HCJ 7444/03

1. Balal Masour Daka
2. Manar Rashad Daka
v.
The Minister of the Interior

The Supreme Court sitting as the High Court of Justice
[22 February 2010]

Before President D. Beinisch and Justices A. Procaccia and S. Joubran

Petition to the Supreme Court sitting as the High Court of Justice.

Facts: The petitioners were married in 1996; petitioner 1 is an Israeli citizen and petitioner 2 was born abroad and at the time of their marriage was a resident of the occupied territories. Following the couple's marriage, petitioner 2 lived in Israel pursuant to limited duration permits to stay in Israel granted through a family unification process. These permits were regularly renewed until 1999, when she received a permit granting her temporary residence status. In 2003, a government resolution that had been adopted in 2002 and which had reversed previous policy on family unification approvals, was legislatively enacted in the form of the Citizenship and Entry into Israel (Temporary Provision) Law, 5763-2003. That same year, the couple was informed that petitioner 2's most recent application for the renewal of her residence permit had been denied for security reasons.

Held: (**Justice Procaccia**). Constitutional rights are not absolute, and the legitimacy of the violation of such a right is determined through a two stage process. The first stage involves a theoretical balancing of the violated right against the values that the government seeks to protect by using the measure that creates the violation. The second stage consists of a second balancing — based on the results of the theoretical balancing conducted in the first stage — of the concrete facts involved in each side of the equation in the particular case. In this case, the government's 2002 resolution and the 2003 Knesset law changed the existing policy regarding family unification, such that the starting point in all such decisions was now that all applications for family unification would be denied unless they fall within certain exclusions including transitional provisions included in the statute. Because the denial of family unification status violates the constitutional right to a family life with a spouse who is or was a resident of the territories, these exclusions must be construed purposively,

so that they provide the required balancing. The transitional provision applicable to the petitioners' particular case is the provision applying to an extension of a residency status that had been granted prior to the new government resolution, and states that such a status "may" be extended — ruling out an automatic denial of applications for renewal. The provision further stipulates that such extensions are to be allowed "while taking into account, inter alia, the existence of a security impediment" — indicating that a security impediment will be a factor to be weighed, but not an automatic ground for denial. Thus, in the case of an application from a non-Israeli spouse who has already lived in Israel for several years pursuant to a valid permit, the strength of the violation of the right to a family life is to be balanced against the strength of any security-related impediment that may be present in the particular case. If the applicant has already been living in Israel for several years and has children who have been born in Israel and are being educated there, the non-renewal of a residence permit is a severe violation. A security-related impediment will justify such a violation only when it is also of great weight. The efficacy of measures less drastic than the non-renewal of the permit must also be considered.

In this case, the applicant had been living, working and raising a family in Israel for seven years by the time the application for an extension of her residency status had first been denied. Her family's strong expectation and interest in continuing their united family life needed to be weighed against the serious security concern raised by the fact that several members of her family were involved in terrorist activity; however, that security interest was an indirect one, because it did not involve the applicant herself and instead involved only her relatives, while there had been no evidence regarding her own involvement in dangerous activity. In such a situation, the state would need to establish that the probability that she herself would present a danger reached the level of near certainty in order to justify the violation of the right to a family life, but no such probability had been proven here. A proper weighing of the intense violation of a right to a family life against an indirect security danger presented by relatives of one applicant would indicate that the applicant should be permitted to stay in Israel, subject to a set of conditions which would include a commitment on her part to cut off all contact with the relatives involved in terrorism and not to visit the territories. In addition, the applicant should receive only permits to stay in Israel that would require renewal every six months, in order to allow proper monitoring of her behavior.

(**President Beinisch, concurring**). The result achieved through the theoretical and concrete balancing presented in Justice Procaccia's opinion is correct. However, in weighing the interests involved, evidence presented by the security establishment need not be examined on any level higher than a prima facie review of correctness, due to the presumption of propriety that applies with regard to the findings of an administrative authority. In this case, the strength of the evidence of risk presented

by the security establishment was clear. However, a proper weighing of the indirect risk against the harm done to the petitioners' rights would nevertheless lead to the same practical conclusions described in Justice Procaccia's opinion.

Petition granted.

Legislation cited

Citizenship and Entry into Israel Law (Temporary Provision Law), 5763-2003, ss. 3d, 4.

Israeli Supreme Court cases cited

[1] HCJ 7052/03 *Adalah Legal Center for Arab Minority Rights in Israel v. Minister of the Interior et al*. (2006) (unreported).
[1A] HCJ 466/07 *MK Zehava Galon v. Attorney General* (2012) (unreported).
[2] HCJ 6055/95 *Tzemach v. Minister of Defense* [1999] IsrSC 53(5) 241.
[3] HCJ 6427/02 *Movement for Quality Government v. Knesset* (2006) (unreported).
[4] HCJ 7015/02 *Ajuri v. IDF Commander* [2002] IsrSC 56(6) 352.
[5] HCJ 9070/00 *MK Livnat v. MK Rubinstein* [2001] IsrSC 55(4) 800.
[6] HCJ 2208/02 *Salameh v. Minister of the Interior* [2002] IsrSC 56(5) 950.
[7] HCJ 2028/05 *Amara v. Minister of the Interior* (2006) (unreported).
[8] HCJ 4541/41 *Miller v.Minister of Defense* [1995] IsrSC 49 (4) 94.
[9] HCJ *Horev v. Minister of Transportation* [1997] IsrSC 51(4) 1.
[10] HCJ 6358/05 *Vanunu v. Home Front Commander* (2006) (unreported).
[11] HCJ 11163/03 *Supreme Monitoring Committee for Arab Affairs in Israel v. Prime Minister* (2006) (unreported).
[12] HCJ 59/83 *Cohen v. Jerusalem Municipality* [1983] IsrSC 37(3) 318.
[13] HCJ 237/81 *Dabul v. Petah Tikva Municipality* [1982] IsrSC 36(3) 365).
[14] HCJ 1730/96 *Sabih v. IDF Commander of the Judea and Samaria Region* [1996] IsrSC 50(1) 353.
[15] HCJ 6821/93 *United Mizrahi Bank Ltd. v. Migdal Cooperative Village* [1995] 49(4) IsrSC 221.

For the petitioners — R. Cohen.
For the respondent — Y. Gensin, State Prosecutor's Office.

JUDGMENT

Justice A. Procaccia

1. In this petition we are asked to order the Minister of the Interior to reverse his decision to cancel the approval that had been granted for the unification of the petitioners' family, and to re-issue to petitioner 2 an approval for permanent residency in Israel and prevent her deportation from Israel.

The factual background of the petition

2. Petitioner 1 was born in Israel and is an Israeli citizen. Petitioner 2 was born in Syria and was a resident of the territories [a term defined by law as referring to a resident of the areas of Judea, Samaria or the Gaza Strip] before she came to Israel. The petitioners were married in January 1996, and subsequently submitted an application for family unification and for petitioner 2 to be granted a permit for permanent residency in Israel. The couple have several children who were born in Israel and who are Israeli citizens. In 1998, the petitioners' application for family unification was approved, and the "gradual procedure" [regarding residence status for spouses from the territories] was applied to petitioner 2's case. At first, petitioner 2 was given DCL [District Coordination and Liaison Office] permits valid for a period of 12 months each, and later, in November 1999, she was given an A-5 temporary residence permit. The permit expired on 14 November 2001. On 4 November 2001 the petitioners applied for the permit to be extended. They were told to produce documents attesting to the locus of the center of their lives. Their documents were produced on 18 February 2003. On 12 March 2003, the security establishment stated its opposition to the extension of petitioner 2's permit to reside in Israel. Consequently, on 24 April 2003, the respondent informed the petitioners that their application for the renewal of petitioner 2's residence permit had been denied for security reasons. The petition before us followed.

The parties' arguments

3. The petitioners ask that we order the respondent to reverse his decision to discontinue the approval of the application for family unification, and to grant petitioner 2 a permit allowing permanent residence in Israel. They argue that the respondent's cancellation of the family unification approval, which had been granted previously, was extremely unreasonable and disproportionate, as was his refusal to renew petitioner 2's temporary residence permit. They argue that the Minister is both authorized and required to balance the relevant interests when making decisions on this

matter. He has the authority, and the obligation, to consult with expert parties, and to weigh the applicable security considerations among the totality of his considerations and balance them against each other. In this case, they argue, the Minister divested himself of his duty to decide the petitioners' matter himself, and essentially transferred the decision-making power to the security establishment. According to the petition, the respondent's considerations in deciding whether or not to cancel a residence permit or to retract a previously granted family unification approval must be different from the considerations he is required to weigh in a preliminary examination of an initial application for family unification. The difference in the type of considerations to be weighed is required by the principle of proportionality, and by the different nature of the harm that can be inflicted on the applicants in the two situations. When approval has previously been given for family unification, only significant and weighty findings, based on the most solid of evidence, will constitute a reasonable ground for the cancellation of an approval or residence permit that have already been issued previously.

According to the petitioners, petitioner 2 presents no security risk for the State of Israel under the circumstances of this case. She has lived in Israel with her husband, studied Hebrew and trained to work as a cosmetician and as an optician; she was licensed to work as an optician by the Ministry of Labor and Welfare. The couple paid a considerable amount for her studies. She had worked previously as a secretary to the President of the Appellate Sharia Court — a job from which she was dismissed following the intervention of the respondent's representative. She recently completed a community leadership course organized by the Shatil organization, and she has been socially active and is a member of the Zemer Women's Council, a position to which she was appointed by the head of the Zemer Local Council. Petitioner 1 has been a government employee for many years and serves as the secretary of the Regional Building and Planning Commission for the Eastern Sharon Region. In reliance on the family unification approval and the residence permit granted to petitioner 2, the couple changed their situation, set down roots, and settled and raised a family in Israel. They argue that cancellation of the family unification approval and of petitioner 2's residence permit is unreasonable and disproportionate, and signifies the dissolution of their family and a violation of their legitimate expectation to realize their right to a family life, to equality and to protection against discrimination based on nationality or religion.

