

Federal Court



Cour fédérale

**Date: 20171204**

**Docket: IMM-330-17**

**Citation: 2017 FC 1102**

**Ottawa, Ontario, December 4, 2017**

**PRESENT: THE CHIEF JUSTICE**

**BETWEEN:**

**KUMAR PRASAD DAHAL, DURGA DAHAL,  
AND DIWAS DAHAL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants are Nepalese citizens who claimed refugee protection in Canada. Their claims were primarily based on Mr. Kumar Dahal's fear of persecution in Nepal, due to his real and perceived political opinions and his membership in a particular social group, namely, the monarchist Rastriya Prajatantra Party [RPP]. That claim, together with the related claims of his spouse, Ms. Durga Dahal, and their minor son, Diwas Dahal, were rejected by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB].

[2] The Applicants' appeal of the RPD's decision was then dismissed by the Refugee Appeal Division [RAD] of the IRB.

[3] The Applicants submit that the RAD erred in its assessment of one of the three grounds of appeal that they had raised in respect of the RPD's treatment of their claims. That ground related to the RPD's analysis of a newspaper article that reported on an alleged attack against Ms. Dahal.

[4] In addition, the Applicants submit that the RAD erred in its treatment of several other issues that it addressed on its own initiative. Those issues concerned Mr. Dahal's delay of approximately two years before claiming refugee protection in this country, his reavilment to Nepal, a letter that he claims was written by a representative of the RPP, and his spouse's claim that Maoists recognized her in 2015 and gave her a threatening letter a few days later.

[5] For the reasons that follow, this application is dismissed.

#### I. Background

[6] Mr. Dahal and his spouse allege that they are members of the RPP and that his membership in that organization dates back to 1999, when he was a member of the RPP's student wing.

[7] Mr. Dahal asserts that in late 2007 and in April 2008 he was extorted by Maoists who visited his store and threatened him with severe consequences if he failed to comply with their

demands. He maintains that Maoists threatened him again during the 2008 general election campaign, when he took an active part in promoting the RPP. In addition, he asserts that he was extorted for a third time shortly afterwards, when he received a letter instructing him to present himself to the Maoists to explain his actions and to pay a fine of 500,000 Rupees. After refusing to comply with the letter, he claims that five armed Maoists visited his store in September 2008, attacked him and threatened to kill him if he betrayed them again or failed to comply with their future orders.

[8] As a result of the foregoing, Mr. Dahal states that he obtained a live-in-caregiver visa in Israel and left Nepal for that country in October 2008, leaving his spouse and their son in Bhaisepati, where his store was located.

[9] Mr. Dahal did not claim refugee status in Israel and he returned to Nepal on two occasions during the five-year period that he resided in that country. He made the first of those trips to visit his wife, who had been hospitalized with typhoid. He made the second trip to visit his family, before traveling to Canada on a work visa.

[10] Shortly thereafter, three members of the same Maoists group (the Young Communist League [YCL]) visited his home while he was absent and gave his spouse a letter requesting him to present himself at their office and to pay a fine of 1 million Rupees. The letter allegedly gave him a one week deadline to comply with those demands.

[11] Mr. Dahal then moved his family to the house of an RPP leader in Katmandu and departed for Canada shortly afterwards. The following day, his spouse and their son moved to Hetauda to live with her parents. She claims that after an earthquake destroyed her parents' home, she was spotted in May 2015 by Maoists who were helping victims of that catastrophe. Three days later, she was given a threatening letter, which was followed up with a visit by the Maoists to her relative's house, where she was staying. She claims to have been threatened, robbed and then "touched all over her body" before falling unconscious to the floor. She maintains that a short while later, the Headmaster at her son's school telephoned her to report that a stranger had called the school inquiring about her son. The following month, they obtained visas to come to Canada. They traveled here approximately two weeks later, in August 2015, and then applied for refugee protection soon after their arrival.

## II. The RPD's decision

[12] The RPD rejected their claims after making several adverse credibility findings with respect to both Mr. Dahal and Ms. Dahal. The RPD also found that several of the documents they had submitted were not genuine.

