

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76125

AT AUCKLAND

<u>Before:</u>	M Robins (Member)
<u>Counsel for the Appellant:</u>	E Griffin
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	25 October 2007
<u>Date of Decision:</u>	18 June 2008

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a citizen of Nepal.

INTRODUCTION

[2] The appellant is a 16 year old girl who arrived in New Zealand on a student visa in May 2006. She applied for refugee status in October 2006 and was interviewed by the Refugee Status Branch over two days in November 2006. The Refugee Status Branch issued a decision, declining her claim, in June 2007. It is from this decision that the appellant appeals.

THE APPELLANT'S CASE

[3] This is a summary of the account given by the appellant.

[4] The appellant was born in Z village in rural Nepal. Her parents, older brother and a younger adopted sister still live in Nepal. The appellant has relatives in New Zealand. They include her mother's brother AA and her maternal grandmother BB.

[5] AA came to New Zealand in 1975. He has regularly sent money back to his family in Nepal, sufficient for the appellant's maternal grandparents to build a house in Z where the family lived until 1999.

[6] In 1996, the Maoists withdrew from the ruling Communist Party and began an insurgency. Armed Maoist guerrillas began to arrive unannounced at houses in Z and simply moved in. It was too dangerous for the villagers to resist them. The guerrillas stole the villagers' cattle and destroyed their crops. The appellant, although aged only six years at this time, remembers the Maoists coming in groups to her family home.

[7] By 1999 it was too dangerous for the appellant's family to remain in Z. The Maoists were constantly demanding money and blowing up government buildings. The family abandoned their home in a hurry, taking virtually nothing with them. They joined the exodus of rural Nepalese who sought safety in the distant Kathmandu Valley.

[8] In Kathmandu Valley the appellant's father rented accommodation in Y and secured employment as a government vet in nearby X. The family lived in Y for two years. The appellant and her brother were able to attend a local school in X because of money sent by AA.

[9] In 2001, the security situation in Nepal worsened. King Berenda was assassinated and King Gyanendra became the new King. The Maoists increased their guerrilla activity. The family moved to X where the appellant's father continued to work as a government vet. The appellant and her older brother continued to attend the same school.

[10] In 2002 the appellant's father moved the family again, this time to W, just 20 minutes walk from X. W is a farming area so there were more animals for the father to attend to there. The appellant and her brother continued to attend the same school.

[11] In the same year, AA travelled to Nepal. He visited his sister (the appellant's mother) but the main purpose of his trip was to bring his mother BB to New Zealand. BB's husband had passed away in 1986. She had been caring for an orphaned girl. When BB left Nepal for New Zealand, the appellant's parents assumed responsibility for this girl and the appellant now regards her as a sister.

[12] The appellant's father was struggling financially, despite the money he was receiving from AA so, when the opportunity arose for him and his family to live rent free in a government compound in X he gladly accepted it. People came to the compound to transact government business and brought their sick animals with them to the government veterinary clinic in the compound. This meant that the father could largely avoid the Maoists who accosted him and demanded money as he travelled on his bicycle on veterinary call-outs. The appellant's father also opened a private veterinary clinic in X, just ten minutes walk from the compound.

[13] The compound was surrounded by a fence. Entry was gained through a gate manned by a security guard. An army roadblock was stationed down the road and the soldiers there vetted everyone. Inside the compound, a single story office building was surrounded by six houses, all tenanted by government employees. The appellant and her family moved into one of them. The appellant and both her siblings continued to attend the same school although by 2003 and 2004 the schools were often closed because of the deteriorating security situation.

[14] In February 2005 the King declared a state of emergency and dissolved the government. This precipitated a further deterioration in national security.

[15] The Maoists had for years been recruiting children as soldiers and porters. In April 2005 the Maoists showed an interest in the appellant's brother who was then aged 15. The appellant's father was working in his clinic in the compound. He asked his son to mind the private clinic and to telephone his father if any customers arrived. The Maoists saw the brother sitting in the clinic and asked nearby shopkeepers who he was. The shopkeepers told the appellant's father of these enquiries. Subsequently, when the Maoists saw the father in his private clinic they said "Your son is eligible to work with us. So make us happy". The father denied that he knew the identity of the young man. As a further precaution, he arranged for his son to board at the school, so he did not have to walk to and from school everyday.

[16] Towards the end of 2005 a popular uprising began. The demonstrators (mostly Maoists) demanded that the King relinquish power to a democratically elected government. The demonstrations became more violent. Schools were often closed and the appellant's father became fearful for his daughter's safety. He was worried that the appellant would be kidnapped by the Maoists because, as a teenager, she was a prime target. The appellant's parents discussed with AA the possibility of the appellant escaping to New Zealand.

