

Federal Court



Cour fédérale

Date: 20250429

Docket: IMM-7395-24

Citation: 2025 FC 765

Ottawa, Ontario, April 29, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

HOSH MOHAMED HOSH

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of the Immigration Division [ID] finding the Applicant to be inadmissible to Canada for serious criminality under s 36(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Background

[2] The Applicant is a foreign national. He was born in Italy in 1987 and considers himself to be stateless as his parents were visitors in Italy when he was born.

[3] In 1989, the Applicant entered the United States [US] with his parents. In 2007, the Applicant was granted US permanent resident status.

[4] On January 22, 2008, the Applicant was charged with unlawful wounding, pursuant to §18.2-51 of the *Virginia Code*, and of grand larceny under §18.2-95 of the *Virginia Code*. On March 4, 2008, the Applicant entered guilty pleas for both of the charges by way of what is referred to as an “Alford Plea” (derived from *North Carolina v Alford*, 400 US 24, 91 S Ct 160 (1970)). And, on the same date, he was convicted in the Circuit Court of Fairfax County, Virginia [Virginia Court], US, on both charges. Following a sentencing hearing held on April 17, 2008, the Applicant received a two-year sentence of incarceration, which was suspended upon the condition of two years of supervised probation.

[5] The Applicant claimed asylum in the US on December 1, 2011.

[6] Due to his criminal convictions, the Applicant was deemed removable from the US. However, his removal order to Somalia was deferred by order dated December 17, 2013.

[7] The Applicant arrived in Canada on June 1, 2022, and sought refugee protection against Somalia. His claim was not successful because he had previously made a refugee claim in the US and, therefore, he was ineligible to make a claim in Canada. He was detained and released on bail, following which he went to live with his wife and child who reside in Edmonton.

[8] An admissibility hearing was held on January 29, 2024. On April 12, 2024, the ID issued its decision finding that the Applicant is inadmissible to Canada pursuant to s 36(1)(b) of the *IRPA*. That decision is the subject of this judicial review.

Relevant Legislation

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]

Serious criminality

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(a) ...;

(b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or

(c) ...

Virginia Code

18.2-51. Shooting, stabbing, etc., with intent to maim, kill, etc.

If any person maliciously shoot, stab, cut, or wound any person or by any means cause him bodily injury, with the intent to maim, disfigure, disable, or kill, he shall, except where it is otherwise provided, be guilty of a Class 3 felony. If such act be done unlawfully but not maliciously, with the intent aforesaid, the offender shall be guilty of a Class 6 felony.

Criminal Code, RSC, 1985, c C-46 [Criminal Code]

Assault with a weapon or causing bodily harm

267 Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or is guilty of an offence punishable on summary conviction who, in committing an assault,

(a) carries, uses or threatens to use a weapon or an imitation thereof,

(b) causes bodily harm to the complainant, or

(c) chokes, suffocates or strangles the complainant.

Decision Under Review

[9] In reaching its decision that the Applicant is inadmissible to Canada pursuant to s 36(1)(b) of the *IRPA*, the ID made three determinations: the Applicant is a foreign national; he was convicted in Virginia, US, under *Virginia Code* §18.2-51; and, the offence, if committed in Canada, would constitute assault causing bodily harm under s 267 of the *Criminal Code*, which is an offence punishable by a maximum term of imprisonment of at least 10 years.

[10] The ID began its analysis by explaining that the burden of proof in establishing serious criminality is on the Minister, on a “reasonable grounds to believe” standard. It then determined, on uncontested grounds, that the Applicant was a foreign national. The ID also found that the Applicant was convicted of an offence outside of Canada. Namely, on March 4, 2008, he was found guilty of unlawful wounding and of grand larceny under §18.2-51 and §18.2-95 of the *Virginia Code*.

[11] Upon explaining the three ways in which equivalency can be determined and outlining the Applicant's arguments, the ID found that unlawful wounding under *Virginia Code* §18.2-51 is equivalent to assault causing bodily harm under s 267 of the *Criminal Code*. The ID stated that it relied on a combination of comparing the precise wording in each statute and examining the evidence to ascertain whether it was sufficient to establish that the essential ingredients of the offence in Canada had been proven in the foreign proceedings.

[12] However, before engaging in the equivalency analysis, the ID addressed the Applicant's arguments concerning the Alford plea, his innocence, and the purported lack of evidence that could establish that the Applicant intended or committed any or all of the essential elements of the assault causing bodily harm. In that regard, the ID set out the relevant principles established by the Canadian jurisprudence. The ID found that the Alford plea is a procedural process in the US and, therefore, it is not facts or legal criteria that go toward establishing the elements of the offence either abroad or in Canada. It also did not accept the Applicant's argument that s 267 must be read together with ss 6 and 606 of the *Criminal Code*. The ID found that these sections are outside the scope of what is to be considered in an equivalency analysis. The ID noted that the Applicant was convicted in the US for unlawful wounding, but maintained his innocence. However, that it is not the ID's "role to examine the validity of the conviction and, therefore, what is relevant is the fact of his conviction and the facts pursuant to which he was convicted." The ID found that the Virginia Court had accepted the Commonwealth's proffered evidence and convicted the Applicant on that evidence. The ID also disagreed that there was a lack of evidence that could establish that the Applicant intended or committed any or all of the essential elements of s 267 of the *Criminal Code*.

[13] The ID then addressed the evidence. It noted that the record contained two transcripts from the Virginia Court, being from March 4, 2008, and April 17, 2008, respectively, and found that they were relevant to understanding what, if any, essential elements of the crime of assault causing bodily harm were established before the Virginia Court. The ID then explained why, based on its review of the evidence, it placed more weight upon the Commonwealth's proffered evidence than on the Applicant's evidence adduced at the admissibility hearing. The ID summarized both transcripts. It noted that the March 4, 2008 transcript contained the Commonwealth's proffered evidence — that is, the evidence that it would have tendered had there been a trial — which included that the Applicant produced a pellet gun and started to “pistol whip” the victim in the head, causing a head wound, and that the Applicant continued to hit the victim while the victim was on his knees. The Commonwealth had submitted that one of the co-defendants would have identified the Applicant as being involved in these activities. The ID noted that, in response to this proffered evidence, the Applicant's counsel stated that this is what “we” believe the Commonwealth's evidence would be and, when asked if the Applicant is pleading guilty because of what the Commonwealth outlined as their likely evidence and because he did not want to risk a jury convicting him, the Applicant answered in the affirmative. The ID then summarized the content of the transcript of the sentencing hearing held on April 17, 2008, describing the testimony of witnesses called by the Applicant, E.M., D.M., and H.H.