With regard to the respondent's arguments, which will be described below, the petitioners reject the argument that the continuation of petitioner

2's stay in Israel constitutes a risk to public security in light of the involvement of her three brothers in terrorist activity. Petitioner 2 presents no danger, it is argued. The petitioners note that the approval of the family unification application, as well as the renewal of petitioner 2's temporary residence permit, both occurred while her father was serving in a senior security position in the Palestinian Authority as Chief of Police in Tul-Karem; moreover, both approvals were granted after one of her brothers had been arrested by the Israeli security forces and another brother — according to information provided by the state — had undergone military training in Afghanistan. Despite this, there has never been any suspicion that petitioner 2 herself has been involved in any hostile activity against Israel, or that she supports such activity. Moreover, petitioner 2's father, who had in previous years served as an assistant to the Civil Defense Commander in Tul-Karem, has recently retired, and she is not in regular contact with her brothers, although she did visit with one of them while he was imprisoned in Israel, and is in telephone contact with her parents.

The petitioners expressed their willingness to accept a series of restrictions as a condition for petitioner 2's continued residence in Israel, including an undertaking to break off any contact with her father and her brothers, in response to the concern expressed by the state that her relatives who are involved in terrorism may attempt to draft her to engage in activity against the State of Israel. They also offered to undertake not to enter the territories, to notify the security establishment of any plan to leave Israel and to provide the details of any planned travel, and to undertake that they would not, by either act or omission, act against the security of the State of Israel or against the public peace, or assist any other party in doing so.

4. The respondent, on his part, argued that the security reasons that give rise to a substantial concern regarding national security and the public peace provide a reasonable and relevant basis for his decision not to renew petitioner 2's Israeli residence permit in the framework of family unification. According to the respondent, his decision is mainly based on information received to the effect that petitioner 2's father is in contact with the heads of the Palestinian security forces, and that her three brothers are involved in terrorist activity — two of them in the framework of organizations operating in the Palestinian Authority's territory, and the third in the framework of the Islamic Jihad organization. The brothers are involved in terrorist activity at a high risk level, which is directed against the security of the State of Israel and against its existence. This involvement also creates a risk with respect to

petitioner 2 as their relative, whose residence in Israel could be exploited by parties who are endangering the Israeli public.

5. Respondent's counsel stressed repeatedly in her arguments that the discretion granted to the Minister of the Interior with respect to the examination of an application from a foreign resident for an Israeli residence permit is very broad, and the scope of permissible review of that discretion is very narrow. In the framework of this exercise of discretion, the Minister can and must consider, *inter alia*, the danger that could be presented to the Israeli public and to the security of the state or to its vital interests as a result of the granting of the application. For the purpose of assessing this danger, the Minister of the Interior is required to consult with experts. When, in the view of the experts, there is a real possibility that such a danger will arise, the Minister of the Interior may take this assessment into consideration, and give it serious weight in his calculation.

6. The respondent argues that the accumulated experience of the security establishment indicates that terrorist organizations customarily look for relatives of those activists who are residents of the territories — relatives who live in Israel and carry Israeli papers as a result of a family unification process — and recruit them in order to promote their objectives. These relatives are an attractive target for the terrorist organizations because of their freedom of movement within the territory of the state, and because of their close familiarity with the area. These relatives can become victims of exploitation by the terrorist organizations, completely unknowingly and innocently. The security risk presented by these relatives is therefore no less than the risk presented by a person who is directly involved in terrorist activity. The nature of the family relationships of those seeking residency status in Israel is relevant to the considerations of the authorized party and should be given proper weight. The relevant question to be considered is whether the residency status and freedom of movement within Israel that will be granted to the applicant are likely to endanger the public peace in light of the applicant's family connections with terrorist organizations. The respondent's position is that these connections are sufficient to establish a danger to public peace, especially when there are several relatives who are involved in terrorism, and that it is not necessary for there to have been any negative intelligence information relating directly to the applicant himself. The reasonableness of this position, they argue, is even clearer in light of the severity of the country's security situation, and the real danger to public peace and state security that arises as a result of an Israeli resident's connections to terrorists.

7. The state notes that the main danger presented by petitioner 2 relates to her connection to her three brothers who are actually involved in terrorist activity, both in fundamentalist organizations in the Palestinian Authority's territory, and in the framework of the World Jihad organization's activity abroad.

Petitioner 2's brother, Wa'al Daka, born in 1974, is an activist in World Jihad. He is currently located in the United Arab Emirates and is in contact with various terrorists, including activists in the Al Qaida terrorist organization. He is a member of that organization's military wing. Wa'al remains in contact with his relatives and with additional terrorists who come to visit him abroad.

Basl Daka, another brother, is a Hamas military activist in Tul-Karem and belongs to the extremist Islamist religious stream. He underwent military training in Afghanistan, and during his interrogation he acknowledged that he had been recruited to the Al Qaida organization and that the training that he underwent there was meant to further the organization's war of jihad. After his release from prison, he continued his activity on behalf of the Hamas organization in the territories, and is in constant contact with Wa'al and with other Hamas operatives.

Yet another brother, Walid Daka, is a Hamas military operative, who, during his interrogation following his arrest, acknowledged that he had been recruited by the Hamas organization and had taken part in checking out a route in anticipation of a terrorist attack; that he had been given weapons, fired a pistol, and purchased materials for the preparation of bombs and for the purpose of planning attacks, including a plan to poison the water in an Israeli settlement. He was convicted of having committed a series of crimes against regional security in the context of his membership in Hamas. After his release from prison in 2004, he continued his activity in the Hamas organization.

Petitioner 2's father served as a high level officer and in a senior position within the Palestinian Authority. He served until recently as the Civil Defense Commander in Tul-Karem, and was in contact with the heads of the Palestinian security forces.

The family members are in ongoing contact with each other, and according to the respondent, petitioner 2 has been in continuous contact with the members of her nuclear family and even visited Basl while he was in prison. The respondent argued that petitioner 2 lied when she told the Court that she had severed ties with her family.

The respondent argues that in light of these family connections, petitioner 2 presents a high-level security risk. The serious information regarding her brothers, based on their status and activity in various terrorist entities, and the untrustworthiness of her declarations regarding her connections with them all serve as a proper basis for the respondent's decision not to allow her continued residence in Israel. The state also notes that since the respondent refused to renew petitioner 2's residence permit in April of 2003, she has been residing in Israel illegally and has also tried to obtain a job in the Ministry of Justice while using an identity number that was no longer valid.

The course of the deliberations

8. Several hearings were held regarding this petition, over an extended period of time, during the course of which efforts were made to find practical solutions to which the parties would agree. Unfortunately, these attempts were unsuccessful. Consequently, on 8 July 2008, we issued an order *nisi* ordering the respondent to show cause why he should not approve petitioner 1's application for family unification and grant petitioner 2 permanent residency status in Israel. In this context we asked — that the respondent also consider the possibility of reaching a proportionate arrangement, the crux of which would be to grant petitioner 2 a DCL type temporary residence permit — one which could be renewed from time to time — and, if needed, to attach further conditions that would facilitate the monitoring of her conduct and the conduct of her family members. We added that in time, consideration should be given to the possibility of reissuing an A-5 residence permit to petitioner 2, if her circumstances should justify it. The respondent rejected the proposed arrangement. Following this, we heard supplementary oral and written arguments from the parties, and we viewed, *ex parte* and with the petitioners' consent, the classified material presented by the state with regard to petitioner 2's case.

Decision

The question

9. The question to be decided in this case is whether and in what circumstances the competent authority may cancel a permit that was issued in the past allowing for family unification and for permanent residence in Israel for a spouse who has the status of a resident of the territories, due to a family relationship between the said spouse and terrorist activists, when there is no security-related intelligence regarding the spouse's own direct connection with any activity directed against Israel's security. This question involves a constitutional aspect relating to the basic human right to a family life —in

this case, the right of an Israeli citizen to establish a family with a spouse from the territories — which is juxtaposed against a public interest, the main part of which is the protection of the country's citizens. An examination of these contrasting interests, and of the manner in which they should be reconciled for the purpose of the exercise of the respondent's authority, lie at the heart of this petition.

We will first examine the issue in principle, and then the manner in which the principles are to be applied in the case before us.

The constitutional aspect

10. It is a basic principle that constitutional human rights, although they are given preferred status in the constitutional regime, cannot be implemented in an absolute manner. They are afforded only relative protection when they are set against general interests or contrasting constitutional rights. The required balancing between basic rights and conflicting values requires, first and foremost, a theoretical balancing which views the range of values that are confronting each other conceptually, and which determines their relative weight in the realm of values. After this theoretical balancing is carried out, a more concrete balancing is required — one that examines the ramifications of the theoretical balancing for the specific circumstances of the case.

The theoretical balancing

11. The Israeli legal system recognizes the right to a family life as a basic human right; the right of every Israeli spouse to establish a family unit in Israel, under conditions of equality in relation to other Israeli spouses, is a part of human dignity. The right to a family life under conditions of equality is a protected constitutional right pursuant to Basic Law: Human Dignity and Liberty.

The Citizenship and Entry into Israel (Temporary Provision) Law, 5763-2003 (hereinafter: "the Temporary Provision Law"), involves a severe violation of the right to a family life of an Israeli spouse who is not permitted to realize his right to a family life in Israel with his spouse who has the status of a resident of the territories. The Temporary Provision Law negates the rights of thousands of Israeli Arabs to realize their rights to family life in Israel and thus violates their rights to human dignity (HCJ 7052/03 *Adalah Legal Center for Arab Minority Rights in Israel v. Minister of the Interior et al.* [1]).

