

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76214**

**AT AUCKLAND**

<b><u>Before:</u></b>	J Baddeley (Member)
<b><u>Counsel for the Appellant:</u></b>	D Mansouri-Rad
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	24 June 2008
<b><u>Date of Decision:</u></b>	23 September 2008

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**DECISION**

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

**INTRODUCTION**

[2] The appellant arrived in New Zealand on 12 May 2005 and lodged his claim for refugee status on 13 June 2005. The decline decision was published by the RSB on 25 August 2005. The hearing of his appeal against that decision was set down for 26 November 2005. On 15 September 2005, the appellant absconded from the Mangere Accommodation Centre. The Authority dismissed the appeal in a decision dated 30 November 2005 on the grounds that he had failed, without reasonable excuse, to attend the notified hearing of his appeal.

[3] The appellant subsequently applied to have his appeal reheard. This application was heard on 27 June 2006 and the decision declining the application was delivered on 20 December 2007. The appellant then applied for a judicial review of that decision. This application was conceded by the DOL and the appeal set down for a rehearing on 24 June 2008.

## **THE APPELLANT'S CASE**

[4] This is a summary of the account given by the appellant. It is assessed later.

[5] The appellant is a 27 year old married man, a citizen of Nepal. He lived in Z village in X district with his parents, two brothers and his wife. He is the eldest in the family. The appellant attended the local high school and for a year was enrolled at university in Pokhara where he studied geography, political science and Nepalese. Due to financial constraints he was unable to complete his studies and began work as a school teacher in Z in 2000.

[6] One day the appellant was in the school office by himself. Six or seven strangers came into the office and asked if his name was ABC. When he acknowledged this they criticised him for teaching Sanskrit and the national anthem at school. They did not identify themselves except to say that they were Maoists and told him that he should join their party. The Maoists then threatened him with punishment if he did not cease teaching Sanskrit and the national anthem and begin to teach Maoist propoganda and join the party.

[7] Maoists had previously visited the school announcing activities which they had organised and exhorting people to attend these. The appellant had experienced these visits but he had not attended their events, nor did he join the Maoist Party.

[8] The appellant told the headmaster about the visit from the Maoists. After consulting with the district committee, the headmaster told the appellant that it was government regulations to teach the national anthem and that he would have to continue to do so. The appellant continued to teach as before.

[9] Some time after this incident Maoists came to the appellant's home. The appellant was inside the house with his family when he heard his name being called. He went outside and saw a group of Maoists. They announced that he was still teaching the national anthem and Sanskrit and had not joined their party. They demanded from him 8 *lakh* (800,000 *rupees*) to be paid within 15 days. If not, they stated they would do whatever they wished to him.

[10] This was a large sum of money and the appellant told them that he could not pay it. They said that if he did not do so or join their party they would come and kill him. They left and the appellant went inside the house to his family. He

told them about the Maoists' demands. His family said that it was not safe for him to remain at home; they could not afford to pay such a large sum of money so he would have to leave. He left within 14 or 15 days of the Maoists' visit.

[11] The sum demanded, 8 *lakh*, is the equivalent of three to four years of his teacher's salary. He believes that he was singled out because he earned a salary and because his father owned a lot of land. He also surmised that he was someone the Maoists could kill if he did not pay the sum demanded. The Maoists never demanded any money at any other time from any member of his family. If they had done so he would have been told.

[12] Maoists had demanded and been paid money by other families in the district but the amounts paid were kept secret for fear of reprisals from the Nepalese army. People were also killed by Maoists if they revealed to the army that Maoists had visited them. Maoists had previously visited the appellant's family home telling them about programmes they had organised and telling them to attend these activities. They had also sought shelter but not inside the house. From the time he first began teaching he had paid money to Maoists who demanded 25 percent of all teachers' salaries. They collected this amount from the teachers every one or two months.

[13] In early 2005, the appellant travelled from his home village to Kathmandu where he stayed for three days with his friend, BB, from whom he borrowed money to travel to New Delhi. There he shared a room with his friend, CC, who told him that because of the Maoist presence in New Delhi it was not safe for him to remain there. The appellant had also heard that the Indian government was extraditing Maoists to Nepal. With CC's help he contacted an agent, DD, who advised him that he would be able to send the appellant overseas. It would cost 15-16 *lakh* (NZ\$8,000). The appellant asked his father for the money. His father provided it to him by raising a mortgage with the Agricultural Development Bank in Nepal and selling family jewellery.

