At the Supreme Court **AdmPA 1966/09**

Sitting as the Administrative Appeals Court

In the matter of:

1. _____ **'Attoun**, ID _____
2. _____ **'Attoun,** no status
3. _____ **'Attoun,** no status
4. _____ **'Attoun,** no status
5. **HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

Represented by counsel, Att. Yotam Ben Hillel (Lic. No. 35418) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben Ari (Lic. No. 37566) and/or Abeer Jubran-Daqwar (Lic. No. 44346), and/or Ido Bloom (Lic. No. 44538) and/or Nirit Hayim (Lic. No. 48783) and/or Daniel Shenhar (Lic. No. 41065)

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The Appellants

- Versus -

1. **Minister of the Interior**
2. **Director of Population Administration**
3. **Director of the Population Administration Bureau in East Jerusalem**

Represented by the State Attorney's Office
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The Respondents

Notice of Appeal

Notice of appeal is hereby filed from the judgment of the Jerusalem District Court sitting as the Court for Administrative Matters (the Honorable Judge N Solberg) in Adm.Pet. 8350/08, served to the Appellants on 3 February 2009.

A copy of the Trial Court's judgment is attached and marked **AP/1**.

This Honorable Court is requested to reverse the judgment of the Honorable Trial Court which denied the administrative petition. The Honorable Court is requested to instruct the Respondents to approve the application of Appellant 1 (hereinafter: **the Appellant**) to have his children, Appellants 2 and 3 registered in the population registry in Israel and grant them the status of permanent residents in Israel.

For the sake of convenience, Respondents 1 to 3 shall be hereinafter referred to as **the Respondent**.

A Summary of the Facts

There is no dispute between the parties regarding the facts of this appeal. We shall list these facts briefly.

1. The Appellant is a resident of the State of Israel and has eleven children. Seven children were born of his first wife, a resident of Israel, and all were registered as Israeli residents. Four more children were born of his second wife, who has a West Bank identity card, as detailed below:

   _____, born in Jerusalem on 9 February 1993, registered as a permanent resident in Israel close to the time of her birth;

   _____, born in Jerusalem on 26 June 1994, registered as a permanent resident in Israel close to the time of her birth;

   _____, Appellant 2 born in Jerusalem on 8 April 1996, has no status anywhere in the world;

   _____, Appellant 3, the twin brother of Appellant 2, born in Jerusalem on 8 April 1996, has no status anywhere in the world;

2. This entire family resides in a compound located 250 meters outside the municipal border of Jerusalem, yet on the west side of the separation fence (the "Jerusalem" side of the fence). As detailed below, the family's center of life is entirely within Jerusalem.

3. As for Appellants 2 and 3, an application to have them entered in the Israeli population registry was rejected by the Respondent on the claim that the Appellants reside outside Israel. An objection to the decision submitted by the Appellants was dismissed. Due to the dismissal of the objection, the petition which is the subject matter of this appeal was filed (hereinafter: **the petition**).

4. We shall note that the Appellant, who was born in 1954, has lived all his life in Sur Bahir with his family. In 1967, the Appellant received the status of permanent resident in Israel. Until 1985, the Appellant lived in his parents' home, in the part of the village located within Jerusalem jurisdiction. After he married and established a family, in 1985, the Appellant and his family moved to live in their present home, which they built on a plot of land bequeathed to the Appellant by his father.

5. The family home is also located on the lands of the village of Sur Bahir, yet it is 250 meters outside the Jerusalem municipal border. This home is part of the south-eastern neighborhood of the village (hereinafter: **the Wadi Humus neighborhood** or **the neighborhood**). It shall be noted, that at the time the Appellant built his home, the fact that it was outside municipal jurisdiction (note: only a few hundred meters outside jurisdiction) was meaningless. The house is built on the lands of the village of Sur Bahir and the entire Wadi Humus neighborhood is an integral part of the village. The neighborhood's residents' center of life has been and still is, for all intents and purposes, the village of Sur Bahir and Jerusalem in general. The line marking municipal jurisdiction was, in those days, a virtual line with no substantive significance.

6. This situation was altered with the building of the separation fence. The fence in this area was to cut off the neighborhood from the rest of the village and leave it on the eastern side of the fence. Following a petition to the High Court of Justice (HCJ 9156/03 **Da'ud Jabur et 32 al. v. Seamline Administration et al.**), the route of the fence was changed such that the neighborhood, including the Appellants' home, remained on the western side of the fence. The State's consent to change the route of the fence in this area stemmed primarily from its recognition of the severe impairment which would have been caused to the lives of the residents, if the fence were built on the planned route. This is indicated in a document provided to the Petitioners in HCJ 940/04 **Abu Tir et 10 al. v. Military Commander of the Judea and Samaria Area et al**. In Section 32(a) of that document, the assistant Legal Advisor to the West Bank notes:

> The harm to the residents of the village of Sur Bahir – According to the route presently planned for the barrier in the relevant area, some 750 residents of Sur Bahir may find themselves separated from the village. **These are Israeli residents. The harm described is particularly severe as this is a single organic community, where the residents who are expected to reside east of the barrier will be separated from their families and from the public institutions which provide them with services.** (emphasis added, Y.B.).

