

AT AUCKLAND

Appellant:	AE (Nepal)
Before:	B L Burson (Member)
Counsel for the Appellant:	C Curtis
Counsel for the Respondent:	No Appearance
Date of Hearing:	5 & 21 September 2011
Date of Decision:	19 December 2011

DECISION

INTRODUCTION

[1] This is an appeal against a decision of a refugee and protection officer of the Refugee Status Branch (“RSB”) of the Department of Labour, declining to grant refugee status and/or protected person status to the appellant, a citizen of Nepal.

[2] The appellant claims to be at risk of serious mistreatment by the Young Communist League (“YCL”) for refusing to join them if returned to Nepal. The central issue to be determined by the Tribunal is the credibility of the appellant’s account.

[3] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

THE APPELLANT’S CASE

[4] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

The Appellant's Evidence

[5] The appellant was born in the mid-1980s and shortly after his birth moved to Kathmandu. He remained living in Kathmandu for the remainder of his life before coming to New Zealand. His father is well-known in Nepal.

[6] The appellant's problems began in 2005 while he was a class captain at his high school. As class captain, he was responsible for maintaining student discipline and acted as an intermediary between students, parents and the teachers. At this time, he prevented representatives of the Maoist YCL from disseminating pro-Maoist propaganda and recruiting students at the school. The following day, he was approached by members from the local YCL office. They told him he should not interfere with their school visits and that he should instead join their cause.

[7] There now began an ongoing campaign of harassment of the appellant by the YCL to pressure him into joining their ranks. Three YCL members named AA, BB and CC were particularly involved. CC, the leader, had a distinctive scar to the right-hand side of his face. Initially, the YCL members approached him on his way to school. When the appellant told his father about this harassment, his father told him to avoid them and not have anything to do with them.

[8] After approximately one week, the local YCL started to come to his house. They forced the appellant to go with them to collect "donations" from members of the public and to seek recruits. The appellant and his father went to the police and filed a complaint. The police gave them an emergency telephone number to call if there were further problems.

[9] This harassment of the appellant carried on throughout the remainder of 2005 and into 2006. No further complaints were made to the police despite this harassment. Instead, the appellant placated the YCL by informing them that he would join them at the end of the academic year, after he had completed his examinations. The YCL told the appellant he had to do as he promised or he would be harmed.

[10] Instead of joining them as promised, after his examinations in April 2006, the appellant travelled to Z, a city situated hundreds of kilometres away. There he found work and made new friends. For the next six or seven months he remained in Z without any problems from the YCL. He was told by his parents that YCL

cadres continued to visit the family home looking for him but his parents told them they did not know where he was.

[11] In around September or October 2006, the appellant returned to Kathmandu to attend a religious festival. He stayed in Kathmandu for 10 or 15 days, during which time he did not go out of the family home. A few days after the appellant returned to Z he was approached by AA in a van. AA told him that CC wanted to see him. The appellant felt he had no choice but to go with AA and BB, who was also in the van along with other YCL cadres.

[12] The appellant was driven for a number of hours to a jungle area in which a makeshift training camp had been established and where YCL cadres were undergoing small-arms training. Immediately upon seeing him, CC approached the appellant, drew a pistol, and placed the gun at the appellant's temple. CC demanded to know why the appellant had reneged on his promise to join the YCL. The appellant said he had been required by his family to go to Z to work. He begged CC not to kill him and said that he would join the YCL immediately.

[13] While BB and CC were debating as to whether the appellant should be killed or given one last opportunity to join the YCL, word reached the camp that an army patrol was in the area. CC decided to let the appellant live and instructed the appellant to report to the YCL office in Kathmandu the following day. The appellant was taken to a small village from where he caught a bus to Z. After collecting his belongings, the appellant returned immediately to Kathmandu.