[17] In December 2005, the appellant's father was approached by Maoists on the road. The appellant does not know exactly what they said to him but she does know they asserted she should join their "military service". She also knows that her father paid them money so they would let him pass.

[18] Shortly after this (still in December 2005) the appellant and her parents went to a travel agent in Kathmandu. They purchased air tickets for the three of them to go to New Delhi. This trip was timed to coincide with AA trip from New Zealand to New Delhi. The plan was that AA would help obtain a New Zealand student visa for the appellant.

[19] On the day they purchased their travel tickets there was a major demonstration in Kathmandu. They were lucky to escape through the crowd and return home. Once back in X there were more protests. On one occasion more than 1,000 people protested in front of the government compound.

[20] In January 2006, the appellant and her parents travelled to New Delhi to meet AA. They lodged an application for a New Zealand student visa with the New Zealand Immigration Service office there. Unfortunately, the application was not processed as quickly as they hoped. After six weeks of waiting, the appellant's parents returned to Nepal leaving the appellant with AA. Two weeks later, with the visa still unissued, AA had to return to New Zealand. The appellant had no choice but to return to Nepal. Her father kept her away from school to avoid the Maoists.

[21] The King relinquished power in early 2006. Shortly after this, the compound security guards were withdrawn and the army checkpoint down the road was dismantled. The government employees in the compound were left with no security.

[22] One day in March 2006 a group of Maoists walked into the compound and demanded details about the residents. The appellant believes they wanted this information as a first step to removing them.

[23] Within a few weeks of this visit – in March or April 2006 – there was a bomb blast very close to the compound. The target was a government car driven by a government official. The official and his wife were injured in the blast.

[24] Around this time, the appellant received her passport endorsed with a New Zealand Student Visa. Her father immediately purchased airline tickets to New Zealand on the earliest available flight, departing in late May.

[25] In early May, another group of Maoists walked into the compound. The appellant believes they intended to order the residents to leave. One of the resident government officials went to each of the compound's houses. He said the Maoists had arrived and he warned the residents to stay inside. This official then talked to the Maoists who subsequently left.

[26] In late May 2006, the appellant left Nepal and came to New Zealand.

[27] The appellant asserts that if she was forced to return to Nepal she would not be safe. Her mother has told her that, shortly after her departure, Maoists asked her father where she was. He told them she had gone overseas. The appellant knows of one girl who "disappeared" and neighbours once told her of someone else who was missing, both presumably at the hands of the Maoists.

[28] AA gave evidence. He said he has spoken to his sister on the telephone since the appellant's arrival in New Zealand. She told him she was frightened of the Maoists who were demanding money. She told him the Maoists had sent several letters demanding money, both before and after the appellant left. AA said he told the appellant about these letters but, when asked by the Authority whether she was aware of any such letters, the appellant said she was not.

[29] BB also gave evidence. She recalled Maoists coming inside her house in Z. She said the Maoists killed lots of people; that she ran away from her house without taking any of her possessions and that she had lost everything. BB could not remember when this happened but she appeared to be talking about the events of 1999 when the family fled to the Kathmandu Valley. This was confirmed by the appellant.

Legal Submissions

[30] Before the hearing, counsel provided to the Authority a Memorandum and copies of or references to country information material. In her submissions, counsel argued that the ceasefire that resulted from the November 2006 Comprehensive Peace Agreement was still only tenuous. She emphasised the fragility of the peace process, coming as it did after the end of a decade-long civil war and after the failure of a previous ceasefire and peace talks in 2001. Counsel referred to country information which predicted that the withdrawal of the Maoists (Communist Party of Nepal-Maoist or CPN-M) from the interim government in September 2007 threatened elections for Nepal's Constituent Assembly scheduled for 22 November 2007.

[31] Counsel argued that there was no internal protection alternative for the appellant. She referred to decisions of the Authority, the latest one of which was *Refugee Appeal No 75946 and 75947* (2 March 2007). At the conclusion of the hearing, counsel was granted leave to provide further submissions on the issue of “well-founded fear”. A further Memorandum plus additional country information was received on 29 November 2007. In this Memorandum, counsel referred to an article which stated that the Maoists were continuing to recruit child soldiers, well after the coming into force of the November 2006 Peace Agreement (Asia News.it, *Maoists not demobilising thousands of child soldiers, says United Nations*, 22 February 2007.) She supported this assertion by reference to two articles: Human Rights Watch, Nepal: *Letter to New Minister for Children Urged to Act Swiftly*, 8 May 2007 and Associated Press of Pakistan, *Nepal’s Maoists forcing child soldiers to return*, United Nations (copy not provided). Counsel also referred to the postponement of the November 2007 elections to April 2008 and submitted that the “Nepalese political stage remains uncertain”.

