At the Jerusalem District Court sitting as the Court for Administrative Affairs

AP 13708-03-20 Khatib et al. v. Israel

External file:

Before Honorable Justice Oded Shaham

Petitioners	**1. _____ Khatib** **2. _____ Khatib** **3. _____ Khatib (minor)** **4. _____ Khatib (minor)** **5. _____ Khatib (minor)** 6. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger** Represented by B. Agsteribbe, Adv.
	V.
Respondents	**State of Israel** Represented by M. Wilinger, Adv., from Jerusalem District Attorney (Civilian)

Judgment

Before me is an administrative petition.

1. The context for this petition lies in the following facts. Petitioner 2 was born in 1976. In 1996, she married Petitioner 1 (they will hereinafter be referred to jointly as the Petitioners), a resident of Israel born in 1969. Petitioner 1 filed a family unification application on December 12, 1999. The application was approved. Following various proceedings, Petitioner 2 filed an application for a status upgrade (March 4, 2019) to temporary residency in Israel, status type A/5. This application relied on the notice made by the Minister of Interior in HCJ 813/14 (hereinafter: the notice of the Minister of Interior).

2. The Minister of Interior rejected the application (decision dated February 16, 2020). The decision stated that Petitioner 2 has no legal, vested or any other right to remain in Israel. In the decision, the

Minister of Interior cited the broad discretion he has as "the gatekeeper for the State of Israel." With respect to the notice of the Minister of Interior, the decision noted that the terms enumerated in it do not detract from said broad discretion. In this context, the decision stated: "When exercising this discretion, it is not possible to divorce the actions of their minor son, who committed a stabbing terrorist attack against a Border Police officer during which he stabbed and injured a Border Police combatant, from the familial environment in which he was reared, an environment that contributed to shaping the minor's personality."

3. In the circumstances, the application was rejected, stating Petitioner 2 would retain her status, a CLA stay-permit which allows her to live and work in Israel, obtain medical insurance and preserve the family unit to avoid family separation.

4. Having considered parties' arguments and given the material before me, I have reached the conclusion that the petition must be accepted. I shall list the grounds for this conclusion.

5. The premise for this deliberation lies in the notice of the Minister of Interior. The notice states that the Minister of Interior had decided to approve status upgrades for Israeli stay-permit holders who filed their family unification applications under the graduated procedure before the end of 2003 (and the application had been approved). It was further established that the upgrades would be granted subject to meeting the conditions for review of such applications, specifically, proving center-of-life in Israel; a genuine and continuing marital relationship and the absence of a security and criminal impediment. It is further stated that according to the above, the Minister of Interior had instructed the Professional Advisory Committee to the Minister under Section 3a1 of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the Temporary Order), that those found to have met the aforesaid conditions would receive a status upgrade, as would their minor children.

6. At this juncture, it is worth noting the Respondent's claim that he has broad discretion when making decisions. There is merit in the argument that the Minister of Interior and the competent officials in his office do, generally, have broad discretion in decisions on entry, stay and status in Israel pursuant to Israel's sovereign power on such matters. However, in this case, discretion has been limited by the notice of the Minister of Interior. This notice is relevant to a large number of people who would have justly developed reasonable expectations and even reliance on its content. This does reduce the discretion the Minister has in the current case.

7. There is no dispute that Petitioner 2 meets all the conditions stipulated in the notice of the Minister of Interior. The Respondent claims that the normative status of the notice of the Minister of Interior is

that of an administrative directive. Given the aforesaid, this claim is founded. However, the rule is that a departure from administrative directives is permissible only on the basis of a pertinent and reasonable justification (see, HCJ 4422/92 **Ofran v. Israel Land Administration,** IsrSC 47(3) 853 (1993), paragraph 10 of the judgment). This restriction stems from the fact that such a departure undermines certainty and the principle of equality (ibid). The question is, therefore, whether there was a justification for the Minister to depart from the aforesaid administrative directive.

8. Given the material before me, I have reached the conclusion that the answer to this question is negative. The premise in this context is that there is no argument, nor infrastructure, pointing to any sort of personal liability on the part of Petitioner 2 for the stabbing attack perpetrated by her son. The Minister of Interior undertook no preliminary inquiry with regard to this matter prior to making his decision. He refers to no infrastructure in this context. And so, there is no infrastructure to tie between the manner in which Petitioner 2 reared her son, which the Minister mentions in the decision, and the attack he committed, nor is there any allegation of any threat to national security associated with Petitioner 2.

