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Pakistani refugee who returned to his homeland six times wins chance to keep Canadian status

Between January 2016 and March 2022, the man returned to Pakistan six times and spent 336 days in the country, attending a 'large wedding' with nearly 100 guests, the ruling notes

By Ari David Blaff
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People walk past the charred house of an Ahmadi Muslim resident following an attack by a mob in the city of Gujranwala, Pakistan, in 2014. A Canadian refugee claimant returned to Pakistan multiple times despite claiming he was in danger there due to his Ahmadi beliefs. PHOTO BY ARIF ALI/AFP/GETTY IMAGES/FILE

A Federal Court judge set aside a ruling by Canada's Refugee Protection Division (RPD), saying it failed "to engage with a critical piece of evidence" when it revoked a Pakistani man's refugee status after he returned to the country on multiple occasions.

Irfan Ahmad arrived in Canada under the "convention refugee abroad" program in 2014, citing his status as a member of the Ahmadi community, a persecuted Muslim minority group in Pakistan.

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The RPD, a division of the Immigration Refugee Board of Canada, found Ahmad "voluntarily re-availed himself of the protection of Pakistan" and "had not provided sufficient evidence to rebut the presumption," the judgment reads. The tribunal found Ahmad's description "of the agents of persecution 'evolved depending on his audience,'" shifting between fear of religious extremists and government authorities on different occasions. The RPD found his statements to be inconsistent.

On February 18, Justice Avvy Yao-Yao Go ruled in favour of Ahmad, arguing that the RPD found inconsistencies "where none existed." The judge added that the tribunal "compounded this error by failing to consider a key precautionary measure that the applicant took against the religious extremists while in Pakistan," when Ahmad avoided going to a mosque.

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"While the RPD noted the applicant's evidence that he did not attend mosque or engage with the broader community," Go wrote in her ruling, "the RPD never engaged with this evidence when conducting its analysis on the applicant's intention... Rather, the RPD focused on the fact that the applicant had a 'large wedding,' the duration of his visits, and the fact that the applicant brought his family to Pakistan, and found these factors to indicate a lack of subjective fear of persecution.

"By failing to engage with a critical piece of evidence that may rebut the intent to reavail, the RDP fell short of its heightened duty to provide justified, transparent, redetermination by a differently constituted panel of the Refugee Protection Division."

Ahmad's legal counsel, Daniel Kingwell, lauded the decision in a written statement to National Post on Thursday afternoon.

"We are very pleased with the judge's ruling. The court recognized that Mr. Ahmad had provided a number of reasons for returning to Pakistan that were not adequately assessed by the Board – in particular to attend to essential family duties including his marriage, the birth of his child, and the illnesses and deaths of his parents," Kingwell wrote, noting that the ruling was "consistent with a number of other decisions where the court has taken issue with an overly aggressive approach to refugee cessation."

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conduct while in the country comported with this, taking necessary precautions that "were consistent with his ongoing need for refugee protection."

The attorney added that the "ball is in the government's court" when it comes to whether the matter will be further pursued. "We hope that they will not pursue this – Mr. Ahmad needs to remain in Canada where he is safe, to continue to support and care for his spouse and disabled children," Kingwell noted.

Immigration lawyer Sergio Karas struggled to understand Go's decision after reading the ruling and seeing the justice repeatedly acknowledging much of the tribunal's initial findings.

"It seems to be that she bends over backwards in this decision to find a way to root in favour of the applicant," Karas said by phone on Thursday. "I think it's grasping at straws here."

Karas said he is familiar with the Ahmadi community from his work in the immigration space and the persecution they face in Pakistan, but sees Ahmad's repeated and lengthy visits as undermining his refugee status.

"The problem with the argument is the length of time and the number of trips that the applicant made," Karas wrote over email. "While brief trips for emergencies may be understandable, multiple trips over an extended period of time, and remaining in the country of alleged persecution for weeks or months, seem to be at odds with the alleged fear of persecution. Also, obtaining Pakistani passports not once, but twice, points to a lack of concern for safety."

> *Persecution in the country of alleged persecution for weeks or*

Karas believes there is an urgent need to reform immigration law, particularly existing loopholes governing refugee status. He pointed to the spike in refugee applications in recent years, driven, in part, by foreign students seeking to extend their residency in the country. Figures reported by the Globe and Mail from Immigration, Refugees and Citizenship Canada show there were roughly 1,500 asylum claims from international students in 2018, which ballooned to over 11,000 by 2023.

Karas is cautiously optimistic about Bill C-12, *Strengthening Canada's Immigration System and Borders Act*, currently before the Senate, which could plug gaps in the existing legal code.

"It is time, really, for the government to amend the Immigration Refugee Protection Act in Canada to make it very clear that if you go back to your country of origin, unless there's some kind of emergency, you are losing the protection of Canada," he said.

However, Kingwell sees the bill's march through Parliament with more concern, calling it "problematic in particular for refugees." According to Kingwell, C-12 "would prevent a person at risk from claiming refugee status more than one year after they arrive," which could leave victims of domestic abuse, members of the LGBT community or war refugees in jeopardy because they "simply didn't learn about the process until it was too late."

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