

CANADA / JUDGMENT

TB9-21375

COURT

Refugee Appeal Division

DECIDED

9 January 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File / Dossier de la SAR: TB9-21375 TB9-21376 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision January 9, 2020 Date de la décision Panel J. Pollock Tribunal Counsel for the persons who are the subject of the appeal Keshab Prasad Dahal Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX (the Principal Appellant) and his wife, XXXX XXXX (the Associate Appellant), are citizens of Nepal. They appeal a decision of the Refugee Protection Division (RPD) rejecting their claims for refugee protection. The Appellants allege a fear of persecution from the Biplav (Biplab) Maoists upon return to Nepal based on the Principal Appellant's political opinion, as a member of the opposition Rastriya Prajatantra Party Nepal (RPP), also known as the National Democratic Party Nepal. The Appellants argue that the RPD erred when it found their claim is not objectively well-founded. Having independently assessed all of the evidence, including the RPD hearing audio-recording, I find that the RPD erred. I find that the Appellants' claim is well-founded and that they are Convention refugees. I have addressed why the RPD's findings are in error before providing my reasons for allowing the appeal and accepting the Appellants' claims.

DETERMINATION

- [2] The appeal is allowed. The Refugee Appeal Division (RAD) sets aside the determination of the RPD and substitutes its own determination that the Appellant is a Convention refugee.¹

BACKGROUND**The Appellant's allegations**

- [3] The Principal Appellant alleges that Maoists seized his family land in Sarlahi in 2005 as retribution for not cooperating with their cause. During the course of the civil war, the Principal Appellant alleges multiple acts of political persecution as a result of his RPP activities. As a result, he has lived for many years in Qatar as a temporary resident. After the Comprehensive Peace Accord (CPA) was signed in 2006, the Principal Appellant alleges that

he asked the local administration to facilitate the return of the family property. However, the Maoists refused. He alleges that due to his father's illness and his only brother's poor relationship with the family, he is in charge of ensuring the family land is returned.

- [4] In XXXX 2011, the Principal Appellant alleges that he was physically attacked by Maoists after he enquired about the return of his family's land. In XXXX 2018, the Appellants decided to return permanently to Nepal from Qatar following the promulgation of the new constitution. He alleges that the Biplav faction of the Maoists gained control of his family property. On XXXX XXXX, 2018, the Principal Appellant alleges that he was physically attacked and threatened by Biplav Maoists who told him that they are not just after him because of his demand for his family land but also because of his political opinion. Specifically, that as a member of the RPP, he supports the monarchy and hates the Maoists, peasants, and the poor.² They threatened to kill him if he does not fund and join their party. On XXXX XXXX XXXX 2018, the Principal Appellant was threatened again, this time in Kathmandu. On XXXX XXXX, 2018, the Appellants allege that they were threatened with death and physically attacked, resulting in the Associate Appellant's miscarriage. They fled Nepal for Canada on XXXX XXXX, 2018, initiating their refugee claims shortly after their arrival. The RPD's decision
- [5] The RPD notes that an inconsistency arose in the Principal Appellant's testimony regarding the reason for his visits to Nepal in 2011 and 2014, whether to care for his ailing father or for his marriage. However, the RPD does not make any adverse credibility findings with respect to the Appellants' allegations. The RPD found that the Appellants' claim is not objectively well-founded. Specifically, that the Appellants do not face a serious possibility of persecution upon return to Nepal if the Principal Appellant discontinues his quest to reclaim his family land. The RPD also found that the Biplav Maoists pose a "generalized risk" and that the Principal Appellant's political profile would not make him a prime target for the Biplav Maoists.³ ROLE OF THE RAD
- [6] I have conducted an independent assessment of the evidence. I am reviewing the RPD's decision on the correctness standard as I do not find the RPD enjoyed a meaningful advantage.⁴ NO NEW EVIDENCE AND NO JURISDICTION TO HOLD AN ORAL HEARING
- [7] The Appellants have not submitted new evidence in support of their appeal. Having admitted no new evidence, the RAD has no jurisdiction to convene an oral hearing.⁵

