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At the Jerusalem District Court
Before the Honorable Deputy President M. Arad

AdmP 783/03

_____ **Ziyad et al.**

represented by attorney Adi Landau *et al.*
of HaMoked: Center for the Defence of the Individual
4 Abu Obeidah Street, Jerusalem
Tel. 02-6283555; Fax 02-6276317

The Petitioners

v.

The Minister of the Interior *et al.*

represented by the Jerusalem District Attorney's Office
4 Uzi Hasson Street, Jerusalem

The Respondents

Response on Behalf of the Respondents

In accordance with the decision of the Honorable Court of 3 December 2003 the Respondents respectfully file the Response as follows:

The Petition concerns the granting of status to the Petitioner in Israel. The Respondents' position is that the Petition should be dismissed with prejudice as specified below.

1. The Petitioner was born in Beit Liqya in the Region, received a birth certificate of the Region from the Civil Administration and was registered in the Register of Births (see Appendix P/1 D).
2. The Petitioner's parents were married at the [Muslim] Shar'i Court in Ramallah [see Appendix P/1 B]. The Petitioner's mother was a resident of the Region and her birth village is Beit Liqya. The Petitioner's father was previously a permanent resident in Israel, although as transpires from the Petition, since 1979 he moved his life center to Jordan where he resides up until today, and thus he no longer has status in Israel. The Petitioner's father never submitted an application for the Petitioner to obtain status in Israel.
3. As transpires from the Petition, during at least part of his early childhood, the Petitioner grew up with his mother's family in Beit Liqya. When he was brought to

Jerusalem by his brothers he attempted to escape to his grandmother's house, and was ultimately even taken there by his brothers. According to that which was asserted, only at the age of 13 did he move to reside with his brothers again in East Jerusalem.

4. The Petitioner has a significant criminal past. In 2000 the Petitioner was convicted of violent offences - arson and threats, in respect of which he was sentenced to eight months of actual imprisonment, as well as a suspended prison sentence. In 2002 the Petitioner was convicted of dangerous drug dealing and illegal residency in Israel and was sentenced to six months of actual imprisonment. In addition there are open investigation files pending against the Petitioner for suspicion of perpetrating offences of assaulting policemen, impersonation and disturbing a policeman whilst fulfilling his duty. Approximately twenty additional cases are registered against the Petitioner, mainly in respect of drug and property offences, which have been closed due to lack of public interest. According to the police record, only the day before yesterday, 9 December 2003, was the Petitioner arrested in the context of an additional case (CrimC 20772/03 Yiftah district) on suspicion of perpetrating an offence of possession of brass knuckles or a knife for illegal purposes. A copy of the police record and the arrests file is attached hereto and marked as Re/A.
5. As transpires from the Petition, the Petitioner was never adopted by any of his brothers; all that it asserted was that his brothers received guardianship of him at the Shar'i Court. The State and the Attorney General were not party to these proceedings, and there is great doubt as to whether this guardianship has any validity in the field of civil and administrative law, and thus there is doubt as to whether it serves as any evidential indication of the Petitioner's link to Israel. Moreover, it transpires from the Petition that the Petitioner in fact grew up on the streets, and whilst still a youngster drew away from his family, which also casts a doubt on the significance and the validity of the asserted guardianship. In any event, it is certainly not possible to present it as "adoption" which justifies the granting of status.
6. The application of the Petitioner's brothers to obtain status for him in Israel is subject to the general criteria according to which family unification applications are examined including a lack of criminal impediment. The Petitioner's applications for family unification with his brothers were denied, *inter alia*, in view of the criminal impediment.
7. The Petitioner establishes the petition upon the claim that his situation is like that of a person who has no status in any place in the world, and that his only link is to the State of Israel. This description is inconsistent with reality. The Petitioner was born in

the Region and grew up, during at least part of his childhood, in the Region. His mother's family is from the Region. The Petitioner gave no reason why he did not arrange for his registration in the Population Registry in the Region. The Petitioner did not produce any evidence to support his far-reaching claim that there is illegality attached to any place (including the Region) where he might reside.

8. With regard to receiving status in the Region, it should be stated that according to Article 28 of the Civil Annex to the Interim Agreement between Israel and the Palestinian Authority (hereinafter: **the PA**), the amendment of the Population Registry's file in the Region and granting residency and visiting permits there are entrusted to the PA. According to the provisions of the Interim Agreement, if the Petitioner had submitted an application to receive status in the Region prior to reaching the age of 16, the PA would have been entitled to grant him that status.
9. For reasons that they have kept to themselves, the Petitioner and his family members did not do so. The channel available to the Petitioner today to receive status in the Region is by way of family unification in the Region. The Palestinian Authority has the authority to decide a family unification application in the Region, subject to Israel's approval. The Israeli side does not hear family unification applications unless the same have been submitted thereto by the PA and it is not authorized to hear such an application without it having previously been approved by the PA. The Petitioner does not state in his Petition whether he submitted such an application to the PA. In any event, so long as such an application has not been submitted and approved by the PA, the State of Israel is not the Petitioner's appropriate respondent.
10. In view of the political-security situation, since September 2000 family unification applications in the Region have not been dealt with, and Israel is also not prepared to receive such applications from the Palestinian side. This policy was submitted to judicial review and was approved by the Supreme Court in several judgments (see for example HCJ 6133/03 *Abu Bakr et al. v. The Minister of Defense* (a copy of the judgment is attached hereto and marked as Re/B); HCJ 7251/02 *Al-Halis et al. v. Binyamin Brigade HQ et al.*, HCJ 6788/02 *Kinana v. Commander of the IDF Forces*; HCJ 5957/02 *I'tidal v. Binyamin Brigade Commander et al.*).
11. In view of the problematic nature, described above, of putting in order the Petitioner's registration in the residents' registry in the Region at the present time, the Respondents agree to grant the Petitioner temporary status parallel to a class B/1 residency permit for a period of one year, subject to the Petitioner's undertaking to submit an application to the PA to be registered in the Population Registry of the

Region which will be handled immediately upon the renewal of the proceedings for handling these applications, and also subject to an undertaking given by his brothers that they shall keep him away from criminal activity and shall assume responsibility for his rehabilitation, so long as the Petitioner is in Israel. The Petitioner will be able to submit an application to extend the period of the residency permit. His application will be examined in light of all of the considerations and the circumstances underlying the Respondent's consent as aforesaid, and subject to the Petitioner complying with the said terms and conditions.

12. It should be emphasized that the Respondents' consent to grant the Petitioner temporary status does not constitute any consent to or approval of any of the Petitioner's claims in the Petition, and is merely an attempt to provide an ad hoc answer to the Petitioner's problem, considering the special facts and circumstances, until his registration in the Region is put in order.

In view of all of the aforesaid, the Court is moved to dismiss the Petition with prejudice.

Issued today, 15 Kislew 5764, 11 December 2003.

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Erez Paddan, Att.

Chief Assistant to the Jerusalem District Attorney