The document was attached to the petition as Exhibit P/11.

7. However, the troubles of the Wadi Humus neighborhood residents did not end thereby. Over the course of 2004, the National Insurance Institute (hereinafter: **the NII**) began sending neighborhood residents notices regarding the cancellation of their status as residents under the National Insurance Law. Accordingly, these residents began receiving notices from the health service providers of which they are members regarding the cancellation of their health insurance. In response, those residents – including the Appellant and his family – brought a suit before the Jerusalem District Labor Court (NI 10177/05 **The Sur Bahir Village Committee on National Insurance et 52 al. v. The National Insurance Institute et al.**) In this suit, the residents requested the Court to issue a declarative judgment stating that they are residents of Israel under the National Insurance Law; this, in light of the fact that their center of life had been and remained in Israel.

8. Following filing of the suit, a judgment was served on 11 April 2005, which ruled:

> In view of agreements between the parties, and the notice, **and considering that this is a single homogenous village**, and in accordance with the instruction given by the Attorney General to the Defendant, indeed, as long as the legal and political situations remains as it is today, and as long as the separation fence exists as planned, the Defendant shall deem anyone meeting all of the following as being subject to the National Insurance Law with respect to both the rights and the duties imposed according thereto, namely:
>
> A. He holds a permit for permanent residency under the Entry into Israel Law 5712-1952.
>
> B. **He is a resident of the Sur Bahir village, including village territory between the separation fence and the municipal territory of Jerusalem, and he resides in the village permanently and not temporarily.**
>
> In light of the aforesaid, the notices sent to the Plaintiffs are null and void. (emphases added).

The judgment was attached to the petition as Exhibit P/12.

9. Thus, in the framework of this proceeding too, the State acknowledged that in the current state of affairs, the residents of the Wadi Humus neighborhood must be viewed as residents of Israel for purposes of the National Insurance Law and the Health Insurance Law. Given the fact that this is a part of a single homogenous village, and given the fact that the separation fence circles the neighborhood and brings it into the boundaries of Jerusalem and in so doing creates an impassable partition between it and the Territories, the center of life of the residents of the neighborhood is in Israel. Denying the rights of the neighborhood's residents based on a virtual municipal line which has no basis in reality is arbitrary and will severely impair the lives of the residents of the neighborhood and infringe their rights.

10. As for the Appellants, we shall emphasize that the village of Sur Bahir and the city of Jerusalem constitute theirs – and the rest of the family members' – center of life for all intents and purposes. As stated, the home of the family is on village lands. The Appellants receive electricity from inside Jerusalem and are connected to a Bezeq telephone line. The Appellant's children, Appellants 2 and 3, were born in hospitals in Jerusalem. The children go to schools which are located in the center of the village and belong to the City of Jerusalem. The Appellant has worked in construction inside Israel for many years and has paid taxes to the State of Israel. The Appellants have relatives who reside both in Wadi Humus and in the main part of the village, which is inside Jerusalem. The Appellants and their relatives visit each other continuously and regularly and participate in family events. The Appellants also do their shopping in the village and in central Jerusalem. Additionally, the Appellant's other children are recognized by the National Insurance Institute and receive healthcare services in Jerusalem.

    The Respondent has not disputed any of this. The dispute between the parties revolves around the question whether or not the Appellants have proved, in all this, that their center of life is in Jerusalem.

Grounds for the Appeal

Registration of children of Israeli residents

11. The Trial Court erred in ruling that Regulation 12 of the Entry into Israel Regulations 5734-1974 (hereinafter: **Regulation 12**) did not apply to the matter of Appellants 2 and 3.

The purpose of Regulation 12

12. As known, Regulation 12 regulates the manner in which children who were born in Israel to Israeli residents are registered. The Regulation sets forth:

> The status in Israel of a child born in Israel, who does not come under Section 4 of the Law of Return 5710-1950, shall be equal to the status of his parents; where the parents do not have the same status, the child shall receive the status of his father or guardian, unless the other parent objects thereto in writing; where the other parent has objected, the child shall receive the status of one of the parents, as determined by the Minister.

13. The Trial Court ruled that the purposes at the basis of the Regulation do not exist in the case at bar. In so ruling, with all due respect, the Court erred.

