

Federal Court



Cour fédérale

**Date: 20200430**

**Docket: IMM-5027-19**

**Citation: 2020 FC 571**

**Ottawa, Ontario, April 30, 2020**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**ALMAN DOUKOURE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The present Application concerns a decision of the Immigration Division (ID) dated August 8, 2019, in which it found the Applicant criminally inadmissible under section 36(1)(b) of the *Immigration and Refugee Protection Act (IRPA)*. In the United States [US], the Applicant pled guilty to and was convicted under 21 U.S.C. §§ 846 and 841 for transporting 1000 kg of cannabis. The issue on judicial review is whether the ID conducted a reasonable equivalency analysis of the relevant US and Canadian criminal provisions.

I. **The Relevant Criminal Provisions and the Legal Standard for Equivalency**

[2] The US criminal provisions read as follows:

21 U.S.C. §§ 841

**(a) UNLAWFUL ACTS** Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally –

**(1)** to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

**(2)** to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

**(b) PENALTIES** Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

**(B)** In the case of a violation of subsection (a) of this section involving –

**(vii)** 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

[Emphasis added]

21 U.S.C. §§ 846

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

[3] The Canadian provisions in the *Cannabis Act*, S.C. 2018, c. 16 state:

**Distribution**

**9 (1)** Unless authorized under this Act, it is prohibited

**Distribution**

**9 (1)** Sauf autorisation prévue sous le régime de la présente loi:

(a) for an individual who is 18 years of age or older

(i) to distribute cannabis of one or more classes of cannabis the total amount of which is equivalent, as determined in accordance with Schedule 3, to more than 30 g of dried cannabis,

(ii) to distribute cannabis to an individual who is under 18 years of age,

(iii) to distribute cannabis to an organization, or

(iv) to distribute cannabis that they know is illicit cannabis;

**Possession for purpose of distributing**

(2) Unless authorized under this Act, it is prohibited to possess cannabis for the purpose of distributing it contrary to subsection (1).

**Punishment**

(5) Subject to section 51, every person that contravenes subsection (1) or (2)

(a) is guilty of an indictable offence and is liable

a) il est interdit à tout individu âgé de dix-huit ans ou plus:

(i) de distribuer une quantité totale de cannabis d'une ou de plusieurs catégories, équivalant, selon l'annexe 3, à plus de trente grammes de cannabis séché,

(ii) de distribuer du cannabis à un individu âgé de moins de dix-huit ans,

(iii) de distribuer du cannabis à une organisation,

(iv) de distribuer du cannabis, s'il sait qu'il s'agit de cannabis illicite;

**Possession en vue de la distribution**

(2) Sauf autorisation prévue sous le régime de la présente loi, il est interdit d'avoir du cannabis en sa possession en vue de le distribuer d'une manière qui contrevient au paragraphe (1).

**Peine**

(5) Sous réserve de l'article 51, quiconque contrevient aux paragraphes (1) ou (2) commet une infraction et encourt, sur déclaration de culpabilité :

a) par mise en accusation :

(i) in the case of an individual who is 18 years of age or older, to imprisonment for a term of not more than 14 years,

(ii) in the case of a young person, to a youth sentence under the Youth Criminal Justice Act, or

(iii) in the case of an organization, to a fine in an amount that is in the discretion of the court; or

**(b)** is guilty of an offence punishable on summary conviction and is liable

(i) in the case of an individual who is 18 years of age or older who contravenes any of subparagraphs (1)(a)(i), (iii) and (iv) and (c)(i) and (ii) — or subsection (2) other than by possessing cannabis for the purpose of distributing it contrary to subparagraph (1)(a)(ii) — to a fine of not more than \$5,000 or imprisonment for a term of not more than six months, or to both,

(i) s'agissant d'un individu âgé de dix-huit ans ou plus, un emprisonnement maximal de quatorze ans,

(ii) s'agissant d'un jeune, une peine spécifique prévue sous le régime de la Loi sur le système de justice pénale pour les adolescents,

(iii) s'agissant d'une organisation, une amende dont le montant est fixé par le tribunal;

**b)** par procédure sommaire :

(i) s'agissant d'un individu âgé de dix-huit ans ou plus, pour une contravention à l'un des sous-alinéas (1)a(i), (iii) ou (iv) ou c)(i) ou (ii) — ou au paragraphe (2) dans un autre cas que la possession de cannabis en vue de le distribuer d'une manière qui contrevient au sous-alinéa (1)a(ii) — une amende maximale de cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines

(iii) in the case of a young person, to a youth sentence under the Youth Criminal Justice Act, or

(iii) s'agissant d'un jeune, une peine spécifique prévue sous le régime de la Loi sur le système de justice pénale pour les adolescents,

(iv) in the case of an organization, to a fine of not more than \$100,000.

(iv) s'agissant d'une organisation, une amende maximale de cent mille dollars.

[Emphasis Added]

[non souligné dans l'original]

[4] In *Hill v. Canada (Minister of Employment & Immigration)*, [1987] F.C.J. No. 47, 1 Imm. L.R. (2d) 1 (FCA), the Federal Court of Appeal states at paragraph 6 that an equivalency analysis is to be conducted in one of three ways:

...first, by a comparison of the precise wording in each statute both through documents and, if available, through the evidence of an expert or experts in the foreign law and determining therefrom the essential ingredients of the respective offences; two, by examining the evidence adduced before the adjudicator, both oral and documentary, to ascertain whether or not that evidence was sufficient to establish that the essential ingredients of the offence in Canada had been proven in the foreign proceedings, whether precisely described in the initiating documents or in the statutory provisions in the same words or not; and three, by a combination of one and two.

