

The Law of Return with a Focus on Christians and Messianic Jews. Advocate Michael Decker

Messianic Jews and the Law of Return

The Messianic Jewish community claims that it is another stream within Judaism that is resurrecting after 2,000 years of silence. The Messianic Jewish community explains its legitimacy by historical and theological claims. Theologically, Messianic Jews claim that Yeshua is really the promised Messiah according to the Messianic prophecies revealed in the Jewish scriptures, and historically they claim that all the first followers of Yeshua were devout Jews. With the establishment of the Jewish nation, many Jewish people have been convinced that Yeshua is truly the Messiah according to the Jewish scriptures and have consequently begun to believe in Yeshua, while insisting on keeping their Jewish identity.

Today, the Messianic Jewish community consists of approximately 15,000 members within the nation of Israel and approximately 300,000 members from around the world. This is a religious community, which believes both in the Tanach and in the New Testament, and that Yeshua is the Messiah of Israel, according to the many prophecies revealed in the Tanach. The Messianic Jewish community is recognized as having a very Zionistic and pro-Israel approach, among many other reasons, because they see the reestablishment of the nation of Israel as the fulfillment of scriptural prophecy. Therefore, the members of the Messianic Jewish community are loyal citizens of Israel that are prompt to serve in the army and to fulfill all their legal obligations.

Notwithstanding the abovementioned, the personal definition of the Messianic Jewish community is not yet accepted by many within the Jewish nation and is thoroughly rejected by the different orthodox streams within Judaism. This fact is revealed as it relates to the Law of Return. The "Law of Return" is a secular law, which is the central, legal expression of the nation of Israel as being a nation for all the Jewish people. This law was made in the Knesset on the 5th of July 1950 and it grants every Jew, being secular or religious, the right to immigrate into Israel and to receive an Oleh Certificate, which according to the Law of Citizenship, is an immediate prerequisite before receiving an Israeli citizenship.

In the year 1970 and as a result of two very famous constitutional court decisions, e.g. Roffeisen v. the Minister of Interior and Binyamin Shalit v. the Minister of Interior, an amendment was made to the "Law of Return" wherein a definition for a Jew was made which indicates that a Jew is a person born of a Jewish mother, and is not a part of a different religion. Furthermore, after an additional amendment which grants the right of return also to family members of Jews, this right was conditioned to the ones who did not willfully change their religion. Now, and subsequent to the

abovementioned amendment of the "Law of Return", I wish to review all the court decisions which have determined that a Jew who believes in Yeshua is a part of a different religion, according to the definition given to a Jew in the "Law of Return"; and as a person who willfully changed his religion according to the section which grants family members of Jews to immigrate into Israel.

The first court decision which I will briefly review is in regards to *Hatshins v. the Minister of Interior*. This court decision deals with a family, belonging to the Christian religion, who decided to convert to Judaism in order to immigrate into Israel, by virtue of the "Law of Return", and to establish a congregation to teach Jews that it is possible to both believe in Yeshua and to remain Jewish. Immediately, when their plan was discovered, their conversion was cancelled, along with their right to immigrate into Israel. Justice Berenzon wrote words in his decision that echo in all the similar court decisions which were made after this particular one, and they are: "Concerning Yeshuim who are considered and recognized as Jews, we have never yet heard of. This is absolutely unacceptable...ask any Jew on the street if this phenomena is probable and their definite answer will be: 'no'."

Two years after this an additional case had transpired in *Dorflinger v. the Minister of Interior*. This case was in connection with a Jewess named Ester Dorflinger. Her request to immigrate into Israel and to receive an Israeli citizenship as a Jew was rejected, since the Ministry of Interior decided that she is part of a different religion. Ms. Dorflinger fervently insisted that there is no contradiction between the fact that she is Jewish and the fact that she believes that Yeshua is the Messiah. However, to the regret of the members of the Messianic Jewish community, she did not succeed in convincing the judges. In the wording of Justice Victor: "She has raised many extended and tortuous claims as to the possible link of a Jew believing in Yeshu(a) as the Messiah, as if we are living today in the beginning of the first century, and as if since then nothing has transpired as it relates to different religious structures that have been established and that have disconnected themselves from Judaism, and for all those who choose to join those different paths."

