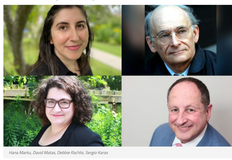
Immigration and refugee lawyers raise concerns with temporary residence program for Gaza

Some say requirements are too onerous for a warzone, others say screening must be tougher



Hana Marku, David Matas, Debbie Rachlis, Sergio Karas

By Aidan Macnab
23 Jan 2024 / Share

Following the federal government's launch of a new visa pathway for Palestinian-Canadians to bring family members fleeing war in Gaza to Canada, immigration and refugee lawyers have raised several concerns with the program.

Some say the program is open to too few people and contains overly onerous requirements that are unrealistic in the circumstances and not expected of others seeking temporary residence in Canada. Others say the pathway could pose a security threat. A new association of immigration lawyers has petitioned the feds, urging them to execute strict screening to ensure the pathway does not become a "terrorist smuggling program."

On Jan. 9, a new temporary resident pathway for Gazan residents with Canadian family members officially opened. The temporary resident visa program is capped at 1,000 applicants. The visa is valid for three years, and applicants can apply for fee-exempt study and work permits. The applicants' Canadian family members are responsible for financially supporting them for at least one year.

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According to the Family Reunification Project, a collection of immigration and refugee lawyers assisting Gazans with Canadian relatives in coming to Canada, it took three months of "intense pressure" for the federal government to finally create the pathway. Debbie Rachlis, an immigration and refugee lawyer in Toronto who is part of the Family Reunification Project, says she and her colleagues were frustrated with the lack of a pathway while the war dragged on, and the humanitarian crisis became more and more acute. In contrast, she says, the government had "fairly quickly" rolled out programs in response to the Ukraine war, the Taliban takeover of Afghanistan, and last year's earthquake in Syria and Turkey.

"The urgency of this pathway is extreme," says Hana Marku, a member of the Family Reunification Project. "The families that we communicate with tell us that their loved ones are, for the most part, homeless. They've been forced to flee their homes; or their homes have been destroyed. Some families are living in temporary housing, such as shelters or tents. And communication with loved ones in Gaza can be extremely difficult because telecommunications can be cut off at a moment's notice."

"This is an emergency situation," she says. "It's a humanitarian disaster unfolding right before our eyes, and we cannot treat this the same as any other immigration pathway."

Following the announcement of the new pathway, a group of more than a dozen immigration lawyers formed Lawyers for Secure Immigration. The association is calling on Ottawa to "be on heightened alert and exercise extreme caution when processing applications from Gaza." In a letter to the immigration minister, the association laid out how the Immigration and Refugee Protection Act (IRPA) determines membership in a terrorist organization. It also provided 21 suggested questions for immigration authorities to ask Gazan applicants to determine if they are inadmissible to Canada due to connections with terrorism.

David Matas is a Winnipeg-based human rights, refugee, and immigration lawyer and a member of Lawyers for Secure Immigration. He spoke to Canadian Lawyer in his personal capacity and not on behalf of the group. Matas says immigration law, under which members of terrorist organizations are inadmissible to Canada, must be applied, and the screening questions Canadian officials use to root out those members must be expanded.

"There are security concerns because there's widespread complicity in terrorism within Gaza," he says. "My concern is that the applicants have to be vetted carefully. Hamas and others also use Palestinians as shields and smoke screens, and they mingle amongst them. My concern, in a nutshell, is that the family reunification program doesn't become a terrorist smuggling program."

The Canadian government does not ordinarily interview everyone who comes to Canada. "But I would say, in this situation, everybody should be interviewed," says Matas. Lawyers representing Gazans should provide relevant information voluntarily before the interview, he says, noting that there is a legal duty not to withhold relevant information.

As Lawyers for Secure Immigration explains in their letter, under the IRPA, Canadian officials only need reasonable grounds to believe that a person seeking admission to Canada is a member of a terrorist organization for that person to become inadmissible. This applies not only to current membership but also past membership and where there is reason to believe this person may become a member of a terrorist organization in the future. The letter adds that a person is inadmissible if there is reason to believe an accompanying family member or a non-accompanying spouse, child, or grandchild is a member of a terrorist organization. Under s. 11(1) of the IRPA, the onus is on applicants for entry to satisfy admission officers that they are not inadmissible.

"The problem with Gaza is that the participation and endorsement of terrorism is so prevalent and widespread that it requires thorough investigation.

"I'm not saying the program should be abandoned, and I'm not saying the program should be changed," says Matas. "What I'm saying is that the current law should be applied in the current context. There has to be a proper investigation. We can't let people in without making the proper inquiries."

The Family Reunification Project, on the other hand, says the Gaza program is too burdensome. They have two main issues with the pathway. One is the cap of 1,000 applicants. With 45,000 Palestinian Canadians in the country, that number "is nowhere close to reflective of the need," says Marku. According to a CBC report, by the end of last November, 200,000 Ukrainians had arrived in Canada since the Russians invaded, and the Canadian Government has issued nearly one million visas. 45,820 Afghans have come to Canada since August 2021.