[Emphasis added]

[5] In *Li v. Canada (Minister of Citizenship & Immigration)*, [1997] 1 F.C. 235 (FCA), the Federal Court of Appeal states at paragraphs 17, 25, and 28:

The purpose of the provision is obviously to exclude from Canada persons who have done things abroad, for which they have been convicted there, which Canada regards by its laws as constituting serious misconduct.

[...]

As indicated earlier, in my view the purpose of subparagraph 19(2)(a.1)(i) is to render inadmissible persons who have been convicted of acts abroad which, if committed in Canada, would be denounced by giving rise to liability for a prosecution by way of indictment. What must be compared are the factual and legal criteria for establishing the offence both abroad and in Canada.

[...]

A comparison of the "essential elements" of the respective offences requires a comparison of the definitions of those offences including defences particular to those offences or those classes of offences.

## II. The Decision Under Review

[6] In an oral decision delivered from the bench, the ID noted that the Applicant pled guilty to and was convicted under 21 U.S.C. §§ 846 and 841, Conspiracy to Distribute and Possess with Intent to Distribute Marijuana. The ID went on to make the following findings of the key elements of the legislation in both countries:

In my view, it is clear that the Minister's representative has been able to demonstrate that there are reasonable grounds to believe the [sic] Mr. Doukoure was convicted in the United States for the offence of conspiracy to distribute with intent to distribute marijuana.

[...]

Distribution that includes transportation, if we follow that definition at paragraph 2(1) of the *Cannabis Act* is a crime in Canada now.

If it falls under paragraph (1)(a) related to more than 30 grams and we know that it was a big amount of drugs over 30 grams in the evidence.

And if it's distribution to a minor or to an organization or if you know it is illicit Cannabis.

So if we go and compare at the Federal Court the ways to establish the equivalency and using the third [inaudible] comparing the wording and the facts, it is clear that the distribution, if organized the evidence shows it was organized in the United States would not be through legal channels in Canada.

We are talking about illicit drugs mainly, more than just distribution to 18 or less than 18.

That's illicit drugs clearly and Mr. Doukoure should have known that in the United States.

So also paragraph 36(1)(a) [sic] I do believe would apply.

If ever I'm wrong on the first part, it would apply here.

Both types of persecutions [sic] are deemed to be an indictable offence therefore liable for 13 years [sic] following paragraph 5(a)(i) of the *Cannabis Act*.

This falls under serious criminality under paragraph 36(1)(b) of the *Immigration and Refugee Protection Act*.

[Emphasis added]

[Decision at paras. 20, 40-49]

### III. **Submissions on Judicial Review**

[7] The Applicant's submissions may be paraphrased as follows:

1. The ID erred in referring to the time that the Applicant was convicted in the US. The timing that is relevant to an equivalency analysis is the time of the inadmissibility hearing.
2. The ID did not properly compare the "essential elements" of the US and Canadian criminal provisions.
3. If one criminal provision contains defences that the corresponding criminal provision does not, the laws will be said to be non-equivalent.
4. Applying the rule of lenity to the Applicant, we must assume that he was not distributing cannabis to persons under 18 years of age, and thus would have been prosecuted summarily pursuant to section 5 of the *Cannabis Act*. Therefore, the

Applicant did not commit an offence that would be subject to a maximum term of imprisonment of ten years.

5. The decision is unintelligible.

[Applicant's Further Memorandum at paras. 29-42]

[8] The Respondent's response is as follows:

...The I.D. indicates that the evidence demonstrated that the guilty plea was for the distribution of illicit cannabis, and for a very large quantity, much more than the 30 grams limit mentioned in the *Cannabis Act*.

[...]

As long as the quantity is over 30 grams, or as long as it is illicit cannabis, the age of the individuals receiving the substance is not relevant at all for the conviction and neither is it for the equivalency.

[Respondent's Further Memorandum at paras. 51 and 57]

#### IV. **Conclusion**

[9] I agree with the Respondent's analysis.

[10] The ID's decision, while not expressed with perfection, makes the critical findings in paragraphs 20 and 40-49 quoted in paragraph 6 of these reasons. The Applicant pled guilty, and thus was convicted in the US of transporting more than 30 grams of cannabis, and of transporting cannabis he knew was illicit. It is clear that the subject matter of the conviction is contrary to section 9(1)(a) of the *Cannabis Act*. In the result the ID found that transporting over 30 grams of illicit cannabis would be punishable for a term of up to 14 years under section 9(5)(a) of the *Cannabis Act*. Therefore, the ID found that the Applicant was criminally inadmissible under



section 36(1)(b) of the *IRPA*. I find that the ID's decision is defensible in respect of the facts and law, and, therefore, is reasonable.

[11] As a result, the present Application is dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question to certify.

"Douglas R. Campbell"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5027-19

**STYLE OF CAUSE:** ALMAN DOUKOURE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**MATTER HEARD IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT  
TO THE PRACTICE DIRECTION AND ORDER (COVID-19) DATED MARCH 17, 2020  
(UPDATED APRIL 4, 2020 AND APRIL 29, 2020)**

**JUDGMENT AND REASONS:** CAMPBELL J.

**DATED:** APRIL 30, 2020

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