14. The ruling established that the purpose which lies at the foundation of Regulation 12 is to prevent the creation of a disconnection or a discrepancy between the status of a parent who resides in Israel pursuant to the Entry into Israel Law, and the status of his child who was born in Israel. The values which lie at the foundation of Regulation 12 are the integrity of the family unit, and the protection of the child's best interests. The Trial Court itself ruled as such in Section 8 of the judgment:

> **The Regulation applies, therefore, to children born in Israel, and establishes that the status of such children shall be as the status of their parents. The purpose thereof, as has been ruled, is to prevent the creation of a disconnection or a discrepancy between the status of a parent who resides in Israel pursuant to the Entry into Israel Law and the status of his child who was born in Israel, and who is not entitled to status therein by the fact of being born in the country.**". (the remarks of Justice Beinisch (her former title) in HCJ 979/99 Pavaloayah Carlo (minor) v. Minister of the Interior, (given on 23

November 1999)). As was further ruled there, "our legal system recognizes and respects the value of the integrity of the family unit and the interests of protecting the child's best interests". The Regulation is designed to put a child born to parents who are Israeli residents in the same status as his parents, so that he is able to live his life with his parents, without their being forced to relocate. Thus, this is a practical regulation that is intended to provide an appropriate and immediate response to a natural family need. **At its basis are a person's natural rights to bear offspring, together with the** "independent rights of each minor to develop and grow up in a supportive and loving family unit" (AdmPA 5569/05 Ministry of the Interior v. Dalal 'Aweisat (Section 21; given on 10 August 2008)). **This Regulation is one of the clear practical expressions of such rights, that is, providing a legal possibility for a shared family existence. The regulation seeks to spare the parents the burden of applying for and receiving status for their offspring, in order to be able to raise them in their place of residence**. (emphases added, Y.B.)

15. After all this, the Trial Court ruled that "there is no justification, from the family aspect, and given the grounds at the basis of the Regulation, to grant them status in Israel (see Section 10 of the judgment). The Trial Court based this ruling on the judgment in the **Carlo** case (see above). We shall provide some details regarding the circumstances of that case.

16. The Carlo judgment concerned the granting of status to a minor who was born in Israel while his parents, members of the Christian faith and Romanian citizens, were in Israel as tourists on a tourist visa. Shortly after the birth, the minor left for Romania with his mother. His mother and father subsequently divorced and his mother was awarded custody. The father remained in the country, married an Israeli citizen and was granted the status of permanent resident in Israel. After years of living in Romania, the Petitioner and his mother entered Israel as tourists, and, after some time, the Petitioner filed an application to receive the status of permanent residency in Israel, by virtue of his father's status. His application was denied and the petition was filed against this refusal.

17. Section 2 of the **Carlo** judgment established that:

> As a rule, our legal system recognizes and respects the value of the integrity of the family unit and the interests of protecting the child's best interests. **Therefore, one must prevent the creation of a disconnection or a discrepancy between the status of a minor child and the status of the parent who has custody of him or who is entitled to custody**. From the point of view of granting residency permits in Israel also, it seems that there is no justification for creating such a discrepancy, as the justifications which lie at the foundation of granting the residency permit to the parent will apply, as a rule, also to his child who was born in Israel and who is with him. (emphasis added).

Indeed, in accordance therewith, and considering the circumstances of that case, it was ruled that Regulation 12 did not apply:

> The change in the father's status in Israel took place while the (minor – Y.B.) Petitioner was no longer in his custody; after his parents divorced in Romania, the Petitioner remained in the sole custody of his mother, and he resided with her in Romania for some five years. **There is no claim before us that "equalizing" the Petitioner's status in Israel to that of his father's is required in order to avoid causing harm to the family fabric. The picture painted by the circumstances of the case is the opposite; Respondent 4** (the minor's father – Y.B.) **has notified that he has no contact with the Petitioner** and that he had no interest in the outcome of the petition, while the Petitioners themselves revealed that their wish to settle in Israel stems from the circumstances of their lives in Romania and their desire to be close to the mother of Petitioner 2 (the mother of the minor – Y.B.). **These circumstances, without making light thereof, are utterly foreign to the purpose at the basis of Regulation 12 and they are not covered by it. Therefore, the Petitioners' arguments that the Petitioner is entitled to the status of permanent resident in Israel pursuant to Regulation 12 cannot be accepted.** (emphases added).

18. The Trial Court made reference to this issue in Section 9 of its judgment:

> Indeed, in the aforesaid **Carlo** case it was also established that **when the purpose of the integrity of the family unit (with the parent who holds a permit for residency in Israel) does not form the basis for the minor's application for status in Israel, the Minister of the Interior is not obligated to grant the minor status solely because he was born in Israel to a parent who has a permit to reside in Israel.** This regulation was not intended for granting status "by virtue of birth", since this is not the purpose of the Entry into Israel Law. (emphasis added).

Do the purposes at the basis of Regulation 12 apply in the case at bar?

