HCJ No. 48/89

Reinhald Issa

v.

1. **Director of Population Administration Regional Bureau in East Jerusalem – Ministry of Interior**

2. **Population Administration Deputy Director – Ministry of Interior**

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

[11.10.89]

Before Justices **A. Barak, D. Levin, Y. Malz**

Judgment

Justice A. Barak: The petitioner was born in 1964 in Jerusalem. Her parents were residents of Jerusalem. Upon the application of the jurisdiction, law and administration of the State of Israel on East Jerusalem she was registered as a permanent resident in the population registry. She was given an identity number according to the Population Registry Law, 5725-1965. In 1987 the petitioner married a resident of Al-Birah (Ramallah) in the Judea and Samaria Area. The petitioner's husband is the owner of an identity card of the Area. The petitioner's application for family unification and grant of an Israeli resident status to her husband was rejected. On 19.3.88 a girl was born to the petitioner and her husband, and the petitioner requested to register her daughter as an Israeli resident. Her application was denied. Hence the petition before us.

The petitioner is not an Israeli citizen. She is a permanent resident in Israel by virtue of a permit given to her pursuant to the Entry into Israel Law, 5712-1952 (see HCJ 282/88).

The daughter's status too must therefore be determined according to the provisions of the Entry into Israel Law. It is true that the daughter did not enter Israel but was born therein. But the Entry into Israel Law deals not only with a person who entered Israel but also with a person who is not a citizen and resides in it (Section 1(b)). The Law's name is misleading as to its contents. Thus, the daughter's status is determined according to the provisions of the Entry into Israel Law regarding children born to permanent residents in Israel. There is no express provision on this matter in the Entry into Israel Law itself.

The provisions appear in the Entry into Israel Regulations, 5734-1974. Regulation 12 pertains to our matter, and stipulates as follows:

> "A child born in Israel, to whom Section 4 of the Law of Return, 5710-1950 does not apply, his status in Israel shall be as his parents' status; [if] his parents do not have a single status, the child shall receive the status of his father or guardian, unless the second parent objects to it in writing; the second parent having objected, the child shall receive the status of one of his parents, according to the Minister's decision".

Nothing has been argued before us concerning the validity of this regulation and in any event the ruling is decided according to it. Had the mother and father of the petitioner's daughter been permanent residents in Israel, the petitioner's daughter would have been a permanent resident. As the father of the petitioner's daughter is not a permanent resident in Israel, the daughter's status is determined according to her father's status. As the petitioner objected to this, the Minister must decide which of the parents' statuses the daughter will receive.

In arguing before us, the petitioner's representative sought to shift the discussion's center of gravity from the Entry into Israel Law and the regulations based on it to the Population Registry Law.

According to his argument, the registry clerk has to give the petitioner's daughter an Israel identity card number, just as he has to register the religion and nationality particulars according to the information provided to him by the petitioner.

This approach of the petitioner's representative is unfounded. The Entry into Israel Law is one thing and the Population Registry Law is another. The Entry into Israel Law stipulates, inter alia, that if a person is a resident, and once his residency has been determined, the Population Registry Law stipulates the paths for receiving an identity card and other registry issues. Moreover, giving an identity number is one thing, and registration in the population registry and the identity card is another. Receipt of an Israeli identity number is conditional on the person being a resident. Registration in the parents' identity card is for information only.

Therefore, so long as the daughter's status is not established to be that of a permanent resident in Israel, it is impossible to give her an Israeli identity number. We therefore return to the Entry into Israel Law and the Minister of Interior's decision under Regulation 12 of the Entry into Israel Regulations.

We read the Minister of Interior's response affidavit, and found no real reference to the Minister of Interior's exercise of discretion in this matter. The affidavit says that –

> "The persistent policy of the Ministry of Interior, even before the legal arrangement in said Regulation 12, concerning children of spouses one of whom is a resident of Israel and the other a resident of the Judea and Samaria Area (or the Gaza Region), was to give the children the status of the father, and this policy is still practiced today in the framework of the permanent arrangement set in Regulation 12 above. This policy is an outcome of the practiced social reality. It should be noted that a similar approach was implemented at the time, following the War of Independence, in applications for family unification from both sides of the Green Line".

The declarant thus explained his perception as to the existing legal situation. It does not explain the considerations which led the Minister of Interior not to use his discretion and determine that the

daughter would receive her mother's status. In his oral pleading before us, Mr. Mazuz, the Respondents' counsel, elaborated on this, noting that the Minister of Interior usually gives children their mother's status if the mother lives apart from the father or in cases of erroneous registration at the hospitals which sometimes occur. Once we asked Mr. Mazuz what was the Minister of Interior's position in cases where the mother actually lives in Israel while the father actually lives in the Area, he responded that the Minister's assumption is that the woman lives with her husband.

This response does not satisfy us. The Minister of Interior's policy on using his discretion under Regulation 12 has remained unclear to us. It has also remained unclear what is the Minister of Interior's position as to the facts of the case, and whether this position corresponds to the reality. The petitioner's representative noted, both in the petition itself and in arguing before us, that the petitioner lives in Jerusalem on a permanent basis. The Respondents' counsel disputed this, without backing this position by any affidavit and without basing this claim on the facts themselves.

The result is that we have made the order absolute, in the sense that the Respondent must consider the petitioner's application in the framework of Regulation 12.

The Respondents' will bear the petitioner's costs, including attorney's fees, in the sum of ILS 3,000.

Justice D. Levin: I concur.

Justice Y. Malz: I concur.

Decided as set forth in the opinion of Justice Barak.

Issued today, 12 Tishrei 5750 (**11.10.89**)