

Federal Court



Cour fédérale

Date: 20221122

Docket: IMM-6475-21

Citation: 2022 FC 1597

Ottawa, Ontario, November 22, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

KARAN BAHADUR PAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Pal, a citizen of Nepal, sought refugee protection. His claim was denied by the Refugee Protection Division, and his appeal to the Refugee Appeal Division [RAD] was dismissed. The RAD found that he had an internal flight alternative [IFA] in Biratnager, Nepal.

[2] The RAD found the Applicant to be credible. The Applicant was a member of the Nepali Congress Party [NCP], as was his father, who was killed by Maoists in 2001. In September

2006, the Applicant's brother requested an investigation into his father's killing. As advised by the NCP leader, the brother provided a copy of this application to the Maoist District office of the Communist Party of Nepal in Khalanga. After this, the Applicant and his brother began to receive threats from a village friend, Khadak, who later informed the Applicant that he had been appointed as the local leader in the Darachula District of the Biplav-led Maoist faction.

[3] The Applicant was asked to join the Young Communist League and he was threatened when he refused to do so. In November 2006, fearing for his safety, the Applicant fled to Kathmandu. Following this, he travelled to Qatar in January 2007 to work. The RAD noted that he had a history thereafter of working for cruise lines outside Nepal, returning for his mother's funeral, for his own wedding, and for the birth of his daughter but on each occasion, Khadak extorted money from him.

[4] It was also noted that he assisted the NCP to campaign during the 2017 elections in Nepal, and he was again threatened and extorted by the Maoists. The Maoists also assaulted him. Finally, after returning to Nepal in 2019, he was threatened and extorted again. The Applicant left the country for work and decided to come to Canada, where he arrived on May 27, 2019, and subsequently claimed refugee status.

[5] The Applicant alleges that, if returned to Nepal, he faces harm at the hands of the Biplav-Maoists.

[6] The RAD found that even if the Applicant is at risk from the Maoists elsewhere in Nepal, he has an IFA in Biratnager based on his profile, the concentration of Maoist attacks being outside Biratnager, and the absence of evidence that his agent of persecution could locate him there.

[7] When an IFA is proposed, the person seeking Canada's protection bears the burden of proving, on the balance of probabilities, that there is a serious possibility that he will be persecuted there or that in the circumstances it is unreasonable for him to seek refuge there: see *Morales Garcia v Canada (Citizenship and Immigration)*, 2022 FC 77 at para 4. The Applicant here did not challenge that it would be unreasonable for him to seek refuge in Biratnager, but argued that he would be at risk there. It is the RAD's contrary finding that he asserts is unreasonable.

[8] First, he submits that the RAD unreasonably found that he did not face a risk because he was a low-level member of the NCP, and that he was targeted because of his brother's application to investigate the father's death. He submits that the RAD overlooked that he and his family were targeted due to "his and his family's political identity of being a part of the NCP."

[9] The RAD specifically noted that both the Applicant and his father were involved in the NCP. The RAD reasonably found that the "initial impetus for the attacks" on the Applicant "appears" to be the request for an investigation into his father's death. Given the absence of any prior attack, that finding is reasonable and supported by the evidence.

[10] The Applicant says that he was targeted because of his and his family's political involvement. He made the same submission to the RAD but it was not accepted. Rather, it found that the motivation for the attacks was to extort money from the Applicant. Given that on each occasion he returned to Nepal after working on the cruise ships, the Maoists extorted money from him, that was a finding supported by the evidence and reasonably open to the RAD.

[11] Second, he submits that it was unreasonable for the RAD not to address the "numerous news articles" demonstrating attacks throughout Nepal by the Maoists, including the Eastern parts.

[12] I agree with the Respondent that the RAD did consider these articles. It specifically references two of the articles but found that the attacks were on persons whose profile was not one the Applicant shares. I further agree with the Respondent that what the Applicant is asking the Court to do is to weigh that evidence differently than the RAD did. That is not the Court's role on judicial review.

[13] Third, the Applicant submits that the RAD decision is unreasonable as it fails to explain how Khadak would be unable to locate him in Biratnager when he had "been able to track him down in Nepal every time he moved."

[14] Again, I agree with the Respondent that this submission exaggerates the facts. The Applicant had been extorted by Khadak each time he returned, but each time he returned first to or near his home village. The only other evidence is that he received a phone call from Khadak

when he was in Kathmandu, but there is no evidence that he had changed his phone number, and thus no evidence that he was tracked down.

[15] In short, the Court agrees with the Respondent that the decision of the RAD was reasonable and supported by the evidence.

[16] No question was posed for certification.

JUDGMENT in IMM-6475-21

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6475-21

STYLE OF CAUSE: KARAN BAHADUR PAL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 8, 2022

JUDGMENT AND REASONS: ZINN J.

DATED: NOVEMBER 22, 2022

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