Federal Court  Cour fédérale

Date: 20250625

Docket: IMM-12015-24

Citation: 2025 FC 1146

Ottawa, Ontario, June 25, 2025

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SUNIL LOTTIA

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of India. In 2018 he was convicted of criminal offences under the Indian Penal Code [IPC]. Following an admissibility hearing held pursuant to section 44(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], the Immigration Appeal Division [IAD] found the Applicant to be inadmissible on the grounds of serious criminality in accordance with paragraph 36(1)(b) of the IRPA.

[2] The Applicant applies under subsection 72(1) of the IRPA for judicial review of the IAD's June 17, 2024, decision arguing that the IAD's equivalency analysis was unreasonable.

[3] As I set out in greater detail below, the IAD correctly identified the test to be applied when undertaking an equivalency analysis for the purpose of paragraph 36(1)(b) of the IRPA, accurately set out the facts as disclosed by the evidence and engaged in a transparent analysis in support of the conclusions reached. The Application is dismissed.

II. Background

[4] The Applicant was convicted of offences under sections 341 ("wrongful restraint") and 323 ("voluntarily causing hurt") of the IPC and sentenced to 6-months probation upon furnishing personal probation bonds in the amount of 25000 Indian Rupees. The convictions followed an altercation in 2016, where the Applicant and three other men carrying large dull knives (called a dattar), sticks and baseball bats confronted the victim. The Indian Court found the accused prevented the victim from returning to his home and beat him. The Court specifically found that the Applicant had struck the victim in the head with a dattar resulting in an 8x1 centimeter laceration.

[5] The Immigration Division [ID], accepted the Applicant's submissions that he had been acting in self defence, found that this negated his blameworthiness, and concluded that the Applicant was not inadmissible.

[6] The Minister of Public Safety and Emergency Preparedness appealed the decision of the ID.

III. Decision under review

[7] The IAD found that the ID erred in their analysis, holding that the self-defence argument raised before the ID was not credibly established. The Applicant does not contest the IAD analysis, the findings made, or the conclusions reached by the IAD in its consideration of the issue of self defence.

[8] The IAD found that there was equivalency between section 341 of the IPC ("wrongful restraint") and subsection 279(2) of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*] ("Forcible confinement"). Forcible confinement is punishable by imprisonment for a term not exceeding 10 years (*Criminal Code*, paragraph 279(2)(a)).

[9] With respect to section 323 of the IPC ("voluntarily causing hurt") the IAD found there to be equivalency with section 267 of the *Criminal Code* ("Assault with a weapon or causing bodily harm"). Assault with a weapon or causing bodily harm is also punishable by imprisonment for a term not exceeding 10 years.

[10] In undertaking its analysis, the IAD noted that it had access to the decision of the Criminal Court in India and that the Indian decision was thorough, detailed and clear.

[11] The IAD acknowledged that equivalency analysis must be undertaken in accordance with the jurisprudence. Relying on *Hill v Canada (Minister of Employment & Immigration)*, 1987 CanLII 9881, 1 Imm LR (2d) 1 (FCA), the IAD noted the three methods for undertaking an equivalency analysis. The first involves a precise comparison of the wording of the penal provision in the foreign jurisdiction with the identified equivalent provision under the *Criminal Code*. The second method involves a review of the evidence from the foreign proceeding to determine whether that evidence is sufficient to establish the identified equivalent *Criminal Code* offence. The third method is a combination of methods one and two.

[12] The IAD relied on method one to find equivalency between the Indian wrongful restraint conviction and the subsection 279(2) *Criminal Code* offence of forcible confinement. Relying on *Hill* method two, the IAD also concluded there was equivalency between the voluntarily causing hurt conviction and the paragraphs 267(a) and (b) *Criminal Code* offences of assault with a weapon and assault causing bodily harm.

[13] Having concluded the Applicant had been convicted of offences in India that, if committed in Canada would constitute an offence punishable by a maximum term of imprisonment of at least 10 years, the IAD concluded there to be reasonable grounds to believe the Applicant is inadmissible under paragraph 36(1)(b) of the IRPA.