12. In *Adalah Legal Center v. Minister of the Interior* [1], an expanded panel of this Court, consisting of 11 justices, dealt with a series of petitions

filed against the constitutionality of the Temporary Provision Law. We examined the Law from the perspective of the limitations clause in the Basic Law: Human Dignity and Liberty, and we examined in depth the matter of whether the Law was directed at a proper purpose, and whether it complies with the various aspects of the proportionality test. This examination was conducted against the background of the conflict between the constitutional human right to a family life and to equality, on the one hand, and the security consideration arising under the difficult political and security circumstances that Israeli society is forced to face, on the other. By a single vote, the Court took the position that the Law was constitutional at that time, and that the petitions in that case should be denied. The issue of the constitutionality of the Temporary Provision Law again became the subject of deliberations in this Court in a case that is currently pending before an expanded panel (HCJ 466/07 *MK Zehava Galon v. Attorney General* [1A]).

13. Under these circumstances, and on the assumption that the Law is constitutional under the current legal situation, it falls to us to interpret the Temporary Provision Law and to apply its provisions in a manner that will properly express the conflict between the right to a family, to which all citizens and residents of Israel are entitled, on the one hand, and national security considerations, on the other hand — while establishing the proper weighting of a basic human right that enjoys a superior position within the range of human rights, and of a public interest with which it is in conflict. The interpretation and implementation of the provisions of the Law under discussion are affected by the constitutional duty to protect the right to a family as a superior right within the range allowed by the law, while providing a correct and proportionate response to the security concern as required by the reality of the current situation, but not beyond the extent that is necessary. The proper balancing between the basic human rights and the security value is necessary not only for the purpose of determining the constitutionality of the Temporary Provision Law, but also for the purpose of construing and implementing the Law's provisions, as a practical matter.

Indeed,

> '[a] violation of a human right will be recognized only where it is essential for realizing a public interest of such strength that it justifies, from a constitutional viewpoint, a proportionate reduction in the right' (*Adalah Legal Center v. Minister of the Interior* [1] (*per* Justice Procaccia, at para. 4)).

14. The more significant the right that has been violated, and the more serious the violation, the more substantial the opposing public interest must be in order for the violation to be justified and proportionate. The violation of the basic right can be justified only if there is a correlation between the importance of that right and the weight of the contrasting public interest. The level of the violation must also fit into this correlation:

> 'A serious violation of an important right which serves no purpose other than to protect a weak public interest would be considered to be an excessive violation' (HCJ 6055/95 *Tzemach v. Minister of Defense* [2], at p. 273 (*per* Justice Zamir)).

At issue in the instant case is the proper balance the right of an Israeli spouse to realize, under conditions of equality, a family life with his spouse who has the status of a resident of the territories, on the one hand, and, on the other, the interest of protecting public security. This balance can only be achieved through the application of relative criteria, rather than through the use of absolute values. It is built on a determination of the probability of the degree of danger to life and security on the one hand, versus the importance of the human right to maintain a family on the other hand. In determining the proportionate relationship between the two conflicting values, we must assess, on the one hand, the strength of the public interest — in terms of the likelihood of a danger to public peace being presented in these situations by the realization of the human right to maintain a family; on the other hand, the level of the violation of the right to a family life resulting from the restriction that the security establishment seeks to impose here must also be assessed. We must examine whether there exists, in the balance that is being sought, an appropriate correlation between the strength of the basic right both in terms of principle and practice, and the level of the security need, and whether the violation of the human right that will result is proportionate under the circumstances.

15. The human right to a family life is one of the basic elements of human existence; its realization is a condition for reaching fulfillment and a meaningful existence; it is a condition for a person's self-fulfillment, and for his or her ability to tie his or her life to that of a spouse and children in a true sharing of their fates. It reflects the essence of the human experience and the embodiment of a person's strivings. The right to a family life is placed at the highest ranking on the scale of human rights. A restriction of this right is permissible only when it is set against a value which is of special power and importance. In the conflict between the value of security and other human

rights, including the right to a family life, the security consideration will be the prevail only when there is a near certainty that if the measures leading to the restriction on the right to a family life are not imposed, the public peace will be substantially harmed.

16. The state bears the burden of persuasion on the issue of the probability of a security risk at a level that justifies a restriction of a human right (*Adalah Legal Center v. Minister of the Interior* [1] (*per* Justice Procaccia, at para. 9); HCJ 6427/02 *Movement for Quality Government v. Knesset* [3] (*per* President Barak, at paras. 21-22 and 49); *Tzemach v. Minister of Defense* [2], at pp. 268-269 (*per* Justice Zamir)). The state must persuade the court that the probability of the public peace being endangered is at least at the level of near certainty, and that it will not be possible to protect against that danger without violating the human right.

17. It has been said, on several occasions, that the "security need" argument, when made by the state, is not a magic formula which is to be accepted without question as soon as it is raised. Although the Court does generally act with restraint when examining the government's security considerations, the reasonableness of the authorities' arguments as well as the proportionality of the measures that the authorities seek to implement must nevertheless be examined in depth, whenever the security policy violates human rights (HCJ 7015/02 *Ajuri v. IDF Commander* [4], at pp. 375-376; HCJ 9070/00 *MK Livnat v. MK Rubinstein* [5], at p. 810). The security risk must be assessed, in the context of this examination, in terms of the probability of its realization, as compared to the magnitude of the violated individual right confronting it, and with respect to the proportionality of the violation of the right which is to be permitted for the purpose of realizing a public interest. The security consideration is examined in a two-stage process: first, the credibility of the security argument is tested; next, the strength of the security interest in terms of the probability that the security risk will in fact be realized is reviewed (*Adalah Legal Center v. Minister of the Interior* [1] (*per* Justice Procaccia, at para. 11)).

18. The work of carrying out a constitutional balancing is done first on the theoretical level; the next step must be a specific-individual examination with respect to the particular case. A sweeping denial on the part of the authorities of the rights of individuals who wish to realize their basic rights, without carrying out an individual constitutional balancing based on specific information that is unique to the case, is a violation of constitutional principles — principles that require both a theoretical and a specific

balancing. Such a sweeping violation obscures the duty imposed on the administrative authority to give proportionate consideration to all the information that is relevant to the administrative decision, and to reach a decision based on the proper balancing of all the data. It is liable to cause the attribution of a determinative value to one consideration, and a disproportionate discounting of a human right which is of central importance. It can lead to a severe impairment of the values of life and of culture, and to violations of the principles of a democratic regime, which is based on the protection of human rights.

Thus:

> 'No one will deny the seriousness of the security situation in which we find ourselves, and the supreme task imposed on the state to protect the lives of its citizens. At the same time, just as we must confront the danger to life and defend ourselves against it, so too we must protect ourselves against the danger of losing security in our values and in the protection of human rights. We must beware the erosion of human rights against the background of security arguments by not maintaining the proper proportion between them. Without insisting on this proportionality, the constitutional approach that protects human rights may be eroded; consequently, cracks may appear in the foundations of our constitution; democratic patterns of life in Israel may be prejudiced and the recognition of human dignity and the right to realize one's identity may be undermined. We must take care not to be carried away by security arguments like blind persons in the dark, where doing so leads to a violation of a human right. We must examine their credibility and strength in accordance with reliable figures, and assess it in accordance with the tests of logic, common sense and the rules of probability.' (*Adalah Legal Center v. Minister of the Interior* [1] (*per* Justice Procaccia, at para. 22)).

These principles also apply to an examination of the constitutionality of legislation enacted by the Knesset, and they apply equally to the interpretation of a law and to its practical implementation, where the law itself has been found to be constitutional.

Background and main policy principles of the Temporary Provision Law

19. On 12 May 2002, the government adopted Resolution 1813 which set in place a new procedure for handling applications for family unification pertaining to Israelis whose spouses are residents of the territories

(hereinafter "the Government Resolution"). As of 6 August 2003, the government's policy has been anchored in the Temporary Provision Law, which has been extended from time to time. The Government Resolution and the enactment of the Temporary Provision Law brought about a change in the family unification policy that had been followed until that time. In the past, the starting point had been that an Israeli citizen could be united with a spouse who had the status of a resident of the territories, absent a ground that nullified such unification, such as a criminal or security-related impediment. This starting point was turned around, and since the enactment in the Law of this policy change, applications for family unification have been rejected, subject to exclusions listed in the Law.

20. The entry into force of the Government Resolution and the Temporary Provision Law inflicted a serious blow to the constitutional rights of Israeli Arabs — to their right to create a complete family unit within Israel's borders with spouses who are residents of the territories. According to the existing legal situation, this violation has been recognized in the case law of this Court as a proportionate violation according to constitutional principles, in light of considerations relating to the security of the state and to the need to protect the citizens of the State of Israel from the potential danger presented by terrorist forces in the territories. The conflicting values that are involved in the right to a family life, on the one hand, and the security interest on the other, underlie the policy against the background of which the Temporary Provision Law was formulated, and this conflict of values affects the correct interpretation of its provisions. Given this situation, in which the basic right of spouses who are residents and citizens of Israel to unite with spouses from the territories is violated, it is necessary to construe the Temporary Provision Law purposively, in a manner that limits the scope of this violation to the degree that is absolutely necessary in order to realize the security objective. Given the strength of the basic right to a family life as an individual constitutional right of the highest order, only a security interest of truly substantial weight will justify its violation; a theoretical and abstract security interest will not justify such a violation. Alongside the principle that the legitimacy of the violation of the right to family life must require the existence of an especially powerful security interest, there is also a need for a narrow interpretation of the scope of the permissible violation of the right to a family life, as well as a liberal interpretation of the exceptions listed in the Temporary Provision Law which allow, within limited boundaries, a deviation from the general policy of rejecting family unification. These exceptions allow the realization of the right to a family life through the grant

of an Israeli residence permit to a spouse from the territories, under certain circumstances. The requirement that a violation of the right to a family life be conditioned on the presence of a substantively weighty security interest, and an expansive interpretation of the exceptions in the Law which make possible, under certain conditions, the realization of this right, are the inevitable consequences of the constitutional clash of values involved in the Law's operation.