[14] The agent, DD, arranged his travel from New Delhi to Mumbai and thence to Johannesburg. He met some other Nepalese in Mumbai whose travel had also been organised by DD. However, they did not discuss their final destination until after they had left Johannesburg, where they stayed for one month. They travelled to New Zealand via Ecuador. When they arrived in Quito, Ecuador they found out that they were all travelling to New Zealand. In accordance with instructions from

his agent DD, the appellant destroyed the false passport he had been using before he arrived in Auckland

[15] The appellant has been in telephone contact with his family. They now have a telephone in their home whereas previously he had to communicate by leaving a message at a public telephone booth and arranging a time to call back. He telephones them every one or two months. They report they are all well. His older brother is about to begin an engineering qualification. He is a qualified electrical overseer. His younger brother is in his third year of study for a degree in education. Neither earns wages. They help on the family farm. The appellant's wife is supported by his parents. Shortly after the appellant's arrival in New Zealand his wife gave birth to their daughter.

[16] The appellant sends money home from New Zealand to pay off the mortgage over the family land. Sometimes he sends NZ\$500 or NZ\$1,000 at a time which goes towards the interest payments only. The appellant has had a difficult time since coming to New Zealand. He told the Authority that he had found it hard to support himself and now suffers from pain and swelling in his hands and joints which make it difficult for him to work.

[17] The appellant refused to join the Maoists because they want to "wage war" and he does not agree with killing people. The appellant is a Hindu and Maoists want to destroy his religion and the Nepalese monarchy, which he supports.

[18] The appellant believes that the threat from Maoists is greater than previously because they are now able to operate with impunity, having been included in the interim government and elected to parliament. The army has been instructed not to interfere with them. In any event, his home village is remote and the army and police have no effective presence there. He fears being tortured or killed by Maoists on return.

### **Documents received**

[19] The Authority received the following additional documentation from the appellant which has been taken into account in reaching this decision: a memorandum of counsel dated 20 June 2008; country information dated 11 May provided at the hearing concerning Maoists killing a businessman in Nepal in May 2008; and a further memorandum of submissions dated 31 July 2008.

## **THE ISSUES**

[20] 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."

[21] 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**

[22] Before determining the abovementioned issues, an assessment must be made of the appellant's credibility. The Authority accepts that the appellant is Nepalese, a teacher and that he lived in Z village. Beyond this it finds that his story of extortion by Maoists in Nepal is not credible because of inherent implausibilities and inconsistencies in his account. These are discussed below.

[23] The Authority has taken account of the time which has elapsed since the appellant was interviewed by the RSB in June 2005, approximately three years prior to the appeal hearing, and accordingly has made allowances for a number of inconsistencies between the evidence provided to the RSB and that given to the Authority at the appeal hearing in June 2008. However, where these inconsistencies are significant and relate to central events, such as the principal occasions when the appellant was confronted and threatened by Maoists, the veracity of the appellant's account is called into question.

### **Implausible evidence**

[24] The appellant was adamant that he was the only member of his family whom the Maoists had ever pursued for money. This is still the case to the

present time. In their visits searching for him at his home they sought only the appellant's whereabouts and did not ask for money. Despite the appellant's failure to pay any of the 8 *lakh* demanded, they did not demand money from his family although his father was known to own a lot of land and that the family was regarded as "middle class" in their village. His father was able to arrange the equivalent of NZ\$8,000 to pay for the appellant's travel, a considerable sum for a Nepalese villager.

[25] When asked why neither his father nor brothers had ever been the target of Maoist extortion, he replied that he was the only one earning wages in the family; he looked after the family finances and his father was not educated or well-organised. It was put to him that his father had managed the family finances until the appellant was old enough to do so. He conceded that this had been the case. Indeed, the family farm earned about 30,000 to 40,000 *rupees* per annum from the sale of crops which also provided most of the family food. This sum was the equivalent of about six months of his teacher's salary. Despite his claims that his father was not well-organised, he had previously managed the family finances and it was he who raised the money for the appellant's travel to New Zealand.

[26] The appellant also offered the explanation that he (unlike his father and brothers) was the only one who had refused to teach Maoist propaganda, join the Maoist Party or desist from teaching Sanskrit and the national anthem. Although none of his family were teachers neither had any of them joined the Maoist party or paid money to it. Nor were they made to do so. The Authority pointed out to the appellant that it was not the consequences of his refusal to modify his teachings according to Maoist demands which triggered his flight from Nepal, but rather the consequences of his refusal to pay the sum demanded by them. It seems highly implausible that they would simply cease the demands of his family once the appellant had left, particularly given the fact that it was obvious that his father had a lot of land and could afford to have both his sons (aged 27 and 23 years) in tertiary education and not earning any wages.