[32] All of this material has been taken into account.

THE ISSUES

[33] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

“... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

[34] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[35] The appellant is a confident and intelligent young woman. She spoke English well and did not require help from the interpreter provided. The Authority accepts the evidence of the appellant and that of her two witnesses as generally credible.

Country Information

[36] The last time the Authority considered the situation in Nepal in any detail was in *Refugee Appeal No 75946 and 75947* (2 March 2007). In this decision the Authority held that, despite the April 2006 cease fire and the November 2006 peace agreement, the Maoist rebels continued to commit serious human rights abuses including intimidation, extortion, abduction and the forced recruitment of child soldiers. The Authority held that the Maoists were able to operate freely throughout Nepal and that the Nepalese authorities had often been unable to provide effective protection to targeted civilians. The appellants, a married couple who feared serious harm from Maoists on the basis of the husband's previous contacts with them, were found to have a well-founded fear of persecution and no internal protection alternative.

[37] A useful summary of events since March 2007 is set out in a chronology prepared by the BBC: "Timeline: Nepal" 2008, *BBC News*, 4 June http://news.bbc.co.uk/2/hi/south_asia/country_profiles/1166516.stm (accessed 5 June 2008). It records that in April 2007 the Maoist rebels joined an interim government, a move that took them into the political mainstream. In May 2007, elections for a constituent assembly were postponed to November 2007. In September 2007, three bombs exploded in Kathmandu – the first attack in the capital since the end of the Maoist insurgency in late 2006. Shortly after this, the Maoists withdrew from the interim government to press their demand for the abolition of the Nepalese monarchy. Their withdrawal forced the further postponement of the November constituent assembly elections. In October 2007 UN Secretary-General Ban Ki-moon urged Nepal's political parties to bury their differences to save the peace process.

[38] The BBC chronology goes on to record that in December 2007 Parliament approved the abolition of the monarchy as part of the peace deal with the Maoists.

The Maoists then agreed to re-join the government. In April 2008 the Maoists won the most number of seats in elections to the new assembly. In May 2008 Nepal became a republic and the government ordered the deposed King Gyanendra to vacate the royal palace in Kathmandu.

[39] The Maoists' success at the polls took everyone by surprise. In an article published just after the election, *The Economist* suggested three reasons for their "overwhelming" victory. First, was the Maoists' threat that if they lost the election they might resume the war. Thugs from several parties, but chiefly Maoists, terrorised voters to the extent that European Union observers of the election concluded it was held in a "general atmosphere of fear and intimidation". Second (described as a more convincing reason) was that Nepalis were sick of the alternative parties. These were chiefly the Nepali Congress and the Unified Marxist-Leninist party. Both, said *The Economist*, were tarnished by spells of corrupt and ineffective rule during the 1990's. As for the abolition of the monarchy, this appeared to be well-supported by the electorate given that Nepal's three small royalist parties won no directly elected seat. The third reason for the Maoists' election success was Nepali citizens' support for the Maoists' apparently liberal economic policies (which include seeking foreign investment for Nepal's hydro-power industry) and the Maoists' popular policies such as fighting caste-based discrimination, the deprivation of tribal groups and the exploitation of landless labourers: "The Maoists triumph", *The Economist*, 19 April 2008.

[40] *The Economist* goes on to describe some of the problems facing the Maoists as they strive to manage a fractious coalition of parties. These include achieving agreement on the new Constitution, complying with a backlog of provisions under the November 2006 Peace Agreement and combining the Maoists' 23,000-strong army with the 90,000-strong royalist army. *The Economist* observes that the Maoists have made big promises and concludes "...Making big promises is easier than keeping them, and the Maoists will disappoint. The question is: how badly?"

[41] Another challenge for the Maoists, according to BBC News, will be to shed their image as a party that gets its way by using force:

"The Maoist leader, Prachanda, has been quick to try to reassure the public, political parties and the international community about his party's commitment to multi-party and peaceful politics. However, scepticism abounds.