IV. Issues and Standard of Review

[14] The Application raises a single issue: did the IAD reasonably conclude that the offences for which the Applicant has been convicted of in India are equivalent to the offences described at subsections 279(2) and 267 of the *Criminal Code*?

[15] The standard of review is not disputed, the IAD's decision is to be reviewed on the presumptive standard of reasonableness. When reviewing a decision on the reasonableness standard, "a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15).

V. Preliminary Matter

[16] The style of cause incorrectly identifies the Minister of Citizenship and Immigration as the Respondent in this matter. The responsible Minister is the Minister of Public Safety and Emergency Preparedness (IRPA, s 4). The style of cause shall therefore be amended to identify the Minister of Public Safety and Emergency Preparedness as the Respondent.

VI. Analysis

[17] The Applicant submits the IAD unreasonably concluded that the offence of forcible confinement at subsection 279(2) of the *Criminal Code* is equivalent to section 341 of the IPC.

This is because the Applicant was charged and convicted in India of the offence of "wrongful restraint" whereas subsection 279(2) of the *Criminal Code* describes the offence as one of forcible "confinement." Confinement, the Applicant argues, has a different meaning than restraint. To highlight this distinction, the Applicant points to the separate offence of "wrongful confinement" under the IPC. The Applicant also argues that the evidence introduced in the criminal trial fails to disclose an intent to "confine" or forcibly restrain the victim, instead the evidence establishes an intent to inflict harm by way of assault.

[18] The Applicant's argument is not persuasive. It was reasonably open to the IAD to conclude that the wrongful restraint offence under the IPC – an offence that reflects the unlawful restriction on movement from one point to another – is equivalent to the forcible confinement offence under the *Criminal Code*. Unlike the IPC, the *Criminal Code* creates a single offence relating to a range of unlawful conduct; conduct that might well be characterized as either restraint or confinement. It was not unreasonable for the IAD to conclude, after considering section 323 of the IPC and subsection 279(2) of the *Criminal Code*, that the offences are equivalent.

[19] My view in this regard is reinforced by the decision of the Supreme Court of Canada in *R v Sundman*, 2022 SCC 31. In *Sundman*, Justice Jamal, on behalf of a unanimous Court, found that unlawful confinement exists even where a victim is not physically restrained but is coercively restrained through violence fear and intimidation (at para 5). Justice Jamal further states that "[u]nlawful confinement occurs if, for any significant time period, a person is

coercively restrained or directed contrary to their wishes, so that they cannot move about according to their own inclination or desire" (at para 21).

[20] The Applicant also submits that the IAD erred in concluding that section 267 of the *Criminal Code* is the Canadian equivalent to section 323 of the IPC, arguing that the essential elements of the Indian offence of voluntarily causing hurt are not sufficient to establish the elements of the more serious Canadian offences of assault with weapon and/or assault causing bodily harm.

[21] This argument ignores the methods of establishing equivalency available to the IAD pursuant to *Hill*. The IAD relied on *Hill* method two – a review of the evidence from the foreign proceeding – to determine that the evidence and uncontested facts demonstrated the assault was undertaken with a weapon (a dattar) and bodily harm resulted (an 8-centimetre laceration to the victim's head). In doing so, the IAD conducted a reasonable equivalency analysis.

[22] In conducting an equivalency analysis, a decision-maker must go beyond the names assigned to the offences to look specifically at the essential elements of the offences and be satisfied that they correspond to one another (*Brannson v Canada (Minister of Employment and Immigration)*, 1980 CanLII 4197, [1981] 2 FC 141 (FCA) at 151-153). This is precisely what was done by the IAD.

VII. Conclusion

[23] The Application is dismissed. The Parties have not proposed a question for certification, and none arises.

JUDGMENT IN IMM-12015-24

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to identify the Minister of Public Safety and Emergency Preparedness as the Respondent.
2. The Application is dismissed.
3. No question of general importance is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12015-24
STYLE OF CAUSE:	SUNIL LOTTIA v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 12, 2025
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JUNE 25, 2025

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