

Federal Court



Cour fédérale

Date: 20190215

Docket: IMM-1193-18

Citation: 2019 FC 195

Ottawa, Ontario, February 15, 2019

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

DIPAK BHANDARI and PUSHPA BHANDARI

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek review of the Refugee Protection Board (RPD) finding that they have a viable internal flight alternative (“IFA”) within their home country of Nepal. The RPD concluded that the male Applicant (“Applicant”) was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection*

Act, SC 2001, c 27. For the reasons that follow, this judicial review is dismissed as the RPD's finding that an IFA is available is reasonable.

Background

[2] The Applicant is a citizen of Nepal. In 2006, he joined the National Democratic Party (known as the RPP), which is a pro-monarchist party in Nepal. He went to India for work in November 2006 and then came to Canada on a work visa. He returned to Nepal in January 2010 and says he attended two pro-monarchist rallies in the Rupandehi district and claims that a group of Maoists attacked the second rally.

[3] He came back to Canada in April 2010 and returned to Nepal in October 2011. In December 2011, the Applicant says he attended a meeting organized by the local chapter of the RPP. On his way home from the meeting, he claims he was approached by a group of four youths, was physically assaulted, and forced at gunpoint to go to their offices. They demanded that he quit the RPP, join the Maoists, and pay 500,000 Nepalese rupees. The Applicant complied with these demands and agreed to pay the money within 10 days.

[4] After informing his family of this incident, the family decided not to report it to the police as they believed it would be pointless and dangerous. Instead, they left their village and moved to the capital City of Kathmandu.

[5] The Applicant returned to Canada on December 11, 2011.

[6] The Applicant's wife, who is the co-applicant to the claim, joined the Applicant in Canada in May 2012, after obtaining a visa. In August 2012, the Applicant was informed by his father that their remaining properties and belongings in their home village in Nepal were taken by local Maoist members who threatened to kill the Applicant and his family for not complying with their previous demands. Following this, the Applicant made a refugee claim.

Decision Under Review

[7] The RPD noted that the Applicant's parents have been living in Kathmandu since 2011 with no further problems with Maoists. Additionally, his parents travelled to Canada in 2015 for a six-month visit and returned to Kathmandu without incident.

[8] The IFA that was considered by the RPD was the large urban centre of Biratnagar with a population of approximately a quarter of a million people, and located over 500 kilometres from the Applicant's home village.

[9] The RPD considered the country condition evidence and the potential risks from Maoists in the village of Biratnagar. The RPD noted that there are a number of Maoist parties, factions and youth wings that are in competition with other each other and they sometimes engage in violence at the local level. However, the RPD determined that extortion by such groups are increasingly rare occurrences and are mainly perpetrated by members of the Baidya and Biplab factions, neither of which were established when the claimant left Nepal in December 2011. The

RPD considered documentary evidence stating that threats by Maoists do not pose significant problems and threats are localized.

[10] The RPD noted the two part test to be applied when considering an IFA is as outlined in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*]. First, that there must be no serious possibility of persecution in the part of the country where an IFA exists; and second, that the conditions in the IFA location must not be unreasonable considering the claimants particular circumstances.

[11] Based upon the evidence, the RPD concluded that the first prong of the IFA test was not met as there was insufficient persuasive evidence to establish that agents of a Maoist party faction would have the ability to reach across Nepal and acquire information about the Applicant should he return to Nepal. The RPD also noted that the Applicant lacked the profile of someone who would be pursued considering it was more than six years after the alleged incident. Accordingly, the risk of persecution was only a mere possibility.

[12] On the second prong of the IFA test, the RPD noted that the Applicant has 10 years of formal education and extensive experience as a chef that would allow him to find alternative employment and be able to support his family in Nepal. Further, the Applicant did not provide persuasive evidence to support an argument that relocation to Biratnagar is an unreasonable IFA.

[13] The RPD therefore determined that the Applicant would be able to safely resettle in Biratnagar with his wife and their daughter.

Issue

[14] The Applicants raise two issues which I will address as follows:

- Is the RPD finding of an IFA reasonable?
- Was there a breach of procedural fairness?

Standard of review

[15] The RPD's finding on the IFA is a factual finding for which the standard of review is reasonableness (*Trevino Zavala v Canada*, 2009 FC 370 at para 5). A reasonable decision is one that demonstrates "justification, transparency and intelligibility within the decision-making process" and falls within a range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[16] Any breach of procedural fairness is subject to a correctness review (*Mission Institution v Khela*, 2014 SCC 24 at para 79).

Analysis

Is the RPD finding of an IFA reasonable?

[17] The Applicant argues that the RPD's finding that the City of Biratnagar was a viable IFA is unreasonable. He argues that the RPD failed to properly consider the presence of Moaist

hardliners throughout Nepal which, in conjunction with the small size of Nepal, makes it impossible for the Applicant to be safe anywhere in Nepal.