9. I am not oblivious to the fact that the Minister's decision mentions the Petitioners were interviewed (January 10, 2016) as part of Petitioner 2's graduated procedure after the aforesaid attack was carried out on October 12, 2015. The decision mentions that the couple said in the interview that they did not know about their son's intentions and that they had nothing to do with his actions. Petitioner 2 was quoted as saying: "There is no proof my son did this. They just shot him. Let them show me he did something. He didn't do anything. No one showed me he did anything."

10. The grounds given by the Minister for his decision do not rely on these statements. Beyond requirement, I note, in this context, that this position voiced by the Petitioner does not indicate support for terrorism, incitement to terrorism or support for her son's actions. In this context, I refer to the judgment handed down in AAA (Jerusalem) 11930-07-18 **State of Israel v. Khatib (**January 3, 2019) (hereinafter: the administrative appeal). This judgment dismissed an appeal the State filed against a judgment delivered by the Appellate Tribunal accepting an appeal against the decision of the Ministry of Interior to stop Petitioner 2's graduated procedure and revoke her stay permit. The judgment in the appeal notes, in this context, that the statement given by Petitioner 2 to the police, which was attached thereto, clearly indicated an approach that is not supportive of terrorism as evinced by her negative response when asked whether her son belonged to any Palestinian organization, to which she added: "I always make sure the kids don't get into these things...." (see paragraph 13 of the judgment).

11. Moreover, the judgment, which the State does not dispute, further stated in this context that there is merit to the State's position that an act of terrorism, whatever it may be, is serious and reprehensible. It was noted that this certainly held true in the case at hand. At the same time, the judgment did note (paragraph 14) that given the unique nature of the relationship between parents and their children, it is difficult to ascribe too much weight to the statements quoted by Petitioner 2 in the interview, which can be reasonably interpreted as a natural response of denial. It was further noted that the mental State of Petitioner 2 around this issue is reflected in other things she said during the interview in relation to the attack her son perpetrated and in the course of which he was killed: "We... don't know if this is reality or a dream. We still haven't gotten used to it."

12. In light of all of the above, the statements quoted from the interview in the decision of the Minister do not substantiate a departure from the statements made in his notice.

13. All of the above is compounded by the remarks made in the judgment delivered in the administrative appeal, whereby the basic obligation Petitioner 2 has that anyone under her responsibility should not harm national security cannot give rise to an absolute responsibility on her part for everything her son has done. It was recalled that he was not a young child, but a minor nearing the age of majority (older than 17 and six months). This information necessarily reflects on the nature and degree of supervision that can be reasonably expected from his parents. The judgment also recalled the ruling of the Supreme Court, according to which there is no recognition of vicarious liability on the part of parents, as such, for their children's negligence (see, CA 290/68 **Arieli v. Tzink** 22(2) 645 (1968), p. 649 of the judgment). The judgment noted there was no allegation or infrastructure to support an allegation that Petitioner 2 was privy to her son's intentions, turned a blind eye to them or acted negligently with respect to his actions. This holds true for this deliberation as well.

14. In this context, the Respondent argues in the Statement of Response that the decision made by the Minister in the matter of Petitioner 2 is rooted in his competency to consider whether her application could "undermine state sovereignty or other important interests." A similar argument was made and dismissed in the judgment rendered in the administrative appeal, which the State has stated it does not dispute. That judgment noted that even if within the wide latitude the authority has to consider public policy, such as, "The state shall not aid those who would destroy it" (HCJ 562/86 **al Khatib v. Ministry of Interior Jerusalem District Director**, IsrSC 40(3), p. 661), in this case, the force of the considerations does not begin to substantiate the decisions made. Given the aforesaid, with respect to the infrastructure relating to Petitioner 2, these remarks are relevant for the decision before me as well.

15. As noted above, the Respondent claims Petitioner 2 has no vested right to status in Israel. As a rule, this claim is founded. However, whereas the notice of the Minister of Interior has been provided to the High Court of Justice, and made public, it does give rise to a reasonable expectation that the Minister comply with its content in the absence of compelling reasons to depart from it, even if presumably, as the Petitioners claim, it is not truly a government promise. I shall remark that in their submissions, the Petitioners fail to specify, in this context, how the notice meets the legal requirements for the formulation of such a promise.