19. In Section 10 of its judgment, the Trial Court ruled:

> The circumstances of the case at bar do not produce reasons which justify granting the status; the reasons which are at the basis of Regulation 12 as aforesaid. **The children are growing up with their parents, live a full family life with them, and the family unit is united. There is no justification, from the family aspect, and given the grounds at the basis of the Regulation, to grant them status in Israel**. (emphases added).

20. It seems, therefore, that in this, the Trial Court, with all due respect, has made a legal error. The Court based this ruling on an incomplete quote from the judgment in the **Carlo** case. In Section 8 of its judgment, the Trial Court quoted from the **Carlo** judgment:

> As a rule, our legal system recognizes and respects the value of the integrity of the family unit and the interests of protecting the child's best interests…

At this point, the Trial Court stopped short and did not complete the quote from the **Carlo** judgment. There, the sentence went on to state:

> **… Therefore, one must prevent the creation of a disconnection or a discrepancy between the status of a minor child and the status of the parent who has custody of him or the parent entitled to custody**. (emphasis added).

21. Thus, in the matter of **Carlo**, the Supreme Court ruled that the fact that the child lives with his resident parent in a united family unit is not sufficient, and that action must be taken to prevent the creation of a discrepancy between the status of the minor and the status of the parent who has custody of that minor. This was carried out, in the context of Regulation 12, by granting the status of the parent, i.e. permanent residency in Israel, to his minor child.

22. Indeed, in the judgment in the **Carlo** case, it was established that Regulation 12 did not apply, but this was after it had been made clear that the minor was not in the custody of his resident father and that the latter was not interested in any form of contact with him. How is it possible to draw on the **Carlo** case for the case before us, in which the Petitioner has legal custody of his children and is maintaining a united family unit with them?

It is specifically in this case that the **Carlo** judgment instructs us to take action to equalize the status of the resident and his minor child. It is specifically in this case that the Petitioner's children must be granted the status of permanent residents in Israel.

The principle of the child's best interest

23. In its judgment, the Trial Court also quoted the judgment given in AdmPA 5569/05 **Ministry of the Interior v. Dalal 'Aweisat** (unpublished, given on 10 August 2008) (hereinafter: **the 'Awiesat case**). In Section 20 of the judgment, the Supreme Court addressed the question: how is the discretion of the Ministry of the Interior to be exercised when handling an application filed under Regulation 12? The Supreme Court ruled:

> The premise for this matter is that the interpretation of subsidiary legislation is incorporated in the interpretation of the primary law pursuant to which it was instituted… This is true, of course, also for the Entry into Israel Law and the regulations instituted pursuant thereto. Considering this, we have explicitly established in the past, that Regulation 12 must be interpreted in "a manner which accords with the primary legislation pursuant to which the Regulation was instituted and which is consistent with the purpose which lies at its base" (the

Carlo case, Section 2). In this spirit, we accept the State's claim that similarly to exercising "ordinary" authority according to the Entry into Israel Law – in the scope of which the Appellant is vested with broad discretion, indeed, also when exercising authority according to Regulation 12, the Minister of the Interior may make considerations other than the question of the minor's center of life. Thus, for example, the Minister of the Interior may make security or criminal considerations which are relevant to the wider public interest, or any other relevant consideration pertaining to the exercising of his power according to the Entry into Israel Law. **In conjunction, one must stress that when the Minister of the Interior considers an application submitted under Regulation 12, he must give significant and considerable weight to the best interest of the child and to the integrity of his family unit**. This is so for two principal reasons. First, one must consider that the subsidiary legislator chose to institute a special regulation for the matter of the status of children who were born in Israel. As we have already noted, the provisions of the Entry into Israel Law or the regulations instituted pursuant thereto generally did not establish criteria for the issue of granting a permit for permanent residency in Israel. **Therefore, the very fact that a special regulation pertaining to the legalization of the status in Israel of children born therein was instituted indicates that the subsidiary legislator sought to establish that special and considerable weight must be given to the consideration of the integrity of the family unit in the matter of such minors.** Second, one must take into account the special character of Regulation 12 as a regulation designed to further human rights on two central aspects. The first is the aspect relating to the right of the parent who has status in Israel to raise his child, that is, the parent's constitutional right to family life. The second aspect relates to the independent and autonomous rights of the minor to lead his life with his parent…These two aspects – the one focusing on the rights of the parent who has status in Israel to live with his child in Israel, and the other, focusing on the minor, whose independent right not to be separated from his parents despite not having status in Israel must be considered – form the basis of the purpose of Regulation 12. Against this background, the Minister of the Interior must exercise

> his authority such that these considerations are given significant weight which fulfills the special purpose of the regulation. **Indeed, recognizing the family unit which was expanded with the birth of the minor and recognizing the minor's independent rights to continuous contact with his parents and his emotional development, necessitate that when considering an application made under Regulation 12, considerable weight is given to the fact that the child's center of life is in Israel, by his mother, father, or both.** (emphasis added).

