positions of government or other power. Individual rights do not end with formal statements. Individual rights are an everyday matter. If they do not pass the practical test, they will soon become platitudes that, as they are exchanged back and forth, create a fleeting illusion of respect for rights, one that fades due to impenetrable bureaucratic obstacles encountered at every turn.
> (Honorable Justice Okon in AP (Jerusalem) 769/04 **Amina v. Ministry of Interior**).

67. The Respondents have a duty to review the Petitioners' matter fairly, reasonably and expediently. This holds true generally. It holds true with respect to humanitarian cases, such as the one at bar and it holds particularly true when express statutory provisions stipulate a predetermined timeline.

68. Irrespective of the express provisions of the law, the duty to act within a reasonable amount of time and refrain from neglect and foot-dragging in the processing of applications pending before the authorities is one of the fundamentals of good governance. Governance which includes neglecting to process applications, disregarding them and allowing them to sit on the shelf is improper governance. It is governance that alienates the population it serves. On this matter, see, AAA 4809/91 **Jerusalem Local Building and Planning Committee v. Kehati et al.**, IsrSC 48(2) 190, 219.

69. In addition to all the aforesaid, the conduct of the Respondents, who have been taking so long in issuing a decision in the Petitioner's application, is also unreasonable and unfair. This court has long since ruled that the Respondent and its officials must show sensitivity in matters relating to proceedings toward obtaining status and refrain from imposing difficulties that could turn the affair into a "pointless via dolorosa" (HCJ 7139/02 **Abbas-Basa v. Minister of Interior**, IsrSC 57(3) 481, 489). The Respondent must approach proceedings for obtaining status in Israel with consideration and care:

> It is important to recall that every person making an application for status with the Respondent is a world unto themselves, and that any decision made in their matter, either by the Respondent or by another authority working on his behalf, may be seminal and have a dramatic effect on the applicant's life, dignity and remaining rights. The inevitable conclusion is that the Respondent and anyone working on his behalf must approach every application for status in Israel that is made to the Respondent with sensitivity and care… (HCJ 394/99 **Maksimov v. Ministry of Interior**, IsrSC 58(1) 919, 934-935).

70. The remarks made only recently by Honorable President Naor with respect to the workload currently facing the Humanitarian Committees are relevant to the matter herein:

> I am prepared to accept that the committee is overloaded. It appears to me that the solution lies in increasing the number of committees. Precisely because humanitarian matters cannot be quantified, access to the committees should be more generous (AAA 2357/14 **Asburk v. Minister of Interior**, judgment dated March 19, 2015, reported in Nevo).

71. Thus, given the great delays routinely seen in the work of Respondent 3, the Petitioners take a clear position: A decision in the Petitioner's matter cannot be reasonable if no consideration is given to the length of time during which the Petitioner, a father and sole custodian parent of four minors, would remain vulnerable to deportation and removal from Israel.

72. Not only has Respondent 2 refused to extend the Petitioner's temporary residency permit in an extremely unreasonable fashion, but it has also referred him to seek remedy from Respondent 3 when it is well aware that his application has been pending before the same respondent for many months, and that this respondent has no authority to extend his residency permit pending Respondent 1's final decision in his application.

73. The Respondents have a duty to make sure, in whatever way they can, that the Petitioner does not lose his status in Israel pending a decision in his matter. As stated, this is all the more the case given the prolonged, unlawful, unresponsiveness of Respondent 3, whose omissions are the reason the Petitioner has found himself in the current predicament of living, with his children, under the threat of deportation. Respondent 3 and Respondent 2 are both arms of Respondent 1 and it is inconceivable that the one arm, the Humanitarian Committee, should defy the law and take months to decide on the petitioner's application, while the other arm of Respondent 1, the PIA, revokes his status, citing "lack of authority".

**The reasonableness of the administrative decision**

74. A decision made by an administrative authority must remain within the bounds of reasonableness. For a decision to remain within these bounds, it must be given after the various relevant factors that should be taken under consideration have been properly weighed and balanced. In HCJ 341/81 **Beit**

**Oved Moshav Community v. Traffic Inspector** (IsrSC 36(3) 349, 354 (1982)), the Court ruled as follows:

> In determining the bounds of reasonableness, **one question that needs to be considered is whether the public authority had given appropriate weight to the various relevant factors it must consider**. A decision made by an administrative authority will be struck down as unreasonable if the weight accorded to the various factors had been inappropriate in the particular circumstances. Indeed, weighing and balancing are some of the main roles performed by an administrative authority and scrutiny over how they are carried out rests with the court.
> (Emphasis added, the undersigned).