[27] Counsel for the appellant submitted that his brothers were not approached by Maoists for money because they were not earning it and the family farm did not produce much cash and any left over was used for the family's living expenses.

[28] The fact remains that the Maoists, on the appellant's evidence, wanted to get money for the war they were waging against the Nepalese government and were ruthless in their attempts to do so. The Authority concludes that it would

matter little to them whether it came from a teacher's salary or was extorted from a middle class farmer and his two adult sons. It does not accept that if these demands were made to the appellant, the Maoists would simply cease their extortion once he had left, rather than attempting to pursue his family for money.

[29] The appellant fled from the family home because he believed that if he stayed, he would be tortured or killed when he failed to pay the sum demanded. However, his father and mother, brothers, wife and daughter still remain there. Beyond visits to enquire after the appellant they are unmolested by Maoists. They have not reported any violence or even threats of violence. When asked why this was so (given that none of his family have acceded to the Maoists' demands to join their cause) the appellant reported "the main person was myself" and that when they came looking for him his father told them that he did not know where the appellant was.

[30] In light of the family's continued immunity from harm and the length of his absence from the village, the appellant was asked why the Maoists would target him now, over three years later. He replied that they would accuse him of not joining the party or paying them money and would kill him. He maintained this assertion even when it was put to him that none of his family, who likewise had not paid the Maoists or joined their party, had been harmed.

### **Inconsistent evidence**

[31] The appellant gave inconsistent evidence as to when he had last been sought by the Maoists. Initially he was clear that his wife said Maoists are coming to look for him; she told him this when he last spoke to her three weeks prior to the appeal hearing. However, in later evidence he was unsure whether it was three or five months prior to the appeal hearing or a long time previously that the Maoists had last come for him. It is somewhat surprising that he is not more certain about the timing of their most recent inquiries given that this is an indication of the degree of current interest in him.

[32] His last encounter with the Maoists was the defining event which triggered his flight from Nepal. However, he gave conflicting accounts of this last visit. To the Authority he said he had left within 15 days of the one and only occasion when they had come to his house demanding 8 *lakh*. To the RSB he stated that Maoists had returned a second time 15 days after they had initially demanded the 8 *lakh* and that he had left the day after this second visit by the Maoists. When this

inconsistency was put to him he said that they might indeed have come even three times but his memory was not reliable because of the lapse of time.

[33] Similarly, his account of the Maoists' visit to his home is inconsistent in significant ways. To the Authority he was clear in his evidence that the Maoists did not come to seek shelter inside their home; they always stayed outside and did not ask the family for food. To the RSB he had stated that they came to the family home to get food and sometimes stayed overnight inside their house. Again, he attempted to explain this discrepancy by the effluxion of time.

[34] Similarly the appellant gave inconsistent accounts of the other occasion of extortion (at the school office) which he related in detail. To the Authority the appellant described the encounter with Maoists in the school office as taking place when he was alone reading in the office and the other teachers were taking classes. He then reported the matter to the headmaster. In the account given to the RSB the appellant stated that other teachers were also present in the office and they were also asked for donations. No mention was made of a report to the headmaster. His explanation for this discrepancy was also that it had happened a long time ago.

[35] There were further discrepancies in his description of the Maoist extortion of school teachers. To the Authority he said that from when he first started teaching he was forced to pay 25 percent of his salary to the Maoists, as were the other teachers. To the RSB he explicitly denied this. In his counsel's written reply to the interview report it states:

“[The appellant] first wishes to clarify that the Maoists first asked him for donations after two years of teaching; that is on the third educational year not when he started teaching.”

[36] When this was put to him, the appellant changed his evidence to accord with that given to the RSB and stated that Maoists did not ask for donations when he first started teaching.

[37] The Authority also raised with the appellant other inconsistencies in his evidence. These variously related to the amount demanded by the Maoists on their visit to his home; the method of contacting his father to obtain the money for his travel; the cost of travel; the length of time he stayed in Kathmandu. Given the time between his RSB interview and the appeal hearing (three years) the Authority places no weight on these minor discrepancies which could reasonably be accounted for by the lapse of time.

[38] The same cannot be said for the appellant's description of the two principal incidences of extortion to which he was subjected and, in particular, to the last visit by the Maoists which caused him to flee his home and country. These were extraordinary events in his experience and as such would remain distinct in his memory from any other similar events.

