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Canadian Afghan advisers take gov't to court over alleged discrimination

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Canadians who served in Afghanistan are suing Ottawa for failing to rescue their family members from the Taliban, and alleging the government has been discriminatory in the way it treats Afghans compared to Ukrainians.

The federal government recently created a program to ensure the families of Canadians who served as language and cultural advisers in Afghanistan are brought to safety.

But the criteria are so restrictive the program doesn't apply to some family who were threatened because of their connection to Canada's military efforts before the Taliban takeover in August 2021.

The government has also capped the number of principal applicants at 380.

Two of the advisers filed a Federal Court application alleging the government provided "superior immigration benefits" to Ukrainians fleeing the Russian invasion of their country beginning in 2022, compared to those provided to Afghans hoping to escape the Taliban

takeover in 2021.

"We're looking for the Ukrainian policy to be extended to anyone who needs it.

Not just the Ukrainians, but anyone in a similar circumstance of persecution by war or severe human-rights abuses," said Nicholas Pope, one of the lawyers representing the advisers.

The advisers and their lawyers also want the government to admit that the vastly different approaches to the two crises violates the Charter of Rights and Freedoms. Shortly after the Russian invasion of Ukraine in February 2022, Canada launched a special program that made an unlimited number of Ukrainian nationals and their families eligible to work or study in Canada while they seek refuge for up to three years.

The families of the advisers, however, are still trapped in Afghanistan and neighbouring countries.

The sister of one of the advisers, identified in the lawsuit as John Doe 1 because of the risk to this family, isn't eligible to come to Canada because she left Afghanistan for Turkey prior to July

FILE PHOTO Canadian soldiers help a comrade after he was injured in an IED blast during a patrol outside Salavat, in the Panjwayi district, southwest of Kandahar, Afghanistan, in this June 2010 file photo.

22,2021.

The lawsuit says she has no legal status in Turkey and cannot work, her children cannot go to school and they risk deportation back to Afghanistan. The same adviser's stepbrother in Afghanistan doesn't qualify because stepbrothers aren't family under the policy. "The Taliban doesn't care. They don't say, 'Oh, you're a stepbrother, not a brother, so we'll leave you alone,'" Pope said.

The family of another adviser, identified in the court filing as John Doe 2, faces similar barriers. In the case of his sister in Afghanistan, the lawsuit says, she would have to leave three of their daughters behind because they are too old to be considered dependants.

The federal government hasn't yet responded to the court filing, and the immigration minister didn't immediately respond to a request for comment.

In a statement earlier this month, the immigration department said it has tailored its approaches as the difficult situation has evolved in Afghanistan.. The Canadian government recruited some 45 Canadian citizens with Afghan heritage to serve as language and cultural advisers during the mission in Afghanistan. They were granted top-secret security clearance and risked their lives to serve alongside soldiers.

Some of their family members were threatened by the Taliban because of their connections to the Canadian military.

“That’s the part of it that disgusts me, that the 45 (language and cultural advisers) took enormous risks,” said Amir Attaran, a University of Ottawa professor and lawyer.

“What’s the Trudeau government done? Kicked them to the curb.”

Attaran represented four other language and cultural advisers who served in Afghanistan in human-rights complaints against the government last year on similar grounds.

“This is obviously discrimination,” he said Tuesday. “You cannot single out a single nationality for special treatment. That clearly violates the Canadian Human Rights Act and, I believe, also the Charter of Rights and Freedoms.”

All four advisers have now settled their complaints, he said.

Though he can’t reveal the details of those settlements, he characterized negotiations with the immigration department as “extremely slow-moving and, until quite recently, in outright bad faith.”

Attaran said he’s not entirely happy with that outcome, because families of many of the other advisers are still in danger.