...The Maoists' planned integration of the former fighters into the national army will be an equally difficult task. The army has said they will have no problem in working under a "legitimate" government. But it has repeatedly made it clear that politically indoctrinated former rebel fighters cannot be part of the professional

national army. There is considerable bad blood between the two sides and, on occasions, the Maoist leader has used derogatory language against the army chief. Apart from these challenges, the former rebels will have to deliver peace, stability and “economic revolution”, all of which have remained their mantra for several years. To make matters worse, the Maoist leadership will have to deal immediately with soaring price rises of food, fuel and construction material in the country. If they fail to deliver, they know the public euphoria will not last long. But many worry that the power struggle between the Maoists and non-Maoists is likely to drag the muddled political process in Nepal for many years to come, leaving the people where they are.”

“Nepal: The rocky red road” *BBC News*, 22 April 2008
http://news.bbc.co.uk/2/hi/south_asia/7360223.stmb (accessed 5 June 2008)

[42] The appellant fears that she will be recruited by Maoists into their military force. A recent report of the Secretary General of the UN Security Council, covering the period from 1 October 2006 to 31 December 2007, discusses the recruitment of children: UN Security Council, 2008, *Report of the Secretary-General on children and armed conflict in Nepal* [S/2008/259], 18 April <http://daccessdds.un.org/doc/UNDOC/GEN/NO8/285/93/PDF/NO828593.pdf?OpenElement> (accessed 5 June 2008)

[43] Paragraphs 13 to 19 of the report state:

“III Grave violations of children’s rights

Violations of children’s rights in the context of conflict have decreased significantly since my last report to the Security Council. However, children are still associated with the Maoist army and there was no progress in securing their formal release; children are still being killed and injured in political demonstrations and by explosive devices left behind during the conflict. In addition to these grave violations, children are still being coerced to take part in political events or made victims of the CPN-M “law enforcement” practices. The CPN-M and armed groups in the Terai bear the responsibility for the majority of the abuses documented during the reporting period. Further, the Government has not taken the necessary steps to end violations and abuse or to ensure effective accountability for violations and abuse committed by both parties during and after the conflict.

The Nepal Task Force for Children and Armed Conflict, set up under the terms of Security Council resolution 1612 (2005), monitored the recruitment of children by the Maoist army and affiliated CPN-M organizations during the post-ceasefire recruitment campaign that reached its greatest intensity in November 2006. Between October and December 2006, the Task Force documented 1,576 cases where families reported that their children had been recruited by the CPN-M. There were 925 registered cases in November 2006 alone. Some of these children were recruited to the Maoist army in violation of the Comprehensive Peace Agreement, while others were recruited to CPN-M affiliated organizations. Approximately 30 per cent of these children were released after a few days spent with the CPN-M, and approximately 20 per cent were later found to be in Maoist army cantonments. Many of the children in the cantonments were relatively young – the average age of children from the Task Force list identified in cantonments was 14.6. The whereabouts of the remaining 50 per cent are currently unknown to Task Force members.

The registration and verification process of Maoist army personnel was concluded in December 2007 but children have yet to be formally released....

An unknown number of children formerly associated with the CPN-M militia were informally released after the militias were disbanded by the Comprehensive Peace Agreement. In 2007, it became clear from interviews with children formerly associated with the Maoist army that the CPN-M had a policy of informally releasing children from cantonments....

Informal release happens in different ways. In some cases, children have escaped from the Maoist army; in others, they have been asked to leave or negotiated their departure. In other cases, children were moved from the Maoist army to other CPN-M organisations, particularly the Young Communist League. Disturbing reports indicate that limited numbers of children informally released from cantonments have been forcibly re-recruited by the Maoist army or CPN-M organizations. During the reporting period, 12 cases were documented. Some cases were resolved with the help of Task Force members, but in other cases, children are still in hiding from the CPN-M.

...The CPN-M frequently targeted and recruited many girls – many of whom joined to escape traditional restrictions on their lives. It has been particularly difficult to monitor outcomes for girls, although there are indications that a number of girls face greater stigma resulting in pressure to marry early.

The Young Communist League appears to have absorbed many members of disbanded CPN-M militias. Many children recruited during the post-ceasefire recruitment campaign of 2006 did not join the Maoist army. There are indications that they have gone to the Young Communist League instead. The League has recently been involved in confrontational street politics, and has been implicated in the supervision, disciplining and even re-recruitment of children informally released from the cantonments.”

[44] The recruits who are the focus of the Secretary-General’s report appear to have been persuaded or coerced into the Maoist military. The only clear reference to forced recruitment appears later in the report:

“C. Abduction of children

25 Abduction of children for military purposes that characterised the period of conflict has decreased significantly during the reporting period. Between June 2006 and February 2007, 168 children were known to have been taken in individual incidents of abduction with the majority abducted in November 2006 during the Maoist army recruitment campaign. Of the 168 children, 135 were abducted for recruitment purposes, while 33 were abducted for cultural and political programmes or for other reasons. A total of 49 children have been released. In 2006, over 324 children were taken in 136 incidents of group abduction with more than 210 abducted in November 2006 and the rest between May and December 2006. All the children were abducted in order to be recruited in to the Maoist army. A total of 110 of them are reported to have returned home or been released. In addition, more than 802 children were taken in incidents of group abduction between October 2006 and February 2007 in order to take part in CPN-M political programmes or mass gatherings and were released at the end of the day’s political activities.”