### **Conclusions as to credibility**

[39] The appellant's account of these two events varied in ways which cause the Authority to conclude that his evidence is untruthful. The Authority's conclusions in this regard are reinforced by the appellant's adamant assertion that Maoists have never demanded money from his family. It finds this highly unlikely particularly given the extreme methods (death or torture) which the appellant believes they would have used to extract money from him. This, if true, would strongly suggest that Maoists would at least attempt to extort money from his family by threats or by violence.

[40] The Authority concludes that the appellant has fabricated these two events (of extortion by Maoists) in order to elevate his circumstances to found a claim to refugee status. He is not of interest to the Maoists.

[41] The Authority now turns to consider the circumstances which he will encounter on return to his home village as an individual who has not previously come to the attention of the Maoists.

### **Country information**

[42] In his submissions dated 20 June 2008, counsel for the appellant argues that recent political developments suggest the establishment of a Maoist tyranny which will increase the chance of the appellant facing persecution on return (refer page 13 of counsel's submissions dated 20 June 2008):

"With all the evidence pointing towards a Maoist tyranny in Nepal, it seems that the appellant will face considerable risk if he is sent back to Nepal."

[43] Counsel argues that despite the comprehensive peace accord introduced in November 2006 and the Maoists joining the interim government in January 2007, both the government and the Communist Party of Nepal (Maoist) (CPNM) largely failed to implement human rights commitments in 2006 and 2007. Counsel cited country information describing abduction, extortion and intimidation by Maoists

continuing in 2007 outside the Kathmandu Valley although this had occurred at a much lower level than previously. Country information also demonstrated that in 2007 Maoists intervened in schools by attempting to enforce a people's calendar curtailing academic freedom and extorting teachers. Christian churches and Christian businessmen were also forced to pay money and unable to seek state protection from these demands. Maoists had taken control of most of the rural areas and the government's presence was restricted to urban centres and district headquarters (refer Internal Displacement Monitoring Centre (IDMC) report "*IDP returns still a trickle despite ceasefire*" 16 October 2006). The Young Communist League (YCL) has emerged as a new force extorting money. Since the Maoists joined the interim government, Maoist groups have been able to carry out human rights violations with increasing impunity because the police were reluctant to intervene as they lacked the backing of their political masters who did not wish to interfere with the peace process. The IDMC report (*supra*) described how people were caught between repression from the police force and the extortion of Maoists. The police of Nepal, counsel submits, are unable to provide adequate protection for the appellant against Maoist extortion and violence.

[44] The pace of recent political change in Nepal has been rapid. Despite fears to the contrary, the elections for the constituent assembly which took place on 10 April 2008 were largely peaceful and fair. The CPNM won the largest vote share (29.27 percent) as opposed to 21 percent for the Nepali Congress and 20.33 percent for the Unified Marxist Leninist Party (UNLM) (refer Nepal Timeline – 2008 South Asia Terrorism Portal <http://satp.org/satporgtp/country/nepal/timeline/index.html>).

[45] Unfortunately none of the country information cited by counsel in submissions dated 20 June 2008 refers to the situation since the election of April 2008 or what, if any, significance this major change in the governmental structure has had on people in the appellant's circumstances. It is pure speculation to assert, as counsel does, that the establishment of a Marxist tyranny is inevitable and will result in the appellant facing persecution on return.

[46] The Authority also provided recent country information to the appellant and invited comment on this updated information concerning events post-election. At the conclusion of the hearing, counsel was granted 20 days leave to provide country information and in particular to comment on the IDMC report "*Nepal:*

*sustainability of IDP returns undermined by lack of assistance*" 19 June 2008 which counsel advised the Authority contained updated information.

[47] Submissions were eventually filed on 31 July 2008. Counsel cited the IDMC report dated 19 June 2008 which referred to the identification by the Maoists of three categories of internally displaced people:

- (a) Those who quietly left in anticipation of conflict and were welcome to return;
- (b) Those who were accused of wrongdoing and had to accept conditions imposed by Maoists such as paying a donation, appearing before a people's court or participating in indoctrination programmes;
- (c) The third category who were responsible for serious crimes and were not welcomed back.

[48] Counsel submitted that the appellant fell into the second category and as such faced a real chance of persecution on return. However, on closer reading of this report it is clear that the imposition of the three categories referred to a practice carried out in the eastern regions of Nepal. The X district, which is the home district of the appellant, is situated in the west. Furthermore, the passage cited in the IDMC report refers to conditions pertaining in 2006.