[14] The ID next addressed the admissibility hearing. It described the Applicant's testimony about the events that occurred on the evening of the offences. This included his testimony that he had accepted an offer of a ride home and did not know about the intended meet-up with the victim to buy marijuana. Further, that when the others left the vehicle and a fight ensued with the

victim, the Applicant remained in the backseat until he saw that things could get serious, at which point he then “got in between spread [his] arms, spread [his] arms up and they immediately stopped”. Further, that the Applicant submitted that he had entered the Alford plea mainly to avoid a jury trial and jail time. The ID also summarized the testimony of the witnesses D.M. and H.H., which went to establishing that the Applicant did not own or carry a pellet gun, and his innocence.

[15] In its analysis, the ID explained that it was choosing to place more weight on the Commonwealth’s proffered evidence than the testimony at the admissibility hearing because, upon reviewing the transcripts, it was satisfied that the Virginia Court convicted the Applicant on the Commonwealth’s proffered evidence. In other words, the ID was “satisfied on a reasonable grounds to believe standard that the Virginia Court accepted the evidence of the Commonwealth given that the Virginia Court accepted [the Applicant’s] plea and sentenced him”. The ID also noted two issues with the evidence at the admissibility hearing. First, it was inconsistent with the evidence that the Virginia Court accepted in deciding to convict and, second, it was inconsistent with a conviction under §18.2-51 of the *Virginia Code*.

[16] The ID then conducted the equivalency analysis based on the Commonwealth’s proffered evidence. This involved a direct comparison of the wording of §18.2-51 of the *Virginia Code*, s 267 of the *Criminal Code*, and an examination of the evidence. Upon completing that analysis, the ID determined that when the Applicant produced a pellet gun and started to “pistol whip” the victim in the head, the Applicant applied force. And, that the same was true when he hit the victim when he was on his knees. The ID was also satisfied that any reasonable person in the

circumstances would realize that “pistol whipping” another person in the head and hitting another person while they are on their knees being punched would put the other person at risk of suffering some kind of bodily harm. Thus, the *actus reus* and the mental element of the offence were satisfied.

[17] The ID also noted that an equivalency analysis must include a comparison of defences. Although the Applicant argued that an Alford plea cannot be withdrawn after conviction while a guilty plea in Canada that does not meet the requirements of s 606 of the *Criminal Code* could result in the striking of the guilty plea, the Applicant had not articulated how this qualified as a defence. As a final note, the ID stated that both parties relied on *Drake v Canada (Minister of Citizenship and Immigration)*, 165 FTR 102 [*Drake*], but that the ID did not find it instructive with respect to the equivalency analysis.

Issues and Standard of Review

[18] The Applicant submits that the ID’s decision is unreasonable in light of the evidence before it. Further, that it erred in law on questions of central importance to the entire legal system.

[19] The Respondent submits that the Applicant’s submissions raise the issue of reasonableness of the ID’s decision finding him inadmissible pursuant to s 36(1)(b) of the *IRPA*.

[20] In my view, the sole issue that arises in this matter is whether the ID’s decision was reasonable.

[21] Accordingly, the reasonableness standard of review applies. This asks this court to: “develop an understanding of the decision maker’s reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25 and 99 [*Vavilov*]).

[22] However, the Applicant submits that reasonableness standard applies, but for “those legal issues addressed by the Member that amount to legal questions of central importance to the entire legal system”, which garner correctness review. More specifically, that the ID erred in describing the Alford plea as a procedural action when it is a matter of substantive law. Further, that the ID erred in its application of the case law and in its determining that there is no ability, as part of the equivalency analysis, in certain circumstances, to look behind a conviction — such as in the case of an Alford plea. The Applicant submits that these are questions of central importance to the entire legal system. I am not convinced.

[23] In *Vavilov*, the Supreme Court held that the reasonableness standard of review will presumptively apply to the review of the merits of an administrative decision (paras 23, 25). However, the rule of law requires that the standard of correctness applies to three types of legal questions: constitutional questions, general questions of law of central importance to the legal system as a whole and, questions regarding the jurisdictional boundaries between two or more administrative bodies. With respect to general questions of law of central importance to the legal

system as a whole, these are questions of law that are of “‘fundamental importance and broad applicability’, with significant legal consequences for the justice system as a whole or for other institutions of government” (*Vavilov*, at para 59, citing *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 70, among others) and require a single determinative answer. Examples include: when an administrative proceeding will be barred by the doctrines of *res judicata* and abuse of process; the scope of the state’s duty of religious neutrality; the appropriateness of limits on solicitor-client privilege; and, the scope of parliamentary privilege (*Vavilov*, at para 60).

[24] Further, “the mere fact that a dispute is ‘of wider public concern’ is not sufficient for a question to fall into this category — nor is the fact that the question, when framed in a general or abstract sense, touches on an important issue” (*Vavilov*, at para 61).

[25] The Applicant has not established why or how the issues put forward meet this threshold, or are similar to instances held by the Supreme Court as requiring correctness review. I would add that the fact that the Applicant does not agree with how the ID assessed and applied the jurisprudence or the evidence goes to the merits of the decision and is clearly reviewable on the reasonableness standard.

The Decision Was Reasonable

Applicant’s position

[26] The Applicant argues that the ID erred when it failed to interpret s 267 of the *Criminal Code* alongside ss 6 and 606 of that *Code*. Further, when it failed to consider two reports

contained in the Applicant's disclosure, which reports would have supplemented his statutory interpretation argument, and failed to consider his argument that s 36(1)(b) should be interpreted in the same manner as s 36(1)(a). The ID also erred, in the Applicant's view, as it did not properly consider and apply relevant portions of the Virginia Court transcripts alongside the Applicant's evidence provided at the admissibility hearing, including the purpose of that evidence. The ID also engaged in circular reasoning when it chose to place more weight on the Commonwealth's proffered evidence over the Applicant's evidence at the admissibility hearing. The Applicant submits that it is illogical why "actual" evidence would not have greater weight than "proffered" evidence.

[27] The Applicant also submits that the ID erred in disregarding his argument that the proffered evidence, upon which it relied, concerned a "Vetrovec" witness and instead focused narrowly on the "obvious reality" that the Virginia Court accepted the proffered evidence. He submits that this is a matter of substantive law in the Canadian criminal law context which was overlooked by the ID. Further, that the Alford plea is also a matter of substantive law. The Applicant also takes issue with the ID's engagement with the jurisprudence in this area and asserts that the ID erred in rejecting his interpretation of the case law which was that, in certain circumstances, it is open to examine the context of a foreign conviction to determine if the conviction alone established all elements of the offence for purposes of an equivalency analysis.