After very solid and broad precedents had already been determined, as it is related to Jews who believe in Yeshua, an additional court decision was made. In *Beresford v. the Minister of Interior*, a Messianic Jewish family attempted to immigrate into Israel by virtue of the "Law of Return" and was denied of this right. In spite of the fact that this issue had already been settled and very negative precedents had already been determined, this family decided to appeal before the Israeli Supreme Court of Justice against the governmental decision that had been made concerning their steps toward immigration. In a court decision that is spread over tens of pages given by Justice Elon (an obvious Religious Judge) it was unquestionably determined that any Jew

who believes in Yeshua in any shape or form and/or any Messianic Jew is part of a different religion and has decided to willfully change his/her own religion.

In a very short period after this, an additional court decision was made in *Kendel v. the Minister of Interior* wherein the Beresford family, along with several other families who belong to the Messianic Jewish community, appealed before the Israeli Supreme Court of Justice, claiming that they are now inactive in Messianic Jewish activity and that a separation needs to be made between their inner beliefs and their external activities. Justice Netanyahu rejected their claims. As it relates to the other families, Justice Netanyahu also rejected their appeal for different reasons that are needless to review at this point. The last and final court decision was made in 1995 in *David Yochanan v. the Minister of Interior*. In a very short paragraph written by Justice Aharon Barak, David Yochann, who did not even have any documentation to prove that he was Jewish, was denied any right to immigrate into Israel as he claimed to be a Messianic Jew.

As we can now examine, all the above mentioned decisions created a very negative precedent for the Messianic Jewish community. These are being reviewed in almost every constitutional discussion in Israel, wherein the important question is raised regarding, "Who is a Jew?" Consequently, there are several suggested drafts for basic laws that indicate that the "Law of Return" does not apply to Messianic Jews, such as in the treaty between Professor Ruth Gabizon and Rabi Ya'akov Madan, and which can be found in www.gavison-medan.org.il.

The legal situation that has been created, as it is related to Messianic Jews, is: i.e. that a Messianic Jew, whose mother is Jewish, is considered a Jew who willfully changed his/her religion, is therefore part of a different religion and is not entitled to immigrate. However, a Messianic Jew whose father, grandfather, or spouse is Jewish, according to the definition in the "Law of Return", is entitled to immigrate into Israel. Such a Messianic Jew immigrates into Israel because he is a family member of a Jew and therefore such a Messianic Jew has never changed his religion and the fact that he is part of a different religion, as defined by the abovementioned court decisions, is altogether irrelevant.

Many obstacles have arisen for the Messianic Jewish community regarding the aforesaid decisions, the major one being a wrong implementation of the precedent that was made. The registration clerks at the Ministry of Interior are not required to be educated about all of these legal matters. Therefore, as being "an average Jew on the street", according to their understanding every person who is a part of the Messianic Jewish community is not entitled to immigrate into Israel by virtue of the "Law of Return". This understanding is felt and interpreted as a decision being made in an

exclusive manner. This particular obstacle is intensified and deployed when one considers that the information regarding the different members of the Messianic Jewish community is, for the most part, being communicated to the registration clerks by activists of extreme fundamental religious groups who purpose to prevent Jews from believing in ways different to their beliefs, from immigrating into Israel.

In other cases after some Messianic Jews have already immigrated into Israel, the Ministry of Interior can refuse to renew their passports, refuse to register their newly born children, and in extreme cases, revoke their citizenship. In essence, the above-mentioned situation reveals an illegal alliance between a governmental office that is obligated to operate in a non-discriminative, legal and equal manner and between fundamental religious groups, their core values being to advance their main objectives of preventing Jews from believing in ways different from theirs.

An appeal that attacks the abovementioned wrong implementation of the precedents that were made in the aforesaid court decisions is Sean Stakbak and others v. the Minister of Interior. This appeal, which was submitted before the Israeli Supreme Court of Justice in February 2005, deals with a group of petitioners who belong to the Messianic Jewish community, are not considered Jewish according to the definition in the "Law of Return", but who are requesting to immigrate into Israel only as family members of Jews. A decision to this appeal has not yet been given.

