

Date: 20071212

Docket: IMM-1446-07

Citation: 2007 FC 1303

Ottawa, Ontario, the 12th day of December 2007

Present: the Honourable Mr. Justice Blanchard

BETWEEN:

IONITA TIMIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review from a decision by the Immigration Division of the Immigration and Refugee Board (the panel) on March 21, 2007 by which it ordered that the applicant be deported as a person covered by paragraph 36(1)(c) of the *Immigration and Refugee Protection Act* (the IRPA) and under paragraph 229(1)(c) of the *Immigration and Refugee Protection Regulations* (IRPR).

II. Factual background

[2] The applicant was born in Romania on May 2, 1973 and is a citizen of that country. He is of the Pentecostal faith and comes from a family of nine brothers and sisters.

[3] The applicant maintained that he and his family could not practise their religion in peace, had difficulties finding work and were underpaid and insulted. For these reasons, he left Romania in 1994 to go and work in Yugoslavia. Three years later, when his visa expired, he was arrested and deported to Romania.

[4] The applicant explained that his family owned property that was returned to them following the 1989 revolution. This property was also claimed by two police officers, Groza and Mignea. These individuals harassed the applicant and his family.

[5] On his return to Romania the two police officers stopped the applicant, asked to see his identity card and ordered him to go with them to the police station. The applicant said he followed the instructions of the officers and was held for several days, beaten and sexually abused.

[6] The applicant was then convicted of acts that he did not commit. He was imprisoned from October 1997 to May 1999. However, his parents appealed the conviction and the applicant was acquitted by the Court of Appeal.

[7] Following his release, the two police officers harassed the applicant several times and threatened that they were going to [TRANSLATION] “put him in prison and [he would not be] able to get out”.

[8] On the night of August 15 to 16, 2002, the applicant’s brother Ilie and his cousin Danici Danut took part in a brawl outside a bar: they were convicted of criminal offences in Romania. Accordingly to his testimony, the applicant arrived on the scene of the brawl after it had begun and never took part in the attack. He said that after watching the brawl for about 15 minutes he grabbed his brother and cousin and got them into his car, and they left the scene.

[9] In August 2002, the applicant left Romania, travelling on an Italian work permit. In December 2002, he arrived in Canada and filed a protection application.

[10] On March 11, 2004, the applicant was sentenced *in absentia* in Romania to nine years in prison for an offence, namely [TRANSLATION] “attempted homicide in a public place”, as stipulated in sections 20 and 175(1)(i) of the *Romanian Penal Code (RPC)*, committed in the same incident which allegedly involved his brother and cousin on August 15-16, 2002. The applicant maintained that the conviction was trumped up by the police officers Groza and Mignea and was the result of their claim to the family property.

[11] Following the filing of a report (the report) pursuant to subsection 44(1) of the IRPA, the applicant was ruled inadmissible for serious criminality. The following information is contained in that report:

THIS REPORT IS BASED ON THE FOLLOWING
INFORMATION:

THAT IONITA TIMIS

-SUBJECT IS NOT A CANADIAN CITIZEN.
-SUBJECT IS NOT A PERMANENT RESIDENT OF CANADA.

CASE NO: 4131/ 2003
WARRANT NO: 57/ 2004

IN THE COURT HOUSE OF MARAMURES, IN ROMANIA, ON
JUNE 30TH 2004 A WARRANT WAS ISSUED FOR THE
SUBJECT IN REGARDS TO HIS

DOCUMENT NO: N907808650 NAME: IONITA TIMIS

INVOLVEMENT IN CHARGES OF ATTEMPTING TO
PERPETRATE THE CRIME OF HOMOCIDE IN A PUBLIC
PLACE. THIS OFFENCE IS DESCRIBED IN PARAGRAPHS
S.20 AND S.175(2)(I) OF THE CRIMINAL CODE OF ROMANIA.
THIS OFFENCE IS THE EQUIVALENT TO AN INDICTABLE
OFFENCE IN CANADA AS DESCRIBED IN ARTICLE 239 OF
THE CCC FOR ATTEMPT TO COMMIT MURDER, AND FOR
WHICH A TERM OF IMPRISONMENT FOR LIFE MAY BE
IMPOSED.