Respondent's position

[28] The Respondent submits that the ID did not err. The Applicant entered an "Alford Plea of Guilty to a Felony" which acknowledged that the evidence against him was overwhelming and

substantially negated any claim of innocence he may have had, he was found guilty and was sentenced by the Virginia Court. *Drake*, which all parties cited, is one of the only cases that addresses Alford pleas directly and establishes that the ID reasonably relied on the Alford plea to treat the Applicant as being guilty and convicted of the offence of unlawful wounding in Virginia. The ID summarized the applicable principles when assessing a foreign conviction and its reasons are logical and attentive to the arguments raised by the Applicant. The ID also conducted a detailed review of the facts and offences in the US, reviewed the Virginia Court transcripts, plea agreements, sentencing order and the applicable criminal offences in Canada.

[29] The Respondent submits that the Applicant's submissions pertaining to his innocence are misguided. While the Applicant maintains his innocence, by entering the Alford plea, he accepted that he was pleading guilty and would be found guilty. The validity or merits of the foreign conviction are not at issue in the equivalency analysis. Moreover, it would undermine foreign judicial processes for an individual to claim the benefit of a plea agreement (such as an Alford plea), which specifically finds the individual guilty and convicts them, and then go to another jurisdiction and challenge that finding of guilt. Nor should it be open to an individual to benefit in one jurisdiction from the lower penalties/sentencing afforded by the Alford plea and then seek to overturn it to challenge an inadmissibility finding. In sum, the Applicant has not demonstrated that the ID was unreasonable in finding him to be inadmissible.

Analysis

i. Legal Backdrop

[30] As stated in *Bellevue v Canada (MPSEP)*, 2018 FC 926 [*Bellevue*]:

[30] The ID must conduct an equivalency exercise to determine whether there are reasonable grounds to believe that a conviction would have been handed down in Canada for the same type of act as was committed outside Canada (*Moscicki v Canada (Citizenship and Immigration)*, 2015 FC 740 at paragraph 38 [*Moscicki*]). It is then a question of assessing the equivalency of offences and not the equivalency of the law (*Steward v Canada (Minister of Employment and Immigration)*, [1988] 3 FC 487 (CA)). It is not necessary to “compare all the general principles of criminal responsibility” (*Moscicki* at paragraph 18), because the test of equivalence only involves the comparison of the two offences, not the analysis of the comparability of possible convictions. Nor does the test of equivalency involve conducting another trial (*Moscicki* at paragraph 38; *Halilaj v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1062 at paragraph 20).

[31] Further, to test for equivalency between a Canadian offence and a “foreign” offence, one of the three methods established in *Hill v Canada (MEI)*, 1987 CanLII 9881 (FCA), [1987] FCJ No 47 (FCA) [*Hill*] must be used. This test involves “[looking] at the similarity of definition of the two offences being compared and the criteria involved for establishing the offences” (*Bellevue*, at para 31, citing *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at para 28).

[32] As noted by the ID, these are:

- i. 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.

- ii. An examination of 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 has been proven in the foreign proceedings, whether precisely described in the initiating documents or in the same words or not.
- iii. A combination of (a) and (b).

[33] In the context of this matter, it is also significant to note that in *Li v Canada (Minister of Citizenship and Immigration) (CA)*, 1996 CanLII 4086 (FCA) [*Li*], the Federal Court of Appeal held that what must be compared in an equivalency assessment are the factual and legal criteria for establishing the offence both abroad and in Canada. Further, that it is “not necessary to compare the adjectival law by which a conviction might or might not be entered in each country”, which comparisons would not be consistent with the scheme of the *IRPA* under which equivalency is to be determined. Further, the *IRPA* “does not contemplate a retrial of the case applying Canadian rules of evidence. Nor does it contemplate an examination of the validity of the conviction abroad” (*Li*, at para 25; see also *Halilaj v Canada (Public Safety and Preparedness)*, 2017 FC 1062 at para 23 [*Halilaj*]; *Brannson v Minister of Employment and Immigration*, 1980 CanLII 4197 (FCA), [1981] 2 FC 141 at 145; *Svecz v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 3 at para 21 [*Svecz*]). *Li* also quoted Justice La Forest in *Canada v Schmidt*, [1987] 1 SCR 500 at pp 522–523 stating that “[t]he judicial process in a foreign country must not be subjected to finicky evaluations against the rules governing the legal process in this country”. This has been taken to confirm that “it is not the role of the ID to

examine another country's judicial system and apply our Charter or our rules of procedural fairness" (*Halilaj*, at para 30).

[34] This Court has also held that it is not the role of the ID to look behind the conviction and to question it (*Abdulqayum v Canada (Citizenship and Immigration)*, 2022 FC 862 at para 18 [*Abdulqayum*]; *Wang v Canada (MPSEP)*, 2021 FC 1196 at para 18 [*Wang*]).

[35] Given this, in my view, the ID accurately stated that the Canadian jurisprudence is clear (referencing *Li* and *Halilaj*) and establishes that:

- the issue before the Immigration Division (ID) is whether a Canadian equivalent exists for the offence for which the person concerned has been convicted outside of Canada, not whether the person concerned would have been convicted in Canada for the offence
- what must be compared are the factual and legal criteria for establishing the offence both abroad and in Canada;
- it is not necessary to compare the adjectival law by which a conviction might or might not be entered in each country;
- the Act does not contemplate a retrial of the case applying Canadian rules of evidence nor does it contemplate an examination of the validity of the conviction abroad; this is so whether the Canadian standards of procedure or evidence sought to be applied are based on the Charter, statute, or common law:

- it is not inappropriate for Canadian tribunals to recognize and accept the validity of foreign legal systems without measuring them against the Charter;
- the judicial process in a foreign country must not be subjected to finicky evaluations against the rules governing the legal process in this country;
- it is not the role of the ID to examine another country's judicial system and apply our Charter and our rules of procedural fairness; and
- a justice system is not, for example, fundamentally unjust because its procedural or evidentiary safeguards have none of the rigours of our system.

ii. Did the ID Err in Interpreting s 267 of the *Criminal Code*?