It must be emphasized, however, that the Messianic Jews who are Israeli citizens have the potential to greatly influence the nation of Israel as a group that is expanding and as of today consists of approximately 15,000 members. All the above mentioned appeals were made by foreigners who have attempted to immigrate into Israel and were refused by the Ministry of Interior. The nation of Israel has the right to define itself as a Jewish nation and the definition given, as of today, is that a Messianic Jew is not considered Jewish for the purposes of the "Law of Return". However, most of the court decisions, which have dealt with discrimination against the Messianic Jews who are citizens of the nation of Israel, were in favour of the members of the Messianic Jewish community who have been harassed simply because of their beliefs. These acts of harassment stand in opposition to the laws of Israel as a Jewish and democratic state. In this Jewish and democratic state, the character of the nation has been formed by its activist citizens.

It seems to me that one of the main problems here is that the Messianic Jews in Israel have not been active enough in the Israeli society. Perhaps they do not realize that their voice could have a strong influence on the different decisions made by the Israeli leaders and even on the nation of Israel as a whole. It seems that they also may be greatly intimidated by the real threat of ostracism and persecution by those who have proven to be vehemently against their beliefs. It is also likely that the Messianic

Jewish community simply does not know its legal rights as citizens of Israel.

The government of Israel certainly has the right to define itself. Yet the citizens of the nation also must have the opportunity and right to have a part in forming this aforesaid definition as well.

Does the Law of Return Apply to Messianic Jews?

On April 16, 2008, The Israeli Supreme Court granted citizenship to twelve members of the Messianic Jewish community in a landmark decision. The Ministry of Interior has been applying the *Beresford vs. State of Israel* decision to every Messianic Jew, and trying to prevent immigration based thereupon, although it should only apply to Messianic believers who are Jewish from their mother's side. The applicants in this case were Messianic believers with Jewish roots on their father's side. After the State Attorney who was representing the Ministry of Interior read our application, they completely succumbed to our request and stated that they are willing to give all twelve of the petitioners citizenship. We drew up a joint notification which the judges ratified as a Supreme Court judgment which states essentially that if someone is a Messianic Jewish believer, and is not the son or daughter of a Jewish mother, they have the right to immigrate to Israel.

As a member of the team which prepared a considerable portion of the case's petitions, I would like to clarify some of its implications and explain the various ways by which a Messianic Jew can utilize the Law of Return to his or her advantage.

First of all, though, I would like to clarify something very important: The recent decision did not change any of the Court's previous, negative precedents regarding Messianic believers. Previously, the Court determined that a Halachically Jewish - i.e. born of a Jewish mother – Messianic Jew has wilfully changed his religion and is therefore not entitled to immigrate under the Law of Return. An explanation of this precedent can be found in a previous article that I authored, entitled [Messianic Jews and the Law of Return](#). The article can be found here:

<http://www.israeltoday.co.il/default.aspx?tabid=182&view=item&idx=1550>

Furthermore, I must note that the definition of a Jew in the Law of Return does not coincide with the religious definition of a Jew. According to Jewish tradition, it is impossible for a Jew to change his religion. Once a person is born a Jew, he or she will always remain a Jew, no matter what. For this reason, a Messianic Jew should be considered Jewish according to the Jurisdiction Law of the Rabbinical Courts, which grants religious courts the right to determine the definition of a Jew.

Additionally, I would like to say that the opinion of the Israeli Supreme Court need not disturb the theological worldview of the Messianic Jewish community or any other existing religious group. For instance, if the Court were to decide that a homosexual couple is entitled to the same benefits as a heterosexual couple, religious

minority groups would not be required to incorporate this way of thinking into their religious ideology. If the Messianic Jewish community wishes to define itself in a certain way, it has every right to do so and it is the duty of the Israeli government to protect and assist every religious group in maintaining its unique identity. Put simply, the fact that the Israeli government does not recognize a Messianic Jew as a Jew under the Law of Return does not mean that the Israeli government wishes to redefine Messianic Jewish theology.

