

Federal Court



Cour fédérale

**Date: 20141010**

**Docket: IMM-3961-13**

**Citation: 2014 FC 969**

**Ottawa, Ontario, October 10, 2014**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**SAJISH KARMACHARYA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision dated December 17, 2012 of the Refugee Protection Division (the “RPD”) of the Immigration and Refugee Board of Canada. The

Board Member determined that Sajish Karmacharya (the “applicant”) was not a Convention refugee or a person in need of protection under sections 96 and 97 of *IRPA*.

[2] For the reasons that follow the application is dismissed.

## II. Facts

[3] The applicant is a 26 year old citizen of Nepal. He alleges that he fears that if he returns to Nepal he will be killed by the Unified Communist Party of Nepal (the “UCP”) or the youth wing of the UCP, the Young Communist League (the “YCL”), because he and his family were supporters of the Nepali Congress Party, a political group that opposes the UCP.

[4] In September 2008, the applicant joined the Nepal Tarun Dal, the youth wing of the Nepali Congress. While he was involved with the Nepal Tarun Dal, he faced numerous confrontations with the YCL. In June 2010, the applicant was involved in a confrontation with individuals whom he identified as members of the YCL. As a result of this confrontation, the applicant was beaten and required medical attention. He was told by his attackers that he had to quit the Nepal Tarun Dal and was released after agreeing to do so.

[5] Two days after that incident, the applicant left the Nepal Tarun Dal and ceased his political activities. In August 2010, the applicant entered Canada on a student visa, attending Mount Allison University in Sackville, New Brunswick in September 2010. He made no refugee claim at that time.

[6] In June 2011, the applicant returned to Nepal from Canada to visit his father who was suffering from a chest condition. He planned to return to Canada when classes at Mount Allison resumed in September 2011.

[7] Upon his return to Nepal in June 2011, the applicant “ran into” Ritesh Maharjan (“Ritesh”), a former classmate whom the applicant had reported for cheating on an exam in 2005. As a consequence of the applicant’s report, Ritesh’s scholarship was terminated and he was forced to drop out of school. The applicant had not had any contact with Ritesh since the exam incident, but when they met in June 2011, Ritesh asked the applicant when he had returned from Canada.

[8] A few days later, Ritesh came to the applicant’s home and invited the applicant to join him at a tea stall. The applicant accepted the invitation because he felt that it would be rude to refuse. When they arrived at the tea stall, they were met by three “muscular” men wearing red bandannas and Ritesh put on a red bandana as well. The applicant testified that this identified them as Maoists. Ritesh told the applicant that he was a Deputy YCL Area Commander and that the applicant had “gotten off too easily” by just quitting the NTD after he had “last angered the YCL.” They forced the claimant to sign a note of apology for being a member of the Nepal Tarun Dal. They presented the applicant with a “donation” letter from the YCL in Kathmandu requiring the applicant to make a donation to the YCL of Rs 500,000 under threat that he would suffer consequences that would “not be nice” if he failed to do so. The letter thanked him for his donation and support of the Maoist party.

[9] Unable to pay such a large amount of money, the applicant was given a grace period of 15 days to pay the men the Rs 500,000. He provided them with a “deposit” of Rs 50,000 and was released with the threat that if he failed to pay, they would follow up with his father and the applicant would be killed.

[10] After consulting with his friends and family and believing it no longer safe for him to remain in Nepal, the applicant returned to Canada on July 13, 2011 using his student visa. Upon his return to Canada, the applicant was too “upset” to continue with his studies at Mount Allison, instead applying for refugee protection on July 19, 2011.

[11] In an affidavit dated January 25, 2013 from the applicant’s father, after the applicant left Nepal, he learned that Ritesh was part of a new breakaway party of Maoists that splintered from the Unified Maoists. It appears that in September 2011, YCL members went to the applicant’s family home in Kathmandu to ask for payment of the monies previously demanded on behalf of the UCP. His father told the YCL members that the applicant was unable to pay because he had been in accident in Canada and asked for a six month extension. The YCL members agreed to a two month extension. Following this incident, the applicant’s parents moved from the family home, which they left in the care of a family friend. In late November 2011, the YCL returned to the applicant’s family home and were told that the applicant’s family no longer lived there. In December 14, 2012, the YCL went to the home of the applicant’s uncle and left a letter addressed to the applicant’s father demanding “financial support” of Rs 600,000.

[12] In January 2013, the applicant's father was approached by Ritesh and another YCL member. The applicant's father indicated that Ritesh told him that it "was not a question of money alone but rather of principles" and that the father had to be "taught a lesson" for protecting the applicant and evading payment. Ritesh and the other man then beat the applicant's father severely before he was eventually rescued by a group of neighbours, after which he went into hiding. Documents were entered into evidence that indicated that the applicant's father was treated at a hospital for "beating wounds" on January 3, 2011.

### III. Decision under Review

[13] The RPD determined that the applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of *IRPA*. It found that there were credibility issues with the applicant's story concerning the involvement of the "friend" Ritesh and other evidence on attempts to extort his father, important details of which were inconceivably omitted from his Personal Information Form.

[14] It also concluded that it was unlikely the UCP, which had gained power by democratic elections, would permit its members to extort citizens of the country using letterhead of one of its agencies and threatening harm if its demands were not met. It concluded that the extortion was carried out by one of the many armed groups in Nepal that are engaged in criminal activities unrelated to a political agenda and therefore not bearing any nexus to section 96 of *IRPA*.