[12] The panel's record contains a translation of the said warrant No. 57/2004 (Warrant of Execution of the Term of Imprisonment No: 57/2004) (the warrant) issued by the Romanian court. This document, which is the basis of the report, sets out the convictions and the penalty imposed. I set out certain relevant passages from the warrant here:

Was sentenced to (sentence and the applicable sections of legislation):

- S. 180 par. 2 of the penal Code, pursuant to S. 75 par. 1, letter a of the Criminal Code, the criminal proceedings were stayed
pursuant to S. 11 par. 2 letter b, 20 letter h of the Code of penal procedure and S. 284 of the Code of penal procedure.
- S. 26 of the Penal Code, referenced to S. 20 of the penal Code (S. 175 par. 1 letter I of the Penal Code pursuant to S. 75 letter a of the Penal Code, following the change of legal applicability, according to S.334 of the Code of penal procedure, by adding these last legal provisions – **a term of imprisonment of 9 years and the prohibition of rights under S. 64 letter a, b of the Code of penal procedure for 4 years.**
Pursuant to S. 37 letter b of the Penal Code.

It was noted that:

During the night of 15/16 August 2002, together with the offenders Danci Danut and Timis Ilie, in the Borsa Complex, they attacked the guard Ciherean George, causing a head trauma with concussion requiring 50-55 days of medical care to heal. The same night, they hit the guard Scuturici Paramon, causing lesions that healed after 8-9 days of medical care. (Emphasis in translation of warrant.)

[13] The said report was referred to the panel for a hearing pursuant to subsection 44(2) of the IRPA. Following the hearing, the panel ordered the removal of the applicant pursuant to paragraph 229(1)(e) of the IRPR. The panel's decision is the subject of this judicial review.

III. Impugned decision

[14] The panel found that the applicant's testimony regarding his involvement with the police officers Grozia and Mignea was not credible. His testimony was described as [TRANSLATION] "hesitant" and he was said to have an [TRANSLATION] "evasive" look and seemed to be [TRANSLATION] "improvising". The panel also noted certain inconsistencies between the

applicant's testimony and the evidence in the record, characterizing this evidence as inconsistent with the Romanian judgment and the applicant's testimony at the hearing. The panel concluded that the applicant's story had no evidentiary value and there were reasonable grounds to believe that the applicant was present at the scene of the attack and took part, thus committing "an offence . . . that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least ten years".

[15] Based on the warrant, which the panel considered to be "persuasive and clear", it found that the applicant had been convicted of bodily harm pursuant to section 75(1)(a) and 180 of the RPC and of involvement in attempted homicide in public under sections 20, 26 and 175(1)(i) of the RPC. I note that according to the warrant the offence pursuant to sections 75(1)(a) and 180 of the RPC was stayed and no conviction registered under those sections.

[16] As to the equivalency between the offences in question in the RPC and the *Criminal Code*, R.S.C. 1985, c. C-46, the panel had this to say:

[TRANSLATION]

As to equivalency, I feel that section 180(2) of the Romanian Penal Code is equivalent to sections 265(1)(a), assault, and 267(b), causing bodily harm. The components in Romanian law, as in Canadian, are the use of force and violence and the existence of bodily injury or lesions. In the Canadian *Criminal Code*, there is no mention of the number of attackers, which implies inclusion of attacks committed by more than three attackers (75(1) Romanian Penal Code). Now, section 175(1)(i) of the Romanian Penal Code and section 222(1) Cr. C. are in my opinion equivalent. Although unlike the Canadian *Criminal Code* (s. 222(1)) the Romanian Penal Code contains no definition of homicide, the term is quite clear. In his arguments on *mens rea* in Canadian law, Mr. Cristinariu said

nothing about the Romanian counterpart, which is to be found in sections 17, 18 and 19 of the Romanian Penal Code, the question of intent is also an essential of Romanian criminal law. (Emphasis by member.)