[36] The Applicant argues that, given his Alford plea “whereby he proclaimed his innocence” and therefore his lack of acceptance of facts which would make up the essential elements of the offence he was convicted of, he had urged the ID to consider s 267 of the *Criminal Code* together and in harmony with ss 6 and 606 of that *Code*. This would be consistent with the modern principle of statutory interpretation (citing *Canada (Public Safety and Emergency Preparedness) v Weldemariam*, 2024 FCA 69 at para 76). The Applicant submits that the ID's failure to do so, without proper explanation, amounts to a “failure of responsive justification”.

[37] However, the ID found that an Alford plea is extraneous to, and therefore does not aid in establishing, equivalency for the purposes of s 36(1)(b) of the *IRPA*.

[38] In that regard, it explained why a review of ss 606 and 6 of the *Criminal Code* was unnecessary:

the Canadian jurisprudence is clear and establishes that the issue before the ID is whether a Canadian equivalent exists for the offence for which the person concerned has been convicted outside of Canada. Section 267 of the Criminal Code does not for the purposes of equivalency have to be read in context with section 6, which falls under the heading Presumption of Innocence, and section 606, which falls under the heading Pleas Permitted. These sections are outside the scope of what is to be considered in an equivalency analysis.

I note that the provisions of the *Criminal Code* referenced by the Applicant are:

Presumption of innocence

6 (1) Where an enactment creates an offence and authorizes a punishment to be imposed in respect of that offence,

(a) a person shall be deemed not to be guilty of the offence until he is convicted or discharged under section 730 of the offence; and

(b) a person who is convicted or discharged under section 730 of the offence is not liable to any punishment in respect thereof other than the punishment prescribed by this Act or by the enactment that creates the offence.

Pleas permitted

606 (1) An accused who is called on to plead may plead guilty or not guilty, or the special pleas authorized by this Part and no others.

Conditions for accepting guilty plea

606 (1.1) A court may accept a plea of guilty only if it is satisfied that

(a) the accused is making the plea voluntarily;

- (b)** the accused understands
 - (i)** that the plea is an admission of the essential elements of the offence,
 - (ii)** the nature and consequences of the plea, and
 - (iii)** that the court is not bound by any agreement made between the accused and the prosecutor; and
- (c)** the facts support the charge.

[39] These provisions refer to offences enacted under an act of Parliament and pleas that may be entered in respect of such charges.

[40] As the ID found, in the context of an equivalency analysis, which calls for a determination of whether the essential elements of the offence in Canada are equivalent to the US offence and have been proven in the foreign proceeding, ss 6 and 606 are not relevant. I see no error in this finding. Section 606 of the *Criminal Code* does not aid in establishing the essential elements of “assault causing bodily harm”. Rather, as the ID found, this provision sets out the requirements for a guilty plea. Similarly, s 6 addresses the general presumption of innocence. Moreover, the pleas in this case were entered before the Virginia Court in accordance with its procedure, as will be discussed below.

[41] Similarly, it was not an error for the ID not to mention two documents in the Applicant’s disclosure, being the Report of the Attorney General’s Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions, dated 1993 and chaired by the Honourable G. Arthur Martin [Martin Report] and the 2018 Report of the Subcommittee of the Public Prosecution Service of Canada [PPSC Report], which included a chapter entitled “False Guilty

Pleas” [collectively, Reports]. While the Applicant argues that the Reports supplemented his statutory interpretation arguments concerning ss 265, 267, 606 and 6 of the *Criminal Code*, as I have found above, it was reasonable for the ID to find that a review of ss 6 and 606 were beyond the scope of the required equivalency analysis.

[42] The Applicant also asserts that the ID was required to justify why it chose not to approach an analysis under s 36(1)(b) of the *IRPA* in a manner similar to s 36(1)(a), the latter of which could involve a consideration of s 606 of the *Criminal Code* and whether a guilty plea ought to be struck if it was not unequivocal. Again, I am not persuaded. That the ID did not adopt the Applicant’s view and approach to s 36(1)(a) (concerning admissibility on grounds of serious criminality for permanent residents or foreign nationals having been convicted in Canada) in the same manner as s 36(1)(b) (concerning convictions outside Canada) is not a reviewable error. These provisions are distinct and because the Applicant was not convicted of an offence in Canada, s 36(1)(a) had no application. The ID was not obliged to justify why it was not adopting the Applicant’s view given that it had explained why a review of s 606 of the *Criminal Code* was unnecessary for its analysis.

[43] In my view, for these reasons, no error flows from the ID’s interpretation of s 267 of the *Criminal Code*. This finding is also related to the ID’s treatment of the Alford plea, discussed below.

iii. Did the ID Err in its Treatment of the Applicant's Alford Plea?

[44] The record contains a document entitled "Alford Plea of Guilty to a Felony" concerning the unlawful wounding charge. Among other things, the document reads:

3. I have received a copy of the warrant or indictment before being called upon to plead and have read and discussed it with my attorney and believe that I understand the charges against me in this case. I am the person named in the indictment. I have told my attorney all the facts and circumstances, as known to me, concerning the case against me. My attorney has discussed with me the nature and elements of the offense and has advised me as to any possible defences I might have in this case. I have had ample time to discuss the case and all possible defences with my attorney.

4. My attorney has advised me that the punishment which the law provides is as follows: A maximum of five years imprisonment (and a minimum of one year imprisonment) or, in the discretion of the Jury or the Judge sitting without a jury, up to twelve months in jail and a fine of not more than \$2,500, or both, also that probation may or not be granted; and that if I plead guilty to more than one offence, the Court may order the sentences to be served consecutively, that is, one after another.

[...]

5. I understand that I may, if I so choose, plead "Not Guilty" to any charge against me, and that if I do plead "Not Guilty", the constitution guarantees me (a) the right to a speedy and public trial by jury; (b) the process of the Court to compel the production of any evidence and attendance of witnesses in my behalf; (c) the right to have the assistance of a lawyer at all stages of the proceedings; (d) the right against self-incrimination; and (e) the right to confront and cross-examine all witnesses against me.

6. I understand that by pleading guilty pursuant to *Alford v. North Carolina* I waive my right to an appeal and that, while I am not admitting guilt, I do admit that the evidence against me is overwhelming and substantially negates any claim of innocence I may have and that the only issue to be decided by the Court is punishment.

7. The following plea agreement is submitted: The Commonwealth agrees not move to revoke the defendant's bond at sentencing plea. No agreement as to sentence.

[...]

10. After having discussed the matter with my attorney, **I do freely and voluntarily enter a plea of guilty pursuant to Alford v North Carolina to the offense of Unlawful Wounding** (VA Code §18.2-51, Criminal No. FE-2007-2227, Count I), and I waive my right to a trial by jury and request the Court to hear all matters of law and fact.