[18] The RPD applied the *Rasaratnam* test to the Applicant's circumstances.

[19] On the risk of persecution prong of the test, the Applicant points to country condition evidence that the Biplab faction of the Maoist party is capable of locating targets at any location of the country given their size and network. He also points out that the Young Communist League, a youth wing of the Maoist party with potentially one million members, is very active and has strong networks throughout the country with known incidents of violence. Further, the country condition reports note instances of extortion and land capture all over Nepal. With respect to state protection, the Applicant highlights a report that Nepal has been largely incapable of providing security to its citizens and increasingly so in the aftermath of the 2015 earthquake.

[20] Although the RPD noted that the Baidya and Biplab groups were not in existence at the time of the threats to the Applicant in December 2011, the Applicant argues that these are in fact breakaway factions of the Maoists party and are thus actors of the agents of persecution that are targeting the Applicant.

[21] The *Rasaratnam* test was further refined in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) where the Court explained that, if claimants are able to seek safe refuge within their own country, there is no basis for finding that they are unable or unwilling to avail themselves of the protection of that country (at para 15).

Therefore, the onus of proof rests on the claimant to show that, on a balance of probabilities, there is a serious possibility of persecution throughout the country, including the identified IFA location.

[22] The evidence the Applicant seeks to rely upon to support his claim for fear of persecution is the country condition evidence. However, that alone is not sufficient to establish a well-founded fear of persecution. It is trite law that an applicant must also be able to establish with clear and convincing evidence that there is a subjective risk of harm or persecution. Here, there was no evidence that the Applicant himself (or his wife) would face risk in the City of Biratnagar as an IFA, nor was there evidence that his family who reside in Kathmandu had been targeted in any way.

[23] The Applicant's reliance on *Christopher v Canada (Minister of Citizenship and Immigration)*, 2005 FC 730 [*Christopher*] is misplaced. In *Christopher*, the RPD found that the claimants had a viable IFA in Colombo, Sri Lanka. However, on judicial review, the Federal Court quashed the RPD's finding, noting that a declaration of a ceasefire with the Liberation Tigers of Tamil Eelam did not necessarily mean that conditions of persecution had improved for the claimants. The circumstances in *Christopher* are unique and do not apply to the Applicant.

[24] The Applicant argues that he is at risk of persecution due to the lack of state protection. There is a presumption of state protection that exists but which can be rebutted with "clear and convincing evidence that the state is unable to provide protection" (*Viguera Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359 at paragraph 26). Here the Applicant did

not have any such evidence. The Applicant and his family never reported their interactions with Maoists to Nepali authorities, and thereby never sought out state protection. The Applicant merely relies on country condition evidence to support his argument that state protection is lacking, which is not sufficient to rebut this presumption.

[25] As for the second prong of the IFA test, the RPD considered the Applicant's circumstances and the reasonableness of his ability to seek refuge in Biratnagar. The RPD noted that the Applicant's education and employment history would allow him to find employment and be able to support his family elsewhere in Nepal. The Applicant did not provide any persuasive evidence to the contrary.

[26] The RPD applied the correct test and the correct analysis in reaching the IFA conclusion. Therefore, the RPD's conclusion regarding the existence of an IFA is reasonable and falls within the range of possible outcomes.

Was there a breach of procedural fairness?

[27] The Applicant argues that there was a breach of procedural fairness as he claims the RPD failed to consider all of the evidence. The arguments made by the Applicant in support of this issue are largely the same arguments as made regarding the reasonableness of the IFA conclusion as addressed above.

[28] A review of the RPD decision indicates that the RPD reasonably considered the evidence and applied the relevant country condition evidence to the Applicant's circumstances. The

Applicants obviously would have preferred an interpretation of the country condition evidence consistent with their submissions. However, the only question for this Court is if the RPD turned its mind to this evidence and reasonably applied it to the circumstances, which it did. It is not the role of this Court to reweigh the evidence (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

[29] In the circumstances, the Applicants have not established a breach of procedural fairness.

[30] I am therefore dismissing this judicial review.

JUDGMENT IN IMM-1193-18

THIS COURT'S JUDGMENT is that

1. This judicial review is dismissed; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1193-18
STYLE OF CAUSE: DIPAK BHANDARI ET AL v MIRC
PLACE OF HEARING: TORONTO, ONTARIO
DATE OF HEARING: DECEMBER 20, 2018
JUDGMENT AND REASONS: MCDONALD J.
DATED: FEBRUARY 15, 2019

APPEARANCES:

Keshab Prasad Dahal

FOR THE APPLICANT

Stephen Jarvis

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Keshab Prasad Dahal
Toronto, Ontario

FOR THE APPLICANT

Department of Justice
Toronto, Ontario

FOR THE RESPONDENT