The interpretation of the Law and its mode of implementation must reflect the deep constitutional tension that is created as a result of the acute conflict between the right to a family life and the importance of the security consideration under the actual circumstances that characterize Israeli society.

The transitional provisions of the Temporary Provision Law

21. The application of the new policy, which prohibits family unification as a rule, necessitated transitional arrangements for residents of the territories who had been granted, prior to the Law's entry into force, a residence permit or a permit allowing the person to remain in Israel in a family unification framework. A transitional arrangement was also required for those residents of the territories who had submitted an application for family unification prior to the date of the Government Resolution regarding the prohibition on family unification dated 12 May 2002 (hereinafter: "the determinative date").

22. The following is the text of the transitional provisions:

Transition provisions

4. Notwithstanding the provisions of this Law —

(1) The Minister of the Interior or the area commander, as applicable, may extend the validity of a license to live in Israel or of a permit to stay in Israel, *which were held by a resident of the area prior to the commencement of this Law, while taking into account, inter alia, the existence of a security impediment as stated in section 3D.*

> (2) The area commander may give a permit for a temporary stay in Israel to a resident of an area who filed an application to become a citizen under the Citizenship Law or an application for a license to live in Israel under the Entry into Israel Law, before the first of Sivan 5762 (12 May 2002) and with regard to which, on the date of commencement of this law, no decision had been made, provided that a resident as aforesaid shall not be given citizenship, under the provisions of this paragraph, nor shall he be given a license for temporary residence or permanent residence, under the Entry into Israel Law (emphasis added).

23. The transitional provisions are part of the exceptions adopted in the Law which permit, even after the determinative date, the granting, under certain circumstances, of a residence permit to a spouse from the territories, or of a permit allowing the spouse to remain in Israel for the purpose of family unification. Because these exceptions, and the transitional provisions as a whole, are provisions that promote and are suited to the realization of the constitutional right to a family life, they must, in the context of legislation that violates the basic human right to a family life, be construed and applied broadly. The purpose of the transitional provisions is to uphold the Israeli spouse's right to a family life under factual circumstances that give rise to a reliance interest and to legitimate expectations regarding that right. Although the legislature has adopted, with regard to new applications for family unification, a policy of a sweeping prohibition on the basis of security considerations, the transitional provisions preserve a certain correlation between the right to a family life and the issue of security considerations, based on individual circumstances. The balance that the legislature found to be proper for the purpose of the transitional arrangement involves, first of all, the possibility that an Israeli residence permit can be extended for a person whose residence in Israel had been permitted prior to the determinative date in the context of family unification. This possibility was also prescribed for a person who had submitted an application for family unification prior to the determinative date and regarding whom a decision had not been reached by that time. However, the permits are to be granted pursuant to the transitional provisions only when there is no security-related impediment relating to the particular individual applicant that justifies a refusal to grant or renew a

permit. The transitional provisions also establish that the extension of a residence permit that has already been granted will not allow for the upgrading of the applicant's status, and the grant of a first-time permit will be limited to a temporary stay permit which may not be upgraded to a higher residency status, as long as the arrangements in the Temporary Provision Law remain in place (HCJ 2208/02 *Salameh v. Minister of the Interior* [6]).

The security-related impediment in the transitional provisions

24. The existence of a security-related impediment is liable to prevent the application of the exception incorporated in the transitional provisions which enables the extension, under certain conditions, of an existing residence permit that had been granted to a spouse from the territories in the context of family unification, or which allows for the grant of a new permit to an applicant who had submitted an application prior to the determinative date and regarding whom a decision had not been reached prior to that date. In implementing the transitional provision, the competent authority is required to decide the proportionate relationship between the Israeli spouse's legitimate expectation to realize his right to be united with a spouse from the territories, as derived from his constitutional right to a family life, on the one hand, and the scope and level of the existing security-related impediment regarding the spouse from the territories, on the other hand. The concept of a "security-related impediment" is not a single-value concept, and its nature can change from case to case, in view, *inter alia*, of the nature and strength of the conflicting values. The concept of a "security-related impediment" is a framework concept, and its content and weight are affected by the specific context in which it arises. The more concrete the Israeli spouse's interest is in realizing his right to a family life, the greater the weight that is required of the security-related impediment in order to justify the denial of an application for family unification in the framework of the transitional provisions, in terms of either the extension of an existing residence permit or the approval of an application for a permit that had been submitted prior to the determinative date regarding which a decision had not yet been reached by that date.

A concrete expectation regarding the realization of the right to a family life when a permit for family unification had already been granted and a request has been made for its renewal has a different import than the expectation that exists when no such permit has ever been granted.

25. Of the two situations to which the transitional provisions relate, it is clear that a couple's expectation with respect to the renewal of a residence

permit when such a permit had already been issued previously is one of great strength. The strength of such an expectation will be greater than that of a couple that has not yet been allowed to enjoy family unification, and whose application for such unification had not yet been answered by the determinative date. Moreover, there may be a difference in terms of the strength of the expectations of a family that has lived in Israel for many years and has set down roots in terms of their life in Israel and who have a number of children who are being raised and educated in Israel, as compared to the strength of the expectations of a young couple that has only recently been permitted to stay together through family unification and who have only been in Israel for a short period and have not yet built a complete family unit or integrated into work and life in Israel. There must be a correlation between the strength of the expectation for a permit pursuant to the transitional provisions, and the special weight of the security-related impediment — the weightier the expectation for family unification in light of the specific circumstances, the greater the security interest must be to justify the violation of that expectation.

26. The Temporary Provision Law refers to the security-related impediment in s. 3D as follows:

> 'A permit to stay in Israel shall not be given to a resident of the territories pursuant to s. 3, 3A(2), 3B(2) and (3) and 4(2), nor shall a permit to reside in Israel be granted to any other applicant who is not a resident of the territories, if the Minister of the Interior or the area commander, as applicable, determines, in accordance with an opinion from the competent security authorities, *that the resident of the area or the other applicant or the family member of these are likely to constitute a security risk to the State of Israel; in this section, 'family member' shall mean a spouse, parent, child, brother, sister and their spouses*. For this purpose, the Minister of the Interior may determine that a resident of the territories or other applicant is liable to constitute a security risk to the State of Israel, on the basis of, *inter alia*, an opinion by the security personnel that, within the country or territory in which the resident of the territories or the other applicant resides, activity is carried out which is liable to endanger the security of the State of Israel or of its citizens' (emphasis added).

This provision authorizes the competent authority to refuse to grant a permit under the exceptions prescribed in the law — including pursuant to

the transitional provisions, with regard to an application for a *new* permit pursuant to s. 4(2) of the Law — if the applicant for the permit, or a family member, is liable to present a security risk to the state. The concept of a "family member" for this purpose is defined broadly, and it includes various degrees of family relationship within the nuclear family circle and within a broader circle as well — a spouse, parent, child, or sibling, or their spouses. Thus, the legislature defined a "security-related impediment" broadly, and includes in it not only a direct risk presented by the permit applicant himself (hereinafter: a "direct security-related impediment") but also an indirect risk presented by the applicant's close relatives (hereinafter: an "indirect security-related impediment").

The security-related impediment in relation to the two alternatives in the transitional provisions

27. The Law, in its content and its formulation, creates a certain distinction between the manner in which, pursuant to the first transitional provision in s. 4(1) of the Law (hereinafter: the "first transitional provision"), the presence of a security-related impediment affects an applicant seeking a renewal of a residence permit that had been issued in the past, and the manner in which such an impediment affects an applicant seeking a permit for the first time, regarding whom a decision had not yet been rendered prior to the determinative date, and who is therefore subject to the transitional provision in s. 4(2) of the Law (hereinafter: the "second transitional provision").

28. The provision in s. 3D of the Law regarding the "security-related impediment" applies directly, pursuant to the text of the *second transitional provision* in s. 4(2) of the Law — i.e., to an applicant for a new permit whose application had not yet been approved by the determinative date. For this purpose, the beginning of s. 3D provides that "*a permit to stay in Israel shall not be given to a resident of the territories pursuant to . . . s. 4(2)*" if the competent authority determines that there is a security-related impediment in the sense of there being a security risk that is presented by the permit applicant or by his family member. Regarding an applicant for a new permit whose entry into Israel has not yet been approved but whose application was pending prior to the determinative date, the Law provides, categorically, that "a permit . . . shall not be granted" in the event that there is a security-related impediment, as defined there.

29. The first transitional provision, in s. 4(1) of the Law, operates differently. This provision deals with an *extension of an existing permit* held

by a spouse who has the status of a resident of the territories, and who has been living in Israel by virtue of that permit. The section provides as follows, regarding such a case:

> 'The Minister of the Interior or the area commander, as applicable, may extend the validity of a license to live in Israel or of a permit to stay in Israel, which were held by a resident of the area prior to the commencement of this law, *while taking into account, inter alia, the existence of a security impediment as stated in section 3D* (emphasis added)..