24. The Appellants shall claim below, that in deciding not to intervene in the Respondent's decision, the Trial Court did not give the child's best interest and the integrity of the family unit their due weight, as required by the aforesaid. Since the Trial Court did not award these matters their proper place, we shall briefly elaborate on them.

25. As stated, it does not suffice that "the children grow up with their parents, live a full family life with them, and the family unit is united" (see the remarks of the Trial Court in Section 10 of its judgment). In order to have the value of the integrity of the family unit respected, the status of the minor must be equalized to the status of his resident parent.

26. Equalizing the status of a child to the status of his parent who is a resident of the country serves a wider principle which is recognized in Israeli and international law – the child's best interest. According to this principle, in any action which has bearing on a child, whether undertaken by courts, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration. As long as the child is a minor and as long as his parent performs appropriately, his best interest obliges allowing him to grow up in a family unit that supports him.

For this matter, see for example: CivA 2266/93 **John Doe v. John Doe**, *Piskey Din* 49(1) 221; HCJ 5227/97 **Michal David v. the Great Rabbinical Court**, *Takdin Elyon*, 98(3), 443; The Convention on the Rights of the Child (preamble and Articles 3(1) and 9(1) of the Convention).

27. The refusal to register a child who resides with his resident parent as a resident of Israel means – possible impediment to the child's development and intervention in the family unit against his best interest. So it is in our case. The Respondent's refusal to register Petitioners 2 and 3 in the population registry, and the refusal of the Trial Court to intervene in this matter mean that the children will be forced to continue to live with their father while imprisoned in the few dunum located between the separation fence and the virtual municipal boundary. There is no dispute that this action goes against the best interest of the child.

28. The decision to refuse the Petitioner's application to register his children, Petitioners 2 and 3, exposes the children to detainment by security forces on the street and at checkpoints. In addition, the fact that the children are not registered thwarts their possibility of receiving social rights, primarily their right to national health insurance. These rights are not awarded to persons who are not registered in the population registry. One cannot ignore the emotional aspect which is involved in the matter. The Respondent's refusal to register Petitioners 2 and 3 creates tension, instability and insecurity in the life of the family – elements which are all important for the children's normal development. Additionally, Appellants 2 and 3 are discriminated against in relation to their older sisters, whom the Respondent registered in the population registry. This discrimination – for which, at face value, there is no reason – also contributes to the tension and instability in the family.

    Moreover, the Respondent's decision thwarts another purpose of Regulation 12 – to allow the Petitioner, a resident of Israel to provide his children with their basic needs, as he is required to do by law. The parent's duty toward his children and the prohibition on neglect are duties which are well anchored in Israeli legislation (see on this matter: **Section 15 of the Legal Capacity and Guardianship Law 5722-1962; Sections 323 and 373 of the Penal Code 5737-1977**).

29. Thus, not only are the Respondent's decision and the Trial Court's judgment that followed inconsistent with the purpose of Regulation 12, but they actually undermine it. These are decisions that go against the best interests of the Appellant's children (in denying them, for example, social rights, health insurance, basic freedom of movement), infringe the rights of

all the Appellants to family life (see Section 28 of President Barak's opinion in HCJ 7052/03 **Adalah v. Minister of the Interior**, judgment dated 14 May 2006), and also impede the Petitioner's ability to provide his children with their basic needs, as he is required to do by law in Israel.

Petitio principia

30. Indeed, the Respondent has read into Regulation 12 a condition that the child of a resident of Israel is to be registered in the population registry only if the resident parent and his child have a center of life in Israel. Indeed, the Appellants detailed in their petition (and shall address this also below) that their center of life is in Israel.

31. However, the Honorable Court established that the Regulation did not apply before it addressed the question of the Appellants' center of life. This is an erroneous move. In many judgments by this Honorable Court and by the Courts for Administrative Matters, and recently, as stated, also in the **'Aweisat** case – it has been established that the center of life of the inviting person and of his children must be examined as part of the determination whether or not Regulation 12 applies. In Section 10 of its judgment, the Trial Court established that Regulation 12 did not apply in our case, based, among other things, on the fact that the Appellants do not live inside the State of Israel. Note well: the aforementioned judgments expressly use the term "center of life" and not "place of residence" or any other similar expression. The Court was obliged to examine the question of the Appellants' center of life as part of the discussion regarding the applicability of the Regulation. It has not done so, and in that, therefore, erred.

32. **To summarize thus far**: The Trial Court erred in this matter twice. First, the Trial Court erred when it determined that the purposes at the basis of Regulation 12 did not apply in the matter of the Appellants. The Trial Court subsequently erred when it did not discuss the matter of the Appellants' center of life as part of addressing the question of the applicability of the Regulation. We shall now turn to examining this question – the existence of a center of life in Israel.

