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F I L E D	FEDERAL COURT COUR FÉDÉRALE
	May 25, 2023 25 mai 2023
Jonathan Macena	
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Court File No.

FEDERAL COURT

B E T W E E N:

JOHN DOE 1 and JOHN DOE 2

Applicants

-and-

ATTORNEY GENERAL OF CANADA

Respondent



NOTICE OF APPLICATION
(Pursuant to sections 18 and 18.1 of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of the hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 25, 2023

Issued by:

Jonathan Macena

(Registry Officer)

Federal Court of Canada
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TO: Shalene Curtis-Micallef
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I HEREBY CERTIFY that the above document is a true copy of
the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie confirmée
À l'original déposé au dossier de la Cour fédérale.

Filing Date
Date de dépôt : May 25, 2023

Dated
Fait le : May 26, 2023

APPLICATION

This is an application pursuant to sections 18 and 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, for a declaration that the Canada-Ukraine Authorization for Emergency Travel violates s. 15 of the *Canadian Charter of Rights and Freedoms* by providing superior immigration benefits to Ukrainian nationals and their family members than to any other foreign nationals and their family members, particularly Afghan nationals.

THE APPLICANT MAKES APPLICATION FOR:

- a) A declaration that the Canada-Ukraine Authorization for Emergency Travel (“**CUAET**”) violates s. 15 of the *Canadian Charter of Rights and Freedoms* (“**Charter**”) by failing to provide equal immigration benefits to non-Ukrainian nationals and their family members as to Ukrainian nationals and their family members, and that this violation cannot be justified in a free and democratic society;
- b) An order severing the words “Ukrainian national” and “Ukrainian” wherever they appear in the CUAET, and reading in “foreign national” in each severed word’s place;
- c) The costs of this application; and
- d) Such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

A. Canada-Ukraine Authorization for Emergency Travel

1. The Canada-Ukraine Authorization for Emergency Travel (“**CUAET**”) is one of the many special measures the Government of Canada has introduced exclusively to support the people of Ukraine. It offers Ukrainians and their family members free, extended temporary status and allows them to work, study and stay in Canada until it is safe for them to return home.
2. Both Ukrainian nationals and family members of Ukrainian nationals, who can be of

any nationality, can apply for authorization through the CUAET.

3. Many benefits are conferred upon Ukrainians through CUAET that are not conferred upon foreign nationals from other countries, including from other countries experiencing devastating wars and human rights abuses, including Afghanistan, Yemen, Ethiopia, Somalia, and Myanmar.
4. Ukrainians and their family members coming to Canada from overseas receive many advantages that other foreign nationals and their family members do not:
 - a. they can apply for a free visitor visa and may be allowed to stay in Canada for 3 years, as opposed to the standard 6-month authorized stay for regular visitors;
 - b. they have the option to apply, free of charge, for an open work permit with their visa application, enabling them to find work as quickly as possible;
 - c. they will have their electronic visa application processed within 14 days of receipt of a complete application, for standard, non-complex cases;
 - d. they are exempt from Canada's COVID-19 vaccination entry requirements; and
 - e. they are exempt from completing an immigration medical exam (IME) overseas.
5. Ukrainians and their family members who acquire or already have temporary status in Canada
 - a. may apply to extend their temporary resident status for up to 3 years;
 - b. can leave and return to Canada at any time while their visa is valid;
 - c. may renew their work or study permit free of charge;
 - d. may apply for a new work or study permit free of charge; and
 - e. are eligible to attend elementary and secondary school.
6. All Ukrainians and their family members

- a. have most of their application and processing fees waived, including the visa application fee, biometric collection fee, work and study permit application fees, and visitor extension, and work and study permit renewal fees;
 - b. have all their IRCC applications prioritized for processing;
 - c. may apply for permanent residence under a variety of different immigration programs and streams if they are eligible to do so; and
 - d. have access to IRCC's dedicated service channel.
7. Unlike applications for resettlement as a refugee and streams for permanent residence available to other foreign nationals, there is no cap on the number of visa, work and study applications that will be accepted under the CUAET.

