

Federal Court



Cour fédérale

**Date: 20231018**

**Docket: IMM-4032-22**

**Citation: 2023 FC 1389**

**Ottawa, Ontario, October 18, 2023**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**KALYAN KUNWAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Kalyan Kunwar, sought refugee protection in Canada because he feared persecution by the Biplav Maoists due to his membership in the Rastriya Prajatantra Party (“RPP”) and his profile in Nepal as a well-known sporting coach. The Refugee Protection Division (“RPD”) dismissed Mr. Kunwar’s claim for protection, finding that his fear of persecution was not well-founded and that he also had an internal flight alternative (“IFA”). On

appeal, the Refugee Appeal Division (“RAD”) disagreed with the RPD’s findings on the well-foundedness of the claim but upheld the RPD’s IFA findings. The determinative issue for the RAD was the IFA.

[2] In this judicial review, Mr. Kunwar makes two principal arguments: i) the RAD erred in declining to admit some of his new evidence on the basis that it was not relevant to the issues on appeal; and ii) the RAD erred in its analysis of the agents of persecution’s means and motivation. Mr. Kunwar has not satisfied me that there is a basis for this Court to intervene on either of these two grounds. For the reasons set out below, I dismiss the application for judicial review.

## II. Issues and Standard of Review

[3] In reviewing the RAD’s reasons, I will be applying a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. None of the exceptions to the presumption of a reasonableness standard of review apply in this case.

## III. Analysis

### A. *New Evidence Relevance Determination*

[4] The legal test for the admission of new evidence at the RAD is set out in subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]:

**110(4)** On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

**110(4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[5] The RAD correctly noted this statutory requirement and explained that in addition to these constraints, the RAD considered whether the documents were new, relevant and credible as set out by the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 at paragraphs 38-49.

[6] The only criteria at issue on this judicial review is relevance, specifically the RAD's finding that articles post-dating the RPD's decision were irrelevant to the RAD's IFA determination and therefore not admitted.

[7] Mr. Kunwar argues first that the RAD made conflicting statements on this issue in finding that the articles were probative on country conditions but then ultimately irrelevant for the IFA determination. This is not an accurate reflection of the RAD's determination. The RAD noted that the Applicant argues that the articles were probative with respect to the worsening country conditions in Nepal; the probative comment was not the RAD's own finding about the documents.

[8] Further, I have considered Mr. Kunwar's claim in his written materials that the articles confirm that Biplav Maoists have a nationwide network, which was a key issue for the RAD and the RPD on IFA. I do not agree. None of the references made to the documents support this position. The RAD's decision to not admit the articles is well-supported and explained. I see no basis to interfere with the RAD's determination.

[9] In any event, given the nature of the information in the articles and the RAD's determination on the IFA, there is no basis for me to find that this could have affected the outcome in this case.

B. *IFA Finding*

[10] On judicial review, Mr. Kunwar focuses his challenge on the RAD's determination on the first prong of the IFA test, which considers whether he could safely relocate to the proposed IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706).

[11] The RAD, like the RPD, determined that the evidence in the record supported the view that the agents of persecution is not part of a nationwide network of Maoists. Further, the RAD, like the RPD, found that the evidence supported the view that the relationship among various Maoist groups in Nepal is "one of competition more than cooperation."

[12] Much of Mr. Kunwar's argument focuses on the claim that the RAD ignored evidence before them, particularly on the question of whether the agents of persecution had a nationwide

network. Mr. Kunwar does not point to anything specific in the record to show that the agents of persecution have a nationwide network or to anything in the record that otherwise contradicts the RAD's finding on this point. Based on the evidence in this record and the arguments before me, I do not find that Mr. Kunwar has identified a sufficiently serious shortcoming in the RAD's analysis.

[13] Mr. Kunwar also argues that the RAD did not sufficiently consider his argument that as a known sports coach, he would be easy to find in the proposed IFA. The RAD considered this argument and the evidence provided about Mr. Kunwar's notoriety in Kathmandu. The RAD found this evidence highly speculative and not a sufficient basis, given the nature of the evidence, to affect its finding on the agents of persecution's means or motivation to find Mr. Kunwar. No sufficiently serious shortcomings have been identified with respect to this analysis.

[14] The RAD made determinations that were reasonably open to it to make. The RAD explained its decision in a transparent, justified and intelligible way that was responsive to the submissions and evidence before it. I see no basis to interfere with its assessment.

[15] No question for certification was proposed and I agree none arises.

**JUDGMENT in IMM-4032-22**

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

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

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

**DOCKET:** IMM-4032-22

**STYLE OF CAUSE:** KALYAN KUNWAR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 18, 2023

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** OCTOBER 18, 2023

**APPEARANCES:**

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