Federal Court  Cour fédérale

Date: 20231013

Docket: IMM-1889-22

Citation: 2023 FC 1365

Ottawa, Ontario, October 13, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

PREM GURUNG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of Nepal. In July 2019, he sought refugee protection in Canada on the basis of his fear of a group known as the Biplav Maoists, a faction of the Communist Party of Nepal. The applicant alleged that he had been attacked and threatened by members of the group because he had spoken out against the group, including its forcible collection of "donations". According to the applicant, the most recent incident had occurred in Kathmandu in

July 2019, when he returned to Nepal after several years abroad and just days before he left for Canada. (The applicant had been granted a visitor visa for Canada in April 2019.)

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) heard the applicant's claim on May 27, 2021. It rejected the claim in a decision dated July 13, 2021. The RPD concluded that the applicant's allegations were not credible and, in any event, the applicant has a viable internal flight alternative (IFA) in two identified locations in Nepal.

[3] The applicant appealed the RPD's decision to the Refugee Appeal Division (RAD) of the IRB. He argued that the RPD erred in finding that his narrative was not credible and in finding that he has a viable IFA. The applicant also contended that the conduct of the RPD member gave rise to a reasonable apprehension of bias. In support of his appeal, the applicant sought the admission of several items of new evidence under subsection 110(3) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

[4] The RAD dismissed the appeal in a decision dated January 14, 2022. With one exception, the RAD refused to admit the new evidence because it was reasonably available to the applicant prior to the RPD's decision or simply repeated information already before the RPD. The RAD found that the applicant had not established a reasonable apprehension of bias on the part of the RPD member. The RAD also found that the RPD determined correctly that the applicant has a viable IFA, which was determinative of the appeal. Accordingly, the RAD

confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection.

[5] The applicant now applies for judicial review of the RAD's decision under subsection 72(1) of the *IRPA*. The sole ground for review he raises is that the RAD's IFA finding is unreasonable.

[6] The parties agree, as do I, that the RAD's decision should be reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[7] The test for an IFA is well-established. An IFA is a place in their country of nationality where a party seeking protection would not be at risk (in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the *IRPA*) and to which it would not be unreasonable for them to relocate. When there is a viable IFA, a claimant

is not entitled to protection from another country. To counter the proposition that they have a viable IFA, a party seeking protection has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in all the circumstances for them to relocate there. For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); and *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA).

[8] In my view, the RAD reasonably concluded that both elements of the IFA test were met.

[9] With respect to the first element, the RAD concluded that there was not a serious possibility of persecution within the meaning of section 96 of the *IRPA* or a risk under section 97 because the applicant had not established that the agents of persecution had the means to locate him in the proposed IFAs. While the agents of persecution had been able to locate him elsewhere in Nepal, the applicant had not established that they would be able to do so in the IFAs. This was a reasonable determination in light of the record before the RAD.

[10] Moreover, the RAD found that any motivation the agents of persecution may once have had to pursue the applicant was called into serious question by fact that, on March 4, 2021 – that is, after the applicant had left Nepal – the Biplav Maoists and the government of Nepal had entered into a peace agreement. Under that agreement, the criminal ban on the group was lifted and the group committed to carry out its political activities lawfully and peacefully.

[11] The RAD recognized that the applicant was sceptical about the peace agreement and that he remained fearful of the Biplav Maoists. This, however, was not sufficient to rebut the first part of the test. The applicant bore the onus of demonstrating that, despite the peace agreement, the agents of persecution still had the means and the motivation to pursue and persecute him. The RAD found that the applicant had failed to demonstrate this. Significantly, all of the incidents on which the applicant relied (whether involving himself or others targeted by the agents of persecution) pre-dated the peace agreement – in one instance, by some two decades. The RAD also reasonably observed: "The agreement was signed in March 2021, and it is now January 2022. I have not been provided with information to indicate that the peace agreement has not been successful." The applicant effectively asks me to reweigh the evidence and reach a different conclusion than the RAD on whether he would be safe in the proposed IFAs. As stated above, this is not the role of a court conducting judicial review on the reasonableness standard.

[12] Turing to the second element of the IFA test, the applicant submits that the RAD ignored or overlooked the hardship factors he raised before the RPD. Contrary to the applicant's submission, the RAD reviewed these factors in detail (see paragraphs 70 to 78 of the decision). The applicant does not suggest any other way in which the RAD's assessment of the second element of the test is unreasonable.

[13] In summary, the RAD's reasons explaining its conclusion that the applicant has a viable IFA are clear, intelligible, and justified in light of the applicable test and the record before the decision maker. The applicant has not established any basis to interfere with the RAD's decision.

[14] For these reasons, the application for judicial review will be dismissed.

[15] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-1889-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1889-22
STYLE OF CAUSE:	PREM GURUNG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 21, 2023
JUDGMENT AND REASONS:	NORRIS J.
DATED:	OCTOBER 13, 2023

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