IV. Issue

[17] The issue to be resolved in the case at bar may be summarized as follows:

- A. Did the panel err in its analysis of equivalency between the applicable sections of the *Romanian Penal Code* and the *Criminal Code*?

V. Standard of review

[18] A finding of inadmissibility for serious criminality depends on the findings of fact made by the panel. The panel must determine the facts giving rise to an offence committed abroad which, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least ten years. The analysis required certain conclusions regarding the foreign law, which the courts have consistently held have always been regarded as questions of fact. The point at issue, namely the equivalency of the offences in question, thus is a question of fact. The Federal Court of Appeal has indicated, in *Thanaratnam v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 122, that a decision of the panel on a question of equivalency should be considered in terms of patent unreasonableness. In *Lakhani v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 674, at paragraphs 20 and 23, my colleague

Michel Beaudry J. adopted this same standard of review in assessing a question of inadmissibility under section 36(1)(c) of the IRPA.

[19] In the case at bar, I will apply the standard of review of patent unreasonableness to the point at issue.

VI. Analysis

[20] The relevant sections of the legislative and regulatory provisions are set out in an appendix to these reasons.

[21] The applicant was found inadmissible pursuant to paragraph 36(1)(c) of the IRPA. That provision requires that it be shown that an offence was committed outside Canada which, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least ten years.

[22] The Act requires the Court to determine whether the two offences are equivalent. To do this, the essentials of each provision must be compared to see if they correspond. Although differences are to be expected in the language used to define offences in different countries, it is important to ensure that the essentials are the same.

[23] The judgments of the Federal Court of Appeal have established that equivalency may be determined in three ways:

- (1) by comparing the exact content of each statute both through the documents and, if possible, through the testimony of experts in the foreign law so as to identify the components of each offence;
- (2) by examining the evidence, both oral and written, to decide whether it is sufficient to establish that the components of the offence in Canada were proven in the foreign proceedings, whether in detail and in the same terms in the originating documents or in the legislative provisions;
- (3) by a combination of the two.

See: *Brannson v. Minister of Employment and Immigration*, [1981] 2 FC 141; (1980), 34 N.R. 411 (C.A.); *Hill v. Minister of Employment and Immigration* (1987), 73 N.R. 315 (F.C.A.); *Steward v. Canada (Minister of Employment and Immigration)*, [1988] 3 FC 487; (1988), 84 N.R. 236 (C.A.).

[24] In the case at bar, the applicant was ruled inadmissible for serious criminality following the filing of the report and based on the information contained in it. The report explained that the applicant was charged with attempted homicide in a public place contrary to sections 20 and 175 of the RPC and that this offence was equivalent to the offence mentioned at section 239 of the *Criminal Code*, namely attempted murder, which carried a penalty of life imprisonment.

[25] In its reasons for decision the panel cited the provisions on these two offences, but undertook no analysis of the specific language used in framing them. Additionally, the essentials of the offences in question were not identified by the panel and so were not compared to determine whether they were the same. The panel's analysis of the question of equivalency was limited

essentially to a statement by the panel that section 175(1)(i) of the RPC and section 222(1) of the *Criminal Code* were equivalent and [TRANSLATION] “that the element of intent was also an essential part of the Roumanian criminal law”. Section 222 of the *Criminal Code* is the provision dealing with homicide. Subsection 222(1) provides that “a person commits homicide when, directly or indirectly, by any means, he causes the death of a human being”. Section 222(4) of the *Criminal Code* states: “culpable homicide is murder or manslaughter or infanticide”. The panel did not undertake any discussion of section 239 of the *Criminal Code* in its analysis. That provision states:

Every person who attempts by any means to commit murder is guilty of an indictable offence and liable

(a) where a firearm is used in the commission of the offence, to imprisonment for life, and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

Quiconque, par quelque moyen, tente de commettre un meurtre est coupable d'un acte criminel passible :

a) s'il y a usage d'une arme à feu lors de la perpétration de l'infraction, de l'emprisonnement à perpétuité, la peine minimale étant de quatre ans;

b) dans les autres cas, de l'emprisonnement à perpétuité.