[49] In the IDMC report dated 19 June 2008, counsel noted that reference was made to "returnees in many districts facing difficulties in reclaiming their land and houses". However, this will not be a problem for the appellant whose family has continued its uninterrupted occupation of their home.

[50] Counsel also submits that the suppression of protests by Tibetans in Nepal in April and May 2008 demonstrates a clear disrespect for human rights and the tendency of both government and Maoists to resort to violence when they encounter obstacles of any kind. However, the government and Maoist response to the Tibetan protests is not relevant to the appellant who has never been involved in these protests.

[51] Counsel further cites at page 8 of the memorandum of submissions (31 July 2008) that there is increasing disturbance in the Terai region. This region, in the east of Nepal, has its own unique problems compounded by ethnic tensions. The IDMC report (*supra*) at page 53 states:

“Marginalised indigenous groups in eastern Terai are now increasingly demanding political representation. In February the Madhesi Movement comprised of indigenous Madhesi people campaigning for a political voice, organised a strike that paralysed the country for 16 days. Moreover a weak state presence has created a security vacuum in the area. This is being exploited by criminal groups.”

These conditions do not pertain in the appellant’s district (X).

[52] The following post-election incidents of violence are noted at page 6 of counsel’s submissions: the abduction and assault of supporters of the United Marxist League (UML) by two YCL members; a Maoist assault on 6 May on UML activists for political activities during the election and the murder of a Congress Party supporter by YCL members on 16 May.

[53] Counsel also refers to the IDMC report of 10 June 2008 at page 30 where it states that in March 2008 (pre-election):

“Thousands of IDPs have returned in the wake of the ceasefire (March 2008)

- Since the ending of hostilities in May 2006 tens of thousands of IDP have returned to their homes. By March 2008, the number of remaining IDPs was estimated at between 35,000 and 50,000.
- Most return movements appear to have been isolated and the majority of the displaced are still too uncertain about the security situation and fear Maoist attitudes towards the displaced.”

[54] In this regard it is necessary to consider that the appellant will be returning to his home and his family which has continued to function as before. He is not dispossessed. There is no evidence that the security of ordinary villagers, like the appellant’s family, is seriously at risk. Indeed, his family has continued to remain in their home, work on their farm, and his brothers have continued to attend to their education.

[55] The Authority, in the course of its research, sought information to provide an overview of the state of security in Nepal with particular regard to the current activities of Maoists and the occurrence of intimidation or other violence which might cause the appellant to fear serious harm on return. This information, made available to counsel for comment concerning events subsequent to the April 2008 election, was contained in the following reports:

- (a) Nepal Timeline – 2008 *South Asia Terrorism Portal* (4 June 2008) <http://satp.org/satporgtp/country/nepal/timeline /index.html>;

- (b) “Maoists Block Water for Denying them Vote” 2008 *Kantipur Report* (11 June 2008) <http://www.kantipuronline.com-kolnews.php?&nid=149861>;
- (c) “UML Chief criticises Maoists Excesses” 2008 *Kantipur Report* (6 June 2008) <http://www.kantipuronline.com-kolnews.php?&nid=149353>;
- (d) “Two critically injured as YCL locals clash in Damauli” 2008 *Kantipur Report* (4 June 2880) <http://www.kantipuronline.comkolnews.php?&nid=149131>; and
- (e) “Twenty injured in Nepal Clash” 2008 *Press Trust of India* (6 June 2008).

[56] These reports describe the continued yet sporadic use of intimidation and violence by Maoists since the election. The following summarises the events described in the reports: displacement of Nepalese Congress workers from their village; assaults on two teachers in Chitwan; an assault on civilians in X over a land-related dispute; assaults on Nepalese Congress activists; fights between YCL and opponents ending in two casualties; Maoists blocking the source of drinking water in five villages which had not supported them in the election.

[57] Over the intervening months since the election the picture which emerges is that of sporadic assaults and intimidation by the YCL generally targeting their political opponents. The appellant will be returning to his home village. The Authority has already found that he is of no adverse interest to Maoists. The situation in Nepal for ordinary villagers, such as the appellant and his family, has not deteriorated post-election to the point where it could be stated that the appellant faces anything more than a remote chance of serious harm. There is nothing to suggest that the appellant could not return to his village and resume living with his family untroubled (as they have been during his absence) by Maoists or any other agent of persecution. The Authority concludes that the appellant has no well-founded fear of being persecuted on return.

## **CONCLUSION**

[58] For the reasons mentioned above, the Authority finds 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.

"J Baddeley"

J Baddeley  
Member