

January 15, 2018

Prof. Shlomo Mor Yosef
Director General of the Population and Immigration Authority
Via fax: [REDACTED]

CC: Adv. Daniel Solomon, Legal Advisor to the Population and Immigration Authority, via fax:
[REDACTED]

Re: Reevaluation of the status of our client, Mr. Omar Shakir, in Israel,

Argument brief on behalf of our clients Mr. Shakir and Human Rights Watch

Reference: Your letter dated November 16, 2017 (received at our office on November 26, 2017); Our letter of November 27, 2017; Your letter of December 7, 2017; Our letter of December 10, 2017; Your letter of December 12, 2017

Dear Sir,

A. Relevant background

1. Our client, named in the subject line, Mr. Omar Shakir (hereinafter: Mr. Shakir) is an American citizen who serves as a senior expert for our additional client - internationally renowned human rights organization Human Rights Watch (hereinafter: HRW, or the organization).
2. As you are aware, Mr. Shakir is currently residing in Israel by virtue of a B/1 work visa issued pursuant to a permit for his employment as a foreign resident in the expert branch issued to HRW on March 12, 2017, in accordance with Procedure for Handling Applications for Employer Permit and Employment and Residence Visa for Foreign Experts, No. 0041.3.5. The visa is valid for a year and will expire on March 31, 2018.
3. In your letter in reference, dated November 16, 2017, you notify us of your decision to reevaluate our client's status. As you clarify in your letter, the decision to perform a reevaluation partway through the validity period of the permit for employment and work visa was made following a court petition by the Israeli organization Shurat HaDin and in light of information you allege to have received indicating our client has "actively and consistently supported the strategy of boycott, divestment, and sanctions against Israel since he was a student until the present time."
4. We remind you that on November 27, 2017, we wrote to you asking that you provide us with all the materials that were available to the minister of interior at the time of his decision to reevaluate our client's status in Israel, so as to enable our client to exercise his right to submit his response to the stated reasons for the decision. On December 7, 2017, the aforesaid materials were received in our offices, containing only two documents:

- A. A Ministry of Strategic Affairs dossier which appears to be based on searches for statements made by our client on social media, and several results brought up by a Google search of his name;
 - B. A recommendation from the Ministry of Strategic Affairs, based on the aforesaid investigation, to revoke our client's work visa. The recommendation was made despite the warning regarding the severe diplomatic and media damage such an act would cause made by the Ministry of Foreign Affairs (which we have not received, but was referred to in the recommendation of the Ministry of Strategic Affairs).
5. Having examined the material, our response follows.
 6. Before delving into the issue, we should like to remind you Mr. Shakir received the visa in accordance to the permit granted to the **organization** for his employment; that Mr. Shakir is **an employee of the organization and its representative in Israel**; and that in view of these facts, the decision whether to revoke or uphold the visa should be predicated on an examination of the activities of the organization and of Mr. Shakir solely as its representative, and that any other consideration influencing the decision would be extraneous and improper.
 7. We further wish to recall that the facts presented in the dossier compiled by the Ministry of Strategic Affairs, which, as stated, are based entirely on publicly available information, relate to events that predate the decision to grant the permit and visa and were, therefore, presumably known to the Ministry of Interior.