30. The difference in the statutory language in each of the two situations is not accidental. It indicates that the security-related impediment is relevant to both the first and second transitional provisions, but the manner in which it is applied in the two situations in terms of the balancing that is to be carried out between the security risk and the level of the violation of the legitimate interest in the realization of the right to a family life differs. Regarding the second transitional provision, which deals with an applicant for a new permit whose entry into Israel, has not yet been allowed and whose application for a family unification permit was pending and undecided as of the determinative date, s. 3D provides that a permit *will not be granted* if there is a security risk. In contrast, with regard to an applicant for an extension of a family unification permit that was given in the past, the Law provides that the competent authority may extend the duration of the permit "*taking into consideration, inter alia, the presence of a security related impediment, as described in s. 3D of the Law*." It appears that this language indicates that in the context of the balancing between the conflicting values, greater weight will be given to the expectation interest of a couple who have already been allowed to unite in the framework of family unification and who wish to continue this shared life, as compared to the weight given to the interest of a couple whose application has not yet been approved prior to the determinative date. Regarding the first transitional provision, only the existence of a security interest which is especially strong will provide a constitutional justification for a violation of the right to family life, if approval for family unification has been granted in the past and the couple is now seeking an extension of such approval. Regarding an applicant whose entry had not yet been allowed prior to the determinative date, a weaker security-related impediment is likely to be sufficient in order to justify a refusal to grant a permit, pursuant to the second transitional provision.

31. It therefore appears that according to the statutory language and in light of the purpose of the Law, and in light of the constitutional principles governing its mode of implementation, a first-time applicant to whom the second transitional provision in s. 4(2) applies will be directly subject to the provisions of s. 3D of the Law with regard to a security-related impediment. If the Minister of the Interior determines that either such an applicant, who is a resident of the territories, or a family member of such an applicant, is likely to constitute a security risk for the State of Israel, then, according to this provision, a permit to stay in Israel temporarily will "*not be granted.*" Invocation of this authority does involve the exercise of discretion — however, when the considerations are balanced, special weight will be granted to the security aspect. In contrast, the provisions of the first transitional provision in s. 4(1) of the Law will apply to an application for an extension of a residence permit, which is submitted by an applicant who has already been granted a family unification permit in the past and who is living in Israel pursuant to that permit. According to that provision, the security-related impediment factor described in s. 3D of the Law constitutes only one of several factors that the Minister of the Interior is required to consider in reaching a decision as to whether to extend the existing Israeli residence permit. In accordance with this provision, the Minister of the Interior, in the framework of the exercise of his authority and judgment, is authorized to and *may extend the existing residence permit even if there is a security-related impediment, as stated in s. 3D of the Law.* All this is subject to the entire array of circumstances, and to the relative weight to be attributed to each of the relevant factors that are considered in the framework of the constitutional and concrete balancing — a balancing which is also required in light of the reasonableness standard that must be followed with respect to any administrative decision.

32. The exercise of the Minister of the Interior's authority regarding the transitional provisions must comply with the principles of administrative law. Therefore, the Minister of the Interior's decision must be reached through a proper administrative process, and it must be free of any irrelevant considerations, and of any arbitrariness or any violation of the principles of natural justice. It must be a reasonable decision. Within the bounds of the reasonableness requirement, the decision must be based on an appropriate factual underpinning, and it must be based on all relevant considerations and on those considerations only, and it must be reached by establishing a proper balance among those considerations, within the boundaries of reasonableness. Since the significance of the decision is likely to involve a

possible violation of the Israeli spouse's high-ranking basic constitutional right, it must also satisfy the proportionality requirement established in the limitations clause (HCJ 2028/05 *Amara v. Minister of the Interior* [7] (*per* President Barak, at paras. 9-17); HCJ 4541/41 *Miller v. Minister of Defense* [8]; HCJ *Horev v. Minister of Transportation* [9], at p. 41; HCJ 6358/05 *Vanunu v. Home Front Commander*, at para. 12 [10]; HCJ 11163/03 *Supreme Monitoring Committee for Arab Affairs in Israel v. Prime Minister* [11] (*per* President Barak, at para. 22)).

The relevant and contrasting considerations in the transitional provisions of the Temporary Provision Law

33. The significance of the refusal by the competent authority to grant or to renew an Israeli residence permit in the case of a spouse who falls within the purview of the transitional provisions of the Temporary Provision Law in the context of a family unification process is that the right of the Israeli family members — a spouse, and any minor Israeli children — to conduct a unified family life will be denied. Juxtaposed against this denial of a right is the purpose of the Temporary Provision Law, which is to protect the security of the Israeli public. Although our case involves a review of the administrative discretion exercised by the administrative authority, the criteria for examining such discretion are also affected by the principles of constitutional law, as the exercise of this authority involves a violation of a basic human right — i.e., the right to a family life. In light of this, the authority may only be exercised in a manner that satisfies the relevant constitutional tests. The security objective, which underlies this use of the administrative authority, must comply with the tests set out in the limitations clause of the Basic Law: Human Dignity and Liberty, when such use is likely to violate the basic right to family life. As a rule, the violation of a basic right for the purpose of protecting the security of the state and that of its residents is deemed to have a proper purpose and to conform to the values of the state as a Jewish and democratic state. The key question, then, is whether the requirement of *proportionality* has been satisfied with respect to the manner in which the authority has been exercised pursuant to the Temporary Provision Law, when it involves a violation of a basic right to a family life for the purpose of responding to a security need. In such a case, proportionality must be examined according to the sub-tests that have been developed in the case law. The rational connection test, the less-violative means test and the narrow proportionality test are the guiding tests in determining the proportionality of a violation of a constitutional right. The application of these tests to our matter involves the following: first, when the

security-related impediment consideration arises in connection with spouses to whom the transitional provisions apply, a correlation is required between, on the one hand, the measure that has been used which prevents family unification, and, on the other hand, the objective of protecting the security of the state and the public peace. Next, it must be the case that the security-related purpose cannot be achieved through the use of any other measure that involves a lesser violation. Finally, the nature and level of the violation of the right to family life and to equality must be in proper proportion to the security objective that is being pursued through the implementation of the measure that prevents the requested unification (*Amara v. Minister of the Interior* [7] (*per* President Barak, at para. 11)). For the purpose of applying the narrow proportionality test, it is not necessary to examine the entire range of the security benefits that will be achieved, in comparison to the situation that would prevail if no other measure was taken to prevent the security risk. All that is needed is an examination of the *marginal additional* benefit to security that is achieved through the termination of the family unification process, compared to the possibility of using alternative security measures — such as the grant of temporary renewable permits for staying in Israel, which allow the for periodic official review by the true level of danger anticipated from the spouse who has the status of a resident of the territories and who is living in Israel; increased supervision of the spouse staying in Israel; and a commitment from that spouse (whose compliance with such commitment will be tested regularly) to cut off all contact with any hostile elements, along with other possible measures. In applying the proportionality test as stated, there may be a difference in the relative weight to be attributed to a violation of the right to a family life as compared with the security advantage to be gained from the violation in the context of a refusal to renew a residence permit to one who has already received such a permit in a family unification context and is already legally living in Israel, on the one hand, and, on the other hand, the relative importance to be attributed to these values in a situation in which the person has not yet been granted such unification status, and has submitted an application prior to the determinative date which had not yet been decided by that date. In the following discussion, we will discuss briefly each of the values that the competent authority is required to consider for the purpose of applying the *transitional provisions*; we will then discuss whether it would be appropriate to intervene in the authority's decision under such circumstances.

The violation of the constitutional right to a family life in the context of the transitional provisions

34. The refusal to grant a first-time family unification permit, or to renew such a permit when one had been granted previously, is a severe violation of the right to a family life — one which violates a person's dignity, his personal autonomy and the meaning of his life which is inextricably tied to his ability to realize a full life in the framework of family, with a spouse and children. This violation cuts through the length and breadth of a person's life, and affects all aspects of his life, as well as his ability to realize his independence fully and completely. It detracts from the person's ability to fully experience happiness in life, and sentences him to a life of loneliness, detachment and sadness during the best years of his life. The refusal to extend an Israeli residence permit to a spouse who has the status of a resident of the territories, and who is living in Israel in the framework of family unification, is one of the most severe blows that can be inflicted on the fabric of family life and on the spouse who is an Israeli resident. As a rule, it is a more serious violation than that suffered by a couple who have not yet been allowed to unite and live together in Israel (HCJ 59/83 *Cohen v. Jerusalem Municipality* [12], at 320; HCJ 237/81 *Dabul v. Petah Tikva Municipality* [13]). When a first-time permit for family unification has been granted, a family unit begins to be established, and the united family begins to put down roots in Israel. The spouse who has the status of a resident of the territories studies Hebrew and integrates himself or herself into the labor market, children are born, these children receive Israeli citizenship and are educated and study in Israeli schools, and the family becomes integrated into Israeli society. The refusal to extend an Israeli residence permit for a person who fulfils the conditions of the first transitional provision thus causes the family to face a tragic decision. They must choose between two alternatives. The first would be the entire family's removal from Israel, from their relatives, extended family and from their friends; from their life in Israel and from the culture and sources of employment on which they rely — a removal which would mean the familial, social, economic and cultural disconnection of a unified family that has lived and put down roots in Israel, sometimes for a period of many years. The second possibility is for the couple to separate, with the Israeli spouse remaining in Israel and the foreign spouse returning to his or her original place of residence within the territories, and with the children being separated from one or the other of their parents. The separation of the family members from each other under such circumstances is difficult for all involved — for the couple and for their children — and it

involves the fracturing of the family's human, social, cultural, and economic frameworks.

35. The refusal to grant an application submitted by a resident of the territories to enter into Israel for the purpose of family unification, when no such application has been approved in the past, also carries severe consequences from the perspective of the family that has not yet had the opportunity to build a unified family unit. However, the violation involved in this refusal is of lesser magnitude than that of the violation caused to a party whose residence in Israel has already been approved, and which has already established a full family life in Israel, with all that this implies. This difference in the strength of the expectation of family unification and the extent of the violation of that expectation in the two situations affects the determination of the proper balance between the violation and the level of the security-related impediment in the framework which is necessitated by the proportionality test. This difference finds expression in the wording and purpose of the Law.