16. It is not superfluous to note, in this context, that the Minister's notice was not made in a void. The background for this notice is a string of judgments delivered by the Supreme Court, wherein the court repeatedly highlighted the need to regularize the status of individuals whose status upgrades were put on hold due to the Temporary Order. In this context, the following citations can be made: AAA 4014/11 **Abu 'Eid v. Ministry of Interior, Population, Immigration and Border Crossing Authority** (January 1, 2014), in which Honorable Justice D. Barak-Erez addressed the fact that the affected people have been kept "in limbo" for years (paragraph 38 of her judgment); AAA 6407/11 **Dajani v. Ministry of Interior - Population Authority** (May 20, 2013), where Honorable Justice U. Vogelman noted that halting status upgrades for these individuals is not indicated by the security purpose of the Temporary Order (paragraph 19 of his judgment); the opinion of Honorable Vice President M. Naor in the same case, where she noted the need for a general resolution for this issue; AAA 9167/11 **Hassan v. Ministry of Interior - Population, Immigration and Border Crossing Authority** (May 8, 2014), where Justice H. Melcer noted the matter should be examined given the "unique features" of this segment of the population; AAA 9168/11, **A. v. Ministry of Interior - Population, Immigration and Border Crossing Authority** (November 25, 2013), where Honorable Justice Zylbertal remarked that arranging for the status of this group of people appears "simpler and more just" than considering the case of any particular petitioner.

17. The overall picture emerging from this jurisprudence indicates that the notice of the Minister relied on compelling considerations. This fact reflects on the weight of the considerations that may justify a departure from the content of the notice in exceptional cases. As described above, this case is nowhere near this standard.

18. In the Statement of Response, the Respondent highlights the argument that the Minister's decision does not impinge on the right to family of Petitioner 2 as she has a CLA stay-permit which allows her to live and work in Israel, obtain medical insurance and preserve the family unit to avoid family separation. This argument has merit. However, it does not alleviate the impingement on equality

created as a result of the fact that her status was not upgraded despite her meeting the conditions listed in the Minister's notice. This harm is more evident, considering the disparity between her status and the status of the rest of her family, all of whom are permanent residents. Given the importance of a person's legal status, this violates Petitioner 2's equality and dignity.

19. The violation of the basic right to dignity arises from an additional perspective as well. The judgment rendered in the administrative appeal notes that given the picture that emerges from the entirety of the material, it is difficult to avoid the impression that the decisions in the matter of Petitioner 2 contained a punitive element related to actions she did not take and for which she was not responsible. This still holds true. It is not superfluous to note, in this context, that the jurisprudence of the Supreme Court has consistently upheld the principle of "every man shall pay for their own sins," which is derived from the State of Israel being a Jewish, democratic, liberty and freedom-seeking country (See HCJ 7015/02 **Ajuri v. IDF Commander in the West Bank**, IsrSC 56(6), 352 (2002), p. 371; HCJ 1125/16 **Mar' i v. IDF Commander in the West Bank** (March 31, 2016), paragraph 24 of the judgment and HCJ 5693/18 **Siam v. Prime Minister** (August 26, 2018), paragraph 1 of the judgment of Honorable Justice I. Amit).

20. Ultimately, there was no substantive justification for the decision made by the Minister to depart from his notice, delivered to the court and the public, in the matter of Petitioner 2. As such, the decision is extremely unreasonable and fails to rely on minimal administrative infrastructure. Though the courts exercise significant self-restraint regarding intervention in decisions made by the competent authorities in such matters, the aforesaid does indicate that the petition should be accepted, the decision should be revoked, and Petitioner 2 should be granted an A/5 temporary residency visa.

21. The petition is, therefore, accepted, according to the aforesaid. The Respondent shall pay costs to the Petitioners covering the court and legal fees in the sum of 15,000 ILS. No VAT shall be added to this amount, which reflects the scope of the work required in this proceeding and the findings made herein. The sum shall be paid by August 16, 2020.

Delivered today, July 8, 2020, in parties' absence.

[signed]

Oded Shaham, Justice