B. The organization

8. As stated, our client is an American citizen, currently residing in Israel as part of his work as an expert and staff member in the human rights organization HRW, and as this organization's representative in Israel and the OPT. The visa that is the subject of this proceeding was granted at the request of the organization.
9. We recall that HRW is one of the largest, oldest and most important human rights organizations currently active in the world. The organization has an extensive research network based on professionals who document human rights abuses all over the globe. HRW is headquartered in New York City and has registered offices in 24 countries around the world, including Lebanon, Jordan and Tunisia. In total, HRW has an investigative presence in 36 different countries, including ones under dictatorship and with appalling human rights records. The organization publishes more than 100 reports and briefings on human rights conditions in about 90 different countries every year. The publications put out by HRW are regularly covered by both local and international media, and its researchers maintain constant contact with journalists regarding their work. As part of their routine work, HRW staff members meet with government officials, UN bodies, international bodies, as well as financial institutions, and corporations. In addition, HRW researchers meet with victims of human rights violations and document practices and policies of both governments and non-government entities that engage in human rights abuses.
10. Thanks to this work, which provides millions of people around the world with access to reliable and important information about human rights, and which, as stated, is undertaken also in patently non-democratic environments and sometimes at great risk to the organization's researchers, and thanks to its uncompromising professionalism, HRW is very highly regarded and has received several awards, including the 1997 Nobel Peace Prize for its central role as one of the founders of the international campaign to ban landmines.
11. The organization's extensive work is conducted through 18 research divisions, one of which, the Middle East and North Africa Division, covers all 19 countries in the region, including Israel and the

occupied territories under its control. On average, HRW activities related to Israel account for less than 1% of its overall budget. Of the 238 reports on human rights violations published by HRW between July 2015 and July 2017, ten concerned human rights violations allegedly committed by Israel. For the sake of comparison, during the same period of time, the organization published 31 reports on human rights violations committed in Syria and 34 on violations in Iraq. The topics addressed by the organization during this period included, inter alia, abuse by ISIS including sexual violence, rape and torture; attacks using chemical weapons by Syrian government forces in Aleppo; the guardianship system in Saudi Arabia; torture in Egypt; Saudi-led coalition air strikes in Yemen and executions in Iran. We note that the Israeli media often covers said HRW reports.

12. As part of the organization's activities in the region, its researchers examine human rights conditions in Israel and in the OPT – both the West Bank and the Gaza Strip. This is the role of our client Mr. Shakir, a human rights expert who has extensive experience in investigations in this field and relevant legal education. HRW has been covering Israel and the OPT for nearly three decades, during which HRW staff members have had access both to Israel and the West Bank, though not to Gaza. As part of their work in our region, organization staff members meet with Israeli officials, including from the military, the police and the Ministry of Foreign Affairs. In 2016, the Ministry of Foreign Affairs asked HRW to intervene in a case involving human rights violations against Israeli civilians, a request the organization accepted. The presence of HRW personnel in the country facilitates access to the organization for victims of human rights abuses, be they Israeli or Palestinian. In the months since Mr. Shakir was issued the visa to enter Israel, the organization has published several reports and briefings that were the result of his work:
 - A. A publication criticizing and condemning Hamas for holding Israeli citizens Avera Mangistu and Hisham al-Sayed against their will in the Gaza Strip - <https://www.hrw.org/news/2017/05/03/2-israelis-who-entered-gaza-held-incommunicado>;
 - B. A publication examining the state of human rights in the Occupied Territories on the 50th anniversary of the Israeli occupation - <https://www.hrw.org/news/2017/06/04/israel-50-years-occupation-abuses>;
 - C. A report on revocation of residency status of Palestinians in East Jerusalem - <https://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status>;
 - D. Report submitted to the UN Committee on the Elimination of All Forms of Discrimination against Women, ahead of its review of the situation in Israel, - <https://www.hrw.org/news/2017/10/10/human-rights-watch-submission-cedaw-committee-israels-periodic-report-68th-session>;
 - E. An appeal to the Palestinian Authority and a public report rebuking the restrictive cybercrime law passed by the Palestinian Authority, which disproportionately and arbitrarily limits Palestinians' rights to freedom of expression, privacy and protection of data - <https://www.hrw.org/news/2017/12/20/palestine-reform-restrictive-cybercrime-law>.