ANALYSIS

The Appellants' claim against Nepal is well-founded

- [8] The RPD found that the Appellants' claim is not objectively well-founded. Counsel argues that this finding was made without assessing the totality of the evidence. I agree. After listening to the RPD hearing audio-recording and independently assessing all of the evidence, I find that the RPD erred. The RPD erred in assessing the Principal Appellant's claim
- [9] The RPD found that the persecution arose as a punitive measure for the Principal Appellant's efforts to reclaim his family land. As a result, the RPD found that the Appellants could safely return to Nepal should the Principal Appellant discontinue his quest to reclaim his family land. Generally speaking, "[C]laimants who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options."⁶ In this context, it is not an error for the RPD to expect a Claimant to abandon their claim to property in order to avoid persecution in their country of nationality.⁷ However, this principle only applies where a Claimant is not being required to compromise either who they are or a fundamental belief.⁸ For the following reasons, I find that the RPD erred in applying this principle in the Appellants' claim.
- [10] In the instant case, the Principal Appellant's political opinion is directly engaged. The Principal Appellant alleges that the Biplav Maoists explicitly told him that they continue to target him because he is a member of the RPP who supports the monarchy and hates the Maoists, peasants, and the poor. The RPD does not impugn the credibility of this allegation. It is not the case that the agents of persecution are only interested in the Principal Appellant because of his attempts to reclaim his family land. As such, it is not clear that abandoning the property claim would enable the Appellants to return to Nepal without facing a serious possibility of persecution. The RPD's finding is in error.
- [11] The RPD also found that the Principal Appellant's profile would not entice his agents of persecution to force him to join their organization and notes that his political profile would not make him a prime target for the Biplav Maoists.⁹ The RPD does not refer to any objective evidence in support of this finding. It is unclear upon what basis the RPD found that the Principal Appellant's political opinion and profile would not place him and the Associate Appellant at a serious possibility of persecution upon return to Nepal. It is especially unclear when considered in light of the Appellants' uncontradicted allegation that they have survived no less than three politically motivated attacks from the Biplav Maoists - including physical violence, death threats, and demands for money and party membership - prior to fleeing Nepal. The Appellants' personal documentary evidence corroborates the Principal Appellant's political affiliation, land ownership, multiple reports to authorities, and physical attacks.¹⁰ The RPD's finding is in error.

- [12] Finally, the RPD's finding of "generalized risk" is misplaced. The Principal Appellant alleged a nexus to a Convention ground based on his political opinion. The RPD did not make a finding that the Appellants lack a nexus to a Convention ground. A generalized risk analysis is applicable to claims assessed under subsection 97(1) and not to claims alleging a serious possibility of persecution under section 96 of the IRPA.¹¹ I find that the RPD erred. The Appellants' claim is objectively well-founded
- [13] Having conducted my own assessment of the evidence, I find that the Appellants face a serious possibility of persecution upon return to Nepal and that their claims are well-founded. The National Documentation Package (NDP) for Nepal indicates that following the CPA, Maoist factions have retained illegally seized land and a "a significant number of conflict-era land disputes remained outstanding."¹² The NDP also indicates that the Biplav (Biplab) Maoist faction is involved in kidnapping, physical violence, and extortion.¹³ While information in the NDP indicates that Maoist attacks on opposition members have reduced, there are reports of continuing attacks.¹⁴ Counsel's April 2019 article from Al Jazeera indicates that the Biplav faction is "fed by popular disillusionment and anger" and that it is "growing in strength."¹⁵
- [14] The Appellants must only make out more than a mere possibility of persecution in order to succeed in their claim for refugee protection. This is a low threshold. I find that the possibility that the Appellants will face persecution - including serious physical violence - by reason of the Principal Appellant's political opinion to be more than a mere one. State protection and an Internal Flight Alternative are not available to the Appellants
- [15] Having found that the Appellants face more than a mere possibility of persecution, I have also considered whether the Appellants have access to operationally adequate state protection in Nepal or a viable Internal Flight Alternative (IFA).
- [16] In March 2019 the Nepalese government officially declared the Biplav (Biplab) faction a criminal group and banned all of its activities.¹⁶ However, "many local Maoist leaders have at least some sympathy for Biplab's party" and the ban has served to bolster the faction's popularity and increase tensions.¹⁷ The NDP indicates that the police are not independent and often fail to carry out prompt, thorough, and impartial investigations.¹⁸ Despite seeking protection on multiple occasions, the Appellants were not provided with assistance. Nepal continues to suffer from a weakened criminal justice system and impunity.¹⁹ I find, on a balance of probabilities, that the Appellants do not have access to adequate state protection in Nepal.
- [17] The NDP indicates that Nepal is a small country and that the Biplav Maoists have a nationwide network.²⁰ The Appellants were located by their agents of persecution in multiple cities within Nepal. On this basis, I find that the Appellants face a serious possibility of persecution throughout Nepal and that they do not have a viable IFA.

