



LAWYERS FOR SECURE IMMIGRATION

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January 19, 2024

**The Honourable Dominic Leblanc  
House of Commons**

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Dear Minister Leblanc,

Re: Temporary residence program for Gazans with Canadian family ties

We, the undersigned immigration and refugee lawyers, wish to follow up with respect to the letters sent to you on December 20th, 2023, and January 13th, 2024, which are attached for ease of reference. The December 20th letter focused primarily on the need to enforce Canadian immigration law against members of terrorist organizations in Canada, in particular Hamas. In this letter we wish to elaborate our concern, expressed in the previous letters, about the need to bar entry to Canada of members of Hamas, or other terrorist organizations in Gaza, who are seeking to come into Canada.



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The current [program](#) to allow for temporary residence of Gazans who have family members in Canada applies only to those who are not inadmissible for any reason other than financial grounds. Being a member of a terrorist organization is a ground of inadmissibility. In order to qualify under the program, a person must not be a member of Hamas or any other terrorist organization operating in Gaza.

The prospect of members of Hamas or other terrorist organizations in Gaza coming to Canada has become more realistic since our last letter in light of the current program. Hamas members have had both a practice and strategy of intermingling with Palestinian civilians as a means of protection and flight. In light of this practice and strategy, Canadian immigration screening has to be rigorous to ensure that this family reunification program is not abused and becomes, in effect, a terrorist smuggling program.

Persons applying to come to Canada under the current program for Gazans who have family members in Canada must complete a temporary resident visa application form. That form, [IMM5257](#), asks in question 5 as follows:

"Are you, or have you ever been a member or associated with any political party, or other group or organization which has engaged in or advocated violence as a means to achieving a political or religious objective, or which has been associated with criminal activity at any time?"

One can assume that members of Hamas who are seeking to smuggle themselves into Canada would say "no" to that question.



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However, others with no intent to deceive may say “no” as well and, by so doing render themselves inadmissible or subject to revocation of status, should their application be granted, simply because they are unfamiliar with Canadian immigration law. In order for that question to be answered accurately, both applicants for temporary resident visas and admissions officers need some direction. This letter provides our views on what that direction should be.

### **Relevant legal features**

In Canadian immigration law, determining membership in a terrorist organization is not a straightforward exercise. There are eight features of the relevant law worth noting.

One feature, as noted in our previous December letter, is that terrorist organizations do not have membership lists and do not sell membership cards. Whether a person is a member of a terrorist organization depends on the nature of the person's involvement in the organization, the length of time involved, and the degree of the person's commitment to the organization's goals and objectives.

A second feature is the standard of proof. The standard of proof is not proof beyond a reasonable doubt or even balance of probabilities. It is rather reasonable grounds to believe. As long as there are reasonable grounds to believe that the person seeking admission is a member of a terrorist organization, the person is inadmissible. See *Immigration and Refugee Protection Act* [section 33](#).

A third feature of the law, for admissibility purposes, is that the issue is not just whether there are reasonable grounds to believe that the person is, at the time of application, a



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member of a terrorist organization. An applicant for permanent or temporary entry is inadmissible if there are reasonable grounds to believe that the person was, in the past, a member of a terrorist organization, even if the person is no longer a member of a terrorist organization. As well, an applicant for permanent or temporary entry is inadmissible if there are reasonable grounds to believe that the person may, in the future, become a member of a terrorist organization, even if the person, at the time of application has never been a member of a terrorist organization.

A fourth feature of the law worth noting is that a person is inadmissible even if there are no reasonable grounds to believe that the person has been, is, or may become a member of a terrorist organization, as long as an accompanying family member fits that description. See Act [section 42](#).

Further a person is inadmissible even if there are no reasonable grounds to believe that the person has been, is, or may become a member of a terrorist organization, as long as a non-accompanying spouse, child or grandchild fits that description. See Immigration and Refugee Protection [Regulation 23](#).

These inadmissibility provisions apply unless the person applying to come to Canada has been determined to be a Convention refugee or a person in need of protection. We note that the current program for admission of Gazans with family members in Canada does not provide for refugee protection determinations before arrival.

Persons from Gaza who are granted temporary resident visas would, on arrival, be free to make refugee protection claims. Should those claims succeed, this particular ground of inadmissibility, based on the inadmissibility of family members, would no longer exist. Yet,



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unless there are refugee protection determinations by Canadian visa officers before entry, Gazans with inadmissible family members should in principle not be able to apply successfully and enter Canada.

A fifth feature of the law one must keep in mind relates to onus. The onus falls on applicants for entry to satisfy admission officers that they are not inadmissible. The onus does not fall on admission officers to establish that applicants for entry are inadmissible. See the *Immigration and Refugee Protection Act* [section 11\(1\)](#).

What that means practically in this context is that every applicant from Gaza for a temporary resident visa has to establish that there are no reasonable grounds to believe that either the person or his family members has been, is, or may become a member of Hamas or any other Gaza based terrorist organization. Unless the applicant under the program can satisfy an admissions officer of that, the application should be refused.

