

Federal Court



Cour fédérale

**Date: 20241001**

**Docket: IMM-10468-23**

**Citation: 2024 FC 1538**

**Toronto, Ontario, October 1, 2024**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**KAMAL KHAPTARI MAGAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] The Applicant is a citizen of Nepal. He claims to have been targeted by the Biplav faction of the Communist Party of Nepal-Maoist [CPN-Maoist or CPN-M], based on his political opinion. The Refugee Protection Division [RPD] of the Immigration and Refugee Board determined that the Applicant could safely relocate to Biratnagar, Nepal - and rejected his claim

for refugee protection on this basis. The Refugee Appeal Division [RAD] confirmed the decision. The Applicant now argues on judicial review that the RAD decision was unreasonable.

[2] For the reasons that follow, I will dismiss this application. The RAD's decision was supported by reasons that were justified, transparent, and intelligible and, as such, judicial intervention is not warranted.

## II. BACKGROUND

### A. *Facts*

[3] As noted above, the Applicant is a citizen of Nepal, and is a member of the ethnic Magar group. He alleges a well-founded fear of persecution from the Biplav-Maoist faction of the Communist Party of Nepal Maoist Party.

[4] The basis of the Applicant's claim is well-detailed in the record, but in brief, he alleges that he has long resisted, and been targeted by Maoist groups, dating back to his initial encounters with the People's Liberation Army [PLA] in the late 90's and early 2000's. In his Basis of Claim [BOC] narrative, the Applicant recounted his affiliation with the Nepali Congress party, and outlined numerous incidents with different Maoist groups, culminating in 2011 when he left the country for Dubai.

[5] The Applicant has returned to Nepal on five occasions, but has not lived in the country since this time. On one return to Nepal in 2016, the Applicant was visiting his wife and son in a town some 300 kilometers from his village. He claims that he was recognized by a member of

the Biplav faction, who accosted and robbed him. This event led the Applicant to conclude that he could not safely be in Nepal, and so he later obtained a work permit to Canada and initiated his claim for refugee protection.

B. *Procedural History*

[6] The procedural history in this matter is quite extensive. In brief, the Applicant's claim for refugee protection has "ping-ponged" back and forth between the RPD and the RAD three times. That is to say, on three occasions the RPD rejected the Applicant's claim, and on three occasions he appealed those decisions to the RAD. It was only on the last of these appeals that the RAD upheld the RPD decision, which has given rise to this application for judicial review. For the sake of brevity, I will only refer here to the final RPD and RAD decisions.

(1) Most Recent RPD Decision

[7] In its most recent consideration of the Applicant's claim, the RPD raised some preliminary concerns related to the Applicant's credibility, but ultimately found that, irrespective of these concerns, the Applicant had a viable internal flight alternative [IFA] in the city of Biratnagar, Nepal. It rejected the Applicant's claim on this basis, though it also found that the compelling reasons exception under s.108(4) of the *Immigration and Refugee Protection Act* [IRPA] did not apply to the Applicant.

(2) Most Recent RAD Decision

[8] The RAD dismissed the Applicant's appeal. In doing so, the RAD member acknowledged that, on the first prong of the IFA test, the RPD had failed to consider documentary evidence specifically regarding the Biplav-Maoists. The RAD then undertook a detailed assessment of the country conditions evidence specific to Biplav-Maoists, and determined that the Biplav faction does engage in extortion as part of its activities in rural areas. However, the RAD also found that Biplav is a fractured movement, with some splinter factions participating in Nepal's electoral processes, while others engage in acts of violence that mainly target government institutions. Further, those Biplav groups that do engage in violence target institutions and individuals believed to have interfered with Biplav-Maoist activities. As a result, the RAD concluded that the Biplav faction would not be motivated to target Mr. Magar in Biratnagar, because of his low political profile (affirming a finding of fact made by the RPD).

[9] The RAD also found that the RPD had not erred in its reliance on certain parts of the NDP, and it went on to independently assess other recent country conditions documents. Ultimately, the RAD concluded that the RPD was correct in finding that Maoists have generally been integrated into Nepal's democratic system.

[10] Additionally, the RAD upheld the RPD's finding that the passage of time since Mr. Magar's departure from Nepal had seriously weakened the Biplav-Maoists' motivation to pursue him to Biratnagar. The RAD noted in this regard that there is no evidence that the Applicant's family in Nepal has been targeted with violence since his departure in 2016.