[14] He went to the family home and told his parents what had happened. The family discussed whether he should flee to India, but discounted this idea as India and Nepal shared an open border and the Maoists could easily trace him there. It was decided to send him to a safe country overseas. The kidnapping incident was reported to the police who repeated their previous advice to ring the emergency telephone number in case there were further problems.

[15] Approximately three days later, the appellant was at home when Maoists came to the family home demanding to know his whereabouts. The appellant's parents told the Maoists they had not seen him for over a year and they left. The appellant went to a friend's house in a nearby town called Y where he stayed for the next one-and-a-half months. He returned occasionally to the family home to visit his parents but did not stay overnight.

[16] After leaving Y, the appellant returned to Kathmandu. He stayed with friends in a different suburb from where his parents lived. In late 2006, the appellant enrolled in a nearby institute undertaking a computer-related course with a view to obtaining a student visa to enable him to travel overseas. In early 2007, after three months, the appellant completed the course. He applied for a number of courses overseas.

[17] During the remainder of 2007, the appellant remained in hiding with various friends in different parts of Kathmandu and in other parts of Nepal. He did not work but was supported by his family. He did not encounter any further problems with the YCL. He eventually received a student offer from a college in New Zealand. After receiving this offer he applied for and obtained a Nepalese passport and then in late 2007 submitted his application for a student visa for New Zealand. The appellant was subsequently issued with a visitor's visa and departed Nepal in early 2008.

[18] Since being in New Zealand, the appellant has kept in regular contact with his family. They have told him there have been repeated visits to the family home by YCL members asking as to his whereabouts. The YCL have also visited his uncle's house in Kathmandu looking for him. His family has advised the YCL that the appellant is overseas and they have no idea when he will be returning. The appellant told the Tribunal that the visits by the YCL were made almost weekly in the year immediately following his departure but over time the frequency has diminished. The last visit to the family home was approximately six or seven months ago.

[19] The appellant is worried about returning to Nepal. He believes the YCL are still interested in him. He believes that because of his father's status the YCL think he can use his connections to obtain donations from rich people. The YCL have networks across Nepal, and the Maoists are in power. Nowhere will be safe for him.

The Evidence of DD

[20] The Tribunal heard from DD. DD is a Nepalese national who came to New Zealand in late 2010 and was recognised as a refugee by the RSB in June 2011.

[21] DD explained that he too had had an encounter with CC. DD had been politically active in an organisation in Nepal and had come under pressure from CC to join the Maoist party. He described CC in identical terms to the appellant.

[22] DD told the Tribunal that he understands from the appellant that he was a class captain and DD believes this is the reason why the Maoists would be interested in him in the first place. Class captains have a lot of power and are seen as natural leaders.

[23] DD stated that the YCL tends to be drawn from lower caste, rural, uneducated youths and they would see the appellant, as a class captain of higher caste and the son of a person with some status in Nepal, as a real asset. He had heard of the appellant's father who was well-known.

[24] He does not believe that the interest in the appellant would have diminished over time. Nepal is still in a state of extreme political instability and there is political conflict between the Maoists and other political parties. There is a greater need for youth leaders now just as there was in the past.

Documents and Submissions

[25] On 1 September 2011, the Tribunal received from counsel a memorandum of submissions. Attached to the submissions were:

- (a) copies of letters from the appellant's high school confirming a mistake had been made in respect of an earlier letter sent by the school, which had raised credibility concerns at the RSB;
- (b) a further statement of the appellant;
- (c) a statement of DD;
- (d) a copy of the RSB decision dated 30 June 2011 granting DD refugee status; and
- (e) a bundle of country information relating to the YCL and the human rights situation in Nepal in 2011.

[26] During the hearing, counsel provided the Tribunal with the YouTube URL for videos which feature CC. Counsel also made oral opening and closing submissions.

ASSESSMENT OF THE APPELLANT'S CASE

[27] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”) (section 129); and
- (b) a protected person under the 1984 Convention Against Torture (section 130); and
- (c) a protected person under the 1966 International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[28] In determining whether the appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant’s account.

Credibility

[29] The appellant’s account is notable for his claim to have been persistently pursued by the Maoists YCL over a number of years. Far from killing or otherwise harming him, he has been treated with some leniency by the Maoist YCL, despite refusing to join them. This, he puts down to his status as class captain and family background. In short, he is seen as too valuable an asset to harm. While having doubts about the plausibility of such a scenario, on their own, these matters would not cause the Tribunal to reject his account. However, when considered alongside the cumulative weight of the following matters, the Tribunal has no doubt that the appellant has given an untrue account of his problems with the Maoists.

The kidnapping incident

[30] His account of being kidnapped rests on a set of extraordinary coincidences which, taken together, appear implausible. In particular, he claims to have been identified in Z by the very Maoists who had pressured him in Kathmandu, despite Kathmandu being situated several hundreds of kilometres away. Then, by further coincidence, an army patrol happened to be in the locality of the jungle camp he was taken to at the very time a discussion took place among his captors as to whether he should be killed or given a further opportunity to join them.

[31] Furthermore, the appellant's account of the timing of the visit to the family home after he returned to Kathmandu and during which he was present was inconsistent. According to his RSB interview and appeal statement, this incident occurred when he had returned to visit his parents after he had already gone to Y. In contrast, in his evidence to the Tribunal, he told the Tribunal that this incident took place on the third day after his return from Z and was the event which precipitated his flight to Y. The appellant's explanation for this discrepancy was simply that he was confused during his RSB interview.

[32] However, even if this were the case, he could not satisfactorily explain why he waited for three days at his parents' home before going to Y. According to his account, the YCL knew where his parents lived. Also, CC had made clear in the jungle camp that he thought the appellant should be killed but was giving him one last chance. Despite this claimed clear threat to kill him if he failed to comply with CC's demand that he present himself to the YCL office in Kathmandu the next day, not only did the appellant not do so, but he waited for three days in the one place in Kathmandu the YCL knew where to find him. He could not provide any compelling reason why he would do so. That he would wait for so long at the family home is, in these circumstances, implausible.

The reports to the police of his problems

[33] The appellant claims to have made complaints to the police in relation to the initial problems he faced and in relation to his kidnapping. There are credibility issues with each.

[34] According to the appellant, the event which triggered the first complaint was that the YCL had begun to forcibly take him to their "donation" gathering activities. Yet, there is no record of this matter in the complaint produced by the appellant purportedly from the police station concerned. The appellant's explanation for this discrepancy was that, despite it being the cause of his complaint, he did not divulge the information about being forced to accompany the YCL to the police as he was concerned that information given to the police could find its way back to the YCL and make his situation worse. He could not convincingly explain why, if this was the case, he made the complaint in the first place.

[35] Equally, the appellant told the Tribunal that, following the initial complaint to the police, at no time did he ever report the YCL's further harassment because he was too frightened to do so. This too is implausible. He could not convincingly

explain why if he were frightened to report further harassment he made the initial complaint at all.

[36] As to the reporting of the kidnapping incident to the police, the appellant told the RSB that, at his father's suggestion, he went to the police station and asked to meet the police inspector. He stated that he informed the police that he had been kidnapped, but did not give further details. He then went to Y. In contrast, the appellant told the Tribunal that his father had telephoned the police station and informed the police of the kidnapping. He stated that he did not speak to the police himself.

[37] When the discrepancy was put to him by the Tribunal, the appellant changed his evidence to say that he went to the police station because, at the time, he had been staying with friends next to the police station. However, this does not address the fundamental inconsistency as to who spoke to the police about the kidnapping incident. Furthermore, the explanation contradicts his evidence to the Tribunal that at the time the police complaint was made he had been staying at the family home and did not begin staying with friends near the police station until after he had returned from Y.

Delay in seeking protection

[38] The appellant's account is also notable for the considerable delay in his seeking protection from the harm he claimed to have faced, both in departing Nepal and in claiming refugee status in New Zealand.

[39] According to the appellant, in approximately October/November 2006, CC put a gun to his head and demanded he immediately join the YCL in Kathmandu. Despite not complying with this demand, the appellant did not leave Nepal until late March 2008, a period of approximately 14 months. Having then left Nepal, he then did not claim refugee status until December 2010, some two and a half years after he arrived in New Zealand and approximately four years after the threat made by CC.

[40] While delay in departure and/or claiming refugee status is not necessarily symptomatic of a lack of underlying credibility, the delays in this case are of an uncommon length, and the appellant's explanations for this lengthy delay were convoluted and implausible.

[41] The appellant told the Tribunal that the reason he did not go immediately to India after he returned from Z, was that the open borders between India and Nepal meant it was easier for the Maoists to trace him. Instead, he remained hiding in various places in Kathmandu and Nepal. This is implausible. It must be remembered that it was the local Kathmandu YCL members with whom the appellant had his problems. It was far easier for the appellant to be indentified in Nepal in general and Kathmandu, in particular, than it would be in India.

[42] Furthermore, the appellant told the Tribunal that, throughout the time he was hiding in Nepal, the YCL continued to look for him. However, far from remaining in hiding, the appellant attended a computer course in Kathmandu for a number of months. He also sat an International English Language Testing System test and in 2008 re-took his final high school exam, which he had previously failed. His explanation for all this activity was that his father advised him to protect himself by gaining entry to a western country on a student visa and that all this study was to that end. This explanation is contrived and is rejected.

[43] Its contrived and artificial nature is underscored by the inconsistency between his oral evidence as to the length of time he undertook the computer course and the documentary evidence he supplied to Immigration New Zealand in support of his visitor visa application. He told the Tribunal that he attended the course for three months. However, the certificate from the relevant educational institute states that its duration was from mid-December 2006 until the end of July 2007. He does not claim that the documentation is false, but says that this reflects the length of the course, not his attendance. The Tribunal has no doubt this is a false explanation, designed to reduce the incongruity between his attending a multiplicity of academic courses in the very city where he claimed the YCL were looking for him.

[44] As mentioned, his refugee claim was not lodged until December 2010, nearly two-and-a-half years after his arrival. The appellant claims that it was not until some Bhutanese refugees arrived in November 2010 that he became aware of New Zealand's refugee system. This is rejected. He told the Tribunal that throughout his time in New Zealand there have been regular visits to the family home and his uncle's home looking for him. There were almost weekly visits in the year immediately following his departure but these dissipated over time. Yet despite these ongoing attempts to find him, the appellant took no steps to seek protection. Indeed, the appellant did nothing until October 2008 when he lodged a work permit application. When considered alongside the other issues that have

arisen in this case, the delay that has occurred in this case further points towards an underlying lack of truth to the core of the claim.

[45] For these reasons, the Tribunal rejects the appellant's claim to have been subjected to the harassment he claims from the YCL. The Tribunal does accept that he is from the Brahmin caste and is the son of a prominent person. It accepts that he was the class captain as he claims. It accepts that there is a YCL leader of some prominence called CC who conforms to the description provided by the appellant. However, there is no credible evidence that he has had the problems with CC and other members of the YCL that he claims to have had. The Tribunal does not overlook that the appellant has filed documents purported to be from the school and from the police attesting to his problems and to a complaint but no weight is given to these documents, given the overall lack of credibility.

[46] Also, in coming to this conclusion, the Tribunal has not overlooked the evidence of DD that the combination of these characteristics mean it is entirely plausible that he would be seen as a natural youth leader and someone coveted by the YCL. However, DD was not a witness to any of the events underpinning the appellant's claim and his beliefs add little probative weight to the appellant's claim to have actually suffered the problems he claims as a result of his possessing these characteristics.

Finding of Fact

[47] The Tribunal finds that the appellant is a young Nepalese male from the Brahmin caste who is the eldest son of a prominent person. In his high school years, he was the class captain giving him a position of authority over the students in his years. His claim will be assessed against his background.

The Refugee Convention

[48] Section 129(1) of the Act provides that:

"A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention."

[49] 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.”

[50] In terms of *Refugee Appeal No 70074* (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 Claim to Refugee Status

[51] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 2039/93* (12 February 1996). Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[52] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective.

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

[53] Country information shows Nepal’s transition towards political stabilisation following the end of open conflict is fraught. The International Crisis Group Report *Nepal’s Fitful Peace Process* (7 April 2011) (“the ICG report”) at p1 observes in its overview:

“Nepal is entering a new phase in its fitful peace process, in which its co-called “logical conclusion” is in sight: the integration and rehabilitation of Maoist combatants and the introduction of a new constitution. The Maoists, the largest party, are back in government in a coalition led by the Communist Party of Nepal (United Marxist-Leninist), UML party. Negotiations, although fraught, are on with the second-largest party, the Nepali Congress (NC), to join. Agreement is being reached on constitutional issues and discussions continue on integration. None

of the actors are ramping up for serious confrontation and few want to be seen as responsible for the collapse of the constitution-writing process underway in the Constituent Assembly (CA). But success depends on parties in opposition keeping tactical threats to dissolve the CA to a minimum, the government keeping them engaged, and the parties in government stabilising their own precariously divided houses. It will also require the Maoists to take major steps to dismantle their army.”

[54] Similar observations are made in Human Rights Watch *World Report: Nepal* (2011) at p337 and Amnesty International *World Report: Nepal* (2011) at p239. Both reports establish that human rights abuses continue to be perpetrated by both state and non-state agents, including the YCL.

The Young Communist League

[55] The YCL is a significant presence in Nepal. A summary of its background and structure is set out in the South Asia Terrorism Portal Report: *Nepal Terrorist Groups: Young Communist League* (www.satp.org) (“the SATP YCL summary”). According to the SATP YCL summary, the YCL was created during the “People’s War” as an affiliate to provide “support and energy” to the revolution. As the youth wing of the CPN-Maoist Party, its role was “to organise youth, to be involved in events, conduct political awareness and take part in development work as volunteers”. The SATP YCL summary confirms that the person identified by the appellant as CC is in charge of the YCL Kathmandu region and is a “hard core member” of the CPN-Maoist. It states that, while YCL leaders claim that the cadres are unarmed young men without formal military training, it is “widely known” that they receive extensive training. YCL cadres openly carry weapons and, backed by the full might of the Maoists, openly challenge government authorities, including the police. However, in order to project an image of social responsibility the YCL engages in a number of symbolic activities such as cleaning localities’ rivers and tree planting. On occasion, they involve themselves in quasi policing activities such as traffic management, night patrolling, demolition of illegal houses and the like.

[56] Amnesty International (*op cit*) at p240 also state the YCL is engaged in killings, assaults and abductions. According to the United States Department of State 2010 *Human Rights Report: Nepal* (8 April 2011) at p1:

“The Maoist affiliated Young Communist League (YCL), and members of other small ethnically based armed groups engage in arbitrary and unlawful use of lethal force.”

[57] At section 1c, the report notes that 497 cases of torture by both state and non-state actors were recorded by an NGO between January and 31 July 2010, of which only one was attributed to the YCL. The report goes on to state, however, that the government failed to conduct thorough and independent investigations into reports of security forces or Maoist/YCL brutality and did not generally take sufficient action against those involved. At section 1f, the report notes that the YCL occasionally conducted illegal forced searches of houses, businesses and property. At section 1g, the report notes that Maoist-affiliated organisations such as the YCL continue to commit abuses during the year.