(emphasis added)

[45] The Alford plea is signed by the Applicant and includes a certificate of his counsel confirming that they explained the charges to the Applicant and “that the Defendant’s plea of guilty is voluntary and understandingly made.”

[46] A document with similar wording concerning the Applicant’s charge of grand larceny is also found in the record.

[47] It is apparent from these documents that an Alford plea, once entered, triggers a specific legal procedure, which essentially takes the form of a plea agreement. Namely, with the entering of an Alford plea, an accused admits that the evidence against them is “overwhelming and substantially negates any claim of innocence” that they waive their right to trial (at which the evidence would be tested) and the right to appeal the conviction. Once the Alford plea was accepted by the Virginia Court, the only matter left for its determination was sentencing.

[48] Indeed, as seen from the March 4, 2008, hearing transcript, the Alford plea was acknowledged by the Virginia Court. The Court asked the Commonwealth for a proffer of what its evidence would be if a trial were held on that day, which was provided. Counsel for the Applicant was asked if they had any comment on the proffer of evidence and responded that they accepted that the described evidence is what the Commonwealth's evidence would be at trial and made other comments which counsel advised would be presented at the sentencing hearing. The Court then canvassed with the Applicant the impact of the Alford pleas including stating that it "is a variation of a guilty plea and still has the same effect as a guilty plea" and ensuring that the Applicant understood that "the convictions which will result from the guilty pleas may cause [the Applicant] to be deported." The Court found that the "pleas of guilty have been made freely, intelligently and voluntarily, that you understand the nature of the charge against you and the consequences of your plea" and accepted the pleas. Based on the Commonwealth's proffer of evidence, the Court found the Applicant guilty as charged. The matter was then remitted for sentencing.

[49] The ID held that:

[26] The Alford plea is a procedural process in the United States. It is not facts or legal criteria that go toward establishing the elements of the offence either abroad or in Canada. Canadian jurisprudence establishes that what must be compared are the factual and legal criteria for establishing the offence both abroad and in Canada. It is not the ID's role to examine a foreign judicial system, contemplate an examination of the validity of the conviction abroad, apply the Charter to the foreign legal system, or examine whether the person concerned would have been convicted in Canada for the offence. The judicial process in a foreign country must not be subjected to finicky evaluations against the rules governing the legal process in this country. As such, it is not my role to examine the Alford plea and the factual matrix pertaining to it.

[50] The ID also stated that it was important to remember that the Virginia Court had decided the Applicant's criminal matter, he was convicted under *Virginia Code* §18.2-51 and, while he may continue to claim his innocence, it is not the role of the ID to retry the proceedings in the Virginia Court that led to his conviction or to examine the validity of that conviction.

[51] In my view, and as discussed above, the jurisprudence is clear that when an equivalency assessment is conducted, what must be compared are the factual and legal criteria for establishing the offence both abroad and in Canada. "It is not necessary to compare the adjectival law by which a conviction might or might not be entered in each country... the Act does not contemplate a retrial of the case applying Canadian rules of evidence. Nor does it contemplate an examination of the validity of the conviction abroad" (*Li*, at para 24; see also *Wang*, at para 18; *Halilaj*, at para 23; *Svecz*, at paras 21, 32).

[52] The ID properly considered the jurisprudence and, based on the evidence before it, reasonably found the Alford plea to be a procedural process. And, that it was not the role of the ID to look behind the conviction. In my view, the ID did not err in treating the Applicant's Alford plea as procedural (or adjectival) rather than substantive law and it justified its determination in that regard.

[53] Accordingly, the ID was not required to engage further with the Applicant's submissions on the Alford plea or to look behind his conviction.

[54] I acknowledge the Applicant's argument that the ID erred in law by refusing to apply the approach adopted in *Biro v Canada (Citizenship and Immigration)*, 2007 FC 776 [*Biro*] or, alternatively, by stating that it can have no application under any circumstances in admissibility proceedings. Further, regarding *Halilaj*, that the case does not amount to "a blanket prohibition of any and all examination of the process leading up to a conviction in a foreign jurisdiction" though it "does place serious constraints on any effort to do so". However, I do not agree with the Applicant.

[55] First, contrary to the Applicant's submission, the ID did not make a blanket prohibition. It simply set out the principles derived from *Li* and *Halilaj* and applied them. Second, the ID addressed *Biro* and correctly noted that in *Halilaj*, Justice McVeigh found that *Biro* is not the appropriate test regarding the fairness of other judicial systems and instead relied on *Li* as confirming that it is not the role of the ID to examine another country's judicial system and apply our *Charter* or our rules of procedural fairness (*Halilaj*, at para 30). The ID also distinguished *Biro* as it involved a judicial review of a decision of the Refugee Protection Division [RPD] where the applicant was excluded from the benefit of refugee protection pursuant to article 1(F)(b) of the Refugee Convention. While in that context the RPD was required to consider corruption or lack of due process in the foreign legal system, this did not apply in the context of an admissibility hearing under s 36(1)(b).

[56] In sum, with respect to its arguments as to *Biro*, *Halilaj* and *Li*, the Applicant's position is that there is no definitive ruling or statement in absolute terms that the ID cannot look behind a conviction in any circumstance. In my view, the jurisprudence is clear that it is not necessary to

compare the adjectival law by which a conviction might or might not be entered in each country. Further, it would be extraordinary for any court to make such an absolute finding. Cases are determined on their particular facts, just as the ID did in this case.

[57] The Applicant also submits that this Court has examined foreign convictions where evidence of torture has been provided and suggests that the ID should have done the same in this instance. In this regard, the Applicant refers to *Carmago v Canada (Public Safety and Emergency Preparedness)*, 2014 CanLII 99223 (CA IRB). However, that is not a decision of this Court – it is a decision of the Immigration and Refugee Board [IRB]. It found that any evidence obtained by torture was inadmissible evidence pursuant to s 269.1(4) of the *Criminal Code*. There, in support of its approach, the IRB stated that in *Sian v Canada (Citizenship and Immigration)*, 2003 FC 1022 [*Sian*], Justice O’Keefe “raised the possibility of applying paragraph 269.1(4) of the *Criminal Code* in cases where the evidence demonstrates that statements made to the police by the person concerned, forming the basis for the conviction abroad, were made by way of torture”. However, upon review of *Sian*, it is apparent that while the applicant in that case argued that the adjudicator was obligated to consider whether the statements made by the applicant to the police and resulted in his conviction were given under torture and that his conviction should therefore not be considered when assessing inadmissibility under s 19.(1) of the (then) *Immigration Act*, Justice O’Keefe found only that the adjudicator had failed to consider statements found in the applicant’s claim. Nothing further. In short, this case does not assist the Applicant.