[15] The panel further concluded that there was insufficient evidence to demonstrate a personalized risk by a group engaged in criminal activities that was not faced generally by other

individuals in the country. It also found that the applicant presented insufficient evidence to demonstrate why state protection was not available, or justifying his failure to seek police protection.

IV. Issues

[16] The applicant advances the following issues:

1. The panel made erroneous and plausibility findings not grounded in the evidence;
2. The panel erred in finding that there was no nexus under section 96 of the *IRPA*;
3. The panel erred in its assessments under section 97; and
4. The panel erred in assessing state protection.

V. Standard of Review

[17] In reviewing the Officer's consideration and treatment of evidence, the appropriate standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Y.Z. v Canada (Minister of Citizenship and Immigration)*, 2009 FC 749, 179 ACWS (3d) 898 at para 22).

[18] The Member's assessment of whether the applicant's risk is personalized or generalized is reviewable on a standard of reasonableness (*Olvera v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1048, 417 FTR 255 at para 28; *Samuel v Canada (Minister of Citizenship and Immigration)*, 2012 FC 973).

VI. Analysis

[19] Reading the decision as a whole, I find that while the Member did not accept the narrative around the involvement of Ritesh in the extortion. Nevertheless, the basis of the decision was that the extortion, if it occurred, was first the result of generalized criminal acts by a Maoist group for motives unrelated to political causes and that the applicant had not demonstrated that state protection was not available.

[20] I do not find it unreasonable for the panel to reject an inference from an event in 2005 involving an archenemy that unexpectedly came to life six years later with no evidence during the intervening period of time to supplement the version of events. There is considerable coincidence from an unexpected event that results in the applicant advancing a refugee claim that causes him to abandon his education upon returning to Canada, instead advancing a refugee claim.

[21] I also agree that in light of other credibility issues, the Board Member could find it highly unlikely that the applicant would meet with a person who obviously hated him for ending his education despite being a brilliant student. The applicant described Ritesh as an exceptional student and academic rival with high academic aspirations whose potential was squandered because the applicant had caught him cheating on an exam and reported the matter resulting in the termination of his scholarship and forcing him to drop out of school. After not hearing from him for six years, I think it is reasonable to conclude that it was unlikely that the applicant would agree to meet with him privately without knowing what the purpose of the meeting would be.

[22] Similarly, the panel's conclusion is reasonable to conclude that it was not plausible that the Nepal Communist Party and the Young Communist League would threaten extortion in writing "as per the policies of our Party" in what was drawn up as a donation letter. Extortion threats are not usually made in writing, particularly when the UCP was no longer employing intimidation tactics, being the largest party in a minority government and seeking to win over the voters in democratic elections to form a majority government.

[23] I also conclude that there is sufficient evidence for the panel to have decided that the extortionist was operating criminally and not in pursuit of any political agenda. The RPD was entitled to rely upon the country condition evidence indicating that monies were being extorted from the general Nepalese population by rogue Maoist organizations. In such circumstances, the panel could reasonably infer that any breakaway "political" body was operating criminally and contrary to the will of its former parent organization.

[24] The generalized nature of the extortion activities is supported by the reference in the extortion letter to the applicant's ability to pay, not to mention that it appears to be a "form" letter on the organization's letterhead, with the amounts demanded to be filled in on presentation of the demand.

[25] There is also the further complication that the original extortion was allegedly carried out by the YCL under the aegis of the UCP, while the affidavit evidence of the applicant's father and other documents indicate that Ritesh had joined a splinter group of Maoists who were in conflict with the original alleged perpetrators of the extortion. There is no evidence on the political



aspirations of this organization apart from a general mention of its existence in the father's evidence.

[26] In any event, the RPD was entitled to give little weight to the father's affidavit evidence recounting events that allegedly occurred after the applicant returned to Canada. The applicant failed to mention significant aspects of the evidence on his father in his PIF. In addition, the panel had no means to assess the reliability of the evidence made in writing, not subject to cross-examination, where there are obvious concerns about the affiant's parental bias, as well being a potential refugee.

[27] I also conclude that the panel member had sufficient evidence to conclude reasonably in rejecting the applicant's evidence that he was not afforded state protection, or that he had reasons to fear seeking police protection in Kathmandu. As noted, the political situation of the UCP had evolved between the alleged extortion in 2011 and the RPD hearing. Ritesh was now in conflict with the UCP as a member of a breakaway organization. There would be no reason to conclude that the UCP would not follow up on a complaint against one of these organizations, or that they could exert pressure on the police in Kathmandu not to do so.

[28] More importantly, the country condition evidence only includes vague references to inadequate police protection with regard to a tendency of the police not to respond to incidents involving Maoists. The applicant's arguments that the UCP was able to exert pressure throughout the country was not supported by evidence that this would apply to Kathmandu, where the

applicant resided. There was no evidence that he would be at risk if he went to the police upon his return.

[29] Accordingly, I judge the RPD's decision to be reasonable and sufficiently articulated as required by the precepts outlined in *Dunsmuir*. The application is dismissed. Neither counsel requested a certified question.

**JUDGMENT**

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

1. The application is dismissed.
2. No question is certified.

“Peter Annis”

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Judge

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

**DOCKET:** IMM-3961-13

**STYLE OF CAUSE:** SAJISH KARMACHARYA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 15, 2014

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** OCTOBER 10, 2014

**APPEARANCES:**

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