The other issue is the level of disclosure IRCC is demanding, which goes above and beyond the requirements in other crises, she says.

To apply, applicants must establish a connection with their Canadian relative. They must disclose all current and previous passport information and every phone number, email address, and social media account they have ever had. Applicants must produce their employment history from their 16th birthday, including exact dates, job descriptions, names of supervisors, reason for leaving, and any disciplinary record. Applicants must describe and explain any scar or injury and account for every country they have visited in the last decade. This information is required of every applicant between 14 and 79 years old and must be provided while the applicant is still in Gaza.

To have their applications processed, all applicants must agree to share their personal information with the governments of Egypt and Israel. Without permission from these two governments, applicants will not be on the evacuation lists, allowing them to leave Gaza to come to Canada.

"We don't do this for any other foreign national and any other immigration program," says Marku. "We're asking for this information from people who are living in tents, being bombed from the sky, and who are starving."

"It is impossible to put together an application like this for a client who is effectively homeless and running for their lives, and who we cannot communicate with on a regular basis."

In contrast, she says a typical temporary resident visa requires the applicant to provide biographical information, such as the date and place of birth; their purpose for coming to Canada; whether they have ever been ordered removed from or refused admission to another country; and whether they have been charged or convicted of a crime. Once this information is confirmed, they provide bio-metric data: their photo and fingerprints.

With 30,000-50,000 Hamas fighters in Gaza, security concerns are heightened for this region, says Sergio Karas, another member of Lawyers for Secure Immigration, who also spoke for himself and not on behalf of the group.

Karas is worried that the 1,000-person cap will be increased because Canada is short on the resources needed to vet a significant influx properly. He also says that temporary residence for Gazans could "stoke the flames of antisemitism, which is on the rise."

"Canada's track record in screening terrorists, human rights violators, and individuals engaged in transnational crime has not been stellar," he says. "Even when caught, it is extremely complex and difficult to deport them. Take, for example, the cases of [Popular Front for the Liberation of Palestine] terrorist Mahmood Mohammed Issa Mohammed, who was able to fight deportation to Lebanon for over 20 years, and the case of Rwandan genocide instigator Leon Mugesera, who took 18 years to deport."

"Further, the cases of Nazi war criminals like Irvre Finta and Helmut Oberlander took decades to be finalized. An increase in the number of applicants will strain Canada's intelligence and security resources."

With all the unique screening requirements required of her Gazan clients, Rachlis says that the security concerns are "disingenuous."

"The concern is not that there's some screening that should be happening, that's not happening," she says. "The concern is based on the idea that every single person who lives in Gaza is presumed to be a terrorist or a supporter of terrorism. I think that's deeply offensive on many levels, and I think it's, frankly, racist."

In an article the Family Reunification Project submitted to Canadian Lawyer, the group writes: "Simply stating that Gazans present a terrorist threat does not make it so. Painting any group as being inherently more likely to commit acts of terrorism is the hallmark of racial profiling. It is lazy, dangerous thinking. It stokes the flames of the post-9/11 panic that perpetuated Islamophobia, hatred, and dehumanization in the name of national security." They note that the assumption that Muslims are terrorists has led to some of "the most shameful episodes in Canadian history," including the torture of Maher Arar and Abdullah Almaki, the unconstitutional security certificate regime, and CSIS's mass surveillance of Muslim Canadians.

"No one is saying that all Muslims are terrorists," says Karas. "But unfortunately, many countries in the Muslim world have a terrorism and radicalization problem. Hence, additional security screening is required."

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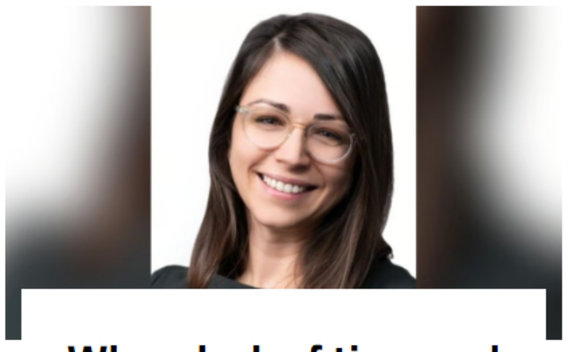

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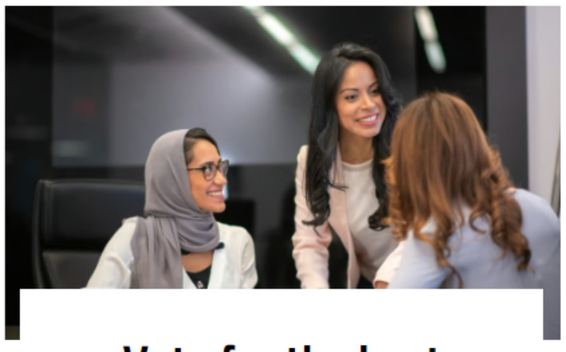

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