[58] Finally, as to *Drake*, in that case the applicant argued that the Appeal Division made a decision based on an erroneous finding of fact when it found that he had confessed to the crime in question. He submitted that he had entered an Alford plea, which is not a confession. This Court held that s 27(1)(a.1)(ii) of the *Immigration Act*, RSC 1985, c I-2 (being similar to now s 36(1)(b) of the *IRPA*) only requires on a balance of probabilities that the person has committed an offence abroad. The applicant “entered an Alford plea because the risk of conviction was high, considering the evidence the prosecution had acquired. In [the Court’s] view, no error was committed in relying on the Alford plea to find that, on the balance of probabilities, Mr. Drake had committed the offence” (*Drake*, at para 18). That is the same approach taken by the ID in this case and the Applicant points to no subsequent law that has decided differently.

[59] Before leaving this point, I note that the main premise of the Applicant’s submission before me was that the Alford plea made in the US — by which a plea of guilty may be entered even if the accused maintains his innocence — has no equivalent in Canada. Thus, in Canada, his plea could be considered a “false guilty plea.” The Applicant submits that because of this, the essential elements of the offence were not proven in the US, and that this circumstance opened the door for the ID to look behind his conviction. As indicated above, I do not agree.

[60] First, the Applicant has not established that the Alford plea was not a matter of procedural law. The Applicant offers no jurisprudence that suggests that the ID erred in its categorization of the Alford plea. As to the distinction between procedural and substantive law, in *R v JG*, 2019 ONCJ 703, the court held that:

[16] In *R. v. Wildman*, the Supreme Court of Canada cited the following definition of substantive and procedural law:

Law is commonly divided into substantive law, which defines rights, duties and liabilities; and adjective law, which defines the procedure, pleading and proof by which the substantive law is applied in practice.

The rules of procedure regulate the general conduct of litigation; the object of pleading is to ascertain for the guidance of the parties and the court the material facts in issue in each particular case; proof is the establishment of such facts by proper legal means to the satisfaction of the court, and in this sense includes disproof. The first-mentioned term is, however, often used to include the other two. *Phipson on Evidence*, 13th ed., 1982, at p. 1

[17] Procedural law governs the conduction of actions – the methods by which facts are proven and legal consequences are established.

[61] Put otherwise: “Substantive law creates rights and obligations and is concerned with the ends which the administration of justice seeks to attain, whereas procedural law is the vehicle providing the means and instruments by which those ends are attained. It regulates the conduct of Courts and litigants in respect of the litigation itself whereas substantive law determines their conduct and relations in respect of the matters litigated” (*Horsefield v Economical Mutual Insurance Company*, 2017 ONSC 2080 at para 13).

[62] In my view, the ID did not err in determining that the Alford plea is procedural law and that it was not open to the ID on an equivalency analysis to look behind the conviction. The fact that a plea under Canada’s criminal procedure would not permit for an “equivocal” (Alford) plea, does not assist him. I would also observe that it is clear from the evidence that the Applicant was fully informed by his counsel and by the Virginia Court of the consequences of entering the Alford pleas and that he does not assert otherwise.

[63] Second, the Applicant argues that he is not questioning the validity of the conviction but that the ID must look behind it, given that he asserted his innocence. In my view, to look behind the conviction is to question its validity. In this regard, the Applicant asserts that the proffered evidence was not sufficient to establish his guilt. However, the Alford plea permitted this process of proof. He also argues that for a guilty plea to be valid in Canada, the accused must, among other things, understand that the plea is an admission of the essential elements of the offence. Again, however, whether the plea would have been accepted under Canadian law is not the issue. In essence, the Applicant seeks to have the ID retry the case against him based on his assertion of innocence. This was not open to the ID legally or practically.

[64] In sum on this point, the ID reasonably assessed the Alford plea as a procedural process and, accordingly, it was not required to factor it into its equivalency analysis.

iv. Did the ID Err in Preferring the Proffered Evidence Over the Applicant's Evidence at the Admissibility Hearing?

[65] The ID did not agree with the Applicant that there was a lack of evidence that could establish that he intended or committed any or all of the essential elements of assault causing bodily harm. Considering the evidence that was before the Virginia Court and that the Applicant was convicted and sentenced for unlawful wounding under *Virginia Code* §18.2-5-1, the ID found that there was sufficient evidence to establish the equivalency to assault causing bodily harm under s 267 of the *Criminal Code*.

[66] The ID described the evidence and explained why it afforded more weight to the Commonwealth's proffered evidence than to the Applicant's evidence submitted at the admissibility hearing. Its reasons were that: (i) the Virginia Court convicted the Applicant on the Commonwealth's proffered evidence while stating that the evidence of guilt substantially negated the Applicant's claim of innocence; (ii) the Virginia Court is an independent body with no particular interest in the Applicant's case; (iii) in the Alford plea the Applicant agreed that "while I am not admitting guilt, I do admit that the evidence against me is overwhelming and substantially negates any claim of innocence"; (iv) the testimony given at the admissibility hearing was inconsistent with the evidence that the Virginia Court accepted in deciding to convict the Applicant; and (v) the evidence at the admissibility hearing was inconsistent with a conviction under §18.2-51 of the *Virginia Code*.

[67] Having described the evidence, the ID noted that at the March 4, 2008 hearing, the Virginia Court found: (1) the evidence of guilt to be overwhelming, (2) the evidence of guilt substantially negates the Applicant's claim of innocence, and (3) the Applicant was guilty as charged based on the Commonwealth's proffer of evidence. It also noted that at the April 17, 2008 sentencing hearing, the Applicant's counsel called witnesses who testified about information received through K.P. and C.T. but, nevertheless, after hearing argument from both parties, the Virginia Court had sentenced the Applicant on the charge for which he was convicted (i.e. unlawful wounding). The ID stated that it was satisfied, on a reasonable grounds to believe standard, that the Virginia Court accepted the evidence of the Commonwealth given that the Virginia Court accepted the Applicant's plea and sentenced him.