75. Moreover, the bounds of reasonableness awarded to an administrative authority engaged in making a decision varies from one decision to another and is partly determined by the impact the decision would have on human rights:

> … The scope of these bounds is influenced by the substance of the matter. There is a distinction between decisions that are technical in character and substantive decisions, such as decisions that limit human rights… decisions on human rights… narrow the bounds of reasonableness (Eliad Shraga and Roi Shachar, **Administrative Law (Causes for Intervention)** Shesh Publishing House, 2008, p. 242)). (

76. The Court of Administrative Affairs has addressed the importance of striking the right balance between administrative norms relating to the public at large and consideration for exceptional humanitarian circumstances – such as in the case at hand – as an element of the duty of reasonableness. In its decision in AP 2430/04 **Korlinko Olga v. Ministry of Interior** (reported in Nevo), the Court ruled:

> A legal system rooted in an open, humane approach that is capable of empathy for difficult, exceptional situations, **should recognize that every general norm must leave room for consideration of exceptional circumstances in which the application of the norm would result in severe harm to a person.** Our ability to formulate general administrative norms must incorporate a proper balance with the ability to consider circumstances in which the formal, automatic application of rules, which would yield particularly harsh results, is inappropriate. The moral content that enables the production of general norms **must also leave room for consideration of situations in which the conclusion must be different.** Too much automation in the application of rules is similar to a formalistic application of the rules of legal procedure. Both justify consideration for exceptional circumstances (emphasis added by the undersigned).

77. Taken together, the aforesaid indicates that the decision to refuse the Petitioner's application to have his Israeli residency permit extended relates directly to human rights. We reiterate that the decision has a serious impact on the four minors who are under the Petitioner's care. Therefore, the bounds of reasonableness the Respondents are confined by when making a decision on such sensitive matters is particularly narrow, given that the decision is critically important for human rights.

78. However, it appears that not only have the Respondents far exceeded the bounds of reasonableness in their decision, they have also betrayed their duty to weigh the various factors relevant to the decision and strike the proper balance between them, as stipulated in the judgments cited above. The slow process of reaching a decision in humanitarian applications in general, and in the Petitioner's application in particular – which has been pending for more than 16 months, should be a major factor to consider.

79. It is clear that had Respondent 2 taken all the factors listed above into consideration, and given them the critical weight they deserve, it would not have come to an unreasonable decision. Therefore, the Petitioners maintain that the decision is wrongful and must be revoked.

**Violation of the right to family life**

80. International law attaches a great deal of importance to the family and imposes a duty on states to protect it. So, for instance, Section 10(1) of the International Convention on Economic Social and Cultural Rights, which has been ratified by Israel, stipulates:

> The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children…

81. The same holds true in Israeli law. In HCJ 7052/03 **Adalah v. Minister of Interior** (published in Nevo) (hereinafter: **Adalah**), the Court ruled that the right to family life is a fundamental constitutional right in Israel and forms part of the right to dignity. This position received broad support from eight of the eleven justices on the panel.

82. This judgment also determined that a child has a right to grow up in a complete, stable family unit:

> [T]he child has the right to grow up in a complete and stable family unit. His welfare demands that he is not separated from his parents and that he grows up with both of them. Indeed, it is difficult to exaggerate the importance of the relationship between the child and each of his parents. The continuity and permanence of the relationship with his parents are an important element in the proper development of children.
> (Paragraph 28 of the opinion of then President Barak).