The security-related impediment in relation to the transitional provisions in the Temporary Provision Law

36. The duty of the state to protect its citizens' lives places the security consideration at the highest level of importance. This consideration has two aspects: a social aspect, which impacts on the state's duty to protect its citizens' security; and an individual aspect, which impacts on the right of the individual within the society to enjoy adequate protection of his life and of his well-being — protection that the government has a responsibility to provide. The right to life is a constitutional human right of the highest order and it ranks first among the human rights protected by the Basic Law: Human Dignity and Liberty. Nevertheless, the value of protecting life is not a single absolute concept. Its relative weight varies from case to case, according to the probability of the realization of the danger to life that arises in the specific context. Occasionally, the security value will also need to be weighed against other values of special importance, according to their relative weight.

37. The assessment of the degree of danger presented by a particular person is a complex task. It becomes especially difficult, given the security situation that Israel is currently facing, when what must be assessed is the danger presented by a resident of the territories. The forces battling against Israel are terrorist forces that are frequently assisted by the civilian population. The source of the security danger is likely to relate directly to the spouse who has the status of a resident of the territories — the spouse who is

applying for a family unification permit or an extension of such a permit. This is the case when the applicant for the permit is himself connected to or involved in terrorist activity. However, the danger may relate not to the applicant for the permit himself or herself, but rather, to the applicants' relatives and family members who are themselves connected to terrorist activity; in these circumstances, the concern is that such family members might make use of their relatives who have been granted family unification status in order to promote their dangerous activities (*Amara v. Minister of the Interior* [7] (*per* President Barak, at para. 14); *Ajuri v. IDF Commander* [4]). Therefore, in an assessment of the security risk presented by a resident of the territories seeking family unification status, the evaluation must be not only of the direct danger presented by the applicant himself. Relative weight must also be given to the applicant's family connections to elements that are involved in terrorism, in light of the potential danger involved in the exploitation of these connections by elements that endanger the security of Israel's residents. Thus, the definition of the security-related impediment provided in s. 3D of the Law relates not only to the *direct* security danger presented by the applicant for the permit himself, but also to the *indirect* security risk presented by the permit applicant's family connection to elements that endanger the security of the state.

38. However, it must be stressed that the subject of the security-related impediment referred to in the statutory language is, in all circumstances, the security danger presented by the *applicant for the permit himself*, whether a *direct danger*, relating to a concern of direct involvement on the part of the applicant himself in terrorist activity, or an *indirect danger*, relating to a concern arising from the possibility that *the applicant* will be wrongfully exploited by family members who are involved in terrorism. The purpose of the analysis of the security-related impediment is not to prevent a danger presented by a relative of the applicant alone; rather, it relates to the effect that this danger will have on the security danger presented by the applicant as a consequence of possible exploitation of the applicant by terrorist elements, for harmful purposes (*Ajuri v. IDF Commander* [4], at pp. 370-371; HCJ 1730/96 *Sabih v. IDF Commander of the Judea and Samaria Region* [14], at p. 364). The explanatory notes accompanying the draft version of s. 3D of the Law clearly indicated that the purpose of weighing the danger presented by a family member of an applicant who is a resident of the territories is that it can indicate, in an indirect manner, the level of danger presented by the applicant himself, in light of the general professional assessment of the security establishment that "such a connection between a resident of the territories

and a family member, from which a security risk may result, can be exploited, as has often been proven in the past" (explanatory notes to s. 3D, Government Draft Laws, 16 May 2005, at p. 626). Since the level of danger presented by a family member is only a possible indicator of the level of danger presented by a resident of the territories applying for family unification, it is understood that for the purpose of implementing s. 3D of the Temporary Provision Law, the weight of a *direct* security risk presented by the resident of the territories (which would justify the denial of an application for an Israeli residence permit because of a direct security-related impediment) cannot be compared to the weight of an indirect security-related impediment that arises from the danger presented by the possible potential influence of the foreign spouse's relative. Naturally, the direct impediment clearly outweighs the indirect impediment, and this disparity between the two situations must be considered on its own merits when the competent authority weighs the particular security risk presented by the spouse who is a resident of the territories against the level of the violation of the right to a family life caused by the refusal to grant a residence permit.

Weighting of the relevant values in applying the transitional provisions

39. The competent authority that must render a decision regarding the application for a residence permit in the framework of the transitional provisions of the Law must base his decision on the principles of reasonableness and proportionality. Reasonableness is a criterion that is used when reviewing an exercise of administrative discretion; when such exercise of discretion involves a possible violation of basic rights, it must also comply with the proportionality test, as established in constitutional principles and in the limitations clause.

40. In deciding whether to grant a residence permit within the framework of the transitional provisions, the competent authority must engage in a reasonable and proportionate weighing of the various relevant values that compete with each other with respect to this issue. On the one hand, the authority must weigh the severe violation of the right to a family life that is inflicted on the Israeli resident or citizen if the application is denied. In this context, the authority must take into consideration the violation of the principle of equality that is thus caused, and the strength of the anticipated consequences that the couple and their children will experience, on a human level, as a result of the inability to establish a unified and complete family unit in Israel, which is the permanent place of residence of one of the spouses. In the context of this consideration, and given the policy that has

been anchored in the Temporary Provision Law, there is likely to be a difference in the strength and the weight of the harm done to an existing family unit that has been granted unification status in the past and wishes to continue thus, on the one hand, and the harm done to a family that has not yet achieved that status, and whose application for unification was pending and not yet decided on the determinative date. The level of the harm done in the first case is greater, because the significance of the non-renewal of the permit is the dissolution of a family unit that has already been established, the removal of the family from the familial, social and economic roots that have been laid down since the original permit was granted, and the delivery of a heavy blow to the fabric of family life that has developed over the years. In assessing the level of the damage to the family life of an applicant who seeks to extend a residence permit that had been issued in the past for the purpose of family unification, the authority must consider, *inter alia*, the number of years that the permit holder has resided in Israel, the level of his involvement in life in Israel, the size of his family, the chance that the Israeli spouse will be able — in the event that they are forced to separate — to bear the burden of maintaining the family if the other spouse is forced to leave Israel, and the overall significance of the couple's separation for the existential fate of the family and of the children. Regarding an application for family unification that has not yet received initial approval, what must be weighed is the level of the damage caused if, from the outset, the couple's establishment of a complete family unit is prevented, as well as the consequences of this damage for the couple and for their children.

41. The competent authority must weigh the factor of the violation of the right to a family life against the existence of a security-related impediment pertaining to the applicant for the permit — a *direct impediment* with regard to the applicant himself, or an *indirect impediment* that may arise due to the applicant's connections with family members who present a security risk. Naturally, there will be a difference in the strength and weight of a direct security-related impediment and that of an indirect security-related impediment. The existence of a direct and substantial security-related impediment will justify a refusal to grant approval for family unification, despite the severe violation of the right to family life, regardless of whether the family has already been unified in the past or has not yet been granted unification status. The issue is different when the security-related impediment is indirect. The risk presented by a permit applicant, when such risk stems from the applicant's family relationship to parties that are connected to terrorism, is a complex matter; the probability of its realization

is subject to assessment, and it requires the cautious exercise of judgment. The indirect danger must be measured carefully, and only the proper relative weight — and not more than that — must be attributed to it. We must take care to avoid reaching a sweeping conclusion to the effect that every permit applicant whose relative is connected to terrorist activity is totally disqualified for family unification status. Instead, the competent authority must assess the case-specific probability that the permit applicant himself will be subject to influence and pressure from family members and will thus become a direct source of a security danger. In making this assessment, the authority must rely as much as possible on objective data such as the length of the foreign spouse's stay in Israel during which, notwithstanding the family connections to terrorist groups, there has been no information whatsoever indicating any involvement on the part of the applicant in any activity directed against Israel. Such information could, at least on a *prima facie* basis, refute an assumption that there is an indirect security-related impediment; when the case involves a wife from the territories who has lived in Israel for many years in a family unification framework and who is raising several children and takes part in supporting the family financially, there is a minimal likelihood that the potential risk of the person's involvement in hostile activity due to a family connection to individuals involved in terrorism will be realized. The authority should not dismiss the significance of statistical data regarding the number of cases in which it has *actually* been proven that such a family connection led to the involvement of such residents of the territories in hostile activity against Israel. Such statistical data have not been shown to the Court. It should be noted further that the level of contact that is maintained between a permit applicant and his or her family members who are involved in hostile activity is not necessarily to be given determinative weight, by itself, as a factor that indicates the potential for danger — although a lowering of the level of such contact, or a breaking off of all such contact, may be required in order to reduce the concern regarding an indirect security risk.

42. The authority must assess the magnitude of the violation of the right to a family life against the direct or indirect security-related impediment, in view of all the details that are relevant to the case. The greater the impact on the right to a family life, the more substantial the security risk presented by the permit holder must be, whether direct or indirect. Just as the strength of the violation of the right to a family life is not the same in the case of an application for an extension of a permit that had been given in the past as it is in the case of an application for a permit that had not been approved in the

past, the strength of the security danger involved in a direct security risk is different than that which is involved when a permit applicant presents only an indirect security risk. The weighting of the contrasting values must be executed carefully. A proper balancing of these elements may in appropriate cases justify the use of proportionate measures in order to achieve the security-related goal — measures that do not involve an absolute prevention of family unification, and which will enable such unification to take place subject to various conditions, such as the granting of short-term temporary permits that allow for ongoing monitoring of the manner in which the spouse and the family conduct themselves; the stipulation of restrictive conditions regarding continued contact with the family members who are involved in terrorism; and the prohibition of visits within the territories, supervision and ongoing monitoring by the authorities, etc.