[11] Finally, the RAD found that the Applicant provided no evidence to suggest that the Biplav-Maoists have the means to locate him in Biratnagar, and that he did not dispute the RPD's finding that the Biplav-Maoists do not have a comprehensive nationwide communications system.

[12] On the second prong, the RAD accepted that the RPD had not considered the cultural make-up, language, and religion of the proposed IFA location. However, on its own assessment of the evidence, the RAD concluded that Terai, where Biratnagar is located, is a region "characterized by ethnic, religious and linguistic diversity". The RAD further noted that while members of the Madhesi group face discrimination from Hindu elites, efforts to combat the discrimination have been pursued largely through political institutions, and there is little to no evidence of ethnic or religious violence between groups that would make Biratnagar an unsuitable IFA.

[13] Further, the RAD considered the Applicant's mention of a different Maoist splinter group that may be present in the IFA. The group, identified by the RAD as the Janatantrik Terai Mukti Morcha [JTMM], has split into multiple factions, some of which have disarmed and others of which are engaged in regular political processes. As a result, the RAD determined that it is unlikely that the JTMM will engage in violence or extortion and ransom activities that would put the Applicant at significant risk. In support of this, the RAD also noted that there has been no armed activity by the JTMM since August 2018.

[14] As a result of the foregoing, the RAD confirmed the RPD decision.

### III. ISSUES

[15] The only issue that arises on this application for judicial review is whether the RAD reasonably concluded that the Applicant has a viable internal flight alternative in Bitrangar, Nepal. The Applicant raises a number of arguments, all in respect of this issue, which I consider below.

### IV. STANDARD OF REVIEW

[16] The parties agree that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*].

[17] In conducting a reasonableness review, a court “must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a “rubber-stamping” process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

### V. LEGAL FRAMEWORK

[18] Refugee status is a “surrogate” form of protection available to individuals only when they cannot acquire protection in their country of origin. It follows that refugee protection is only provided when a claimant establishes that the risk they fear is not merely a local one, but one that they would face throughout their country.

[19] Where there is a safe internal alternative for an individual within their country of origin, refugee protection is not warranted. A viable internal flight alternative [IFA] is therefore determinative of a claim for refugee protection: *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA) at 710 [*Rasaratnam*]; *Calderon v Canada (Citizenship and Immigration)*, 2010 FC 263 at para 10.

[20] In *Rasaratnam and Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (C.A.), 1993 CanLII 3011 (FCA), the Federal Court of Appeal established a two-prong test to determine the existence of a viable IFA. In order for a proposed IFA to be considered reasonable, two criteria must be met:

- 1) There must be no serious possibility of the claimant being persecuted, or subject to a risk of torture, risk to life, or risk of cruel and unusual punishment in the part of the country where the IFA exists; and
- 2) It must not be unreasonable for the claimant to seek refuge in the IFA, considering all of their particular circumstances.

[21] More recent jurisprudence has established that a serious possibility of persecution in the IFA can only be established if it is demonstrated that the agents of persecution have both the means and motivation to target the claimant in the proposed IFA location: *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46, citing *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 43.

[22] On the second prong of the test, the jurisprudence has typically emphasized a high threshold for establishing the unreasonableness of an IFA location. In *Ranganathan v Canada (Minister of Citizenship and Immigration)* 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) at para 15 [*Ranganathan*], the Court of Appeal described this threshold as requiring “nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area.”

[23] Finally, once the issue of an IFA has been raised, together with a specific location identified, it is the refugee claimant who bears the onus of demonstrating that the IFA is either unsafe or unreasonable: *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21.

## VI. ANALYSIS

### A. *The RAD did not err in their assessment of the first prong of the IFA test*

#### (1) *Motivation*

[24] The RAD found that the Biplav faction would not have the motivation to pursue the Applicant, because of his low profile. It referred to documentary evidence indicating that the Biplav-Maoists only target individuals with sufficiently high political profiles, or those who are believed to have interfered with Biplav activities. Given the Applicant’s low political profile (as determined by the RPD), the RAD found that the Biplav-Maoists would not remain interested in him, and would therefore have no motivation to pursue him to the IFA location.