[45] An even more recent report by the Secretary-General (12 May 2008) states:

“E. Gender, social inclusion and child protection

.....

45. UNMIN [United Nations Mission in Nepal] sought to promote discussion among the Government, the Maoist army and United Nations agencies willing to assist with the orderly discharge of children from the cantonments and their reintegration. Since CPN(M) has defined conditions for the formal release of

children the absence of an adequate institution to manage their release and reintegration has caused delays. As mentioned in previous reports, more than 8,000 individuals left the cantonments between the first-phase and second-phase registration. There seems to be a policy of informal release of late recruits and minors. Many of these were under 18 years of age at the time of the ceasefire, and about 4,000 are estimated to have joined the UNICEF-led reintegration programme since its launching in June 2006.”

UN Security Council, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process* [S/2008/313], 12 May 2008 (ECOI)

[46] The Secretary General’s reports indicate that although grave violations of children’s rights have decreased significantly since the signing of the comprehensive ceasefire agreement, violations against children continue. The reports note that substantial numbers of children were recruited by the (CPN-M) prior to the signing of the ceasefire agreement and moved into cantonments and that there is only slow progress in securing their formal discharge although many children have been released informally.

[47] We have considered the country information produced by counsel for the appellant. The Asia News article which asserted “...Maoists continue recruiting child soldiers in Nepal and have not returned them to their families despite the November 2006 peace accord” is dated February 2007 and is now out of date. The other two articles (Human Rights Watch and Associated Press of Pakistan) describe the re-recruitment of former child soldiers and the slow demobilisation of child recruits. Neither of these categories apply to the appellant and, in any event, both articles are superseded by the very recent country information obtained by the Authority.

[48] While there is some evidence of recent re-recruitment of child soldiers and evidence that children have been coerced to participate in political demonstrations, the overwhelming emphasis is now on the release and reintegration of child soldiers. Last month, the Maoist leadership assured the UN that their party is committed to facilitate and support the release and reintegration of child combatants. They blamed the government for the delays. The reintegration programme is supported by national and international organisations such as UNICEF, by many foreign governments including Japan, Germany and the United Kingdom, and by the European Commission’s Humanitarian Aid Office (ECHO): “Reintegration of child soldiers “taking too long”, *IRN News*, 28 May 2008 <http://www.irinnews.org/Report.aspx?ReportId=78422> (accessed 5 June 2008).

First issue: Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

[49] The Authority acknowledges that the relatively recent outbreak of peace in Nepal is still fragile. The interim government clearly faces a number of serious challenges. The situation, however, is vastly different now from that which prevailed in March 2007, when the Authority concluded that “despite the general positive developments assessed above, caution must still be exercised in assessing the risk to the appellants in a volatile period that is still less than a year since the “palace capitulation” in April 2006” (*Refugee Appeal Nos 75946 and 75947* (2 March 2007)). Fifteen months on, the risk of abduction of Nepalese children has decreased dramatically and there is, in the Authority’s view, good cause for optimism that the political changes which have brought relative peace, while not irreversible, have a real prospect of permanence.

[50] Turning to the appellant’s particular circumstances, the Authority observes that she was not, at any time when the Maoist insurgency was at its height, conscripted by the Maoists. Nor was she ever approached by them directly. She had only minimal exposure to the conscription which undoubtedly was taking place elsewhere in the country— she personally knew of only one girl who had disappeared. She heard neighbours talk about another. The country information indicates that the prospects of the appellant being conscripted now are considerably less than they were at any time when the appellant was in Nepal. The Maoists are no longer rebels – they are the major party in the interim ruling coalition. The child soldiers previously recruited are being released, albeit slowly, and all country information points to a cessation of the systemic recruitment of children that existed up to and including 2006.

[51] The Authority concludes, in the light of the country information, that this appellant does not face a real chance of being persecuted in Nepal. The prospects of her being conscripted into a militia are remote.

Second issue: Is there a Convention reason?

[52] Given the Authority’s finding on the first issue, there is no need to consider whether the harm feared by the appellant is for a Convention reason.

CONCLUSION

[53] For the above reasons, the Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"M Robins"
Member