Burden of persuasion

43. The burden of persuasion regarding the probability of the realization of the security risk at a level that justifies the violation of a human right is generally imposed on the state (*Movement for Quality Government v. Knesset* [3] (*per* President Barak, at paras. 22 and 49); A. Barak, *Legal Interpretation* (vol. 3, 'Constitutional Interpretation,' (1994); HCJ 6821/93 *United Mizrahi Bank Ltd. v. Migdal Cooperative Village* [15], at pp. 428-429; HCJ *Tzemach v. Minister of Defense* [2], at pp. 268-269 (*per* Justice Cheshin)). The state bears the burden of persuading the court that the need to protect the public against a substantive security risk necessitates a substantive violation of a human right, and that the said public need could not be met without causing that violation, or at least that it would not be met by a more moderate violation that does not involve the prevention of family unification. The state must persuade the court that the likelihood of the realization of the security risk is high enough to necessitate the adoption of measures that protect life and security even when such measures violate human rights of the highest constitutional order. When the probability of danger to life is close to certainty, even the most important of constitutional human rights will retreat before these measures. If the probability that the danger will be realized is lower, it may be the case that the security value will not justify any violation whatsoever of a human right, or that it will justify only a lesser violation. The level of the probability of the realization of the danger is juxtaposed against the importance of the values that are violated — all in accordance with the range of the circumstances that are unique to the case under discussion.

From the general to the specific

44. In light of the theoretical criteria for applying the transitional provisions of the Law, the question arises as to whether the Minister's refusal to extend petitioner 2's Israeli residence permit meets the judicial review test.

The details regarding petitioner 2's family

45. Petitioner 1 is a citizen and resident of Israel. He was married to petitioner 2, a resident of the territories, in 1996, and in 1998 their application for family unification was approved. Their children were born in Israel and they are Israeli citizens. At the time that the Minister decided not to renew petitioner 2's residence permit, they had been married for seven years. Fourteen years have now passed since the beginning of the family's life in Israel. Over the course of the years, the family has set down roots in Israel. Petitioner 2 studied Hebrew, learned a profession and became involved in public activity. Petitioner 1 is a state employee working at a Building and Planning Commission. The couple's children were born in Israel, where they are growing up and receiving their education. Israel is the children's natural environment and it is petitioner 1's homeland, and the family, as a full and unified unit, wishes to continue to conduct its life in Israel.

This case is covered by the first transitional provision — meaning that it is an application for an extension of a residence permit that had already been issued in the past, and that the extension is for the purpose of allowing petitioner 2's continued residence in Israel in the framework of family unification. Section 4(1) applies to this case, which gives significant weight to the applicant's expectations regarding the renewal of the permit and establishes the security-related impediment as only one of a range of additional considerations to be weighed in this matter.

Information regarding the security risk

46. The state has provided substantial detail regarding the significant security risk presented by petitioner 2's relatives, who live outside of Israel and are involved in activity in terrorist organizations at a very high risk level. The state specified, in this regard, petitioner 2's father, since retired, who was employed by the Palestinian Authority's security forces, and primarily, the involvement of her three brothers in Palestinian and international terrorist organizations, regarding whom the security danger is at a very high level.

The state noted the existence of a potential risk presented by petitioner 2, in the event that her close relatives who are involved in terrorism might influence her and recruit her for their purposes, causing damage to the

security of the state. This is a high level indirect security-related impediment with regard to petitioner 2, in light of the nature of the involvement of a number of her relatives in a wide range of terrorist activity.

47. We reviewed the confidential material that the state provided for our perusal. All that can be said following this review is that the risk from the relatives — especially on a cumulative basis, given the number of such relatives who are involved — is high. Nevertheless, it can also be said that petitioner 2 herself is not directly involved in any anti-Israel behavior, and over the course of the years of her stay here — and as of the current time, she has been here for 14 years — no direct substantive information has accumulated against her. The family relationship that she maintains with her relatives should not, by itself, be seen as a type of anti-Israeli activity in which she has been engaged. Her visit with her jailed brother does not necessarily indicate that she identifies with his activity — it is only an expression of her natural family connection with him. In any event, nothing else has been proven regarding this visit. The security risk from petitioner 2's perspective is thus primarily focused on the *indirect risk* presented by her relatives, and on the potential danger that her relatives will exploit her to promote objectives that are directed at causing harm to the security of the State of Israel and to its citizens.

The balance between the contrasting considerations

48. This case is complex, in light of the existence of the petitioners' high level right to continue their family unification, on the one hand, which stands against an indirect security-related impediment, on the other hand — albeit one that carries substantial weight, in light of the intense involvement of petitioner 2's three brothers in a broad and dangerous range of terrorist activity.

49. The magnitude of the violation of the right to a family life that will follow from the respondent's refusal to grant renewable permits to remain in Israel is too high in this case. It requires the family, as a complete unit, to either move to a different country — even though the father and the children are citizens of Israel, the family has established roots in Israel over the course of fourteen years, and the locus of the center of the family's life is in Israel. The alternative consequence would be the couple's separation from each other and the division of the family unit into two — one spouse and the children in one grouping, and the other spouse in the other. It goes without saying that the dissolution of a family unit in this manner will constitute a

permanent blow to the family's unity, to its welfare and to the children's well-being, and only a very weighty reason can justify such an action.

50. On the other hand, we cannot make light of the potential security risk generated by the involvement of petitioner 2's close relatives in terrorist activity. We cannot rule out the possibility that in the context of their activity, they may try to exploit their sister's family in Israel to promote their objectives. This possibility does exist and cannot be denied, but the probability of its realization remains unclear, in the absence of any direct information indicating the potential for a real risk presented by petitioner 2 from this direction. Petitioner 2's case is not the same as her brothers' case, and the potential risk that they present is not the same as the indirect potential risk that she presents. Over the course of the fourteen years that she has lived in Israel, no security-related information whatsoever concerning petitioner 2 has come to the attention of the authorities, other than the fact of her family connections with her parents and with her brothers who have been involved in terrorism for many years.

51. Under these circumstances, a balancing of the strength of the petitioners' family right to maintain that family against the *indirect* potential risk presented by petitioner 2 due to her family connections with her father and her brothers who are involved in terrorism — while the probability and actual level of that risk remain matters of speculation only — indicates that there is no justification at the current time for a general cancellation of the Israeli residence permit that was previously issued to petitioner 2 in a family unification framework. Even if a certain level of risk is presented by petitioner 2, which is something that cannot be denied, the risk margin is a tolerable one, and it is a risk that should be taken in order to prevent the break-up of the family or its removal from its environment — as part of the risk inherent to the maintenance of a constitutional regime that protects human rights.

Nevertheless, a proportionate balancing of the contrasting considerations — one which assigns the proper weight to the security risk presented here by the protection of the right to family life — justifies subjecting petitioner 2's continued residence in Israel to various conditions that will address the security concern that arises with regard to her. These terms are intended, on the one hand, to have a deterrent effect and to serve as a warning to petitioner 2 against continued family contact between her and her family in the territories, some of whom are involved in terrorism, and, on the other hand, to give the security establishment effective means for supervising and

monitoring her conduct, in light of the indirect potential risk that she does present. In this manner, there will be a correlation between the strength of the right to a family life and the existing security risk, created by a solution that reflects a proper weighing of the conflicting considerations involved in the matter.

Result

52. The proper balancing between the contrasting considerations leads to the following results:

As it has not been proven that petitioner 2 presents a security risk that justifies the severe blow involved in a cancellation of the residence permits that had been issued to her in the family unification framework, the Minister of the Interior's decision not to renew her family unification Israeli residence permit must be reversed.

53. Nevertheless, in light of the indirect security risk that petitioner 2 presents, her residency status in Israel as of the present time will be approved pursuant to DCL permits that will be issued for six-month periods and which will be renewed from time to time, subject to the continued absence of new circumstances that justify their cancellation.

The issuance of the DCL permits as stated will be conditioned on petitioner 2's signing of a declaration, to be made to the competent authority, in which she undertakes to comply with the following conditions:

a. To refrain from maintaining any contact whatsoever — either direct or indirect — with any members of her family in the territories, and with other acquaintances and relations in the territories;

b. To refrain from entering the territories for any purpose and for any length of time whatsoever;

c. To notify the competent authority in advance of any intention to leave Israel, and to provide full details regarding the planned trip;

d. To refrain from any act or omission which could directly or indirectly cause harm to the security of the state or the public peace.

The respondent may add additional conditions to these undertakings, to the extent he sees fit.

With the passage of time, and subject to changing circumstances and at his discretion, the respondent may consider restoring the A-5 residence permit that petitioner 2 had held prior to its non-renewal, or he may ease the restrictions involved in the undertakings mentioned above, as he sees fit.

Obviously, if petitioner 2 violates any of these undertakings, such a violation will constitute grounds for cancellation of the permit for remaining in Israel that has been issued to her.

54. The petition is therefore granted, and the order is made absolute, subject to the conditions described above.

Justice S. Joubran

I concur in the opinion of my colleague Justice A. Procaccia, and in the result she has reached in her judgment. Indeed, as my colleague has noted, even the respondent does not claim that petitioner 2 presents a direct security risk, and argues only that her family ties give rise to a concern that she may be exploited by others. Although this concern cannot be ruled out, it does not, by itself, justify the infliction of such significant harm on petitioner 2 in the form of the cancellation of the permits that have been granted to her to remain in Israel as part of the life that she shares with petitioner 1. The concern that others will exploit petitioner 2 as a means for realizing their objectionable purposes does justify an arrangement that provides the security establishment with tools to prevent the danger involved in this situation, by continuing the restrictions on petitioner 2's stay in Israel and by stipulating conditions for its continuation. It does not, however, warrant a measure that forces petitioner 2 to bear the cost of the actions of the members of her family, through the infliction of such severe harm to her and to her spouse, petitioner 1.