Now, I will move on to the Court's recent decision. The Messianic Jewish community – which, according to some estimates, consists of several hundred thousand global members – is comprised of believers in Yeshua who have a biological Jewish connection. Some Messianic Jews were raised by two Jewish parents; others have only one Jewish parent. There are also those who do not have any Jewish parents, but have Jewish lineage that can be traced back to their grandparents or preceding generations. Today, Messianic Jews who do not have a Jewish mother are not considered Jewish according to the Jewish Halacha. The negative Supreme Court precedents were created only regarding those who are Halachically Jewish. Therefore, they are not relevant to any Messianic Jew whose connection to Judaism is not maternal. Thus, many Messianic Jews are entitled to immigrate to Israel in accordance with the Law of Return. The Law of Return is also applicable to the children of Messianic Jews, even children with a Messianic parent. Such children would not be considered the children of a Jewish mother, as I will explain.

According to the Law of Return, there are two basic groups of people that are entitled to immigrate. The first group may immigrate under section 1 of the law, and consists of those born to Jewish mothers and of those who have converted to Judaism. These people may only immigrate, though, if they are not members of another religion. The second group of people – family members of Jews – is entitled to immigrate to Israel in under section 4 (a) of the law. Such people may immigrate if they are the children of a Jewish father, or if one or more of their grandparents is Jewish. This latter scenario can occur in the cases of people whose parents have both decided to change their religion. Furthermore, section 4 (a) grants immigration rights to the spouses of Jews, the spouses of the offspring of Jews, and the spouses of the grandchildren of Jews. It is important to re-emphasize that this second group of people is not affected by the negative precedents set in the Supreme Court, which determine that a Messianic Jew is not Jewish. The people in this group were never considered Jewish to begin with, according to the definition given in section 1 of the Law of Return.

It should also be stated that a child whose Messianic mother has lost the right to immigrate (since she has changed her religion and is therefore no longer considered Jewish under section 1 of the Law of Return) is entitled to immigrate into Israel. Again, the reason for this is that the child, also, is not considered Jewish under section 1 of the Law of Return. Because such a child's mother is not considered Jewish, she or he is still entitled to immigrate in accordance with section 4 (a) as a family member of (at least) a Jewish grandmother. Such a child can only utilize this right, though, when

he or she reaches adulthood. The reason for this is a previous Supreme Court decision in which it was determined that as long as a child is a minor; she or he is subject to parental auspices. The parents of such a child would not be entitled to benefit from their child's rights. Furthermore, if such a child were to immigrate to Israel and later serve in the Israeli Defence Forces (IDF) for a period of 18 months, his or her parents - who had previously been unable to immigrate - would be entitled to receive permanent residency as parents of an IDF soldier.

In light of these facts, we may conclude that according to the current wording of the Law of Return, many Messianic Jews are entitled to immigrate to Israel as family members of Jews. This, as mentioned above, also includes children whose Messianic Jewish parents have lost their right to immigrate into Israel.

As section 4 (a) shows, Israel is committed to operate according to an equal standard once a person's religious affiliation is irrelevant. Therefore, if any person can bring sufficient evidence proving that he or she has a Jewish family member - excluding a Jewish mother - there is no hindrance for him to immigrate as an "oleh-chadash" and to receive all the benefits of a new Israeli immigrant, regardless of his religious worldview.

Finally, I must note that even though this is the legal situation, many clerks at the Ministry of Interior and Jewish Agency are not acquainted with the legal distinctions that I have mentioned in this article. Furthermore, there are various fascist, fundamentalist religious organizations whose members are actively opposed to the notion that some Jews think and act differently than they do. These organizations, and certain nameless individuals, are in the habit of volunteering information to governmental offices regarding people's religious backgrounds. In particular, these groups tend to submit information regarding Messianic Jews. Additionally, there are various clerks within the Ministry of Interior who illegally discriminate against every Messianic Jew, even when the person's religious affiliation is irrelevant. Therefore, my recommendation is that it is unnecessary to disclose personal religious persuasions to the clerks in the Ministry of Interior. Nevertheless, if a clerk is informed that a person is a Messianic Jew and thereafter decides to operate illegally, the person can appeal to the Israeli Supreme Court of Justice in order to receive what he or she rightfully deserves.

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