



16 January 2005

Mr. Ophir Pines-Paz
Minister of the Interior

Dear Sir:

Re: Proposal to Amend and Extend the Validity of the Nationality and Entry into Israel Law

The Legal Advisor of the Ministry of Interior is currently distributing a statutory memorandum [proposed draft bill] to extend the validity of the Nationality and Entry into Israel Law, which will establish even more stringent provisions, all in the guise of an amendment and a broadening of its restrictions. For this and the reasons described below, we request that you intervene immediately to terminate this process.

1. On 21 July 2004, the Knesset extended the validity of the Nationality and Entry into Israel Law (Temporary Order) – 2003 (hereafter “the Law”), which establishes a sweeping prohibition, for an additional six-month period, on granting status in Israel to Palestinians married to citizens and residents of the State. You and your party [the Labor Party] led the opposition to this racist law, which denies on ethnic grounds the constitutional rights to family life, human dignity, equality, personal freedom, and privacy, which are enshrined in the Basic Law: Human Dignity and Liberty and in international law. The Law also breaches the principle of presumed innocence and personal responsibility, negates the very essence of the values of a democratic society, and renders meaningless the citizenship of the Arab minority in Israel.

2. Since its enactment, the Law has gravely harmed thousands of families of Arab citizens married to Palestinian residents of the West Bank and the Gaza Strip. In most cases, the persons involved are Israeli citizens who filed, prior to the enactment of the Law, a request to grant status to their spouse. Their requests were examined and approved, but the Law prevented the upgrading of the temporary status in Israel that had been granted to the spouse. This prohibition has forced the families to live under the constant fear of separation. In many other cases, in which the spouses had not yet received status in Israel, the Law prohibited the granting of status in Israel, compelling the spouses to live apart, and tearing children away from their parents.

3. A Supreme Court panel of thirteen justices recently postponed delivering judgment on petitions challenging the constitutionality of the Law, in order to enable the government to amend, at its initiative, the Law. In its decision, the Court stated:

We all recognize that the further review that the government decided upon must examine thoroughly the problems that the law raises, as set forth in the petitions before us. The statute before us, we all agree, is not an “ordinary” statute. It justifies special treatment.

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However, despite these clear remarks by the Supreme Court, as shown below, the statutory memorandum does not remedy the Law's grave constitutional defects. Quite the contrary; it contains numerous new and serious constitutional flaws.

4. Paragraph 2 of the statutory memorandum, under the heading "Purpose of the Law," states that, "The purpose of the Law is to amend the Nationality and Entry into Israel Law... by expanding the powers of the Regional Commander, and expanding the reservations to the applicability of the Law..." However, persons expecting to find amendments in the memorandum that revoke, or at least reduce, the Law's grave breach of fundamental rights will be bitterly disappointed. The statutory memorandum distributed by the Legal Advisor of your Ministry *leaves the unacceptable and unconstitutional principle that prevents, in a sweeping manner, the granting of status in Israel to Palestinians married to citizens and residents of Israel, and adds other grave constitutional defects, among them:*

Revocation of the Minister of Interior's remaining authority to grant temporary permits to stay in Israel

Section 2(1) of the statutory memorandum is intended to remove the Minister of Interior's remaining authority to grant temporary permits to stay in Israel, in the framework of the reservations set forth in Section 3 of the Law (this is so even after the statute removed the Minister's power to grant residency and/or nationality to residents of the West Bank and the Gaza Strip who are married to Israeli citizens) and to transfer the power to the "Regional Commander."

Discrimination based on age

Sections 2(1)(c) and (d) of the memorandum discriminate, on the basis of age, between residents of the West Bank and the Gaza Strip by setting arbitrary and unreasonable conditions relating to age. These provisions permit the military commander to grant permits to stay in Israel "to prevent separation from the spouse" only to persons over the age stated in the memorandum (of twenty-five years for women and thirty-five years for men). It goes without saying that the memorandum does not lay out any factual foundation for the relevancy of age, or regarding the specific ages that are set forth. In addition, most of the spouses harmed by the Law married at a young age and do not meet this draconian condition. As a result, these sections will not benefit most of the persons harmed by the Law.

H.C. 104/87, *Navo v. National Labor Court, Piskei Din* 44 (4) 749; H.C. 6778/97, *The Association for Civil Rights in Israel v. Minister of Internal Security, et. al., Takdin Elyon* 2004 (1) 203.

Discrimination based on sex

Sections 2(1)(c) and (d) of the memorandum, as described above, by setting different ages for men and women, discriminate on the basis of sex. In this matter, too, the memorandum lays out no factual basis for distinguishing between men and women.

H.C. 4541/94, *Miller v. Minister of Defense, et. al., Piskei Din* 49 (4) 94; H.C. 2671/98, *Israel Women's Network v. Minister of Labor and Social Welfare, Piskei Din* 52 (3) 630, 662-664; H.C. 6845/00, *Niv, et. al. v. National Labor Court, Takdin Elyon* 2002 (3) 1867.

Discrimination based on sexual orientation

Sections 2(1)(c) and (d) of the memorandum use the language, "preventing separation of a resident [in the masculine case] of the region... from his wife" and "preventing separation of a resident [in the feminine case] of the region... from her husband." This wording ostensibly excludes couples of the same sex, and thus constitutes discrimination based on sexual orientation.

H.C. 721/94, *El-Al Israel Airways v. Danilowitz, Piskei Din* 48 (5) 749.

Presumptive conclusion regarding collective security risk

Sections 2(2) and 4 of the memorandum assert a presumptive conclusion whereby it is permitted to refuse to allow a Palestinian to stay in Israel not only on grounds that he or she creates a security risk, but also in the event an “opinion of security officials” indicates that a member of the individual’s family “is liable to constitute a security threat to the State of Israel.” This provision effectively negates the presumption of innocence and the principle of individual responsibility. These provisions violate the fundamental rights of a person based solely on the individual’s relationship to his family, a tie which the person can neither control nor alter. Furthermore, the presumptive conclusion also applies where no information links the person to the acts attributed to his or her relatives, and even in the absence of any relationship with his or her relatives.

In light of the above, we request that you take immediate action to reject the statutory memorandum in its entirety, and ensure that the memorandum is not submitted to the Knesset for approval.

Yours Sincerely,

Orna Kohn, Attorney

cc: Mr. Menachem Mazuz, Attorney General