[26] The offence stated in section 239 was that used by the panel to justify its conclusion that the applicant was inadmissible, not section 222. In any event, the essential components of murder in the Romanian and Canadian offences were not identified and compared to determine whether they were the same. Further, the panel undertook no assessment of the evidence to decide whether it showed that the essential components of the offence in Canada had been proven in the foreign proceedings. There is no evidence in the record to show that the applicant

intended to commit murder in Romania, and *mens rea* is an essential component of the offence described in section 239 of the *Criminal Code*.

[27] In the case at bar, I conclude that the panel did not make an adequate review of equivalency as required by the case law cited above. The review of equivalency by the panel was incomplete and clearly insufficient. Consequently, its decision on inadmissibility for serious criminality must be set aside, as in the circumstances it is a reviewable error.

[28] I note that the panel undertook a more comprehensive review of the offences contained in sections 75(a) and 180 of the RPC and sections 265(1)(a) and 267(b) of the *Criminal Code*. Those offences deal with the infliction of bodily harm. I find that it undertook an adequate review of the equivalency of the offences, but those are not the offences which led to the applicant being inadmissible. The report based its conclusion on offences dealing with attempted homicide in Romania and the equivalent offence in the *Criminal Code*. The report is clear and specific on this point, despite the fact that warrant No. 57/2004 noted in the report mentions the offences set out in sections 75 and 180 of the RPC.

[29] A report pursuant to subsection 44(1) of the IRPA must necessarily specify the offence committed outside Canada and the equivalent offence under an Act of Parliament so that the person who is the subject of the inadmissibility order may be informed and may be able to present his arguments at the hearing. In the case at bar, the offence in question under the RPC is that dealing with attempted homicide. For that offence the panel's analysis of the question of equivalency, as indicated earlier in these reasons, is deficient.

VII. Conclusion

[30] I consider that the panel's decision ordering removal of the applicant on account of inadmissibility for serious criminality must be set aside. The review of equivalency by the panel is incomplete and clearly insufficient, which in the circumstances justifies the Court's intervention.

[31] For the reasons stated above, the application for judicial review will be allowed. The matter will be referred back for reconsideration by a panel of different members in accordance with these reasons.

[32] The parties did not suggest certification of any serious questions of general importance as contemplated by paragraph 74(d) of the IRPA. I am satisfied that no such question arises in the case at bar.

JUDGMENT

THE COURT ORDERS AND RULES that:

1. The application for judicial review is allowed;
2. The matter will be referred back for reconsideration by a panel of different members in accordance with these reasons;
3. No question is certified.

“Edmond P. Blanchard”

Judge

Certified true translation

Brian McCordick, Translator

APPENDIX

The Romanian *Criminal Code*

20. An attempt constitutes initiation of the execution decision to perpetrate the crime, execution which was interrupted or which did not produce any damage.

Attempt exists also in the case in which completion of the crime was not possible due to the insufficiency or failure of the means used, or due to the fact that the action was perpetrated without the presence of the object as expected by the perpetrator.

It is not attempt the case in which the impossibility of crime's completion is due to the manner in which the execution was conceived.

...

26. An accomplice is the person who deliberately facilitates or assists in any way in the perpetration of the action provided by the criminal law. Also, an accomplice is the person who promises, before or during the perpetration of the action, not to reveal the assets resulted from the crime or that this person will favor the criminal, even if after perpetration of the crime the promise is not fulfilled.

...