[68] The ID also explained why the Applicant's evidence at the admissibility hearing resulted in the ID affording more weight to the Commonwealth's proffered evidence. First, the Applicant's evidence at the admissibility hearing was inconsistent with the evidence that the Virginia Court accepted (the Commonwealth's proffered evidence). The ID acknowledged that at the sentencing hearing, the Applicant put forward evidence and argued that he did not have a pellet gun. However, it noted that it was pursuant to the proffered evidence at the prior hearing that he had been convicted. The ID also recognized that the Applicant had not had a trial but found that it is likewise not its role to retry the information that led to his conviction pursuant to an Alford plea. The ID pointed out that in this case, it had the benefit of the Virginia Court transcripts and, therefore, the information that the Virginia Court had before it when deciding to convict the Applicant. Had the ID only the evidence from the admissibility hearing, then it may have been a different situation. Second, the ID found that the Applicant's evidence at the admissibility hearing was inconsistent with a conviction under §18.2-51 of the *Virginia Code*. More specifically, the ID found on a reasonable grounds to believe standard that the relevant section of the *Virginia Code* "requires something more than acting as a peacemaker by placing one's self between two fighting parties and spreading one's arms".

[69] Put differently, informed by the approach to equivalency outlined in *Hill*, the ID examined the evidence adduced before it at the admissibility hearing (including the Virginia Court transcripts and the Applicant's submissions) and determined, for the reasons it set out, that the Commonwealth's proffered evidence was preferable and was sufficient to establish the essential elements of s 267 of the *Criminal Code*.

[70] The Applicant argues that the ID's reasons "amount to saying that merely because the substantial evidence under oath differs from the evidence that the Court accepted and is inconsistent with the finding of guilt, they have no weight", making it "logically impossible" to provide evidence that would have greater weight than that proffered by the Commonwealth. However, the ID did not find that the Applicant's evidence had "no weight." Rather, it determined that the Commonwealth's proffered evidence had "more weight" for the reasons it set out. Further, the Applicant's argument glosses over the fact, emphasized by the ID in its reasons, that the Virginia Court *accepted* the Commonwealth's proffered evidence and convicted the Applicant based on that evidence.

[71] I also note that at his sentencing hearing, the Applicant tendered similar witness evidence and argument asserting his lack of a pellet gun and inadvertent role in the incident. There, his US counsel also reiterated that "the Alford plea was the appropriate resolution, and really this man is the one that the Alford plea is designed for because he didn't do what they said he did." However, the Applicant's sentencing evidence and submissions did not impact the conviction which, as the ID noted, was entered based on the Commonwealth's proffered evidence, and spoke only to sentencing. I also note that the sentencing hearing transcript also demonstrates that the Applicant's sentence was consistent with the sentences of two of the others involved. One received a two-year suspended sentence and the other received a five-year suspended sentence but was committed to the Department of Juvenile Justice until his 21st birthday. The Court noted that it had no evidence as to the third person involved, E.P.

[72] In sum, the Applicant has not persuaded me that in these circumstances, the ID erred in its weighing of the evidence.

[73] Finally, I note that the Applicant makes various other arguments which, in effect, invite the Court to look behind the conviction or otherwise question its validity. For example, the Applicant argues that the Commonwealth's proffered evidence "is simply a summary statement by the prosecutor of the evidence one single witness would purportedly give" and that no evidence was actually adduced. And, given that the standard of proof to convict in Virginia is proof beyond a reasonable doubt, as in Canada, the acceptance by the hearing judge "of a statement by a prosecutor is not equivalent to the proving of the elements of the offence beyond a reasonable doubt" where there has been an Alford plea entered. However, as I have found above, the case law is clear that for the purposes of equivalency analyses, the "judicial process in a foreign country must not be subjected to finicky evaluations against the rules governing the legal process in this country" (*Halilaj*, at para 30). The ID accepted the fact that a conviction was entered in the Virginia Court, based on the unchallenged proffered evidence, and it was entitled to conduct an equivalency analysis on that basis.

[74] The Applicant also takes issue with the ID's treatment of the transcripts from the Virginia proceedings, asserting that the ID provides no analysis and does not consider the arguments advanced by the Applicant, which arguments point to his innocence. He argues that the ID failed to identify and weigh statements in the transcript which, when supplemented by the admissibility hearing testimony, "clearly indicate that the Applicant was not admitting to nor acknowledging the essential elements of the offence of an unlawful assault with a weapon". I am not convinced

by this argument. The evidence that the Applicant asserts was overlooked concerns statements attesting to his innocence (i.e. that he was not the one in possession of the pellet gun involved in the incident, that he did not participate in the offence and that he was “at the wrong place at the wrong time”). However, the ID was aware that the Applicant maintained his innocence and acknowledged and addressed this in its reasons.

[75] The Applicant also argues that in the admissibility hearing, he made clear that he was challenging the Commonwealth’s proffered evidence of the one witness the Commonwealth proposed to call, were there to be a trial, as this individual (“K.P.”) was a “Vetrovec” witness (derived from *Vetrovec v The Queen*, [1982] 1 SCR 811 [*Vetrovec*]) who obtained a favourable deal in return for testifying against the Applicant. As such, the Commonwealth’s proffered evidence was “completely compromised” and there “was no corroborating evidence whatsoever”. He submits that this was not considered or commented on by the ID. However, the ID stated in its reasons that “[w]hether the Commonwealth’s theory is ‘untenable, unreliable and in several respects wrong or irremediably flawed,’ does not matter for the purposes of the equivalency; the foreign court entered a conviction on the Commonwealth’s proffered evidence.” In other words, the ID accepted the Virginia Court’s evidentiary finding, the proffered evidence upon which it based its conviction, and that this was sufficient to establish that the essential elements of the offence in Canada had been proven by that evidence. Thus, the ID reasonably refused to look behind the conviction as the Applicant would have preferred.

[76] I would add that there is no evidence that K.P. was, in fact, a cooperating witness. In addressing the absence of sentencing information with respect to the third co-accused, counsel

for the Commonwealth stated that “I would make the observation, and I guess this is speculation piled on speculation -- but if Paz was the cooperating witness and he's the one that allowed the Government to do the prosecution, it wouldn't surprise me if there was a little bit of bad feelings as well amongst the other members. I mean to come in and blame Paz for everything today is -- well, there are motives other than pure truth telling that I can imagine for that.” There is no evidence in the record that the witness received a favourable plea deal for cooperating.