The Petitioners' center of life is in Jerusalem

The meaning of the term "center of life" in relation to Regulation 12

33. The term "center of life", like other terms, has different meanings in different laws (see for example the matter of the different meaning of the term "resident" in different laws: CivA 657/76 **The Competent Authority for the purpose of the Nazi Persecution Handicapped Law 5717-1967 v. Hisdai**, *Piskey Din* 32(1) 778; CrimA 3025/00 **Haroush v. The State of Israel**, *Piskey Din*, 54(5) 111). The Appellants cited in their petition a number of laws (see for this matter: sections 39-48 of the petition), which list various tests according to which one must determine what a person's center of life is; each law and its emphases, according to the purpose at the basis of the legislation.

34. Since the Trial Court refrained from addressing the question of the Appellants' center of life in the context of Regulation 12, we shall briefly address this question. As stated, the purpose at the basis of Regulation 12 is to prevent the creation of a discrepancy between the status of a parent and the status of his child born in Israel. This, in order to protect the values of the integrity of the family unit and the best interest of the child. Indeed, Regulation 12 does not cite center of life as a condition for obtaining status in Israel, however, as noted above, the Respondent has added a condition to Regulation 12 according to which the child of a resident of Israel is to be registered in the population registry only if the resident parent and his child maintain a center of life in Israel.

35. In accordance therewith, the term "center of life" in this context must be interpreted in a manner befitting the purpose at the basis of Regulation 12. The term "center of life", in the matter of the Appellants, must be interpreted such that the creation of a discrepancy between the status of the father of the family, a resident of Israel, and that of his children, is prevented. One must find the solution which preserves the integrity of the Appellants' family unit and corresponds with the best interest of the children.

36. Additionally, one must take into consideration that the question of center of life has been reviewed, along with other considerations at the basis of Regulation 12, while giving

"**significant and considerable** weight to the best interest of the child and the integrity of his family unit", as this Honorable Court ruled in the matter of **'Aweisat** (emphasis in the original, Y.B.)

The test of most ties

37. The Trial Court ruled that the Appellants are not to be viewed as maintaining a center of life in Israel solely on the basis of the geographic location of their home – 250 meters east of the Jerusalem municipal boundary. In so doing, the Trial Court ignored the Appellants' overall ties to Jerusalem. These are ties the existence of which was not disputed by the Respondent and the Trial Court itself noted them in its judgment (see Section 6 of the judgment). As known, the accepted test for defining a "center of life" is the test of "most ties" (for this matter see the petition and documents presented in the framework thereof). This test examines the applicant's substantive bond to each of the possible places of residence.

    The exclusive reliance of the Trial Court on the geographic location of the home constitutes, in effect, a cancellation of the test of "most ties". In so doing, with all due respect, the Trial Court erred. We shall elaborate on this matter.

38. As noted is sections 6-9 above, in proceedings before the HCJ and the Labor Court, the State acknowledged that the Wadi Humus neighborhood is an integral part of the village of Sur Bahir and that this was a single, homogenous community. In light of this, given the fact that the separation fence circles the neighborhood and brings it into the boundaries of Jerusalem and in so doing creates an impassable partition between it and the Territories, and considering the Appellants' overall ties to Jerusalem, one must determine that the Appellants' center of life is in Israel. Denying the Appellants' rights on the basis of a virtual municipal boundary which has no basis in reality is arbitrary and will severely impede their lives.

39. In this context, the Trial Court's remark in Section 12 of its judgment that the Appellants are ignoring the inviting person's place of residence is lamentable. The Appellants have never sought to claim that the geographic location of a person's home must not be ascribed

significance in the process of determining this person's center of life. However, the Appellants sought to stress that in their special case, as people who live just a few hundred meters outside the municipal boundary, and considering the special circumstances created in the area following the erection of the separation fence, indeed, the exact location of the Appellants' home must be given negligible weight. The recognition that their center of life is, in every other way, in Jerusalem is far more important. The fact that the municipal jurisdiction boundary was merely virtual until the erection of the fence must also be ascribed significance. The Appellants, who moved to live on village lands located close to the boundary, but west thereof, had no reason to assume that their home was "outside Jerusalem" and obviously, they did not fathom that by residing there they were risking their civil rights and those of their children.

The judgment in AdmPet 8568/08

40. These determinations are no longer exclusive to the HCJ and the Labor Court. The Court for Administrative Matters joined these determinations. On the very same day the judgment which is the subject matter of this appeal was issued, another judgment, addressing this very subject was also issued. This is the judgment in AdmPet 8568/08 **Hamadah v. Minister of the Interior** (handed down on 26 January 2009, unpublished) (hereinafter: **the Hamadah case**).

    The judgment in the **Hamadah** case is attached and marked AP/2.