75. The following situations constitute aggravating circumstances:

- a) perpetration of the crime by three or more persons together;
- b) perpetration of the crime through cruel actions or through means and methods which present public threat;
- c) perpetration of the crime by an adult, if this crime was committed together with a juvenile;
- d) perpetration of the crime with mean purpose;
- e) perpetration of the crime under deliberate state of drunkenness in order to commit the crime;
- f) perpetration of the crime by a person who took advantage by the situation resulted after a calamity.

The court can retain as aggravating circumstances other situations, too, which give the action a serious character.

...

175. Homicide perpetrated under one of the following circumstances:
- a) with premeditation;
 - b) out of financial interest
 - c) against the husband/wife or a close relative;
 - d) advantage over the incapacity of the victim to defence;
 - e) by means which endanger more persons ' lives;
 - f) related to the victim's accomplishment of work or public duties;
 - g) in order to abscond or to abscond other person from investigation or arrest, or from the penalty's execution;
 - h) in order to facilitate or conceal the perpetration of another crime;
 - i) in public;
- is subject to imprisonment between 15 and 25 years and interdiction of certain rights.

The attempt is subject to penalty.

...

180. Injures or any other violent actions which cause physical pain are subject to imprisonment between one month and 3 months or with fine.

Injures or violent actions which caused medical care for recovery up to 20 days are punished with imprisonment between 3 months and 2 years or with fine.

The criminal action is initiated upon the prior complaint of the injured party.

The parties' reconciliation removes the criminal responsibility.

...

182. Any action which resulted into injures against the health and physical integrity which need more than 60 days of medical care for recovery, or which produced one of the following consequences: loss of a feeling or organ, cease of functioning of these, a permanent physical or mental infirmity, mutilation, abortion, or endanger of the person's life, is punished with imprisonment between 2 and 7 years.

When the action was perpetrated in order to produce the consequences mentioned in the preceding paragraph, the penalty consists in imprisonment between 3 and 10 years.

The attempt to the action mentioned in paragraph 2 is subject to penalty.

***Immigration and Refugee Protection Act/
Loi sur l'immigration et la protection des réfugiés***

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

- (a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;
- (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) committing an act outside Canada that is an offence in the place where it was committed and 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.

.....

44.(1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.

(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the

36.(1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

- a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;
- b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
- c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

.....

44.(1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.

(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements,

residency obligation under section 28 except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order;

d'un étranger; il peut alors prendre une mesure de renvoi.

(3) An officer or the Immigration Division may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer or the Division considers necessary on a permanent resident or a foreign national who is the subject of a report, an admissibility hearing or, being in Canada, a removal order.

(3) L'agent ou la Section de l'immigration peut imposer les conditions qu'il estime nécessaires, notamment la remise d'une garantie d'exécution, au résident permanent ou à l'étranger qui fait l'objet d'un rapport ou d'une enquête ou, étant au Canada, d'une mesure de renvoi.

***Immigration and Refugee Protection Regulations/
Règlement sur l'immigration et la protection des réfugiés***

229.(1) For the purposes of paragraph 45(d) of the Act, the applicable removal order to be made by the Immigration Division against a person is

229.(1) Pour l'application de l'alinéa 45d) de la Loi, la Section de l'immigration prend contre la personne la mesure de renvoi indiquée en regard du motif en cause :

.....

.....

(c) a deportation order, in the case of a permanent resident inadmissible under subsection 36(1) of the Act on grounds of serious criminality or a foreign national inadmissible under paragraph 36(1)(b) or (c) of the Act on grounds of serious criminality;

c) en cas d'interdiction de territoire pour grande criminalité du résident permanent au titre du paragraphe 36(1) de la Loi ou de l'étranger au titre des alinéas 36(1)b) ou c) de la Loi, l'expulsion

.....

.....

(e) a deportation order, if they are inadmissible under subsection 37(1) of the Act on grounds of organized criminality . . .

e) en cas d'interdiction de territoire pour criminalité organisée au titre du paragraphe 37(1) de la Loi, l'expulsion . . .

