

Federal Court



Cour fédérale

**Date: 20211124**

**Docket: IMM-4607-20**

**Citation: 2021 FC 1293**

**Ottawa, Ontario, November 24, 2021**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**BISHNU PRASAD KANDEL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered orally from the Bench by videoconference  
at Ottawa, Ontario on October 13, 2021)**

[1] This application is for judicial review of a decision of the Refugee Appeal Division [the RAD] dated September 4, 2020, in which it upheld a decision of the Refugee Protection Division [the RPD]. The RAD concluded that the Applicant is neither a Convention refugee nor a person in need of protection. The determinative issue before the RAD was the existence of an internal flight alternative [IFA] in Kathmandu, Nepal.

[2] The Applicant was born in Bihu Village in Nepal on February 2, 1973, and was raised in a middle class farming family. After graduating from high school, he began to support his mother by working on the family farm. In October 1993, the Applicant became a member of the Rastriya Prajatantra Party [the RPP], which was an opponent of the Communist, or Maoist, Party. In or about 1994, the Applicant was chosen to be a working committee member of the RPP in his village.

[3] In October 1995, the Applicant travelled to India to work as a kitchen helper at a restaurant in New Delhi. However, he continued to participate in the RPP through financial donations.

[4] The Applicant remained in India until he returned to Nepal to marry in February 1999. Shortly after the marriage, the Applicant was forced to pay 65,000 rupees to the Maoists. About 18 months later, he was extorted again and paid 45,000 rupees.

[5] In January of 2003, the Applicant travelled to Qatar to work as a cook. Three years later, he returned to Nepal and began to reside in Chitwan. Later, in 2006, the Applicant returned to Delhi to work at another restaurant and, in 2007, he took a job as a cook in Vietnam. He remained there until 2010.

[6] Meanwhile, in 2006, the Nepalese government and the Maoists signed a peace accord ending the civil war, which had started in 1996.

[7] The Applicant returned to Nepal in 2010 and began to work at a restaurant in Chitwan. In June 2010, a group of Maoists entered the restaurant and began to beat its owner. They demanded money. The Applicant recognized one of the Maoists as a resident of his hometown of Bihu Village. His name was Subedi. After this incident, the Applicant returned to Vietnam. Two years later, he briefly visited his family in Nepal and then he travelled to Canada. He worked in Canada until his Canadian work permit expired and he then returned to Nepal in November of 2015.

[8] In January of 2016, six people, including Subedi, barged into the Applicant's home in Chitwan and assaulted him at gunpoint. Subedi demanded 1,000,000 rupees. The Applicant offered to pay 300,000 rupees, which he had available in the bank. Subedi continued to demand the full amount. Eventually, Subedi agreed to take 100,000 rupees. Before leaving, the assailants threatened to kill the Applicant and his sons if he failed to pay the full amount.

[9] After this incident, the Applicant returned to Canada and his wife and sons moved to Kathmandu. Although his wife moved once in Kathmandu after she thought she recognized one of their attackers on the street, the family had no problems with the Maoists in their years in Kathmandu.

[10] A hearing was held before the RPD on May 2, 2018. It refused the Applicant's refugee claim on May 18 of that year.

I. THE RAD DECISION

[11] The RAD found that the Applicant had an IFA in Kathmandu. The RAD noted that Maoists targeting of individuals belonging to opposing political parties decreased dramatically with the end of armed conflict in 2006, and that kidnapping and extortion were no longer common. Further, extortionists usually targeted businesses and prominent government officials. The RAD found that the Applicant's profile did not suggest that he faced a serious possibility of persecution. He joined the RPP in 1993 and undertook some committee work until he left for India in 1995. Since then, his involvement has been limited to financial donations. The RAD concluded that the Applicant was never actively or prominently involved in the RPP and found that his work as a chef in foreign countries for many years did not place him at serious risk of persecution.

[12] The RAD also concluded that the Applicant failed to discharge his onus of substantiating his allegation that the Maoists could find him anywhere in Kathmandu, due to their organisational reach or network. It found his allegation to be only speculative because the documentary evidence did not show that the Maoists had a network with the capacity to track the Applicant.

[13] Further, the Applicant's wife and three sons, who had been living in Kathmandu since 2016, had not been harmed there, notwithstanding the Maoist's threat in 2016 to kill the Applicant and his sons if he failed to pay the full amount they demanded. The RAD found that Kathmandu is a city with 1.5 million inhabitants. It concluded that the Applicant is Hindu and

speaks Nepali, and that he therefore is a member of the majority religion and a speaker of the language of the majority. Since he has been successful finding employment as a chef in several countries, it was reasonable to expect that he could find similar employment in Kathmandu. Moreover, his wife and children have housing in Kathmandu. Finally, given that his family had not been threatened, and that he had been out of country for 16 years, the RAD found that it was reasonable for the Applicant to relocate to Kathmandu.

[14] The Applicant argued the following issues:

1. Was it unreasonable of the RAD to consider the fact that his family was safe in Kathmandu as a basis for finding that he would also be safe?
2. Was it unreasonable of the RAD to consider that the Maoists had no motive to look for the Applicant when he had failed to pay the balance of the amount requested in 2016?
3. Was it unreasonable of the RAD to conclude that the evidence of a Maoist network in Kathmandu was insufficient?
4. Was it unreasonable of the RAD to consider that there might be no state protection because the population was afraid to report Maoist activity to the police?

*Issue 1*

[15] In my view, given that the Applicant and his sons were threatened directly with death in the January 2016 extortion attempt, it was reasonable of the RAD to conclude in August of 2020 that the fact that they had not been attacked by Maoists in Kathmandu was a reasonableness

indicator of their safety in that location, especially given that a significant sum had never been paid.

*Issue 2*

[16] The RAD found no motivation on the part of the Maoists to look for the Applicant based on country condition documents which showed that people such as the Applicant, who were not politically active or prominent, were not Maoist targets.

[17] In view of the family's safety in Kathmandu, the RAD reasonably concluded, in my view, that the Applicant's failure many years ago to pay the full extortion amount no longer motivated the Maoists.

*Issue 3*

[18] I have also concluded that, the RAD reasonably found that the evidence of a Maoist network in Kathmandu was speculative because there was no current evidence about its strength, objectives, or effectiveness. The only potentially relevant document is a Response to Information Request, dated June 20, 2014. It describes a nationwide network of the Young Communist League [the YCL], but indicates that the YCL had split into two factions. There was no evidence about the impact of the split on the network, and no evidence about the strength, objectives, or activities of the network countrywide or in Kathmandu. As well, the Tarun Dal's national network was described as "mostly inactive".

*Issue 4*

[19] In deciding that Kathmandu was an acceptable IFA for the Applicant, the RAD concluded that there was no serious possibility of persecution in that city. In these circumstances, there was no need to consider whether the Applicant would chose to seek police protection should the need arise.

II. CERTIFICATION

[20] No question was posed for certification for appeal.

III. DECISION

[21] The application for judicial review will be dismissed.

**JUDGMENT IN IMM-4607-20**

**THIS COURT'S JUDGMENT is that** the judicial review application is hereby dismissed.

"Sandra J. Simpson"

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Judge



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

**DOCKET:** IMM-4607-20

**STYLE OF CAUSE:** BISHNU PRASAD KANDEL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE USING ZOOM

**DATE OF HEARING:** OCTOBER 13, 2021

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** NOVEMBER 24, 2021

**APPEARANCES:**

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