A sixth feature of the relevant law one must keep in mind is the duty on applicants for entry not to withhold relevant evidence. Should they do so, their applications can be rejected on credibility grounds alone. This rejection can occur even if the evidence withheld would not, if given, establish inadmissibility.

Determination of admissibility should be left, and legally must be left, to Canadian Immigration and Canada Border Services Agency officials in consultation with the Canadian Security and Intelligence Service (CSIS) after consideration of all relevant factors. The determination should not be left to the applicant for entry into Canada. Even people answering all questions in the temporary resident application visa in good faith may be mistaken about the assessment of their or their family members past, present or potential



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future affiliation with Hamas. They may consider themselves or their family members not to have been, not to be and not to become members of Hamas or any other Gaza based terrorist organization when Canadian law, after assessing all relevant factors, would consider them to have been, to be or to become members.

A seventh feature of the relevant law one has to remember in this context is that a person who enters Canada after having answered questions inaccurately on entry can have their status revoked because of the inaccuracy. Revocation can occur even after the person has obtained citizenship if the inaccuracy was a false representation or fraudulent or a knowing concealment of material circumstances. See Citizenship Act [section 10.2](#).

Before a person has obtained citizenship, revocation of status can occur even if the inaccuracy is innocent. That revocation is possible even if, after entry as a temporary resident, the person then becomes a permanent resident.

Moreover, that revocation can occur because of the inaccuracy or, in the case of citizenship revocation, dishonesty, even if the questions, answered honestly, would not have led to a finding of inadmissibility. Mere foreclosure of inquiries can lead to revocation of status even if the inquiries, once made, reveal nothing.

For permanent residence, see *Bickin v. Canada (Minister of Citizenship and Immigration)*, [2000 CanLII 16261](#) paragraph 10. For citizenship, see *M.C.I. v. Odynsky* [2001 FCT 138](#), MacKay J. paragraph 94., *M.C.I. v. Katriuk*, [156 F.T.R. 161](#), T-2409-96, Nadon J. January 29, 1999, paragraph 146. For citizenship, this principle has now been legislated. See Citizenship Act [section 10.1\(4\)](#).



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The fact that revocation is possible does not justify anything less than thorough scrutiny on entry. Entry into Canada of a member of a terrorist organization, even for a short period, is problematic. In reality, revocation procedures can be prolonged. The risks to Canada from admission of members of terrorist organizations are far from countered by revocation procedures after the fact of entry.

Admissions officers should advise applicants for a temporary resident visa of all these seven features before applicants for entry are asked to answer any questions. Applicants under the program cannot be presumed to be aware of Canadian immigration and citizenship law. Moreover, from the applicants' perspective, being aware of the potential consequences of withholding evidence or foreclosing inquiries may prompt and result in more accurate answers to questions they are asked.

An eighth feature of the current law specifically relevant to the Gaza program is the application of the Criminal Code definition of terrorism to the Immigration and Refugee Protection Act terrorism provisions. The Immigration and Refugee Protection Act ground of inadmissibility for membership in a terrorist organization preceded the enactment of the Criminal Code provisions on terrorism. Since the Criminal Code enactment, the Federal Court has held that it is both appropriate and harmonious to use the definition of terrorist activity set out in the Criminal Code to inform the meaning of terrorism in the context of the Immigration and Refugee Protection Act. See *Ali v. Canada (Citizenship and Immigration)*, [2017 FC 182](#) paragraph 45.

The Criminal Code provides as follows:

["83.18 \(4\)](#) In determining whether an accused participates in or contributes to any activity of a terrorist group, the court may consider, among other factors, whether the accused



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(a) uses a name, word, symbol or other representation that identifies, or is associated with, the terrorist group;

terrorist activity means

(b) an act or omission, in or outside Canada,

(i) that is committed

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(ii) that intentionally

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to

(C), or

terrorist group means

(b) a listed entity, and includes an association of such entities.”

Hamas is a listed entity. The following are also listed entities: Abu Nidal Organization, Al-Aqsa Martyrs' Brigade, Harakat al-Sabireen, Hizballah, Islamic Revolutionary Guard Corps' Qods Force, Palestine Liberation Front, Palestinian Islamic Jihad, Popular Front for the Liberation of Palestine - General Command, and Popular Front for the Liberation of Palestine.

## **Relevant questions**





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In order to make the relevant factual determination, applicants for immigration need to provide specific detail and admissions officers need to ask specific questions. In the present context, where people are coming from Gaza, a place where support for Hamas and other terrorist organizations is rife, simply asking and answering whether a person or the person's family member has been or is or may become a member or associated with any group or organization which has engaged in or advocated violence as a means to achieving a political or religious objective is insufficient.

The specific questions set out in one of the letters sent to you January 13th need to be asked and answered. For convenience, those questions, with a modification to apply to other terrorist organizations besides Hamas, are repeated here.

- 1) Have you ever been a member of Hamas or any other terrorist organization at any time?
- 2) Has any member of your family been a member of Hamas or any other terrorist organization at any time (father, mother, brother, sister, son, daughter, grandfather, grandmother)?
- 3) Have you ever provided funds to Hamas or to a member of Hamas or any other terrorist organization at any time?
- 4) Has any member of your family ever provided funds to Hamas or a member of Hamas or any other terrorist organization at any time (father, mother, brother, sister, son, daughter, grandfather, grandmother)?