President D. Beinisch

I agree with the result reached by my colleague, Justice A. Procaccia, under the circumstances of the petitioners' case. I also agree with her position that a distinction must be made between a party who seeks the renewal of a residence permit and a party to whom such a permit has not yet been issued — a distinction which I will discuss below. Together with this, I wish to emphasize a number of points of my own, relating primarily to the criteria that should guide the exercise of judicial review of a decision by the Minister of the Interior not to allow the continued stay in Israel of a person with the status of a resident of the territories who is married to an Israeli, against a background of security-related reasons pertaining to a close relative.

1. The starting point in an examination of the issue we face in the context of this petition is the determination in the majority opinion in this Court's judgment in *Adalah Legal Center v. Minister of the Interior* [1], that

the Temporary Provision Law — including all of the arrangements contained within it — is, at present, in compliance with all constitutional tests.

2. Regarding what is relevant to our case, s. 3D provides expressly that a security-related impediment to the grant of a new permit or to the extension of an existing permit can be based on the presence of a security risk to the State of Israel, the source of which is the resident of the territories or a member of his or her family — and for this purpose a family member is defined as "a spouse, parent, child, brother and sister and their spouses." With this formulation, the legislature sought to express the position taken by the security establishment, as was also presented to us at length in the written and oral pleadings, that even when the source of a risk is a close relative and not the foreign spouse himself or herself, harm may be caused to the security of the state. In the words of my colleague Justice Procaccia, this is an "indirect security impediment". This determination is not new to us, and in *Amara v. Minister of the Interior* [7], President Barak held that —

> ' . . . a refusal to grant legal status in Israel, due to a security-related impediment connected to the applicant himself, presents no difficulty, provided that the refusal has a proper factual basis. The *Temporary Provision Law* (emphasis in the original - D.B.) extends the security risk qualification to the members of the applicant's family as well. *Therefore, the consideration of an existing risk involving a close relative is not inherently improper.* In the current reality, in light of the serious security dangers that Israel is facing, a security risk presented by a family member of the resident of the territories can establish a basis for rejecting an application for legal status in Israel . . .' (emphasis added - D.B.).

In light of the above, we must begin with the assumption that a decision not to permit a foreigner's stay in Israel because of a risk presented by the applicant's family members is possible, and will, in certain circumstances, overcome any constitutional challenges. (See also para. 94 of President Barak's opinion in *Adalah Legal Center v. Minister of the Interior et al.* [1].) In any event, we may also conclude that the theoretical balancing that is indicated by the provisions of ss. 3D and 4 of the Temporary Provision Law, between the realization of the constitutional right to a family life and the protection of a public security interest (in which additional basic rights are incorporated) is possible, but is subject to the individualized examination of such applications, in the context of the exceptions to the sweeping rule established in s. 2 of the Temporary Provision Law.

3. I would also add that even though according to the majority opinion in this Court's decision in *Adalah Legal Center v. Minister of the Interior* [1], the theoretical foundation upon which the sections under discussion is based does not indicate a built-in constitutional difficulty, it is nevertheless the case — and my colleague discussed this at length — that any decision not to allow the foreign spouse of an Israeli to remain in Israel will constitute a serious violation of the constitutional right to a family life, as discussed at length and as held in *Adalah Legal Center v. Minister of the Interior* [1] (see, for example, paras. 6-7 of my opinion there), and as such, a careful examination of any such decision is required. In this context, it was held in *Amara v. Minister of the Interior* [7] — and the holding applies to this case as well — that the Minister of the Interior must exercise his authority pursuant to the provisions of s. 3D "in accordance with the basic principles of Israeli administrative law. He must exercise any powers that may infringe basic constitutional rights in accordance with the criteria prescribed in the limitations clause of the Basic Laws concerning human rights . . . the Minister of the Interior's determination pursuant to s. 3D must therefore comply with the requirement that it be proportionate."

Thus, for example, if a decision not to extend a residence permit that had been granted in the past is based on the security establishment's reliance on an issue pertaining to a close relative of the applicant as a ground for refusing the extension, the Minister of the Interior must, in order to ensure that the decision complies with the proportionality test, carry out a meticulous and careful examination of the administrative evidence that has been presented to him and on the basis of which he seeks to define the scope and the degree of the potential danger presented by the foreign spouse for whom residency status is requested. The Minister must establish, through the presentation of substantial administrative evidence, that the applicant does indeed present a security risk, *because of the risk presented by his or her family member*. (See also *Amara v. Minister of the Interior* [7], para. 17.) In this context, I would adopt my colleague's comments in para. 41 of her opinion regarding the set of information to be considered in the context of assessing the danger presented by the applicant, as well as regarding the appropriate weight to be ascribed, in terms of the assessment of the level of the risk, to information indicating a direct security risk coming from the applicant as compared to information regarding an indirect risk based on characteristics of members of the applicant's family. Nevertheless, I would leave — as an issue needing further review — the question of the probability test that my colleague wishes to adopt, as I do not see the need to decide that matter in this context.

Additionally, there is no doubt that my colleague is correct in stating that an argument based on a security need should not be accepted without question and that it should instead be examined on its own merits, in accordance with all the details of the specific case. Regarding the two-stage test for examining the security consideration, which my colleague explains in para. 17 of her opinion, it appears that the threshold requirement involved in the first stage would need to be examined on a *prima facie* basis only, in light of the presumption of propriety enjoyed by an administrative authority. Under these circumstances, the main examination will focus on the strength of the security-based argument, since even when true security considerations have guided the authority in reaching the decision, such considerations can still be subjected to review in order to determine whether they were given disproportionate weight in that the security establishment allowed for excessively wide safety margins. In any event, this issue does not arise to a full extent under the circumstances of this case, since even my colleague acknowledges that we have been presented here with a significant amount of substantial security-related material, and there is no doubt that true security considerations were at the basis of the position taken by the security establishment and that these considerations provided the foundation for the Minister of the Interior's decision not to extend petitioner 2's residence in Israel.

On the other hand, and in juxtaposition to any assessment of the risk presented by the applicant for a residence permit in Israel, the Minister of the Interior must, as stated, attribute significant weight to the violation of the right to a family life caused by the decision to disallow the permit. In this context — and here I share my colleague's view — the Minister of the Interior must give significant weight to the applicant's situation and to the type of application that has been submitted, i.e., to the issue of whether the applicant is requesting, for the first time, permission to stay in Israel, or whether — as is the case here — the applicant has already been given a permit in the past pursuant to the criteria that were then applicable, and now seeks to renew that permit. My colleague bases this determination on, *inter alia*, an interpretation that distinguishes between s. 4(1) and s. 4(2) — the transitional provisions of the Temporary Provision Law. Such a distinction is also required in accordance with the basic concepts of administrative law, which distinguishes between the non-renewal of a license and the issuing of a new license. At the same time, I believe that in addition to the distinction that my colleague makes between the provisions of s. 4(1) and s. 4(2), an additional distinction should also be made, relating to yet another group, and

that this distinction should also be given weight in a review of the application: the distinction between those applicants who had submitted their application prior to the adoption of the Government Resolution in May 2002 and whose matter had not yet been decided (applicants who are covered by s. 4(2) of the Temporary Provision Law) and applicants who have submitted a new application for a residence permit after the Temporary Provision Law entered into effect (and in the context of the exceptions that had been prescribed in that Law over the years). All of these fall within the category of applicants who have not yet been issued a permit, but it would appear that greater weight should be given to the rights of those who had submitted their application many years before, and whose applications had not been answered because of a delay in the progress of the competent authority's work.

4. Moving from the general to the specific, the circumstances of this case present a difficult situation, containing various elements that stand at opposite ends of the scale of matters that are to be considered. At one end, there is the substantial information available to the security establishment, to the effect that petitioner 2's father and brothers are involved in terrorist activity which presents a high risk potential. Thus, the state noted that petitioner 2's father was, in the past, employed by the Palestinian Authority's security establishment and that her three brothers are involved in the activity of Palestinian and international terrorist organizations (the latter element being the primary factor to be considered). This involvement of petitioner 2's family members does indicate a substantial potential risk which could be presented by petitioner 2, primarily due to a concern that her family or possibly the terrorist organizations could exploit her status in Israel and attempt to recruit her to advance their goals. At the other end, there is the fact that petitioner 2 has lived in Israel for many years, and that during some of them she lived here pursuant to a residence permit granted to her by the Minister of the Interior. During the course of these years, she and her Israeli spouse had several children who are Israeli citizens and who are being raised and educated in Israel; she studied Hebrew, acquired professional skills and worked as the secretary to the President of the Sharia Appellate Court. Petitioner 2 is currently active socially in the Women's Council in Zemer. This indicates that this is a petitioner whose life is bound tightly to the State of Israel, and that she and her Israeli husband have established a family unit here over the course of many years, and the respondent's decision will cause the dissolution of that unit, while doing much harm to her, her spouse and their children. Under this complex set of circumstances, I agree with my

colleague that the proper balancing of all the considerations requires that a solution be found that will allow her to stay in Israel at this time, while creating a framework that will help to reduce the indirect potential security risk that is involved in allowing her to stay. In my view, my colleague's proposal, according to which, at this time, petitioner 2 will be allowed to stay in Israel through the issuance of permits allowing her to remain in Israel (i.e., DCL permits), which will be valid for six months each and renewable from time to time subject to ongoing reviews to be based on updated information, and that this arrangement will be subject to the range of conditions specified by my colleague in para. 53 of her judgment, expresses a suitable balance for these complicated circumstances.

Therefore, and in light of the above, I concur in my colleague's conclusion that the petition should be granted.

Petition granted, *per* the opinion of Justice Procaccia.

8 Adar 5770.
22 February 2010.