

Unofficial translation

Population and Immigration Authority

The State of Israel

Director General

June 30, 2013

2013-19810

To: Mr. Yossi Edelstein

Head of the Enforcement and Foreigners Authority

Re: Procedure for documenting the free will of infiltrators, from Eritrea and The Republic of the Sudan, who are in detention in their requests to depart from Israel to their country

Attached is the above-mentioned Procedure which was approved by the State Attorney General on June 27, 2013 and which allows the voluntary departure of Eritreans and Sudanese in detention to their countries.

I will request that you be prepared for the immediate implementation of the Procedure.

Sincerely,

Amnon Ben Ami

(signed)

cc. KM Gidon Sa'ar- Minister of Interior

Mr. Daniel Solomon- Legal Adviser.

Attorney General

Jerusalem. 27 June, 2013

No. 2013-0004-5129

(When replying please indicate number)

To: Gideon Sa'ar, Minister of Interior

Greetings,

Re: Procedure for documenting the free will of infiltrators from Eritrea and the Republic of the Sudan, who are in detention and who request to depart from Israel to their countries

The procedure for documenting the free will of infiltrators, from Eritrea and North Sudan who are in detention, in their requests to return to their country is hereby attached. The procedure was prepared by the Deputy Attorney General, Mrs. Dina Zilber, with the helpful assistance and aid of the professionals from PIBA, the Ministry of Foreign Affairs and the Ministry of Justice. The procedure has now received my approval, after I had been convinced that the procedure provides a response to where a person is held in detention and it needs to be thoroughly examined whether his request to return to the aforementioned states – to which for now the State of Israel does not deport persons – is indeed made voluntarily.

The procedure does not deal with the departure of infiltrators from Eritrea and North Sudan to third states which have agreed to receive them, because the states in question are not the countries of origin. Nevertheless it should be assured, that when it comes to departure for these states, the states in question meet several basic conditions:

- There are no wars / general riots in these states;
- There is no opinion by UNHCR according to which deportations to these states are prohibited;

- Overall, in these states, there must not be any danger to the life or liberty of the Eritrean national or the Sudanese national for reasons of race, religion, nationality, membership of a particular social group or political opinion;
- In these states it will be possible to apply for asylum or receive temporary protection, or at the very least, these states must be committed to the *Non-refoulement* principle. These states must not deport the Eritrean or Sudanese citizen to a third country where his life or liberty will be in danger.
- There is prohibition in these states against torture or any other form of cruel or degrading treatment.
- These states are committed to allowing Eritrean or Sudanese nationals to live in dignity (at least prospects for work and to provide for himself).

Therefore we have requested the MFA for its opinion, which it is now drafting, on whether these states meet these conditions.

The MFA was further requested to give its opinion on the treatment of the State of Ethiopia towards its subjects returned from Israel. This was required following the demand made by Ethiopia, as delivered by Hagai Hadas, that returned subjects from Israel shall be returned voluntarily.

As it was not possible to receive opinions on these matters, it should be considered whether to apply the procedure for documenting the free will of infiltrators in their requests to return in the matter of the departure of Eritreans and Sudanese citizens to third countries as well. I will add that as long as the demand posed by Ethiopia, that its returned subjects from Israel shall do so voluntarily, stands, there might be grounds for considering to apply the procedure in the case of Ethiopian citizens, although it is not a trivial matter; because the Israeli Law determines that the deportation of an illegal alien in its territory is not dependent on the will of the foreigner, unless there is a danger to his life or liberty.

Best,
Yehuda Weinstein

(signed)

CC: Dina Zilber, Deputy Attorney General

Daniel Solomon, Legal Advisor to PIBA

Ehud Keinan, Legal Advisor to Ministry of Foreign Affairs

The procedure for documenting the free will of infiltrators, from Eritrea and The Republic of the Sudan, who are in detention in their requests to depart from Israel to their country

A. General:

1. This procedure refers to infiltrators from Eritrea and the Republic of the Sudan which are held in detention by virtue of the Anti-Infiltration Law, are not unaccompanied minors and as of now, are not deported by the State of Israel to their country of origin. Among them, some express their desire to return to their country of origin (the “**Applicant**”). This procedure refers only to those cases where the Applicant expressed his desire to return to his country of origin.
2. It is the legal right of any person to leave Israel from his own free will (article 6 of Basic Law: Human Dignity and Liberty; article 12 of ICCPR).
3. However, when a person who is under this procedure is in detention, it should be clarified whether his request to leave Israel and return to his country of origin was made voluntarily, from his own free will.
4. The goal of the procedure is to have set a procedure which will allow for the examination and recording of the voluntariness of the Applicant to leave from Israel to his country of origin, in order to find out whether the desire which he expresses is voluntary.

