

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): [Beer Sheva District Court]	
Date of the decision: (2013/04/18)	Case number: ² 44920-03-13
Parties to the case: Anonymous v. Minister of Interior	
Decision available on the internet? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If yes, please provide the link: (If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: Hebrew	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Countr(y)(ies) of origin of the applicant(s): Eritrea	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Israel	
Any third country of relevance to the case: ³	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: <input type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15 <input type="checkbox"/> #16 <input type="checkbox"/> #17 <input type="checkbox"/> #18 <input type="checkbox"/> #19 <input type="checkbox"/> #20 <input type="checkbox"/> #21 <input type="checkbox"/> #22 <input type="checkbox"/> #23 <input type="checkbox"/> #24 <input type="checkbox"/> #25 <input checked="" type="checkbox"/> #26 <input type="checkbox"/> #27 <input type="checkbox"/> #28 <input type="checkbox"/> #29 <input type="checkbox"/> #30 <input checked="" type="checkbox"/> #31 <input type="checkbox"/> #32 <input type="checkbox"/> #33 <input type="checkbox"/> #34 <input type="checkbox"/> #35 <input type="checkbox"/> #36 <input type="checkbox"/> #37 <input type="checkbox"/> #38 <input type="checkbox"/> #39 <input type="checkbox"/> #40 <input type="checkbox"/> #41 <input type="checkbox"/> #42 <input type="checkbox"/> #43 <input type="checkbox"/> #44 <input type="checkbox"/> #45 <input type="checkbox"/> #46
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: <input type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15 <input type="checkbox"/> #16 <input type="checkbox"/> #17 <input type="checkbox"/> #18 <input type="checkbox"/> #19 <input type="checkbox"/> #20 <input type="checkbox"/> #21 <input type="checkbox"/> #22 <input type="checkbox"/> #23 <input type="checkbox"/> #24 <input type="checkbox"/> #25 <input type="checkbox"/> #26 <input type="checkbox"/> #27 <input type="checkbox"/> #28 <input type="checkbox"/> #29 <input type="checkbox"/> #30 <input type="checkbox"/> #31 <input type="checkbox"/> #32 <input type="checkbox"/> #33 <input type="checkbox"/> #34 <input type="checkbox"/> #35 <input type="checkbox"/> #36 <input type="checkbox"/> #37 <input type="checkbox"/> #38 <input type="checkbox"/> #39 <input type="checkbox"/> #40 <input type="checkbox"/> #41
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: <input type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15 <input type="checkbox"/> #16 <input type="checkbox"/> #17 <input type="checkbox"/> #18 <input type="checkbox"/> #19 <input type="checkbox"/> #20 <input type="checkbox"/> #21
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: <input type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15

For EU member states: please indicate which EU instruments are referred to in the decision	Relevant articles of the EU instruments referred to in the decision:
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Topics / Key terms: (see attached ‘Topics’ annex):

Detention

Humanitarian release

Minors

Key facts (as reflected in the decision): [No more than 200 words]

Petitioner 1 is an Eritrean resident born in 1982 who entered Israel illegally with her two minor daughters (Petitioners 2 and 3, aged eight and eleven respectively) on June 13, 2012. Since then and up until the date of the decision being rendered, they have been in detention under a deportation order according to the amended Anti-Infiltration Law (New Law). According to section 30(A)(v)(2) of the New Law, there will be a discretionary ground for release regarding a child asylum seeker (or “infiltrator”, in the language of the Law) located in detention – even if one of the categorical release provisions under section 30(A)(b)(1) (where detention will cause harm to the health of the detainee) or 30(A)(b)(3) (where a minor is unaccompanied) does not exist. The judge held that the authority to release the child Petitioners comes from the fact that the Petitioners’ minority – girls aged 8 and 11 – is sufficient to constitute a special humanitarian reason. This discretionary determination will be made by considering the age of the child asylum seeker as well as the additional circumstances in his or her case. The judge continued to state that in the case of very small children – including boys or girls aged 8 and 11 – their age is sufficient to constitute a special humanitarian reason, all the more so when dealing with two girls aged 8 and 11 who have been detained for more than ten months and in relation to whom deportation from Israel is not on the horizon (given the fact that they are Eritrean citizens and due to the government’s decision regarding collective protection for Eritreans). The judge held that continuing to leave the child Petitioners in detention for an unlimited period of time will without a doubt harm their mental and social development.

The judge noted in his decision that, while the State is attempting to preserve its sovereignty and cope with the widespread phenomenon of illegal immigration (“infiltration” in the language of the Law), out of the 2500 “infiltrators” being held in detention, only 15 “infiltrators” are infants up to the age of 2 years old and 26 are between the ages of 2 to 10. Therefore, the judge held that infants or small children form a small sub-group, requiring different treatment from the larger group of illegal immigrants (“infiltrators”), on the basis of their age.



Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

Please submit this form to:

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