

Federal Court



Cour fédérale

Date: 20240130

Docket: IMM-7312-22

Citation: 2024 FC 145

Ottawa, Ontario, January 30, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

PURNA BAHADUR GURUNG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Purna Bahadur Gurung (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), dismissing his appeal from a decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”).

[2] The Applicant is a citizen of Nepal. He sought protection under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”) on the basis of fear of persecution at the hands of Maoists on account of his political opinions.

[3] The RPD determined that an Internal Flight Alternative (“IFA”) is available to the Applicant in Biratnagar. The RAD confirmed this finding.

[4] The Applicant now argues that the RAD improperly made credibility findings about his failure to disclose a previous refusal for a U.S. Visa, his reason for returning to Nepal, his lack of knowledge of various Maoist factions and his failure to provide corroborative evidence to support his allegation that he was attacked in 2015.

[5] The Minister of Citizenship and Immigration (the “Respondent”) argues that the decision of the RAD is reasonable and that judicial intervention is unwarranted.

[6] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the RAD’s decision is reviewable on the standard of reasonableness.

[7] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra*, at paragraph 99.

[8] The RAD made credibility findings about the Applicant's evidence. It addressed the problems that were identified by Justice Pallotta in an earlier application for judicial review where she allowed the application and remitted the matter for re-determination by a differently constituted panel of the RAD. I refer to *Gurung v. Canada (Citizenship and Immigration)*, 2021 FC 1472.

[9] The RAD's negative credibility findings are supported by the evidence, particularly its conclusion rejecting the evidence about an attack by Maoists upon the Applicant in 2015.

[10] In light of its adverse credibility findings, the RAD was entitled to rule on the availability of an IFA on the basis of the evidence that it accepted.

[11] The two-part test for a viable IFA is addressed in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 at 710-711 (F.C.A.):

- First, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA.
- Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.

[12] On the basis of the materials submitted and arguments presented, I am satisfied that the RAD reasonably considered the evidence and reasonably concluded that an IFA is available to the Applicant.

[13] In the result, the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-7312-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7312-22

STYLE OF CAUSE: PURNA BAHADUR GURUNG v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 23, 2023

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JANUARY 30, 2024

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