

Court File Number: T-258-17

FEDERAL COURT

BETWEEN:

INTERNATIONAL RELIEF FUND FOR THE AFFLICTED AND NEEDY (CANADA)
and RASEM ABDEL MAJID

Applicants

FILED	FEDERAL COURT COUR FÉDÉRALE	DEPOSE
	FEB 24 2017 G. M. Lutz	
OTTAWA, ON		

-and-

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION
(Pursuant to section 83.05(5) of the *Criminal Code of Canada* and
sections 18 and 18.1 of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants 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 Applicants. The Applicants 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 Applicants' solicitors, 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.

February 24, 2017

Issued by: 

(Registry Officer)

Federal Court of Canada
90 Sparks Street, 1st Floor
Ottawa, Ontario K1A 0H9
Tel: 613-992-4238
Fax: 613-947-2141

TO: William F. Pentney
Deputy Attorney General of Canada
Department of Justice
50 O'Connor Street
Suite 500, Room 504
Ottawa, ON K1A 0H8

APPLICATION

This is an application for judicial review of a decision of the Minister of Public Safety dated December 22, 2016 ("the Minister's Decision"), which denies the request for delisting of the Applicant, International Relief Fund for the Afflicted and Needy (Canada) ("IRFAN-Canada") as a terrorist entity made pursuant to section 83.05(2) of the Criminal Code of Canada ("the Code"). The Minister's decision was received via regular mail by counsel for the Applicant, Mr. Abdel-Majid, on December 29, 2016. The Applicants make the present request for judicial review pursuant to section 83.05(5) of the Code within 60 days of receipt of the Minister's decision.

On or about April 24, 2014, the Governor in Council, on the recommendation of the Respondent, listed the Applicant IRFAN-Canada as a terrorist entity pursuant to section 83.05 of the Criminal Code on the ground of having alleged associational linkages to Hamas because of international assistance work in Gaza. The listing of an organization as a terrorist entity under the Criminal Code is a unilateral decision that is effected by the Minister of Public Safety without adjudicative process or prior notice to the concerned organization. The Minister denied the Applicant authorization to fund or solicit funds to pay for counsel and/or expenses relating to its delisting. Accordingly, the Applicant, IRFAN-Canada, applied to this Court in 2014 for advance costs, but was denied. The Applicant signalled its intention to seek desilting in the fall of 2015 and received a brief attaching hundreds of pages prepared by the Minister of Public Safety ("Listing Brief") in December 2015, which appear in large part to be extracted from a Canada Revenue Audit of IRFAN-Canada. The Applicant was also provided with a document identified as "Summary of Allegations". On October 21, 2016, the principal for the Applicant, Mr. Abdel-Majid, made a request for delisting, as a person affected by the listing, which request was supported by the Applicant, IRFAN-Canada. The Applicant's request for delisting was denied by the Minister of Public Safety on December 22, 2016.

The Applicants make application for:

- a) An order that the Minister' Decision of December 22, 2016 be set aside and that the Court direct the Minister to delist the Applicant as a terrorist entity;
- b) A declaration that the listing regime of terrorist pursuant to section 83.05(1) of the Criminal Code, including *inter alia* sections 83.05(1) and 83.08, is unconstitutional and is declared to be of no force and effect;
- 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:

1. The listing of the Applicant, IRFAN-Canada as a terrorist entity is unreasonable;
2. The listing threshold for a terrorist entity pursuant to section 83.05(1) is unconstitutional as it violates section 7 of the *Charter of Rights and Freedoms* ("the Charter") ;
3. IRFAN-Canada's activities do not meet the purpose of section 83.05(1)(b) of the *Criminal Code* for listing a terrorist entity;
4. IRFAN-Canada's activities do not constitute association for a terrorist purpose;
5. The listing regime at sections 83.05 et seq of the *Criminal Code* violates sections 2, 7, 10(b) and 11(d) of the *Charter* rendering the Applicant's listing constitutionally invalid;
6. The statutory discretion of the Minister in considering a delisting application must be exercised in conformity with *Charter* values and in a manner to avoid perpetuating a violation of fundamental *Charter* rights;
7. A contextual examination of the Applicant's humanitarian aid work clearly

establishes that its listing as a terrorist entity is without merit. The political and humanitarian situation in which the aid from the Applicant was administered in the West Bank and Gaza Strip had not been fairly considered by the government and RCMP.