[13] In particular, the RPD drew negative inferences regarding Mr. Dahal's credibility, based on (i) his failure to claim asylum in Israel, (ii) his delay in claiming refugee protection in Canada, (iii) his active participation in the election campaign in Nepal in October 2013, during his second return trip to that country from Israel, and (iv) his failure to make any attempt to obtain corroboration of his claim that Maoists searched for him at his parents' home in December 2015. After making those adverse inferences, and certain other findings with respect

to documentation that Mr. Dahal had provided in support of his application, the RPD concluded that his claims had not been established on a balance of probabilities.

[14] The RPD then turned to Ms. Dahal's claims, which were based on the alleged robbery and assault that took place at her relatives' home in Hetauda, in May 2015. After finding that her testimony was "not spontaneous or detailed," and noting that she failed to provide important details regarding the alleged assault, the RPD drew a negative inference regarding her credibility. The RPD drew a further negative inference from the fact that she failed to provide any corroborating evidence from her mother, who she stated had witnessed the alleged assault.

[15] The RPD also raised a number of questions regarding a newspaper article that reported on the alleged assault, a letter from the Hetauda Hospital regarding her stay there following the assault, and two letters from the RPP.

[16] Ultimately, the RPD found that if the alleged robbery and assault had indeed taken place, it was likely at the hands of individuals who were exploiting the after-effects of the earthquake. Stated differently, the RPD found that Ms. Dahal had not established that she faced a serious risk of persecution at the hands of Maoists, on a forward-looking basis.

[17] In addition, the RPD identified concerns with respect to several documents provided by the Applicants in support of their application. In the course of discussing those documents, the RPD noted that Mr. Dahal had acknowledged in his testimony that he had exaggerated what had happened to him in his statements to the Police, who had then repeated his exaggerated claims in

their report. The RPD further noted that two separate medical reports had identical wording and the same spelling errors.

[18] Finally, the RPD placed no weight on a letter from the Headmaster at their son's school, which indicated that he had telephoned Ms. Dahal to inform her that a stranger had telephoned the school inquiring about their son.

### III. Decision under Review

[19] The Applicants raised three issues in their appeal to the RAD. In brief they claimed that the RPD erred by:

- i. concluding that Mr. Dahal's failure to claim refugee status in Israel was evidence of a lack of subjective fear of persecution in Nepal;
- ii. failing to find that the Headmaster's letter provided credible and trustworthy support for their claims with respect to the risks faced by their son; and
- iii. failing to find that the newspaper article that reported on the assault against Ms. Dahal provided credible and trustworthy support for her claim with respect to the risks she faces at the hands of Maoists in Nepal.

[20] The Applicants have not raised any issue before this Court with respect to the RAD's treatment of the first two of the above-mentioned grounds of appeal. Accordingly, I will not further discuss the RAD's treatment of those issues.

[21] The RAD rejected the Applicants' request for an oral hearing, based on the fact that no new evidence had been presented on their appeal. That decision was not challenged in the proceeding before this Court.

[22] With respect to the challenged newspaper article, the RAD considered that the inconsistencies between the details it provided and the evidence provided by the Applicants undermined the authenticity of the article as well as the credibility of the Applicants and of the incident itself.

[23] After dealing with the three grounds of appeal, the RAD briefly summarized the negative inferences drawn by the RPD (and discussed at paragraphs 13 and 14 above). In addition, it briefly summarized the findings made by the RPD in respect of certain documentation that it had found to be not genuine or reliable. After observing that the Applicants had made no allegations in respect of these negative inferences and findings, the RAD stated: "After reviewing all the evidence in the record, the RAD concurs with these findings."

[24] Based on all of the foregoing, the RAD concluded that the Applicants had not established that they face a serious possibility of persecution should they return to Nepal and that they had

not demonstrated on a balance of probabilities that they are persons in need of protection pursuant to section 97 of *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA].

IV. Issues

[25] The Applicants submit that the RAD erred in its analysis of:

- i. The news article that reported upon alleged robbery and assault of Ms. Dahal in May 2015;
- ii. The letter that Maoists allegedly gave to Ms. Dahal in May 2015;
- iii. A letter written by a representative of the RPP, indicating that the Applicants lived at his house in 2013, after receiving threats from the Maoists;
- iv. The failure of Mr. Dahal to claim refugee protection in Canada for approximately two years; and
- v. Mr. Dahal's reavilment to Nepal in October 2013.

