

Federal Court



Cour fédérale

Date: 20230825

Docket: IMM-181-22

Citation: 2023 FC 1150

Ottawa, Ontario, August 25, 2023

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ANG DENDY SHERPA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a review of the decision of the Refugee Appeal Division [RAD] affirming the decision of the Refugee Protection Division [RPD] that the Applicant, Mr. Sherpa, is not a Convention refugee or a person in need of protection. For the reasons that follow, this application will be dismissed.

[2] Mr. Sherpa, a citizen of Nepal, alleged that he is at risk of persecution at the hands of the Biplav Maoists in Nepal. However, both the RPD and RAD found that he had a viable Internal Flight Alternative [IFA] in Biratnagar, Nepal. This finding excludes Mr. Sherpa from the definition of a Convention refugee (see *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 [*Rasaratnam*] at p. 710).

[3] The RAD decision is reviewable on the standard of reasonableness under *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Following paragraph 85 of *Vavilov*, “a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker.”

[4] Mr. Sherpa submits that the RAD’s decision confirming he has an IFA is unreasonable because that “determination is clearly inconsistent with the country documents and other evidences submitted by the applicant and the current jurisprudence.”

[5] In reviewing the RPD’s IFA finding, the RAD was required to be satisfied that 1) on a balance of probabilities, there was no serious possibility of the Applicant being persecuted in the IFA; and 2) it was not unreasonable for the Applicant to seek refuge in the IFA given all the circumstances (see *Rasaratnam* at p. 711).

[6] On the first prong, once an IFA is claimed, the burden is on the Applicant to establish that there is a serious possibility of his personal persecution in the IFA (see *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* , [1994] 1 FC 589 at p. 595).

[7] The RAD found “that the Appellant has failed to establish, on a balance of probabilities, that his agents of persecution have the means and motivation to locate him in Biratnagar, irrespective of his political profile.” Specifically, the RAD noted:

The Appellant has not challenged the RPD’s findings with respect to the inability of the Maoists to locate him in the IFA due to insufficient evidence of a nationwide network that has operational interconnectedness and effectiveness such that the groups would cooperate to have the ability to locate him in Biratnagar.

[8] In his memorandum of argument and during oral submissions, counsel for the Applicant often referred to the agent of persecution as the “Maoists/YCL” [Young Communist League]; however, the record indicates that there are various factions of Maoists and only the Biplav Maoists were found to be the Applicant’s agent of persecution. The YCL was not identified as an agent of persecution. As counsel for the Respondent noted, the record indicates that many of the Maoist factions have a youth wing, but it does not appear that the Biplav Maoists have one.

[9] 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. While the record does indicate, as noted by the Applicant’s counsel, that the various Maoist organizations commonly employ extortion as a means of funding their activities, a possible risk of extortion in the IFA from anyone other than the identified agent of persecution is not relevant to the IFA

determination. Notwithstanding counsel's impassioned plea, the Court was not pointed to any evidence in the certified tribunal record that establishes, or even suggests, that the Biplav Maoists are active in the IFA or have a network that would permit them to locate the Applicant there. The RAD's determination that the Applicant did not establish a serious possibility of persecution in the IFA from the agent of persecution was therefore justified in light of the evidence it had before it.

[10] The parties did not contest the reasonableness of the RAD's finding on the second prong of the IFA test. It notably has a very high threshold (see *Ohwofasa v Canada (Citizenship and Immigration)*, 2020 FC 266 at para 20).

[11] The RAD was thereby justified in deciding both that the Applicant did not discharge his burden of proof in respect to contesting the IFA finding and that it would not be unreasonable for the Applicant to seek refugee in Biratnagar.

[12] For these reasons, the Court is not persuaded that the decision under review is unreasonable. The application is dismissed.

[13] No question was proposed for certification.

JUDGMENT in IMM-181-22

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-181-22

STYLE OF CAUSE: ANG DENDY SHERPA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 23, 2023

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