Criminal Code / Code criminel

- | | |
|---|---|
| 222.(1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being. | 222.(1) Commet un homicide quiconque, directement ou indirectement, par quelque moyen, cause la mort d'un être humain. |
| (2) Homicide is culpable or not culpable. | (2) L'homicide est coupable ou non coupable. |
| (3) Homicide that is not culpable is not an offence. | (3) L'homicide non coupable ne constitue pas une infraction. |
| (4) Culpable homicide is murder or manslaughter or infanticide. | (4) L'homicide coupable est le meurtre, l'homicide involontaire coupable ou l'infanticide. |
| (5) A person commits culpable homicide when he causes the death of a human being, | (5) Une personne commet un homicide coupable lorsqu'elle cause la mort d'un être humain : |
| (a) by means of an unlawful act, | a) soit au moyen d'un acte illégal; |
| (b) by criminal negligence, | b) soit par négligence criminelle; |
| (c) by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death, or | c) soit en portant cet être humain, par des menaces ou la crainte de quelque chose qui cause sa mort; |
| (d) by willfully frightening that human being, in the case of a child or sick person. | d) soit en effrayant volontairement cet être humain, dans le cas d'un enfant ou d'une personne malade. |
| (6) Notwithstanding anything in this section, a person does not commit homicide within the meaning of this Act by reason only that he causes the death of a human being by procuring, by false evidence, the conviction and death of that human being by sentence of the law. | (6) Nonobstant les autres disposition du présent article, une personne ne commet pas un homicide au sens de la présente loi, du seul fait qu'elle cause la mort d'un être humain en amenant, par de faux témoignages, la condamnation et la mort de cet être humain par sentence de la loi. |
| 224. Where a person, by an act or | 224. Lorsque, par un acte ou une omission, |

omission, does any thing that results in the death of a human being, he causes the death of that human being notwithstanding that death from that cause might have been prevented by resorting to proper means.

une personne fait une chose qui entraîne la mort d'un être humain, elle cause la mort de cet être humain, bien que la mort produite par cette cause eût pu être empêchée en recourant à des moyens appropriés.

239. Every person who attempts by any means to commit murder is guilty of an indictable offence and liable

239. Quiconque, par quelque moyen, tente de commettre un meurtre est coupable d'un acte criminel passible :

(a) where a firearm is used in the commission of the offence, to imprisonment for life, and to a minimum punishment of imprisonment for a term of four years; and

a) s'il y a usage d'une arme à feu lors de la perpétration de l'infraction, de l'emprisonnement à perpétuité, la peine minimale étant de quatre ans;

(b) in any other case, to imprisonment for life.

b) dans les autres cas, de l'emprisonnement à perpétuité.

.....

.....

265. A person commits an assault when

265. Commet des voies de fait, ou se livre à une attaque ou une agression, quiconque, selon le cas :

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

a) d'une manière intentionnelle, emploie la force, directement ou indirectement, contre une autre personne sans son consentement;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or

b) tente ou menace, par un acte ou un geste, d'employer la force contre une autre personne, s'il est en mesure actuelle, ou s'il porte cette personne à croire, pour des motifs raisonnables, qu'il est alors en mesure actuelle d'accomplir son dessein;

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

c) en portant ostensiblement une arme ou une imitation, aborde ou importune une

267. Every one who, in committing an assault,

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

(b) causes bodily harm to the complainant,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

autre personne ou mendie.

267. Est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois quiconque, en se livrant à des voies de fait, selon le cas :

a) porte, utilise ou menace d'utiliser une arme ou une imitation d'arme;

b) inflige des lésions corporelles au plaignant.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1446-07

STYLE OF CAUSE: IONITA TIMIS v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 23, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** the Honourable Mr. Justice Blanchard

DATED: December 12, 2007

APPEARANCES:

Lia Cristinariu FOR THE APPLICANT

Thi My Dung Tram FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lia Cristinariu FOR THE APPLICANT
Montréal, Quebec

John H. Sims FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec