

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76281

AT AUCKLAND

Before: C M Treadwell (Member)
Counsel for the Appellant: D Patchett
Appearing for the Department of Labour: No appearance
Date of Hearing: 10 and 13 November 2008
Date of Decision: 9 April 2009

DECISION

INTRODUCTION

[1] This is an appeal by a married man from Nepal, aged in his mid-thirties, against a decision of a refugee status officer declining him the grant of refugee status.

[2] The crux of the appellant's claim is that, as a long-standing opponent of the Maoist insurgency and a supporter of the Rastrya Prajatantra Party ("the RRP"), he is at risk of serious harm at the hands of pro-Maoist supporters in Nepal.

[3] The central issues are whether the appellant's account is credible and, if so, whether on the facts as found he is at risk of serious harm as claimed.

THE APPELLANT'S CASE

[4] The account which follows is a summary of the evidence given by the appellant on appeal. It is assessed later.

[5] The appellant is one of three children of a wealthy Hindu trader and shopkeeper of the Nirwani tribe, based in X town in the Y district. His father was politically active in the village, as a youth leader under the pro-monarchist village *panchayat* system. The Nirwani are known throughout Nepal as business people and are generally well-off.

[6] At college in the early 1990s, the appellant became politically active himself, to a modest degree. He would attend meetings in support of the King but was merely a participant, not a leader. With the advent of multi-party democracy in the early 1990s, he began to support the right-wing, pro-monarchist RRP.

[7] The appellant finished college in the mid-1990s and married the same year. He and his wife lived with his parents above his father's shop in X town. The appellant worked for the ABC in the nearby town of Z, as a computer assistant.

[8] In 1996, a Maoist insurgency began in Nepal. In April of that year, the Maoists called for a national strike. The appellant's father was confronted by Maoists from the Young Communists League ("the YCL") but refused to close his shop. The following day, he made a complaint to the police, who increased patrols around the area.

[9] In May 1996, some 12-15 armed Maoists entered the shop and seriously assaulted a tenant who was living there. The appellant himself escaped out the back but his mother was given a warning that when the Maoists came to power, people like the appellant would be killed.

[10] Following this incident, the appellant's parents decided that it was unsafe for him to remain and they arranged for him to travel to England to study. He left Nepal in September 1996 and lived in England, studying management, until February 2000, when he returned to Nepal because he had heard from his wife that their daughter was very ill. By that stage, his wife and child had moved to a house in Kathmandu because they were finding village life difficult owing to the harassment of the Maoists, who would telephone, looking for the appellant. The appellant's wife continued to receive such telephone calls in Kathmandu, however, and was still receiving them when the appellant returned to live with her in 2000.

[11] The appellant only stayed in Nepal for a few weeks, before returning to England. His wife then told him that "things were normalising" in Nepal and he left

England again in August 2000 and returned to Nepal, where he joined his wife and child in Kathmandu.

[12] In Kathmandu, the appellant struggled to start a business. Eventually, after the birth of their second child in 2002, his financial difficulties and the fact that the Maoists persisted in their telephone calls to the wife, led him to decide that he should look overseas for work and he left Nepal for Germany. En route, he landed in England in transit and he sought refugee status there under a false name.

[13] While he waited for a result on his refugee claim, the appellant kept in touch with his wife by telephone. She would cry and ask for him to return. Eventually, in 2004, he assumed it must be safe for him to go back and he returned to Nepal (his refugee claim still undetermined) under his real name.

[14] In May 2005, in Kathmandu, the appellant and another man, AA, set up a small computer and office stationery business called "DEF", with money he borrowed from his father. He would visit his parents in X town every two or three months, either staying with them or with an uncle in the larger nearby town of Z.

[15] The appellant resumed his support for the RRP at this time. The party then split into two factions in 2005 and he followed the group led by Kamal Thapa (known as the "RPP Nepal"). He would attend fortnightly or monthly meetings, the frequency of which increased as elections drew near, at which time he would assist a spokesman going door to door, campaigning.

[16] Following the 2005 dissolution of Parliament by the King, the appellant's paternal uncle (by marriage) was appointed as Committee Co-ordinator for the Y district. The purpose of the District Committee was to monitor and evaluate business activities in the area. The appellant's uncle was, however, shot and killed by Maoists before a ceasefire agreement was reached in May 2006.

[17] Throughout 2006 and 2007, the appellant continued to support the RRP Nepal and was active in membership drives and promoting its objectives.

[18] In December 2007, the appellant made one of his regular visits to his parents in X town. Members of the YCL learned of his presence and attacked the shop, causing the appellant to flee over the roofs. His parents were warned that if he was caught by them, they would kill him.

[19] In January 2008, the appellant travelled to New Delhi to buy items for resale in Nepal. While he was there, he learned from his wife that Maoists had confronted his father and had attacked him, causing a serious head injury. His father was hospitalised for some two weeks. The family did not complain to the police for fear of being seen by the Maoists as informers.

[20] The appellant returned home to Kathmandu briefly but then returned to India where he applied for a visa to come to New Zealand. His business partner, AA, was also a supporter of the RRP Nepal, by coincidence, and was also having difficulties with the Maoists, though the appellant does not know their precise nature. He too decided to come to New Zealand for his safety.

[21] The RRP Nepal party assisted both men with their travel plans and funding.

[22] Since their arrival in New Zealand on 8 April 2008, the two men have flatted together. The appellant has kept in touch with his wife and learned that his parents and sister were also now living in Kathmandu, in a house they own there. The shop and home in X town has been rented out.

[23] The appellant lodged a refugee application on 1 May 2008. Initially, he hid from the Refugee Status Branch the fact that he had (twice) returned to Nepal from England in 2001 and had remained there until 2002 or that he had sought refugee status in England. He was interviewed by a refugee status officer six weeks later, on 12 and 13 June 2008, by which time this information had been gleaned from other sources and he admitted the deception. Enquiries into his certificate from the Queensland College, London established that it was false, a fact which he also conceded, though he now says it is genuine and that he was mistaken in conceding this.

[24] The appellant's application for refugee status was declined on 13 August 2008.

[25] Since he has been in New Zealand, the appellant's wife has sent to him a notice she has received on his behalf, from the Maoists, accusing him of spying and warning him to cease any activity against it.

Documentary evidence

[26] The Authority and the appellant have been provided with the file of the Refugee Status Branch, including copies of all documents submitted by the appellant at first instance.

[27] The appellant also submits the following:

- (a) Marriage Registration certificate for the appellant and his wife;
- (b) Migration Registration certificate, dated June 2007, recording the movement of the appellant and his family from X town to Kathmandu in February 2002;
- (c) Notice stating (as translated):

“People’s Liberation Army, Nepal
Third Division
Dinesh Ramji Memorial Brigade

All the Labour of the World is One

2 February 2008

Organisation/Person: [the appellant]
Subject: To Be Present

This is notified to you [the appellant] residing in Kathmandu District, [the appellant’s address] that you are spying People’s Liberation Army and our party’s leader and workers and doing activities against this prestigious People’s Liberation Army, requested to stop its activities and be present in its office within seven days. Otherwise if you make yourself available in such type of activities, party will be forced to take physical action against you.

Commander”

- (d) Medical certificate dated February 2008, for the appellant’s father, noting that he had suffered a physical assault, causing “multiple injury on the body”, loss of consciousness and vomiting.
- (e) Oath of Allegiance to the King, signed by the appellant’s uncle on taking office as President of a village Primary Working Committee;
- (f) Undated letter from the appellant’s wife;
- (g) Appellant’s letter of membership of the RRP Nepal, dated April 2008;

- (h) Appellant's undated Oath of Allegiance to the RPP Nepal;
- (i) Employment certificate dated 10 June 1996 from ABC, confirming the appellant's employment since December 1994;
- (j) Relationship Certificate confirming the appellant's relationship to his parents;
- (k) Relationship Certificate confirming the appellant's relationship to his wife and daughters;
- (l) 10 photographs, showing the appellant's attendance at various RRP Nepal activities, sometimes in the company of Kamal Thapa, the leader of the RRP Nepal party;
- (m) XYZ Membership certificate for the appellant's business in Nepal;
- (n) Untranslated certificate bearing the appellant's photograph;
- (o) Various envelopes from Nepal to the appellant in New Zealand.

[28] Counsel for the appellant has submitted written submissions dated 6 and 28 November 2008 and refers the Authority to various items of country information which are, as relevant, referred to hereafter.

THE ISSUES

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

"... owing to a 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."

[30] 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

[31] Before considering those issues, however, it is necessary to address the question of the credibility of the appellant's account.

[32] There are aspects of the appellant's account which either impugn his credibility generally or are disbelieved.

[33] It is a matter of concern, for example, that the appellant initially sought to hide from the New Zealand authorities the extent of his time in England, the fact that he had twice returned to Nepal in 2000 and the fact that he had sought refugee status in England under a false identity.

[34] It is also fanciful for the appellant to suggest that he and his business partner did not realise for a long time that the other was an active supporter of the RPP Nepal. The appellant says that, in spite of starting a small business with the man in May 2005 after their past friendship in England, each did not discover that the other was an RPP Nepal supporter until they happened to be campaigning together in the lead-up to the 2008 elections. Given the enmity between royalists and Maoists in Nepal at that time, it is beyond belief that either man would have been in day-to-day contact at work with a business partner whose political views were not well-known to him. The Authority is satisfied that the appellant's pretence that he knew nothing of his friend's political activity is no more than a device to forestall questions which might compromise each other's refugee claims.