[58] The SATP YCL summary details a number of incidents of assault and kidnapping in which the YCL have been implicated. Further details of kidnappings are set out by the South Asia Terrorism Portal *Abductions by the CPN Maoists since the April 2006 Cease-fire* (www.satp.org) (“the SATP abductions report”). In both reports, there are only two incidents reported in the period January-June 2011 and both cases involved persons who were activists for the rival Nepalese Congress Party.

[59] In light of the country information, there can be little doubt that YCL cadres are engaged in assaults, kidnappings and property damage in Nepal. Yet, it would be a mistake to see this as being necessarily politically motivated in all cases. Some incidents appear to be motivated by economic gain. The IGC report notes, at p11:

“The business interests of the Maoist party, individual leaders and their relatives serve multiple purposes, and involve party structures. Some are central-level investments... Others are managed by the unions, and include a number of revenue streams, such as sharing of profits from the casinos in Kathmandu and targeted extortion of businesses. The YCL, which is being challenged by the new “people’s volunteers”, was after the war at the frontline of Maoist economic activity, involved in extortion and various industries including herb collection and processing, and trades such as timber. The YCL is still organised along economic lines; in 2008 the organisation was restructured to form separate production and construction units. These are still active and headed by YCL district or area in-charges. Some of these activities support the party organisation, and others expand the influence of individuals or factions within the party. Other activities, such as the large land dealings some senior Maoist leaders and their family members reportedly participate in, are for personal gain. Crisis Group interviews, Kathmandu, January-February 2011.”

[60] In summary, the Tribunal accepts that YCL cadres engage in assaults and kidnappings of individuals with some degree of impunity, both for political reasons as well as simply for economic gain. However, there is no country information before the Tribunal or of which it is aware to establish that persons of the Brahmin caste who were class captains are being targeted by the YCL to force them to join

them and aid their cause and if so, are at risk of serious harm for refusing to do so. In none of the country information is there any pattern emerging of persons possessing the bundle of characteristics the appellant does, being at risk of forcible recruitment into the YCL to the real chance level. Any risk to the appellant arising from his possession of these characteristics is entirely conjectural. It is not a well-founded fear of being persecuted.

Conclusion on Claim to Refugee Status

[61] For these reasons, the Tribunal answers the first principal issue in the negative. The need to consider the second does not, therefore, arise. The appellant is not entitled to be recognised as a refugee under section 129 of the Act.

The Convention Against Torture

[62] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

[63] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

"... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Assessment of the Claim under the Convention Against Torture

[64] The Tribunal has not found the appellant credible in terms of his claims to be at risk from the YCL for refusing to join them. It has also found that there is no real chance that he will be at risk of serious harm by reason of his being a Brahmin who is the son of a well-known person in Nepal and a former class captain. The appellant relies only on those matters which he has raised in the context of his refugee claim. For the reasons already given in respect of his refugee claim, there

are no substantial reasons for believing the appellant would be in danger of being subjected to torture if deported from New Zealand.

The ICCPR

[65] Section 131(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.”

[66] Pursuant to section 131(6) of the Act “cruel treatment” means cruel, inhuman or degrading treatment or punishment but, by virtue of section 131(5):

- “(a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards:
- (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.”

Assessment of the Claim under the ICCPR

[67] Again, the Tribunal has found the appellant not to be credible in terms of his claims to be at risk from the YCL for refusing to join them and found that there is no real chance that he will be at risk of being persecuted in Nepal. As with the claim under the CAT, the appellant relies only on the matters he has raised in the context of his refugee claim. For the reasons already given in respect of his refugee claim, there are no substantial reasons for believing the appellant would be in danger of being subjected to cruel treatment as defined under the Act if deported from New Zealand.

CONCLUSION

[68] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is not a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture;

(c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[69] The appeal is dismissed.

"B. L. Burson"

B L Burson
Member

Certified to be the Research Copy
released for publication.

B L Burson
Member