C. Allegations of “active support” for BDS against Israel

13. **In stark contrast to the statements made in the recommendation of the Ministry of Strategic affairs, neither HRW – nor Shakir as its representative – advocate boycott, divestment or sanctions against companies that operate in the settlements, Israel or Israelis. HRW is not part of the BDS movement and takes no position on this movement.**
14. At the same time, and as a result of its worldwide efforts to promote human rights protection, HRW does occasionally issue recommendations to the business sector. HRW has a division dedicated to research and advocacy aimed at encouraging corporations to meet their human rights obligations. Last

year, the department's publications included reports on forced child labor in connection to World Bank investments in Uzbekistan's cotton industry and on the duty of transparency in the supply chain of the world's garment and footwear industry.

15. In the Israeli context, in its 2016 report entitled *Occupation Inc*, HRW found that various companies operating in the settlements contribute to and profit from the violation of Palestinians' human rights, in breach of international law. Based on these findings, the organization recommended these companies halt settlement-related business activity. These recommendations were not meant to pressure Israel and push it toward a specific political outcome, but rather to guide businesses on what to do in order to meet their responsibilities in terms of human rights protection. In other words: this action was not meant to produce political pressure, but to prevent human rights abuses, which is precisely the mission of the organization, like any other human rights organization.
16. HRW does not address business activity inside the Green Line or on academic or cultural cooperation with Israel or with the settlements.
17. While HRW does not advocate for boycott, divestment and/or sanctions in the context of the Israeli-Palestinian conflict, it does recognize the right of individuals to pursue their convictions through non-violent means, including participating in boycotts.
18. As for Mr. Shakir: As noted, Mr. Shakir has been HRW's representative in the region since October 2016. All HRW staff members have political views that predate their employment with the organization. However, once they join HRW, they keep these views separate and apart from their work, as part of which they are one element in a system where every product is vetted by at least four people prior to publication. Accordingly, like any other staff member, Ms. Shakir is bound by HRW's policies and positions in his public statements, including on the issue of boycott, divestment and sanctions in the context of the Israeli-Palestinian conflict, as presented above.
19. The only element mentioned in the Ministry of Strategic Affairs dossier which dates to the time Mr. Shakir has worked for HRW relates to work carried out by the organization in connection to FIFA sponsorship for Israeli soccer league matches that took place in the settlements. The claim is that Mr. Shakir and HRW, "in conjunction with political consciousness-raising efforts by the Palestinian Authority and the actions of BDS organizations from all over the world, Shakir unsuccessfully attempted to move FIFA to suspend six soccer clubs from the organization" (paragraph 15 in the recommendations of Ministry of Strategic Affairs).
20. **However, HRW's activity on this issue does not constitute calling for or advocating a boycott. In addition, HRW's position on this issue was made public prior to Mr. Shakir's appointment as its representative in Israel and the OPT, and, accordingly, Mr. Shakir had no involvement in the matter.** The relevant HRW statement (<https://www.hrw.org/news/2016/09/25/israel/palestine-fifa-sponsoring-games-seized-land>) was published in September 2016. Mr. Shakir joined the organization only in October of 2016. On the issue itself, this statement calls on FIFA to refrain from holding matches in settlements, and keep to the Green Line, in accordance with its obligation arising from international law. There is no basis for the allegation that HRW (or Mr. Shakir, who was not yet employed by the organization) were involved in a call to have six clubs suspended from FIFA. Every child in Israel knows that it is the national soccer associations that are members of FIFA and not individual soccer clubs. Indeed, HRW representatives have clearly stated that the Israeli Football Association can remedy the situation by moving all matches of these six clubs, with the same players, coaches and fans, into Israel.
21. A review of the aforesaid Ministry of Strategic Affairs dossier we have received reveals that other than the FIFA issue addressed above, all the information presented therein regarding Mr. Shakir relates to activities **that took place before his employment as an HRW researcher and the**

organization’s representative in Israel and the OPT, and for the most part, to activities that took place years ago, when he was still a student. These activities, quite aside from the fact that they do not display any element of anti-Israelism (as distinct from criticism of Government of Israel policies), focused on human rights violations that stem from the occupation, and are nothing but legitimate, public, peaceful political activism.

