

Federal Court of Appeal opens door to wider immigration analysis of foreign convictions

By **Sergio R. Karas**

Law360 Canada (May 21, 2026, 2:19 PM EDT) -- The Federal Court of Appeal (FCA) has clarified the scope of Canada's criminal inadmissibility regime, holding that immigration decision-makers may consider whether a foreign duress defence was effectively unavailable in practice, even if it was not raised at trial.

In *Rodriguez Anzola v. Canada (Citizenship and Immigration)*, 2026 FCA 90, the court allowed an appeal from a Federal Court Trial Division decision that had upheld a finding of serious criminality under s. 36(1)(b) of the *Immigration and Refugee Protection Act (IRPA)*. The case involved a Colombian national who had been convicted abroad for drug trafficking after acting under threats from the terrorist group FARC.



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Initially, the Immigration Division (ID) had found the applicant inadmissible, applying the traditional "equivalency" test, meaning that the foreign conviction would also be an offence in Canada, and declining to consider a duress defence that had not been raised in Colombia. Relying on *Beltran v. Canada (Citizenship and Immigration)*, (2012), 406 F.T.R. 145, the ID reasoned that it should not speculate about defences not pursued in the foreign proceedings. The Federal Court Trial Division agreed, finding the decision reasonable.

The Court of Appeal disagreed. Writing for a unanimous panel, Justice René LeBlanc held that the ID's approach was too rigid. While reaffirming that equivalency remains the governing framework, the court concluded that decision-makers are entitled to examine "extenuating circumstances" that may have rendered a legal defence — such as duress — practically unavailable in the foreign jurisdiction.

The court drew support from its earlier decision in *Canada (Public Safety and Emergency Preparedness) v. Gayam*, 2021 FCA 163, which recognized that duress may be relevant in inadmissibility determinations involving organized criminality. Extending that reasoning, the court held there is no principled basis to exclude such considerations in serious criminality cases under s.

36(1)(b).

Importantly, the court did not overturn *Beltran*, nor did it require the ID to conduct a full collateral review of foreign convictions. Rather, it emphasized that any consideration of duress must be grounded in cogent evidence showing that the defence, while legally available, could not realistically be advanced — for example, due to threats, coercion or systemic constraints.

On the facts, the applicant had presented evidence of sustained threats from the FARC, including violence and intimidation directed at her family. The court found that the ID failed to meaningfully engage with whether these circumstances affected the practical availability of a duress defence. This omission rendered the decision unreasonable.

The ruling also addressed procedural fairness, rejecting the argument that the ID's refusal to admit additional evidence constituted a breach. The court characterized that issue as one of relevance tied to the merits, not fairness. The appeal was allowed, and the matter remitted for redetermination.

The decision signals a modest but important shift in how inadmissibility cases may be assessed. While the equivalency test remains central, immigration tribunals now have clearer authority to consider the real-world constraints facing individuals prosecuted abroad. For practitioners, the case underscores the need to develop a detailed evidentiary record where duress or similar defences were not raised, but arguably could not be.

The Court of Appeal's decision introduces a refinement to the assessment of criminal inadmissibility under IRPA. While it preserves the primacy of the equivalency test, it confirms that immigration decision-makers are not confined to a purely formal comparison of offences. Instead, they may look beyond the record of conviction to assess whether fundamental criminal law defences — particularly duress — were realistically available in the foreign legal system.

This shift has practical consequences. First, it opens the door for applicants to challenge inadmissibility findings by adducing evidence about the conditions under which their foreign convictions were obtained, including coercion, threats or systemic barriers to raising a defence. Second, it places a corresponding obligation on the Immigration Division and Immigration Appeal Division to engage with that evidence where it is credible and material, rather than dismissing it as speculative.

At the same time, the decision carefully avoids transforming inadmissibility hearings into collateral attacks on foreign convictions. The court's emphasis on "practical unavailability" sets a high evidentiary threshold and signals that only exceptional cases will warrant this deeper inquiry. As a result, the ruling strikes a balance between maintaining the efficiency and integrity of the immigration system and ensuring that it does not operate in a manner divorced from the realities of coercion and constrained legal process in certain jurisdictions.

For counsel, the case underscores the importance of building a robust factual record, including country condition evidence and detailed accounts of the applicant's circumstances at the time of the offence and prosecution. For decision-makers, it signals a need for more nuanced reasoning when confronted with claims that a defence, though legally recognized, could not be meaningfully invoked.

Rodriguez Anzola marks a careful but significant evolution in Canadian immigration law. By recognizing that the availability of criminal defences must be assessed in practical, not merely theoretical, terms, the Federal Court of Appeal has introduced a measure of flexibility into the inadmissibility analysis without displacing its core principles. How this framework is applied in future cases will determine whether the decision remains a narrow exception or develops into a more influential tool for applicants facing the consequences of foreign convictions.

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