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- 5) Have you ever provided accommodation, at any time, to a member of Hamas or any other terrorist organization?
  
- 6) Has any member of your family ever provided accommodation to a member of Hamas or any other terrorist organization, at any time (father, mother, brother, sister, son, daughter, grandfather, grandmother)?
  
- 7) Have you ever harboured, housed, fed, cared for, or minded, an Israeli citizen, at any time, during 2023 or 2024?
  
- 8) Has any member of your family ever harboured, housed, fed, cared for, or minded, an Israeli citizen, at any time, during 2023 or 2024 (father, mother, brother, sister, son, daughter, grandfather, grandmother)?
  
- 9) Have you ever participated in, or assisted in, or witnessed, the kidnapping of an Israeli citizen, at any time during 2023 or 2024?
  
- 10) Has any member of your family ever participated in, or assisted in, or witnessed, the kidnapping of an Israeli citizen, at any time during 2023 or 2024 (father, mother, brother, sister, son, daughter, grandfather, grandmother)?
  
- 11) Have you ever participated or assisted in a rocket shelling attack, at any time?



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12) Has any member of your family ever participated or assisted in a rocket shelling attack, at any time (father, mother, brother, sister, son, daughter, grandfather, grandmother)?

In addition to the above, the following questions should also be asked and answered:

13) Has Hamas or any other terrorist organization ever stored arms at your house or apartment or the house or apartment of a family member?

14) Have you or a member of your family ever hosted in the place where you or family member lived an entrance to a Hamas tunnel?

15) Have you or has a family member ever provided goods to Hamas or any other terrorist organization?

16) Has Hamas or any other terrorist organization given you or a family member money to produce a good or perform a service for them? If so, what good or service?

17) Have you or any family member ever voluntarily produced a good or performed a service for Hamas or any other terrorist organization? If so, what good or service?

18) Have you or has a family member ever distributed literature or pamphlets or posted signs or posters for Hamas or any other terrorist organization?



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19) Have you or has a family member ever posted, or forwarded on social media, or sent an e-mail, or added to websites, statements supportive of Hamas or any other terrorist organization?

20) Have you or has a family member ever attended meetings hosted by Hamas or other terrorist organization?

21) Have you or a family member ever expressed or shown support in any way for Hamas or any other terrorist organization?

Answering yes to some of these questions does not in itself constitute an admission of membership in a terrorist organization. Yet, they can prompt other more detailed inquiries leading to a determination of membership.

Asking these detailed questions serves three purposes. One is to allow determinations of inadmissibility. The second is to avoid the fault of withholding relevant evidence. The third is to avoid the fault of foreclosing inquiries.

### **Exceptions**

Visa officers may determine some applicants under the program to be members of a terrorist organization. If that is so, the applicants would be inadmissible and fall outside the program. That does not, however, mean that these applicants are devoid of any recourse.



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Canadian immigration law allows admission to Canada of inadmissible persons who apply for and receive temporary resident permits. See *Immigration and Refugee Protection Act* [section 24](#).

The situation in Gaza is dire. In our view, the tragedy of Gaza is solely attributable to Hamas, first for attacking Israel, and then engineering, through a variety of means, the victimization of Palestinians when Israel responded. Be that as it may, the plight of the Palestinians, even if it is a plight generated only by Hamas, understandably prompts sympathy. There is a temptation to allow into Canada more or less anyone with Canadian family connections who can escape from the horrors of Gaza.

Yet, it would be wrong to say that the inadmissibility provisions of the current temporary resident visa program should be waived and that absolutely anyone who has the requisite family in Canada should be allowed to come to Canada with, if need be, the aid of a temporary resident permit. One has to weigh the risk to Palestinians in Gaza against the risk to Canada from importing terrorists.

The temporary resident program in this specific context must not become a loophole in the law, allowing for circumvention of the prohibition against inadmissibility of members of terrorist organizations. Each application for a temporary resident permit has to be determined individually based on the specific circumstances of the applicant. It would be wrong to say from the get-go what the result of that weighing should be in all cases.

### **Duty on officers and counsel**



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Generally, the Immigration and Refugee Protection Act should be respected. Its respect has particular importance when what is at issue is the risk of allowing terrorists to enter Canada.

In light of the pervasiveness of support for Hamas and other terrorist organizations in Gaza and the widespread complicity in their atrocities, Canadian authorities have to be on heightened alert and exercise extreme caution when processing applications from Gaza. That heightened alert and extreme caution require a thorough investigative process before allowing entry of anyone from Gaza.

This caution is applicable to counsel for applicants for entry as much as to admissions officers. Immigration counsel should advise their clients of the relevant law and not be party either to withholding evidence or foreclosing inquiries. The questions set out above should be asked not only by admissions officers to applicants under the program for temporary entry of Gazans with Canadian family members. The questions should also be asked by counsel to clients seeking admission under the program and the answers provided to admissions officers. We so request and advise.

Yours truly

*Lawyers for Secure Immigration*

Per: Lawyers for Secure Immigration

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