[26] The Respondent maintains that only the first of the issues listed above is properly before this Court. The Respondent asserts that since the Applicants did not raise the other four issues in their appeal to the RAD [the **"Issues Not Appealed"**], they cannot now do so before this Court. It submits that this would constitute an impermissible collateral attack on the RAD's decision, and effectively permit applicants for judicial review to by-pass the RAD with respect to issues that they did not raise before the RAD. In the Respondent's view, this would be contrary to the statutory scheme.



[27] It appears that this particular issue has not previously been addressed by this Court.

[28] For the reasons set forth immediately below, I agree that only the first of the issues listed at paragraph 25 above is properly before this Court. In any event, I do not consider those issues to be appropriate subject matters for the exercise of discretion in favour of the Applicants in this Application (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, at paras 22-23 [*“Alberta Teachers”*]). Nothing turns on this, as I have in any event addressed each of the issues raised by the Applicants, and have found that the RAD’s decision was not unreasonable.

[29] The RAD’s jurisdiction is set forth in sections 110 and 111 of the IRPA. For the purposes of the present analysis, the relevant provisions are subsections 110(1), 111(1), and 111(2). They state as follows:

**Appeal to Refugee Appeal Division**

*Appeal*

**110 (1)** Subject to subsections (1.1) and (2), a person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person’s claim for refugee protection.

[...]

*Decision*

**Appel devant la Section d’appel des réfugiés**

*Appel*

**110 (1)** Sous réserve des paragraphes (1.1) et (2), la personne en cause et le ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d’appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d’asile.

[...]

*Décision*

**111 (1)** After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

- (a) confirm the determination of the Refugee Protection Division;
- (b) set aside the determination and substitute a determination that, in its opinion, should have been made; or
- (c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

*Referrals*

**(2)** The Refugee Appeal Division may make the referral described in paragraph (1)(c) only if it is of the opinion that

- (a) the decision of the Refugee Protection Division is wrong in law, in fact or in mixed law and fact; and
- (b) it cannot make a decision under paragraph 111(1)(a) or (b) without hearing evidence that was presented to the Refugee Protection Division.

**111 (1)** La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

*Renvoi*

**(2)** Elle ne peut procéder au renvoi que si elle estime, à la fois :

- a) que la décision attaquée de la Section de la protection des réfugiés est erronée en droit, en fait ou en droit et en fait;
- b) qu'elle ne peut confirmer la décision attaquée ou casser la décision et y substituer la décision qui aurait dû être rendue sans tenir une nouvelle audience en vue du réexamen des éléments de preuve qui ont été présentés à la Section de la protection des réfugiés.

[Emphasis added.]

[30] Pursuant to Rule 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257 [the “*Rules*”], an appellant’s record must include “a memorandum that includes full and detailed

submissions regarding: (i) the errors that are the grounds of the appeal, (ii) where the errors are located in the written reasons for the [RPD's] decision that the appellant is appealing or in the transcript or in any audio or other electronic recording of the [RPD's] hearing ...” In my view, this makes it clear that the RAD is required to focus on the specific errors that an appellant has alleged have been made by the RPD.

[31] Indeed, this would be consistent with the principle that the RAD should conduct “its own analysis of the record to determine whether, as submitted by the appellant, the RPD erred” (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, at para 103 [**“Huruglica”**], emphasis added).

[32] In any event, the RAD also has the jurisdiction to determine whether other errors have been made by the RPD. This is clear from Rule 57(1) of the *Rules*, which states:

<p><b>57 (1)</b> A hearing is restricted to matters relating to the issues provided with the notice to appear unless the Division considers that other issues have been raised by statements made by the person who is the subject of the appeal or by a witness during the hearing.</p>	<p><b>57 (1)</b> L’audience ne porte que sur les points relatifs aux questions transmises avec l’avis de convocation, à moins que la Section estime que les déclarations de la personne en cause ou d’un témoin faites à l’audience soulèvent d’autres questions.</p>
--	---

[33] An assessment by the RAD of whether such other errors have been made would be consistent with the legislative history pertaining to the creation of the RAD, which suggests that the RAD was intended to be a “safety net that would catch all mistakes made by the RPD, be it on the law or the facts” (*Huruglica*, above, at para 98).

[34] If the RAD conducts an assessment of whether the RPD may have committed additional errors not identified by an appellant, that aspect of the RAD's decision may be properly challenged before this Court where the RAD identifies an error on the part of the RPD and then takes one of the actions set forth in paragraphs 111(1)(a) – (c).