41. That case concerned an application for family unification submitted by a resident of Israel for his wife, a Jordanian citizen. As in this case, so in the **Hamadah** case, the family has lived in the Wadi Humus neighborhood for many years. In the **Hamadah** case too, the Respondent decided to refuse the application claiming the couple did not maintain a center of life in Israel. In Section 14 of the judgment, Vice President, Honorable Judge Y. Tsur refers to the issue of the Attorney General's decision in the framework of the proceedings before the Labor Court to "deem anyone permanently residing in the village of Sur Bahir, including the territory between the Jerusalem municipal border and the separation fence (which includes the Wadi Humus neighborhood) – as residing within the territory of Israel":

> **This decision by the Attorney General was given in view of the special circumstances that characterize the area in question, which lies in between the official borders of Jerusalem and Israel, and the separation fence which is located beyond that border. The separation fence created a concrete and special reality. It in fact constitutes an impassable physical barrier which prevents a resident who resides on the "Israeli" side of the fence from maintaining a center of life in the territories of the West Bank. Therefore, the residents of this area are caught in the middle and cannot in fact maintain a center of life anywhere other than in Israel. In addition, it should be remembered that the area in question constitutes a natural extension of the village of Sur Bahir (namely of Jerusalem), and there is no material border line (such as a fence or any other kind of marking) which separates the territory of Israel from this area, and thus, this is a single homogenous village. It seems that the village of Sur Bahir developed naturally also towards the east, such that its residents built their homes beyond the village territory which is also the territory of Jerusalem and the State of Israel. It is not needless to mention that it was precisely for that reason that the State previously decided to set the route of the separation fence not on the official border, but on a different outline, and thus the village of Sur Bahir remained a single homogenous unit (see the notice filed on behalf of Petitioners and the Respondents in HCJ 9156/03 Da'ud v. Seam Area Administration). In view of all the aforesaid, the Attorney General saw fit to consider the Israeli permanent residents of this area as residents of Israel for purposes of the National Insurance Law.** (emphasis added)

In Section 17 of the judgment, Judge Tsur goes on to establish:

> **Indeed, the Petitioners' place of residence is formally situated outside the territory of the State of Israel, but in the special reality that was created, there is room to rule that their center of life is within Israel. In this context, it should be stated that Petitioner 1 works in Israel and the Petitioners' children study and receive medical treatment therein. In addition, the**

> **Petitioners receive all services and infrastructure from Israel and their social and familial life are therein. This reality is a result of the situation that the separation fence created, and as long as this situation exists, it should be ruled that Petitioners' center of life is within the territory of the State of Israel for the purposes of the Entry into Israel Law, and the Respondents' decision which refuses their application should be reversed.** (emphasis added)

42. These determinations are clear, unambiguous and relevant for our case. The Appellants believe that these determinations properly implement the test of most ties. The Honorable Judge Tsur did not ignore the fact that the home of the petitioners in that case was outside the territory of Israel. However, she ruled that in these special circumstances, when the petitioners "**cannot in fact maintain a center of life anywhere other than in Israel**" – it must be ruled that their center of life is inside Israel for the purpose of the Entry into Israel Law.

The Trial Court's reference to the proceeding before the Labor Court

43. In Section 14 of its judgment, the Trial Court ruled:

> As may be recalled, the Petitioners also sought to rely on the aforesaid judgment which applied the National Insurance and Health Insurance Laws. Based thereon, the Petitioners argued that that the institutions of the State have already acknowledged that the center of life of the residents of the Wadi Humus neighborhood is in the territory of Israel. This is an argument which cannot be accepted, since in the judgment, that was issued consensually, it was determined that for purposes of the National Insurance and Health Insurance Laws, status will be granted only to a person who holds a permit for permanent residency, and is also a resident of the village. Only upon the fulfillment of both these conditions, cumulatively, will status be granted for purposes of the aforementioned laws. Thus, the judgment teaches the opposite of that which the Petitioners seek to learn from it. It distinguishes between a person holding permanent residency in Israel and a person who does not. The existence of such a distinction is at the basis thereof, and based thereon, the National Insurance Institute went a long way

> towards the petitioners in that case. Also, the plaintiffs in that case, including Petitioner 1 in the case at bar, agreed that anyone who does not hold Israeli residency, is not entitled to these conditions (Petitioner 1 and his seven children from his first wife were amongst the claimants there, unlike Petitioners 2 and 3 at bar, who had not joined the suit there). This means that they themselves recognized the distinction between a person holding Israeli residency and a person who does not. The attempt to now rely on the judgment there, in order to argue that all of the residents in this neighborhood are entitled to Israeli residency, borders on bad faith and is logically deficient. The argument is tautological, in other words, because the Attorney General determined that amongst the residents of the Wadi Humus neighborhood, anyone having the status of a permanent resident will be entitled to the application of the National Insurance Law, it should be determined that all of the neighborhood's residents are entitled to the status of permanent residency. Accepting this argument is thus illogical, and will also unduly prejudice the Respondents who gave their consent to the arrangement pertaining to national insurance based on the existence of a distinction between those who are permanent residents and those who are not.