22. Finally, we recall again, that the work visa pursuant to which Mr. Shakir currently resides in the country **was issued at the request of the organization**, as is evidenced in your notice regarding issuance of the visa dated March 12, 2017, wherein you inform HRW of the grant of a permit that names Mr. Shakir and allows for his employment in Israel. Mr. Shakir is, therefore, a representative of the organization, an inseparable part thereof and enjoys a visa issued **to the organization** for him. Mr. Shakir is not in Israel on private business, but on behalf of HRW. As such, your decision to reevaluate the visa means a reevaluation of an HRW visa for employment.

23. **In light of all the above, the allegation that HRW or our client have “actively and consistently supported strategies calling for boycott, divestment and sanctions against Israel” is, quite simply, not true.**

D. The unconstitutionality of the Entry into Israel Law, or, alternatively, lack of cause for denying the visa:

24. *The Entry into Israel Law 5712-1952* (hereinafter: the Law) grants the minister of interior discretion to order the revocation of a visa extended to a foreign national. One of the causes enumerated in the Law (Section 2(d), added in Amendment No. 28), is that the visa recipient or the organization or agency for which he or she works have knowingly issued a “public call for a boycott against the State of Israel, as defined in *The Law for the Prevention of Harm to the State of Israel through Boycott, 5771-2011*, or has undertaken to participate in such a boycott”. Section 2(e) allows the minister of interior to depart from the provision of Section 2(d) “for special reasons duly recorded.”

25. On July 24, 2017, the Population Authority published “criteria for preventing boycott activists from entering Israel.” These criteria outline the conditions for the application of the aforesaid provision of the Law. According to the criteria, for the provision to be applied to an organization (and its employees and representatives), the support for boycott must be “**active, continuous and prolonged**” (emphasis in the original). For the provision to be applied to an activist who is not part of an organization, the activist must take “**concrete, consistent and continuous**” **action to promote boycott either as part of prominent de-legitimation organizations or independently.**”

26. The criteria document further establishes that “the fact that an organization is anti-Israeli or pro-Palestinian, or that it espouses a critical agenda of Government of Israel policies does not, in and of itself, constitute cause to deny entry into Israel.”

27. As stated above, given that the organization and Mr. Shakir, as a researcher for the organization and its representative in Israel and the OPT, have not issued a “public call for a boycott against the State of Israel,” and certainly not in an “active, continuous and prolonged” manner – the Amendment to the Law is irrelevant regardless, and there is no cause to revoke the visa granted.

28. For this reason, the employment permit and residency visa must be upheld. The following arguments are presented as alternative arguments to our above-stated position.

29. First, we maintain that Amendment No. 28 to *The Entry into Israel Law* expresses a patently undemocratic viewpoint, whereby the state may deny foreigners entry based on their political views and in violation of their right to freedom of expression, freedom of conscience and political freedom, and, in some contexts, also freedom of religion. Our clients believe that Amendment No. 28 is, therefore, **unconstitutional**, and must be revoked and set aside. Therefore, it is our position that the

minister of interior should refrain from exercising the discretion ostensibly granted to him by the Amendment, as exercising said power is tainted with patent, grievous unconstitutionality.