[35] However, where the RAD simply provides a brief summary of the RPD's findings regarding matters that were not raised on appeal, and then makes a general statement that it concurs with those findings, the situation is entirely different. In such circumstances, the errors alleged to have been made by the RAD are in essence errors that were allegedly made by the RPD. Where an applicant fails to raise an issue on appeal before the RAD in respect of those aspects of the RPD's decision, it should not be able to do so before this Court. To conclude otherwise would be to permit an applicant to, in effect, do an "end run" around the RAD. I agree with the Respondent that this would be contrary to the scheme set forth in the *Rules*.

[36] This is essentially what the RAD did in the decision that is under review in this Application. I recognize that in addition to making the general statement that it concurred with the RPD's findings, the RAD also observed that those findings were "thorough and based on the evidence." Nevertheless, the RAD's review of the RPD's treatment of matters that were not the subject of appeal simply consisted of a brief summary of the RPD's findings and a short expression of general concurrence with those findings, taken as a whole. In essence, what the RAD did was to briefly review the full record before the RPD, to ensure that it did not make any errors that were not identified by the Applicants.

[37] By simply satisfying itself that no such additional errors were made, the RAD's decision should not become vulnerable to being set aside on judicial review, based solely on its general concurrence with findings made by the RPD in respect of matters that were not raised on appeal by the Applicants. In my view, this would largely vitiate the purpose of Rule 3(3)(g) of the *Rules*, which requires an appellant to identify (i) the errors that are the grounds of the appeal, and (ii) where those errors are located in the RPD's decision, or in the transcript recording of its hearing.

[38] With one exception, the Applicants' submissions in relation to the four Issues Not Appealed are directed towards the RPD's analysis, which the RAD simply summarized, before simply stating that it concurred with the RPD's findings as a whole. In effect, given that the RAD did not engage in any supplementary analysis of its own in respect of those issues, the Applicants are essentially seeking judicial review of the RPD's decision in relation to those issues.

[39] However, considering that the Applicants did not raise any issue before the RAD regarding those aspects of the RPD's decision, they are not proper subjects of judicial review before this Court.

[40] In any event, even if the RAD's treatment of the four Issues Not Appealed may be construed as forming part of a single decision that is properly before this Court, I consider that, in the circumstances, it would not be appropriate to exercise the Court's jurisdiction to grant judicial review in respect of those issues (*Alberta Teachers*, above).

[41] The exception mentioned at paragraph 38 above concerned an error that the RAD made in summarizing the facts underpinning the RPD's analysis of a claim by Ms. Dahal that is further discussed at paragraphs 51 and 52 below.

V. Standard of Review

[42] It is common ground between the parties, and I agree, that the issues raised by the Applicants are reviewable on a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paras 51-53 [*Dunsmuir*]; *Abdulmaula v Canada (Citizenship and Immigration)*, 2017 FC 14, at para 8).

[43] In assessing the reasonableness of the RAD's decision, the Court must assess that decision as a whole (*Construction Labour Relations v Driver Iron Inc.*, 2012 SCC 65, at para 3; *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34, at para 54).

VI. Analysis

A. *Was the RAD's decision reasonable?*

- (1) The news article that reported upon alleged robbery and assault of Ms. Dahal in May 2015

[44] Ms. Dahal's claim for refugee protection is based on a single incident that she alleges occurred on May 31, 2015, shortly before her departure for Canada. In support of that allegation, she adduced a newspaper article that reported on that incident.

[45] In its decision, the RAD observed that many of the details reported on in the newspaper article were not consistent with the details of the incident provided by Mr. Dahal in his Basis of Claim [BOC] form narrative, and provided by Ms. Dahal in testimony at the RPD's hearing. The RAD concluded that those inconsistencies undermined the authenticity of the newspaper article, the credibility of Mr. Dahal and his spouse, and the credibility of the incident itself. The RAD added that "the lack of credibility [of Mr. Dahal and his spouse] in other areas and the prevalence of fraudulent documents in Nepal reinforce this finding."

[46] The Applicants submit that the RAD exaggerated the inconsistencies in question, and that they can be attributed to journalistic error. I disagree.