B. A request to leave Israel

1. When an Applicant turns to the staff of the detention facility he is held in and announces that he wishes to leave Israel – he will be scheduled an interview with the Border Control Officer.
2. The entire interview will be videotaped.
3. If the Border Control Officer does not speak the language of the Applicant, an interpreter will be present at the interview.

4. The Applicant will bring a travel document with him to the interview if he has one. If the Applicant had brought a travel document it will be photocopied. For this matter “travel document” – passport or Laissez-passer.
5. At the beginning of the interview, the Applicant will be requested to present his request to depart from Israel.
6. The Border Control Officer will ask the Applicant open ended questions through which it will be clarified whether the Applicant had submitted an asylum request and is aware of the situation in his country of origin; additionally, in the case of an Eritrean Applicant, whether he is aware that as of now the state of Israel does not deport Eritrean citizens to Eritrea. A list of questions is attached to this document and is marked as Annex No. 1.
7. The Border Control Officer will explain to the Applicant that there will be no progress made regarding his departure request as long as there is an asylum request pending in his matter. It will be explained to the Applicant that his request to depart from Israel will freeze the handling of his asylum request, to the extent that he submitted one.
8. At the end of the interview, the Applicant will be requested to write (if he is literate), in his own hand writing and language and in a phrasing of his choice, his request to leave Israel and the reasons for this request.
9. The Applicant will sign at the end of the document on a statement according to which he requests to leave Israel, and that he is aware of the situation in his country of origin. The Border Control officer and the interpreter who speaks the language of the Applicant will also declare and sign that they have read the statement to the Applicant in his language and that he signed it in front of them.
10. All the documents filled during the interview, as well as the video recording – will be filed in a file opened in the name of the Applicant (“**Departure File**”).
11. **In any stage of the interview, the Applicant may withdraw his request to depart from Israel and to end the interview or ask to continue it in a different time.** If he does do – the Border Control Officer will document the

events in his own transcript. The transcript, along with the video recording of the interview will be filled in the Departure File. The Applicant will remain in detention.

C. A review by an RSD trained Representative of the PIBA

1. After the Border Control Officer has ensured that an asylum request submitted by the Applicant is also currently reviewed, he will transfer the Applicant's departure file, with all its documents included, to the review of an RSD trained Representative of PIBA (the "**Representative**"). The Representative will also review the Applicant's personal file, including any former procedure, data or registration in the Applicant's case, as well as registration by the Aviv system (the "**Personal File**")
2. The Representative will ensure that all stages of the procedure have been properly executed and recorded in the departure file.
3. The Representative will review the documentation of the request submitted by the Applicant, in order to examine whether the Applicant truly wishes to depart from Israel to his country of origin, that such is his free will, and that he is aware of the situation in his country of origin.
4. The Representative may give the instruction to conduct a complementary interview with the Applicant to clarify anything that might need clarification, according to his discretion. If the Representative instructs to do so – his instruction will be documented in the departure file, and a complementary interview with the Applicant, which will be also recorded in video, will be filed in the departure file. Afterwards, the departure file and the personal file will be returned for the Representative's examination.
5. If the Representative is convinced, based on examining the material in the Applicant's personal and departure files, that the Applicant is indeed freely interested in to return to his country of origin – he will record this conclusion in the relevant form, which will also be filled in the departure file.
6. If the Representative believes that the Applicant's request to return to his country of origin does not reflect his free will, and there is a flaw in the desire

– he will write this conclusion and explain it. This will be filed in the departure file. In a case of this sort, the Applicant will remain in detention.

7. Even while the request is in the hands of the Representative, and even after its review is over – **the Applicant may withdraw his request to leave Israel**. If he does so – it will be recorded and filed in the departure file and the Applicant will remain in detention.
8. After the RSD Representative has finished the review, the personal and departure file will be returned to the Border Control Officer, who will make a decision by virtue of his authority. The Border Control Officer will ensure that there is no asylum claim submitted by the Applicant, to the extent that he submitted it, which is being handled at the same time.

D. A review by a tribunal judge in the Detention Review Tribunal

1. The decision of the Border Control Officer in article 18¹ will be brought to the review of a tribunal judge in the Detention Review Tribunal by virtue of his authorities from the power of the Anti-Infiltration Law and article B of the fourth chapter of Entry Law. The Tribunal Secretariat will ensure that the tribunal judge receives both the departure file and the personal file, so that the tribunal judge may ensure that the stages of this procedure have been followed correctly and are recorded in the departure file, and to gain the impression that the Applicant wishes to depart from Israel to his country of origin, and is aware of the situation in his country of origin.
2. The Tribunal Secretariat will transfer the decision made by the tribunal judge to the Border Control Officer.
3. Even while the request is in the hands of the Detention Review Tribunal, and even after its review is over – **the Applicant may withdraw his request to leave Israel**. If he does so – it will be recorded and filed in the departure file and the Applicant will remain in detention.

¹ Note by translator: As appears in original text