[25] While acknowledging that each matter must be decided on its own merits, I would note that this Court has upheld similar RAD findings in other cases. In both *Sharma v. Canada (Citizenship and Immigration)*, 2021 FC 545 and *Subedi v. Canada (Citizenship and Immigration)*, 2023 FC 452 the Court upheld tribunal decisions which had found that the applicants did not have the political profile to be targeted by Biplav-Maoists in Biratnagar.

[26] The Applicant argues that he has been targeted in the past specifically because he interfered with Maoist activities, citing the 2001 incident in which his family was accused of causing the arrest of CPN-Maoist cadres; his refusals to join the CPN-Maoist/Biplav party; and his refusals to pay fees to the CPN-Maoist/Biplav party. Thus, he argues, his profile is that of someone whom the Biplav faction would be motivated to pursue in Biratnagar.

[27] I disagree. While it is true that the Applicant was a long-time member of the Nepali Students' Union and acted as a campaign manager during one election cycle, as the RAD noted, he was only part of the Nepali Congress Party for one year before leaving to Dubai.

[28] The documentary evidence, as canvassed by the RAD, linked the Biplav faction to only one violent incident involving an individual: the 2020 murder of a schoolteacher believed to have been spying on the Biplav-Maoists. In my view, it was open to the RAD to conclude that that the Applicant lacked the kind of political profile that would motivate the Biplav faction to target him, or search for him in the IFA location.

[29] I would also note that many of the incidents described by the Applicant in his BOC narrative took place many years ago, and did not involve the Biplav-Maoists. This includes

letters that were sent to the Applicant in 2017, 2018, and 2022 from the Communist Party of Nepal-Central and Rupandehi Committees. The Applicant has emphasized the distinctions between the Biplav-Maoist faction and the CPN-Maoist party throughout these proceedings. This being the case, the incidents identified in the BOC narrative related to the CPCN-M do not appear particularly relevant to his claim of a forward-looking risk. As this Court held in *Sherpa v. Canada (Citizenship and Immigration)*, 2023 FC 1150 at para 9 [*Sherpa*],

When assessing the reasonableness of the decision, care must be taken not to rely, as the Applicant often does, on an assessment of any threat the Applicant may face in the IFA from organizations and persons aligned with organizations other than the Biplav Maoists... a possible risk... in the IFA from anyone other than the identified agent of persecution is not relevant to the IFA determination.

[30] In reviewing the RAD's decision in this matter, I find that it thoroughly considered the evidence before it – including several documents that the RPD had neglected to consider - and reasonably concluded that the Biplav-Maoists would not be motivated to target the Applicant in the IFA location. The Applicant's arguments in this regard are for the most part an invitation to re-weigh the evidence in his favour, which is not the role of a reviewing court on judicial review.

[31] Beyond the documentary evidence, however, the Applicant also submits that the RAD ignored evidence (found in the Applicant's testimony before the RPD) of the ongoing threats to his parents and his wife, as proof of the Biplav-Maoists' motivation to find him in Biratnagar. The RAD did not ignore the testimony related to Biplav visits to the Applicant's wife and family. On the contrary, it acknowledged them, but concluded as follows:

The fact is the Appellant has not been in Nepal since 2016, and there is no evidence the Biplav Maoists, whom the Appellant's wife asserts are looking for him in his home village of Belhariya,

have targeted the Appellant's family in Nepal with violence since that time.

[32] The Applicant submits that the RAD erred in acknowledging that the Biplav faction has continued to ask after him, while simultaneously finding that they lacked the motivation to find him. In the circumstances, it was reasonable for the RAD to conclude that the rather general information that individuals have come looking for him in locations where he had previously lived or where his family continues to live was insufficient to establish that the Biplav faction would be motivated to search for him in the IFA location.

(2) *Means*

[33] The RAD assessed the documentary evidence and found that the Biplav-Maoist faction does not have a comprehensive nationwide communications system and is rather a disparate set of local groups that concentrate on activities in their own local areas. As such, the RAD concluded that the Biplav-Maoist faction would not have the means to identify the Applicant in the IFA location. The Applicant submits that the evidence demonstrated that the Biplav have connections throughout the country, which the RAD failed to consider. I disagree.