B. Afghanistan Language and Cultural Advisors Policy

8. Canada has held a travel advisory to Afghanistan and has recognized that rampant human rights abuses created by war have made Afghanistan a dangerous place to live for decades.
9. Canada maintained a military presence in Afghanistan between 2001 and 2021. During this time, the Department of National Defence (“DND”) employed around 45 Afghans as Language and Cultural Advisors (“LCAs”) to assist DND.
10. Canada recognizes that, by assisting DND in Afghanistan, LCAs placed themselves and their families at risk of death, torture, targeted assassination, and disappearance, which are common in Afghanistan.
11. Canada had a diplomatic presence in Afghanistan from 2004 to 2021. Currently no Canadian government immigration processing or other government agencies function in Afghanistan.
12. The Canadian Government established the *Temporary public policy for extended families of former language and cultural advisors* (“LCA Policy”) to provide a pathway to permanent residence for extended families of former LCAs.

13. The LCA Policy arbitrarily stipulates a cut-off date of July 22, 2021, at which the eligible family member must have been present in Afghanistan. The date restriction is not rationally connected to the goal of providing a pathway for permanent residency of the extended family members of LCAs. By contrast, the CUAET has no restriction relating to the date at which any Ukrainian left Ukraine.
14. The LCA Policy limits who may apply as principal applicants to those who are extended family members of an LCA, and limits those who may apply as family members of principal applicants to those who meet the definition of “family member” in s. 1(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, namely:
 - a. the spouse or common-law partner of the principal applicant;
 - b. a dependent child of the principal applicant or of the principal applicant’s spouse or common-law partner; and
 - c. a dependent child of a dependent child referred to in paragraph (b).
15. By contrast, the CUAET permits all Ukrainian nationals to immigrate to Canada regardless of whether they are a dependant child or partner of an extended family member of a person who worked for DND.
16. To be eligible to apply for permanent residency under the LCA Policy, the principal applicant must
 - a. be an Afghan national;
 - b. be outside Canada when they apply;
 - c. have been in Afghanistan on or after July 22, 2021;
 - d. apply using the application package posted online;
 - e. be a child (no matter the age), grandchild, parent, grandparent, or sibling (may include a sibling-in-law in some cases) of a Canadian citizen or permanent resident whose employment as an LCA in Afghanistan for DND between 2001 and 2021 has been confirmed by DND;

- f. provide a statutory declaration from the former LCA to confirm their relationship;
 - g. provide a statutory declaration that the LCA lives in Canada; and
 - h. hold a travel or identity document (or if they do not have one, provide a statutory declaration attesting to their identity).
17. To be eligible to apply for permanent residency as a family member to a principal applicant, the person must meet the following conditions:
- a. Has been included as an accompanying family member in an application for a permanent resident visa by a principal applicant seeking exemptions under this public policy;
 - b. Meets the definition of family member in subsection 1(3) of the Regulations, which is limited to a spouse or common-law partner, dependent child, and dependent child of a dependent child; to be a dependent child, the person must be less than 22 years of age or unable to be financially self-supporting due to a physical or mental condition;
 - c. Holds a document enumerated at subsection 50(1) of the Regulations or if they are unable to obtain a document enumerated at subsection 50(1), provides a document described in subsection 178(1) and 178(2) of the Regulations; and
 - d. A delegated officer has determined that the principal applicant meets all of the above conditions (eligibility requirements) in Part 1 of this public policy.
18. Under the LCA Policy, applications will cease to be accepted after applications for 380 principal applicants are accepted into processing.

C. Applicants

19. The Applicants are Canadian citizens with top secret clearance who worked for DND as LCAs in Afghanistan between 2001 and 2021.
20. The Applicants are referred to by the pseudonyms John Doe 1 and John Doe 2 in this

Notice of Application to reduce a serious risk to them and their extended family members of detention, mistreatment, torture, or death at the hands of the Taliban.