[35] The claim that Maoists persisted in searching for the appellant by regularly telephoning his wife, whether in X town or Kathmandu, from 1996 to 2002 and beyond, is implausible. To sustain such interest in a fruitless pursuit for over six years, particularly given the appellant's lack of political importance, is inherently unlikely. When this was put to the appellant, he could offer no sensible explanation.

[36] The Maoist notice of 2 February 2008, supposedly given to the appellant's wife, requiring him to report to the Maoists within a week and threatening him that he must stop opposing them, is not accepted as genuine. First, the appellant says

that his wife sent it to him in a small envelope, after he came to New Zealand. Yet the letter is on A4 paper and has clearly never been folded. When this was queried, he then produced a number of empty envelopes from his wife, which might conceivably have been large enough to contain the document but which did not, inevitably, fit the description of "small". Further, the appellant claimed never to have been told about the notice before receiving it here in New Zealand. When the Authority pointed out to him that it was dated two months before he left Nepal, he could not explain why his wife would have failed to give it to him at that time, or at least to tell him of it. It is implausible that she would not have done so, particularly as the letter contained a deadline and threatened him harm if he persisted in his actions. That she would allow him to miss the deadline and to continue his activities ignorant of the threat is incomprehensible. The notice is not accepted as genuine.

[37] These factors, taken cumulatively, lead the Authority to conclude that the appellant's claim to have had past difficulties with the Maoists in Nepal is untruthful.

[38] All that is accepted is that the appellant is a Nirwani co-owner of a small business in Kathmandu and that, in the lead-up to the April 2008 elections, he was a low-level supporter of the right-wing, pro-monarchist RRP Nepal party. That latter point is a reasonable inference from the various photographs which show him and his business partner, and many others, in the company of Kamal Thapa, the leader of the RPP Nepal, engaged in what appear to be campaign activities such as door-to-door calling.

[39] It is against these findings that it is now necessary to consider whether the appellant has a well-founded fear of being persecuted.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Nepal?

[40] Persecution is defined in refugee law as the sustained or systemic violation of basic or core human rights such as to be demonstrative of a failure of state protection. See J C Hathaway, *The Law of Refugee Status* (Butterworths, Ontario, 1991) pp104-108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at p15.

[41] The Authority is grateful to Ms Patchett for the wealth of country information submitted. Ultimately, however, neither it nor the Authority's own researches point to persons with the particular characteristics of the appellant having been at risk of being seriously harmed since the April 2008 elections.

[42] Since the Maoists came to power in what are described by observers as credible elections in April 2008 (see, for example, the United States Department of State's *Country Reports on Human Rights Practices: Nepal* (February 2009)), there have been various social and political difficulties in progressing the country from civil war to a multiparty democracy. Much of the country information is concerned with, for example:

- (a) the difficulty in integrating former Maoist insurgents into the armed forces (which have remained in their barracks);
- (b) India's concern that its former ally, Nepal, may renege on the 1950 Treaty of Peace and Friendship, as part of a re-alignment with China; and
- (c) criticism of the YCL for continuing sporadic acts of violence. Two young persons were, for example, arbitrarily killed by the YCL in 2008 on the grounds that they were thieves – murders for which no-one has been brought to account.

[43] In spite of these difficulties, the country information is virtually silent as to any serious reprisals against the supporters of opposition political parties, or against persons of any social class, ethnic group or occupation. Nepal has been monitored extensively by international human rights observers in the relevant period and there is no doubt that, had such abuses occurred, they would have been extensively recorded. They have not.

[44] The website of the South Asia Terrorism Portal (www.satp.org) a private monitor which, in its own words "creates the database and analytic context for research and analysis of all extremist movements in the region", gives a day-by-day account of 'incidents' involving the YCL in Nepal throughout 2008. Of the 70 incidents noted, only two involved the RPP Nepal – an incident on 26 March 2008 in which an RPP Nepal cadre was one of a group of six members of different political parties kidnapped by the YCL to intimidate voters, and an incident on 28 March 2008 in which stones were thrown by YCL supporters to disrupt an RPP

Nepal election meeting in the Pokhara district. Significantly, both incidents happened in the run-up to the April 2008 elections. There is no mention of any incidents against RPP Nepal supporters or members since the elections.

[45] As a pro-monarchist, right-wing businessman, the appellant's diffidence about the success of the Maoists in the April 2008 elections is not hard to comprehend. But the Maoists appear committed to the democratic process, at least for the foreseeable future (see "Prachanda's first interview as Nepal PM", *BBC News* 3 September 2008), and there is simply nothing to indicate that a person having the characteristics of the appellant is at risk of serious harm.

[46] The Authority is satisfied that there is no real chance of the appellant being persecuted if he returns to Nepal. He does not have a well-founded fear of being persecuted there.

[47] Given that finding, it follows that the second issue raised by the Convention, the reason for being persecuted, does not arise.

CONCLUSION

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

"C M Treadwell"

C M Treadwell
Member