44. It seems that in this matter, with all due respect, the Trial Court did not understand the Appellants' claims. We shall explain. In Section 66 of their petition, the Petitioners claimed that in the framework of the proceeding before the Labor Court the "State acknowledged that in the present situation the residents of the south-eastern neighborhood of Sur Bahir are to be deemed Israeli residents for the purposes of the National Insurance Law and the Health Insurance Law". This, in light of their acknowledgement that this was indeed a single homogenous village. As such, the Petitioners claimed in Section 67 of their petition that:

> These principles are relevant in our matter as well. National insurance rights, like the issue of child registration, are determined according to the center of life test. The principles established in the matter of social benefits are relevant in our case also: the south-eastern neighborhood forms an integral part of the village of Sur Bahir, the center of life of its residents is in Jerusalem and, therefore, one must not infringe the rights due to the residents of the neighborhood by law.

45. Thus, the Appellants never claimed that the ruling that the plaintiffs in that proceeding must be deemed Israeli residents for the purpose of the National Insurance Law means that Appellants 2 and 3 must be granted status in Israel – **due to this ruling *per se***. All the Appellants claimed was that the principles set forth in that proceeding (as well as the proceeding before the HCJ, to which the Trial Court did not refer for some reason) are relevant to our case as well. Namely, the same recognition of the homogeneity of the village and the special situation created by the separation fence – is relevant also to the question of determining the Appellants' center of life. The Court addressed this matter too in the **Hamadah** case, in Section 15 of its judgment:

> **The Attorney General's determination, which refers to the National Insurance Law, should also be applied with respect to the Entry into Israel Law. First of all, the Respondent did not present any substantive reason for a distinction between the two laws, and did not demonstrate why the Attorney General's decision to consider the residents of the Wadi Humus neighborhood as residents of the State of Israel for the purposes of applying the National Insurance Law, should not also be applied with respect to the Entry into Israel Law. And indeed it seems that there is no substantive justification to determine that in the matter of granting economic and social rights given by virtue of the National Insurance Law the residents of the area should be deemed as residents of the State of Israel, while in the matter of granting the right to family life they should be deemed as residing outside the State's territory.** Secondly, the Respondent himself commonly appeals to the NII in order to clarify the question of the applicants' center of life, and he relies in his decisions on the NII's investigations and its opinion (see for example the Respondent's decision to deny the appeal submitted by the Petitioners who are the subject matter of this petition, Exhibit R/30 to the Response). Also in the case before us, the Respondent approached the NII no less than three times to examine this issue, and received the summaries of four different investigations conducted by the NII with respect to the Petitioners' place of residence and center of life. **It is not justified for the Respondent to rely on factual determinations arising**

> **from the NII's investigation, but completely renounce the legal significance resulting therefrom with respect to the law for which it is responsible. Once the Respondent chose to factually rely on the NII's determinations, he must also consider the legal consequences arising from such determinations, and in this case, the consequence that the residents of Wadi Humus who are permanent residents in Israel should be deemed as residing within the State of Israel.** (emphasis added).

46. Therefore, in the Hamadah case too, the Court ruled that the Labor Court's judgment is relevant to the issue of the significance of the determinations that have been made regarding the Petitioners' center of life in that proceeding and nothing more.

Conclusion

47. The judgment of the Trial Court cannot stand. The Respondent's decision, according to which the Appellants do not maintain a center of life in Israel, a decision based entirely on the location of the family home, without considering all the other circumstances of the Appellants' lives, cannot be considered reasonable. This is particularly true in light of the circumstances created following the erection of the separation fence – circumstances which brought the State itself to acknowledge that the neighborhood where the Appellants live is an integral part of the village of Sur Bahir. The refusal of the Trial Court to intervene in this decision, means, for all practical purposes, the cancellation of the test of most ties. It is a legal error which begs remedying.

48. The ruling of the Trial Court is particularly grave when examined in light of Regulation 12 according to which the children of permanent residents who were born in Israel are registered. The Honorable Court erred in its interpretation of the purpose of the Regulation and in the manner in which it was applied in the case at bar. The purpose of this Regulation is precisely to prevent the results which ensue from the Respondent's decision – leaving the children of a resident with no status and in danger of separation from the entire family, infringement of the children's social right, real harm to the best interest of the children.

For all the aforementioned reasons, the Court is requested to reverse the judgment of the Trial Court and grant the Appellants the remedy detailed in the introduction of this notice of appeal. The Honorable Court is also requested to charge the Respondents with payment of legal expenses and legal fees.

3 March 2009

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[T.S. 53836]