8. IRFAN-Canada administered humanitarian aid to persons living in extreme poverty. The aid was for basic human needs to help the most vulnerable. The listing brief in support of the Minister's decision does not challenge that the aid went to *bona fide* recipients. Furthermore, it does not identify that any specific beneficiary in receipt of donations from IRFAN-Canada was an illicit individual or entity.
9. IRFAN-Canada aided thousands of orphans in Palestine. To ensure the orphans received the aid they needed in a manner that was both efficient and accountable, IRFAN-Canada sent money to them through the Ministry of Telecommunications and Information Technology (MTIT) because it was in charge of the post offices in the Palestinian National Authority controlled areas. In that region of the world where there was at the time an absence of a reliable banking system, the Post office issued cheques for the orphans from IRFAN-Canada that could be cashed and traced through the post office. IRFAN-Canada provided thousands of documents proving all of the funds were received by the beneficiaries, none of which were challenged by the CRA as being illegal.
10. The allegations against IRFAN-Canada generalize that because some members of HAMAS have been linked to the broader MTIT, IRFAN-Canada has somehow supported HAMAS. This assertion is both wrong and unsubstantiated. It is akin to arguing that buying stamps at a local Canadian post office in 2014 amounts to knowingly aiding the Canadian government to fulfill its mandate.
11. In addition to helping orphans, IRFAN-Canada paid for medical equipment and supplies. In regions where essential medical equipment is gravely needed but lacking to treat the ill, it signed an agreement with the PNA Ministry of Health in Ramallah to supply dialysis machines. IRFAN-Canada clearly stated that the

donated machines are not to be sold or donated to another party without authorization from IRFAN-Canada.

12. IRFAN-Canada also donated 9.6 million dollars in resources that were transferred through the Zakat Fund for medical supplies for Palestine refugee camps and Lebanese medical facilities. 3.5 million dollars from that contribution went to the Islamic Medical Association. The transfer was made through the Zakat Fund in order to have the goods exempt from excise taxes. The Zakat Fund is part of a governmental organization that is able to issue custom exception certificates. It is not listed as a terrorist entity or terrorist supporter by the United States, Canada, or the United Nations.
13. IRFAN-Canada's operations were not raided, shut down or confiscated by Israel. To the contrary, it administered aid with the Israeli government's full knowledge until it closed in 2014 due to the listing. It was never given notice that the Israeli government had any objection to its aid work or projects it funded.
14. IRFAN-Canada did not knowingly work with prohibited charities. The status of some organizations changed without notice to IRFAN-Canada. As a result, the alleged improper connections to prohibited organizations cited in the listing brief are false and misleading. IRFAN-Canada concluded its relationship with the Ramallah Zakat Committee in 2003. It approved a project with an orphanage in Ramallah for the installation of elevators that started in 2004 and was completed in 2007. IRFAN-Canada was unaware of the orphanage committee's relationship with the Ramallah Zakat Committee. When the allegations surfaced, IRFAN-Canada retained legal counsel in Palestine to investigate the matter in 2011.
15. Similarly, IRFAN-Canada was not aware that El Lid (Al Lod) Charitable Society's Arab bank account was purportedly confiscated by the Israeli authorities. That society continued to operate and received funding from the Canada Fund. IRFAN-Canada was also unaware that Tubas Charitable Society's Arab bank account was purportedly confiscated. IRFAN-Canada sent money to the Society for clothes and

meat distribution. IRFAN-Canada at no point was provided information that would suggest to them the Society was misusing funds. IRFAN-Canada's unawareness of the purported actions against either Society is not unreasonable considering the context and circumstances in which they operate .