[34] First, in identifying the reach of Maoist parties throughout Nepal, the Applicant again seems to conflate the Biplav-Maoist faction with other groups – which, ironically, he argues elsewhere was an error in the RAD's reasons.

[35] Second, the RAD thoroughly engaged with the documentary evidence to support its conclusion regarding the national scope of the Biplav-Maoist faction. Indeed, this Court has

upheld essentially identical findings in both *Subedi* (at para 58) and *Magar v Canada (Citizenship and Immigration)*, 2021 FC 1053 (at para 24). Once again, I find that the Applicant is requesting that this Court reweigh evidence that was thoroughly assessed by the RAD.

[36] The Applicant also submits that the RAD failed to properly address the fact that he was, in one instance, confronted by a Biplav cadre in Bhaktapur, which is some 300 kilometers from his hometown. While I accept that it would have been preferable for the RAD to have specifically considered this element of the Applicant's claim, I conclude for two principal reasons that this does not, on its own, render the RAD's decision unreasonable.

[37] First, the paragraph in the Applicant's BOC narrative that refers to this incident is not particularly specific and does not clearly set out whether the Biplav-Maoist cadre had tracked him to Bhaktapur, or whether this was a chance encounter. Second, while this incident does appear to have occurred in a new location, this in itself does not mean that the Biplav-Maoists would be able to locate the Applicant in Biratnagar.

[38] I also acknowledge that there was evidence in the record indicating that on one occasion the Biplav faction is thought to have murdered a schoolteacher in the Morang district, which includes Biratnagar. The RAD mentioned this incident in passing, but did not consider it in its analysis of the Biplav faction's means. It also would have been preferable for the RAD to have squarely confronted this evidence, but once again, I do not find this to be a fatal error in an otherwise detailed set of reasons. A brief reference to a single incident in the IFA location does not, on its own, establish that the RAD's conclusions on this issue were unreasonable.

[39] Finally, on this issue, and contrary to the submission of the Applicant, the RAD adequately considered the connections between the Biplav faction and other Maoist splinter groups. Indeed, while no particular splinter group was mentioned by the Applicant, the RAD surmised that it was a group known as the JTMM, and then proceeded to explain why this group did not pose a serious risk for the Applicant. There is nothing unreasonable in this conclusion.

B. *The RAD did not err in its assessment of the second prong of the IFA test*

[40] In considering the second prong of the IFA test, the RAD agreed with the Applicant that the RPD had erred in failing to consider cultural, linguistic and religious realities in the IFA location, together with the prevalence of discrimination. On its own assessment of these issues, the RAD concluded that it would not be unreasonable for the Applicant to relocate to Biratnagar.

[41] On judicial review, the Applicant argues that the RAD failed to consider important evidence documenting severe discrimination in the IFA location, and in so doing, it replicated the error it sought to correct. Once again, I disagree.

[42] In its analysis, the RAD cited extensively from the documentary evidence. This evidence outlined the demographic realities of the IFA region and documented long-existing tensions between groups such as the Madhesi and Pahadis, and others who have settled in the area. On my review of the RAD's analysis, I am not convinced that it ignored important evidence that ran contrary to its conclusions. The Applicant's arguments are general in nature and contain no specific references to documentary evidence that was overlooked by the RAD. Recall that the

onus was on the Applicant to demonstrate that the proposed IFA location would be unreasonable. It was reasonable for the RAD to conclude that the Applicant had not met this onus.

[43] The Applicant also argues that the RAD erred in failing to consider the economic situation in Nepal, as a reason why he would not reasonably be able to relocate to the IFA. While the RAD did not directly consider this issue, I see little merit to the argument. The Applicant's submissions on this issue are focused on the poor economy in Nepal generally, and are therefore of no tangible assistance to the Applicant in meeting his onus.

## VII. CONCLUSION

[44] I have concluded that the RAD reasonably confirmed the RPD decision that a viable internal flight alternative exists for the Applicant in Nepal. This decision was justified, intelligible, and transparent, and was the product of a rational chain of analysis. As such, I must dismiss this application for judicial review. The parties did not propose a question for certification and I agree that none arises.

**JUDGMENT in IMM-10468-23**

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

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

"Angus G. Grant"

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Judge

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

**DOCKET:** IMM-10468-22

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