30. Second, even following on the assumption that Amendment 28 is valid, the cause stipulated therein for visa revocation fails to materialize in the case at hand, as Mr. Shakir and his organization are not activists whose statements regarding the Israeli-Palestinian conflict form part of activity aimed at imposing a specific political solution, but rather a human rights expert and a human rights organization which are clearly professionals and whose statements form part of their mission to promote and bolster human rights for all.
31. A reading of Amendment 28 in a manner that would be consistent with basic constitutional principles of respect for freedom of expression, conscience and religion and would not require the full revocation of the Amendment begs an interpretation of the Amendment as **not meant to deny entry to persons whose utterances stem from an attempt to prevent human rights violations**, but those who use boycott as a means of putting political pressure on the Government of Israel. As noted, we believe calling for a boycott is a legitimate act protected by freedom of expression and that any sanctions against such are clearly tainted with unconstitutionality. The aforesaid notwithstanding, the fact is that neither HRW nor Mr. Shakir have called for a boycott of Israel, and their recommendations to refrain from violating human rights should not be construed as anything other than legitimate human rights activism that does not come under the Amendment to the Law.
32. We recall that HRW is a veteran, well-known and acclaimed organization in the field of human rights and that Mr. Shakir, a person with several academic degrees with a focus on human rights law (awarded by the prestigious American universities of Stanford and Georgetown) has experience and a record that leaves no room for doubt that he is unmistakably a human rights activist: In 2007, Mr. Shakir was awarded the Fulbright Scholarship by the US State Department for research on political and economic reform in Syria; he represented detainees held at Guantanamo Bay in Cuba in Habeas Corpus proceedings in the US Federal Court; he co-authored “Living Under Drones”, a report from the law schools of Stanford University and New York University that documented the results of American drone attacks in Pakistan; he has delivered countless lectures on human rights issues, including in the law schools of Harvard, Yale and Columbia universities; during a previous and brief engagement with HRW in 2013-2014, he investigated and documented human rights violations in Egypt, and wrote a report on the mass killing of protestors in 2013, including the Raba massacre. Incidentally, the publication of the report sparked a wave of incitement against HRW and Mr. Shakir personally, and he was forced to leave Cairo out of concern for his safety. Therefore, according to the criteria document as well, there is no cause to revoke the visa.

E. The presence of an exception to the rule regarding denial or revocation of visa

33. As an alternative to the alternative, the conditions for use of the exclusion stipulated in Section 2(e) of the *Entry into Israel Law* are fulfilled as revocation of Mr. Shakir’s visa and/or permit signifies a serious and irreparable violation of fundamental democratic principles concerning the need to allow freedom of action and expression to government policy critics, primarily those whose profession involves criticism of the regime, such as journalists and human rights organizations. A decision to revoke the organization and Mr. Shakir of the permit would place Israel alongside a handful of countries that have taken the same path and denied HRW representatives entry, such as Cuba, Sudan and North Korea – a club it is doubtful Israel wishes to join.
34. Therefore, as established by the Ministry of Foreign Affairs in its report mentioned in the recommendation of the Ministry for Strategic Affairs, revocation of our client’s visa would cause Israel significant damage which can and should be avoided.

F. Conclusion

35. For all the above reasons, we believe the alleged power granted to the minister under Section 2(d) of *The Entry into Israel Law* must not be exercised: The section is unconstitutional; the cause to which it gives rise is not present in the case at hand, as the conditions for its application, as stipulated in the criteria issued by the Ministry of Interior, have not been met; and there is clear cause to invoke the exclusion stipulated in Section 2(e) of the Law.
36. Accordingly, the minister is hereby called upon to reject the recommendation of the Ministry of Strategic Affairs and uphold the visa. In addition, and given the approaching expiration of the visa (on March 31, 2018), the Ministry of Interior is requested to **extend** Mr. Shakir's visa for another year. The proper application will be filed through the appropriate channels in the coming days.
37. Revoking the visa would send an extremely grave message, both to the Israeli public and to the entire world, regarding whether Israeli society remains an open society, where debate, even on sensitive questions relating to the society's character and values, are openly pursued while the right and freedom of persons of different persuasions to voice unpopular opinions is assiduously upheld. Revoking the visa would mean that the State of Israel has no tolerance for criticism in the field of human rights and that it would rather silence voices than address the issues they raise.
38. Should, despite the arguments made in this brief, the minister decide to revoke Mr. Shakir's visa, you are hereby requested to stay implementation of the revocation for thirty days in order to allow HRW and Mr. Shakir to take legal action against the decision.

Sincerely,

Michael Sfard, Adv.

Sophia Brodsky, Adv.