21. John Doe 1 has a sister who left Afghanistan in August 2018 and currently resides in Turkey. John Doe's sister has three dependent sons and one dependent daughter who reside with her. This sister and her dependent children ("**Family 1**") are not eligible to immigrate to Canada under the LCA Policy because they left Afghanistan prior to July 22, 2021.
22. John Doe 1 also has a stepbrother who currently resides in Afghanistan. John Doe's stepbrother has seven dependent children under the age of eighteen. This stepbrother and his children ("**Family 2**") are not eligible to immigrate to Canada under the LCA Policy because the stepbrother does not meet the relationship requirement in condition (e) of Part 1 of the LCA Policy.
23. John Doe 2 has a brother who left Afghanistan in February 2009 and currently resides in India. John Doe 2's brother has a wife and six dependent children who reside with him. This brother and his wife and dependent children ("**Family 3**") are not eligible to immigrate to Canada under the LCA Policy because they left Afghanistan prior to July 22, 2021.
24. John Doe 2 has a sister who currently resides in Afghanistan. Two of this sister's sons do not meet the definition of a dependent child because they are over the age of 22 and do not have a physical or mental condition that makes them unable to be financially self-supporting. One of these two sons has a wife and two dependent children. Both sons and the one son's wife and two children ("**Family 4**") are not eligible to immigrate to Canada under the LCA policy because they do not meet the relationship requirement in condition (b) of Part 2 of the LCA Policy.
25. John Doe 2 has another sister who currently resides in Afghanistan. Three of this sister's daughters do not meet the definition of a dependent child because they are over the age of 22 and do not have a physical or mental condition that makes them unable to be financially self-supporting. One of these three daughters has a husband and two dependent children. All three daughters and the one daughter's husband and

two children (“**Family 5**”) are not eligible to immigrate to Canada under the LCA policy because they do not meet the relationship requirement in condition (b) of Part 2 of the LCA Policy.

26. None of the members of Families 1 and 3 have legal status in their current countries of residence. They cannot work, go to school, or travel freely, and they risk deportation back to Afghanistan, where they will likely be targeted by the Taliban and face significant risk of death or injury.

27. All the members of Families 2, 4 and 5 are at significant risk of death or injury since they are in Afghanistan and will likely be targeted by the Taliban due to their relationships to LCAs.

28. Collectively, Family 1, 2, 3, 4, and 5 will be referred to as the “**Excluded Family Members**”.

29. If the Applicants and the Excluded Family Members were Ukrainian nationals, instead of Afghan nationals, the Excluded Family Members would automatically be permitted to immigrate to Canada under the CUAET without regard to the date that they left their home country or their relationship to an LCA.

D. Section 15 Charter Violation

30. The CUAET confers immigration advantages to Ukrainians that are not conferred to persons of any other national origin, including Afghans. This is a distinction based on national origin, which is a prohibited ground of discrimination under s. 15 of the *Charter*.

31. Ukrainians are predominantly White and European. Afghans are predominantly dark-skinned and Muslim. Thus, the CUAET has the effect of distinguishing based on race, colour, ethnic origin, and religion, which are prohibited grounds under s. 15 of the *Charter*.

32. Afghans are a historically disadvantaged people who have been living in poverty and under conditions of intolerable war, occupation, and human rights abuses for decades.

33. Afghans currently face as great, if not greater, risk of harm and death as compared to

people living in certain parts of Ukraine.

34. The CUAET has resulted, and continues to result, in Canada deploying exponentially greater resources to assist Ukrainians than any other nationality. The CUAET applies to almost any person living in Ukraine and their extended family outside Ukraine who may not be Ukrainian nationals, which includes more than 50 million people. By contrast, there are currently only 45 former LCAs whose extended family may be less than a few hundred.

E. Statutory Grounds

35. Sections 15(1), and 24(1) of the *Canadian Charter of Rights and Freedoms*.

36. Section 52(1) of *The Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

37. Sections 18 and 18.1 of the Federal Courts Act;

THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- a) Supporting affidavits and exhibits attached thereto; and
- b) Such further and other materials as counsel may advise and this Honourable Court may permit.

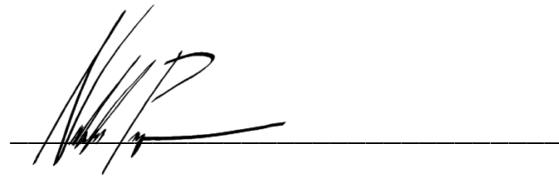
RULE 317 REQUEST:

The Applicants request the Respondent to send a certified copy to the Applicants and the Registry of the following material that is relevant to the Application and not in the possession of the Applicants but is in the possession of the Respondent:

- a) All information considered by the Respondent, its delegates, and any other persons involved in the development, approval, or establishment of CUAET, including, but not limited to, all records, reports, submissions, research, assessments, articles, studies, opinions, databases, correspondence, emails, Blackberry PIN messages, memos, and notes.

- b) All information considered by the Respondent, its delegates, and any other persons involved in the development, approval, or establishment of the LCA Policy, including, but not limited to, all records, reports, submissions, research, assessments, articles, studies, opinions, databases, correspondence, emails, Blackberry PIN messages, memos, and notes.

May 25, 2023



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