CONCLUSION

[18] The appeal is allowed. Pursuant to section 111(1)(b) of the IRPA, the RAD sets aside the determination of the RPD and substitutes its own determination that the Appellants are Convention refugees. (signed) "J. Pollock" J. Pollock January 9, 2020 Date 1 Immigration and Refugee Protection Act (IRPA), SC 2001, c 27, as amended, at ss. 111(1)(b). 2 Exhibit RPD-1, RPD Record, Exhibit 2.1, at p. 24, at para. 20. 3 Exhibit RPD-2, RPD Supplementary Record, RPD Reasons, at paras. 13-14. 4 Canada (MCI) v. Huruglica, 2016 FCA 93, at para. 103. 5 IRPA, at ss. 110(6). 6 Sanchez v. Canada (MCI), 2007 FCA 99, at para. 16; Malik v. Canada (MCI), 2019 FC 955, at para. 29. 7 Kenguruka v. Canada (MCI), 2014 FC 895, at para. 7; Ndambi v. Canada (MCI), 2014 FC 117, at para. 16; Malik v. Canada (MCI), 2019 FC 955, at para. 30. 8 Canada (AG) v. Ward, 1993 CanLII 105, at p. 739; Sanchez v. Canada (MCI), 2007 FCA 99, at para. 19; Malik v. Canada (MCI), 2019 FC 955, at para. 30. 9 Exhibit RPD-2, RPD Supplementary Record, RPD Reasons, at para. 14. 10 Exhibit RPD-1, RPD Record, Exhibit 7, at pp. 247-261. 11 Di Mpasi Mansoni v. Canada (MCI), 2012 FC 62, at para. 34. 12 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP) for Nepal (30 April 2019), Item 2.1. 13 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nepal (30 April 2019), Item 4.7. 14 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nepal (30 April 2019), Item 1.6, at paras. 3.42-4.45; Item 4.7; Exhibit 6, at pp. 263-277. 15 Exhibit RPD-1, RPD Record, Exhibit 6, at p. 218. 16 Exhibit RPD-1, RPD Record, Exhibit 6, at p. 219. 17 Exhibit RPD-1, RPD Record, Exhibit 6, at p. 220. 18 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nepal (30 April 2019), Item 2.4, at para. 4.5; Item 2.5. 19 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nepal (30 April 2019), Item 2.4, at para. 2.7. 20 Exhibit RPD-1, RPD Record, Exhibit 6, at p. 220.

RAD File / Dossier de la SAR: TB9-21375 TB9-21376 RAD.25.02 (April 04, 2019) Disponible en français 2 Immigration and Refugee Board of Canada Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés RAD.25.02 (April 04, 2019) Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/Conventionrefugee-refugee-appeal-division-2020--6a40c3b14cf2c72690fb1cae>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 28 October 2026 · Esheria