[47] The RAD did not identify the "many details" in the newspaper article that it considered to be inconsistent with statements made by Mr. Dahal in his BOC form, or by his spouse in her testimony. However, the RAD specifically referred to paragraph 40 of the RPD's reasons, which described two important inconsistencies. In particular, whereas the newspaper article stated that Ms. Dahal, her mother and her son were beaten by the Maoists during the attack, neither she nor her spouse made any mention of harm to their son or to Ms. Dahal's mother. Indeed, Ms. Dahal testified that no one other than herself had been injured. Moreover, whereas the newspaper article attributed statements to Ms. Dahal, the RPD noted that Ms. Dahal did not mention in her testimony that she had spoken to anyone in the press, and that this was not mentioned in the Applicants' written narrative.

[48] In my view, it was reasonably open to the RAD to find that those inconsistencies undermined the authenticity of the newspaper article submitted by Mr. Dahal and his spouse. When considered together with the Applicants' "lack of credibility in other areas" referenced by the RAD as reinforcing its finding, I find that the RAD's conclusion fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir*, above, at para 47). The finding of a lack of credibility in other areas was in part specifically based on the determination that Ms. Dahal's testimony regarding the incident was "vague and not spontaneous," and the fact that she did not provide any corroboration from her mother, who allegedly witnessed the incident.

(2) The letter that Maoists allegedly gave to Ms. Dahal in May 2015

[49] In addition to providing the newspaper article discussed immediately above, Ms. Dahal testified that the robbery and assault that she alleges took place on May 31, 2015 occurred after the Maoists recognized her earlier that month, when they were assisting earthquake victims. She stated that a few days later, the Maoists returned with a letter, addressed to her and Mr. Dahal. She maintains that the letter requested her and Mr. Dahal to appear at the Maoists' office as soon as possible, to provide an explanation of their failure to comply with the Maoists' prior orders.

[50] Given that the Applicants had not raised any issue with respect to this letter in their grounds of appeal, it was discussed only briefly by the RAD, when it summarized the RPD's "other findings." In the short summary that it provided on this point, it noted that the RPD had found the alleged circumstances in which the letter was given to Ms. Dahal to have been outside the realm of what could reasonably be expected. In this regard, the RAD summarized its



understanding that the Maoists, who had not seen Ms. Dahal since 2013, recognized her as having been the wife of the person they allegedly were after back in 2008, “at which point they gave her a letter addressed to both her and her husband, which they happened to have on them when they spotted her.”

[51] The RAD’s statement that the Maoists gave Ms. Dahal the letter as soon as they recognized her was inconsistent with the evidence in the record, which was that they returned with the letter a few days after spotting her in her tent. Taken in isolation, this was an error in respect of a material fact.

[52] However, the RAD’s affirmation of the RPD’s treatment of this specific claim by Ms. Dahal was simply made as part of a broader conclusion that it reached after briefly summarizing the numerous findings that the RPD had made in respect of matters that had not been challenged on appeal. That broader conclusion was reached after the RAD had reviewed “all of the evidence in the record,” which included the RPD’s accurate statement that the letter in question had been given to Ms. Dahal a few days after it had recognized her. Perhaps more importantly, the record included what the RAD reasonably characterized as having been numerous anomalies in the Applicants’ evidence, which provided the basis for its reasonable conclusion that Mr. Dahal and his spouse lacked credibility. Given those findings, the RAD’s determination that the material events described by the Applicants had not occurred as they had described them was not unreasonable. In my view, that conclusion was well “within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law” (*Dunsmuir*, above, at para 47).

- (3) The letter written by a representative of the RPP

[53] The Applicants also submit that it was unreasonable for the RAD to have attributed no weight to a letter from the RPP.

[54] In fact, there were two letters from the RPP. The RAD's treatment of those letters was confined to two brief sentences, which briefly summarized the RPD's assessment of the letters. Specifically, the RAD observed that the RPD had noted that neither of the two letters from the RPP had indicated how they acquired the knowledge of the matters that they described. Given the credibility concerns that the RPD had already identified in its decision, it placed no weight on those letters.

[55] The Applicants maintain that one of the letters did in fact describe how the author acquired knowledge of the matters about which he wrote. However, during the hearing of this Application, their counsel conceded that the two letters referenced by the RPD and the RAD were different from the letter that had been referenced in the Applicant's written submissions. Neither of those letters which were written by the same author, explained how he obtained his knowledge of the matters that he described.

[56] In the absence of any submissions concerning those letters, there is no basis for interfering with the RAD's treatment of them.