[77] Further, *Vetrovec* is a Canadian decision concerning a trial judge's duty to warn a jury that it is dangerous to found a conviction on the evidence of an accomplice unless that evidence is corroborated in a material particular implicating the accused. The Supreme Court in that case also noted that common law doctrine in Canada and England requiring a special jury instruction for certain categories of witnesses has little counterpart in the US (*Vetrovec*, at pp 808). In essence, the Applicant seeks to essentially appeal, or challenge the validity of the Virginia conviction, based on Canadian jurisprudence that applies to jury trials, in a situation where there was no trial. Here, the Applicant agreed to the Alford plea and the Commonwealth's evidence was not contested prior to conviction. Appealing or challenging the validity of the conviction was not open to him on any basis at the admissibility hearing or before this Court. Similarly, his submission that an inquiry into this witness “is a matter of substantive law within the Canadian criminal law context” is a thinly veiled attempt to have the ID or this Court to re-try or look behind the Virginia Court's conviction.

[78] Finally, I agree with the Respondent that many of the Applicant's submissions more closely resemble an appeal of the conviction, or an effort to undermine the legal validity of the

Alford plea on the basis that no similar process exists in Canada and the fact that the Applicant maintains his innocence, than a response to the merits of the equivalency analysis. However, as the ID found, the Alford plea was a matter of procedural law and the conviction was entered in accordance with that process. It is not the role of the ID to contemplate a retrial of the case based on Canada's procedural law or rules of evidence, nor to question the conviction. As held in

Wang:

[18] I disagree with the Applicant. As set out in *Li v Canada (MCI)*, [1997] 1 FC 235 [“*Li*”], equivalency analysis does not require a consideration of whether the individual would have been convicted in Canada for the offence. *Li*, above, tells me that what is required is rather a comparison of the offence abroad to an offence in Canada in order to find the Canadian equivalent. It is not the role of the ID to look behind the conviction and begin to question it (see: *Svecz v Canada (MPSEP)*, 2016 FC 3 at para 39), but rather simply to transpose what transpired abroad into the Canadian legal context (*Bellevue v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 56 at para 33). The ID, in their analysis, engaged in a detailed comparison of the statutes, punishment, and elements of the given offenses, finding them to be “almost similar enough to find an equivalence” without any reference to the facts of the Chinese court. After reference to the facts as ascertained by the Chinese court, the ID found equivalence.

[79] That is what the ID did in this case.

Conclusion

[80] Beyond his arguments connected to the Alford plea and the evidence upon which the ID ultimately relied, the Applicant does not substantively challenge the equivalency analysis. For the reasons above, I conclude that the Applicant has failed to identify a reviewable error in the ID's reasons, which were transparent, intelligible and justified. The decision is reasonable.

Certified Question

[81] By letter to the Court dated April 9, 2025, amended by letter dated April 11, 2025, the Applicant proposed the following question for certification, pursuant to s 74(d) of the *IRPA*:

Where an Alford plea has been entered in a previous proceeding in a US (Virginia) court, is it essential for the Panel member and the Federal Court, under judicial review, to interpret s. 267 of the Criminal Code together with s. 6 and s. 606 of the Criminal Code and if so, is it essential that the Panel member examine the entire court record, including the transcript, to determine whether or not the essential elements of the offence have been established, given that under Canadian law, a conviction in the circumstances of an Alford plea is not in any way a valid conviction?

[82] The Respondent contests the certified question on the grounds that it is an improper question, and that the Applicant has failed to meet the test for certification.

[83] In *Tesfaye v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 2040, Justice Gascon provided a summary of the test for a certified question:

[76] According to paragraph 74(d) of the *IRPA*, a question can be certified by the Court if "a serious question of general importance is involved." To be certified, a question must be a serious one that: (i) is dispositive of the appeal; (ii) transcends the interests of the immediate parties to the litigation; and (iii) contemplate an issue of broad significance or general importance (*Mason* at para 37; *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 15-16 [*Mudrak*]; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9 [*Zhang*]). The question must also have been dealt with by the Court, and it must arise from the case rather than from the Court's reasons (*Obazughanmwun v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para 28 [*Obazughanmwun*]; *Mudrak* at para 16; *Zhang* at para 9; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA

145 at para 29). Finally, and as a corollary of the requirement that it be of general importance, it must not have been previously settled in an earlier appeal (*Obazughanmwun* at para 28; *Rrotaj v Canada (Citizenship and Immigration)* 2016 FCA 292 at para 6; *Mudrak* at para 36; *Krishan v Canada (Citizenship and Immigration)* 2018 FC 1203 at para 98; *Halilaj v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1062 at para 37).

(See also *Canada (Public Safety and Emergency Preparedness) v XY*, 2022 FCA 113, at para 7)

[84] Here the proposed question is premised on an assumption that “under Canadian law, a conviction in the circumstances of an Alford plea is not in any way a valid conviction”. This is based on the Applicant’s view that because only pleas of guilty or not guilty are accepted in Canada, the Alford plea is therefore a “false guilty plea” and, as such, could be rejected by a Canadian court. However, as discussed above, procedurally the Alford plea is a valid plea in Virginia where it was entered and where conviction resulted. And, the jurisprudence establishes that it is not the role of the ID or this Court to question the validity of the procedure of a foreign jurisdiction or to examine whether the person would have been convicted in Canada. To my mind, this invalidates the question.

[85] In any event, in my view, the proposed question for certification does not meet the test. This is because the ID’s decision did not turn on its determination that ss 606 and 6 of the *Criminal Code* were not relevant to the equivalency analysis required under s 36(1)(b) of the *IRPA* and therefore did not inform its interpretation of s 267 of the *Criminal Code*. The ID’s decision turned on its finding that the Alford plea was a matter of US procedural law. Similarly, this Court’s decision does not turn on whether the ID was required to interpret s 267 of the *Criminal Code* together with ss 606 and 6, but on whether the ID reasonably found that the

Alford plea is a matter of US procedural law. Thus, the proposed question is not dispositive of the appeal.

[86] For these reasons, I decline to certify the proposed question.

JUDGMENT IN IMM-7395-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. The Applicant's proposed certified question is dismissed.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7395-24

STYLE OF CAUSE: HOSH MOHAMED HOSH v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: APRIL 17, 2025

JUDGMENT AND REASONS: STRICKLAND J.

DATED: APRIL 29, 2025

APPEARANCES:

Rachael J. Anderson	FOR THE APPLICANT
Robert Normey	
Meenu Ahluwalia	FOR THE RESPONDENT

SOLICITORS OF RECORD:

RJA Law	FOR THE APPLICANT
Edmonton, Alberta	
Robert Normey Law	FOR THE APPLICANT
Enoch, Alberta	
Attorney General of Canada	FOR THE RESPONDENT
Calgary, Alberta	