16. IRFAN-Canada did not directly or indirectly assist HAMAS. Further, there is nothing to corroborate the implication that HAMAS engaged in a strategic re-allocation of its resources to aid its militant wing as a result of the charitable endeavours of IRFAN-Canada. Even if this could have happened, it was not intended.
17. There is no evidence that IRFAN-Canada attempted to advance the goals of HAMAS or any other organization affiliated with HAMAS.
18. The case against IRFAN-Canada is built around unproven and unreliable assertions of links of association. The eight organizations listed in the Summary of Allegations do not constitute a meaningful or intelligible link between IRFAN-Canada and HAMAS.
19. The listing brief makes various irrelevant references to the Muslim Brotherhood and the Union of Good, which are inflammatory. IRFAN-Canada has no credible link to the Union of Good. There is no evidence that the Muslim Brotherhood controlled any of IRFAN-Canada's partner organizations or beneficiaries.
20. The listing brief is also misleading and wrong about the amount of aid administered. In particular, 3.5 million dollars of medical supplies was double counted. The remaining amount can be traced back to reputable charitable purposes. The case against IRFAN-Canada does not rest upon forensic accounting that traces the specific funds from IRFAN-Canada being allocated to specific organizations.
21. The listing of IRFAN-Canada is contrary to the purpose of the anti-terrorism provisions under *the Criminal Code*. The Supreme Court has explicitly stated that conduct rooted in a pro-social purpose such as the administration of charitable aid that may have unintended and indirect consequences of helping a terrorist group

will not satisfy the intent requirements for terrorist offences.

22. The listing regime and statutory scheme are unconstitutional. They violate the presumption of innocence and right to a fair hearing, freedom of association and expression, and the right to retain counsel of choice. No one should be subject to the prejudicial effect of a listing without receiving a fair process.
23. The Applicant Mr. Abdel-Majid, former Executive Director and Manager of IRFAN-Canada, continues to suffer financial and reputational loss as a result of the listing. He lost his job due to the listing. He has been denied the ability to operate a personal bank account by the major banking institutions. He is required to store property of IRFAN-Canada including a vehicle and trailer at his residence and at his own expense that was not seized by the RCMP and the Minister refuses to grant an exemption pursuant to section 83.08(1) of the Criminal Code for him to sell. Also, the RCMP seized several items of personal property of Mr. Abdel-Majid and the Minister refuses to authorize their return. Further, he has been subject to increased scrutiny and detention during travel despite being 73 years old and having no criminal record.
24. IRFAN-Canada is impecunious and is unable to solely maintain the present application in the absence of retaining counsel and, for this purpose, funding and/or soliciting funds for the payment of legal counsel;
25. Sections 18 and 18.1 of the *Federal Courts Act*;
26. Sections 2, 7, 9, 10, 15 and 24 (1) of the *Charter of Rights and Freedoms*;
27. Such further and other grounds as counsel may advise and this Honourable Court may permit.

The application will be supported by the following material:

- (a) The affidavit of Rasem Abdel Majid and/or other affidavit and exhibits attached thereto.
- (b) Such further and other materials as counsel may advise and this Honourable Court may permit.

February 24, 2017



**HAMEED LAW
Barristers & Solicitors
43 Florence Street
Ottawa, ON K2P 0W6**

**Yavar Hameed
Tel. (613) 232-2688 ext. 228
Fax. (613) 232-2680**

Counsel for the Applicant, IRFAN-Canada



**FAISAL MIRZA PROFESSIONAL
CORPORATION
55 Village Centre Place, Suite 301
Mississauga, Ontario L4Z 1V9
Per: Faisal Mirza
Telephone: 905.897.5600
Facsimile: 905.897.5657**

Counsel for the Applicant, Mr. Abdel-
Majid