- (4) The failure of Mr. Dahal to claim refugee protection in Canada for approximately two years

[57] The Applicants submit that it was unreasonable for the RAD to find that Mr. Dahal's delay in claiming refugee protection after his arrival in Canada undermined his subjective fear and credibility. They maintain that he had valid status in Canada throughout the two-year period following his arrival here, and that therefore his failure to claim refugee protection here was not inconsistent with a subjective fear of returning to Nepal.

[58] I disagree.

[59] In its treatment of this issue, the RAD noted that the RPD rejected Mr. Dahal's explanation for his two-year delay in claiming protection in this country, namely, that he did not know much about the refugee process until after August 2015. As noted by the RAD, the RPD found that this was unreasonable, given Mr. Dahal's level of education, his demonstrated ability to obtain work permits in two countries, and discussions that he had had with various persons regarding how he could remain in Canada. The RAD further noted that, based on this, the RPD drew a negative inference regarding Mr. Dahal's credibility, and found that his delay in claiming refugee protection in Canada demonstrated a lack of subjective fear on his part. The RAD then implicitly concurred with this assessment, when it later expressed a general endorsement of several findings that had been made by the RPD.

[60] In my view, the reasons given by the RPD for finding that Mr. Dahal's delay in claiming refugee protection in this country demonstrated a lack of subjective fear on his part, reasonably supported that finding. Given that the RPD's analysis was simply endorsed, without further analysis, by the RAD, I am satisfied that it was not unreasonable for the RAD to have reached

that determination. I note that this Court has reached similar findings on numerous occasions (*Kostrzewa v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1449, at paras 26-27; *Niyonkuru v Canada (Minister of Citizenship and Immigration)*, 2005 FC 174, at paras 22-23).

(5) Mr. Dahal's reavilment to Nepal in October 2013

[61] Finally, the Applicants submit that the RAD erred in drawing a negative inference regarding Mr. Dahal's subjective fear of persecution in Nepal, based on his reavilment to that country in October 2013. He maintains that he wanted to visit his parents prior to moving to Canada, and that he assumed that the Maoists would not recognize him, given that approximately five years had passed since he last had trouble with them.

[62] I disagree.

[63] The RAD noted that the RPD had found that Mr. Dahal's public campaigning for the RPP during his visit to Nepal in October 2013 was not reasonable behaviour for someone who had previously fled that country based on a fear to his life at the hands of the Maoists. The RAD added that the RPD had drawn a negative inference regarding his credibility and his allegations that the Maoists were looking for him in Nepal. At the end of its decision, the RAD implicitly concurred with this finding, when it expressed general concurrence with several findings that had been made by the RPD.

[64] In my view, it was reasonably open to the RPD, and then the RAD, to find that Mr. Dahal's public campaigning for the RPP during his visit to Nepal, which included knocking

on random doors that the RAD and the RPD appropriately observed could belong to anyone, demonstrated a lack of subjective fear of persecution in Nepal. This is so notwithstanding that it had been approximately five years since his last encounter with the Maoists. If Mr. Dahal had truly feared for his life in that country, it is not unreasonable to expect that he would not have engaged in such behaviour. Indeed, “[a]bsent compelling reasons, people do not abandon safe havens to return to places where their personal safety is in jeopardy” (*Ortiz Garcia v Canada (Citizenship and Immigration)*, 2011 FC 1346, at para 8).

## VII. Conclusion

[65] For the reasons set forth above, this application is dismissed.

[66] At the conclusion of the hearing of this application, counsel to the parties stated that there was no serious question of general importance for certification under paragraph 74(d) of the IRPA. I agree.

**JUDGMENT**

**THIS COURT'S JUDGMENT** is that:

1. This application is dismissed.
2. There is no serious question of general importance for certification under paragraph 74(d) of the IRPA.

“Paul S. Crampton”

---

Chief Justice

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

**DOCKET:** IMM-330-17

**STYLE OF CAUSE:** KUMAR PRASAD DAHAL, DURGA DAHAL, AND  
DIWAS DAHAL v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 29, 2017

**JUDGMENT AND REASONS:** CRAMPTON C.J.

**DATED:** DECEMBER 4, 2017

**APPEARANCES:**

Dov Maierovitz FOR THE APPLICANTS

David Joseph FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Dov Maierovitz FOR THE APPLICANTS  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Ottawa, Ontario