83. On the other hand, jurisprudence has also highlighted the rights parents have with respect to their children and the limits of state interference in the family unit:

> The right parents have to have custody of their children and raise them, with all that this entails is a constitutional, natural and primary right, an expression of the natural connection between parents and their children (CivA 577/83 **Attorney General v. Doe**, IsrSC 38(1) 461). This right is expressed in the privacy and autonomy of the family: parents have autonomy to make decisions about their children – education, way of life, where they live, etc., and intervention on the part of the state or society in these decisions are an exception that must be explained and justified (See above CivA 577/83, p. 468, 485). This approach is rooted in the recognition that the family is "the most fundamental, most ancient societal grouping in human history. It has been and continues to be the foundation that sustains and ensures the existence of human society" (Justice Alon, as was his title

then, in CivA 488/77 **Doe v. State Attorney**, IsrSC 32(3) 421, p. 434)
(CivA 2266/93 **Does v. Roe**, IsrSC 49(1), 221, pp. 237-238).

84. The status of the right to family life as a constitutional right directly relates to the possibility of violating said right. Refraining from extending the Petitioner's Israeli residency permit and leaving the family in danger of separation and living in fear, critically and disproportionately violates the constitutional right to family life.

**Violation of the principle of the child's best interest**

85. It is clearly the right of the children and it is in their best interest to live with their father, and his gaining status is necessary for them to continue to live and grow in safety and stability, as they deserve.

86. The finding, mentioned above, that children must be allowed to grow up in a stable and loving family unit serves a wider principle, known in both Israeli and international law – the principle of the child's best interest. According to this principle the child's best interest is a primary concern in any action that effects children, whether carried out by the courts, administrative authorities or legislative bodies. So long as the child is a minor and so long as the parent functions properly, the child's best interest necessitates the child grow up in a supportive family unit.

87. The principle of the child's best interest is a fundamental, and well established principle of Israeli law. So, for instance, in CivA 2266/93 **Doe v. Roe**, (reported in Nevo), Justice Shamgar ruled that the state must intervene to protect a child from violation of his or her rights.

88. Moreover, the principle of the child's best interest has been recognized in many judgments as a guiding principle in every instance in which a balance must be struck between rights. As stated in CivA 549/75 **Doe v. Attorney General** (reported in Nevo): "There is no judicial matter that relates to minors in which the minors' best interests are not the main and primary concern".

89. The principle of the child's best interest has supreme status under international law as well. This is expressed, *inter alia*, in the enactment of the Convention on the Rights of the Child. The convention, which has been ratified by the State of Israel, stipulates a set of provisions that require protection for the child's family unit – specifically, Article 3, which stipulates that children's interests are to be a primary consideration in any governmental act. It follows that any piece of legislation and any policy should be interpreted in a manner that allows safeguarding the rights of the minor.

90. It is evident that in their decision to deny the application made by the Petitioner – like others in his predicament – to have his residency visa extended while his humanitarian application is pending – the Respondents have not given the children's best interest primacy, if they gave it any consideration at all, and as such they have defied the principle of the child's best interest. In the decision made by Respondent 2 in the matter of the Petitioner herein, the Respondents are harming the Petitioner's minor children, who are deprived of the security they so desperately need, especially given their parents' divorce.

## Conclusion

91. The decision of Respondent 2 not to extend the Petitioner's residency visa, which is set to expire, pending the decision of Respondent 3 in his matter – a refusal also recently given to other applicants in the same predicament as the Petitioner – contravenes the relevant procedure and the rationale for it. The decision wrongfully discriminates against OPT residents; it is extremely unreasonable and it violates the right to family life and the principle of the child's best interest.

92. Therefore, the Honorable Court is hereby moved to instruct the Respondents to renew the Petitioner's permit for residency in Israel pending a final decision in his humanitarian application. The Honorable Court is also moved to instruct the Respondents to determine that the status of anyone who has lived in Israel lawfully pursuant to a family unification procedure, and whose family unification procedure was terminated due to domestic violence, divorce, death of a spouse, etc., will be extended so long as their application is pending before the Humanitarian Committee. Finally, the Petitioners ask that the Respondent be instructed to make decisions in applications submitted to it within the timeframe stipulated in the law.

93. In light of all the aforesaid, the Honorable Court is moved to grant an Order Nisi as requested, providing for the remedies sought in the petition herein, and to render it absolute after hearing the Respondent's response. The court is also moved to issue a costs order against the Respondent for Petitioners' expenses and legal fees.

Jerusalem, February 7, 2017

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(File no. 13559)