

## Case Summary: Immigration Law Advisor

U.S. Department of Justice, Executive Office for Immigration Review

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***Acharya v. Holder***, No. 11-4362-ag, 2014 WL 3821132 (2d Cir. Aug. 5, 2014): The Second Circuit granted a petition for review of the Board's decision affirming an Immigration Judge's denial of asylum from Nepal. The petitioner was employed with the Nepali Police Force, gathering information on Maoist insurgents. He and his family members were also members of the Nepali Congress Party. He was detained and physically abused by Maoists while on an intelligence gathering assignment in a village in Nepal. The Immigration Judge found the petitioner credible but concluded that the evidence did not establish that the petitioner's political opinion was "the central ground" for his persecution by the Maoists. The Immigration Judge stated that it appeared that the Maoists targeted the petitioner because of his employment with the police force because the effectiveness of the petitioner's police activities seemed to "naturally upset" his attackers. In affirming, the Board stated that the petitioner had not shown that his Nepali Congress role was "one central reason" that he was targeted. The court found that the Immigration Judge's reference to "the central ground" constituted legal error because it created a more stringent standard than the statutory requirement that a protected ground provide "at least one central reason" for the persecution. The court noted that under the standard articulated by the Immigration Judge, "multiple motives for persecution must be analyzed in competition with each other, rather than in concert." Thus, the Immigration Judge's finding of another more likely motive would prevent the petitioner from satisfying the standard. However, the court cited to case law in which a showing of mixed motives for persecution was sufficient to satisfy the "at least one central reason" standard. The court further found that according to the petitioner's credible testimony, in three separate incidents (including the petitioner's own abduction), the Maoists specifically referenced both the petitioner's police activities and his political party ties. The court found that this evidence established the petitioner's political opinion as "at least one (of only two, in fact) reason for their targeting." The court additionally found that the Board's use of the proper standard in its decision did not correct the legal error without further analysis of how the standard articulated by the Immigration Judge might have impacted the findings. It therefore remanded the record to the Board. The court raised an additional issue for consideration on remand, involving the Board's application of *Matter of Fuentes*, 19 I&N Dec. 658 (BIA 1988) (holding that dangers arising from employment as a policeman in an area of domestic unrest do not constitute persecution on account of a protected ground). The court noted that the Board had distinguished the court's holding in *Castro v. Holder*, 597 F.3d 93 (2d Cir. 2010), which involved a policeman acting as a whistleblower against police corruption. The court explained that *Castro* may be interpreted as more broadly focusing on "the activities and responsibilities unique to the petitioner in assessing the relationship between persecution and a protected ground." Applying *Castro* to the facts of this case, the court stated that such a reading of *Castro* would lead to consideration whether the Maoists viewed the petitioner's police work as an "effort to undermine [the Maoists'] plurality position in the national legislature," based on the political allegiance of the petitioner and his family to the Nepali Congress party. The court thus concluded that on remand the Board may be required to "take account of the depth of this political component" of the petitioner's police work.