

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70636/97

AT AUCKLAND

Before: J M Priestley QC (Chairman)
R P G Haines (Member)

Representative for the Appellant: Ms R Singh

Representative for NZIS: No Appearance

Date of Hearing: 28 October 1997

Date of Decision: 5 February 1998

DECISION

INTRODUCTION

The appellant is aged 33 and is a national of Nepal. He is married with two children. The appellant arrived in New Zealand on 4 December 1996, having obtained a 20-day visitor's permit from the British embassy in Kathmandu. He applied for refugee status on 13 December 1996.

In a short written statement which accompanied the appellant's refugee application, he stated that he had been an "active worker" of the Samyukta Jana Morcha (SJM) since 1990; had been a district president since June 1994; and that the government of Nepal had, since January 1996, banned the activities of the SJM, arresting a number of leaders many of whom (including the appellant) had gone underground.

The appellant's refugee application was duly heard by an officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service. By letter dated 30 June 1997, refugee status was declined. From that decision the appellant appealed to the Authority.

NEPAL - COUNTRY INFORMATION

The appellant claims that he is entitled to refugee status on the basis that he has a well-founded fear of being persecuted by the Nepalese authorities on the ground of his political opinion. It is the appellant's case that he was, in June 1994, elected president of the SJM in the X District of Nepal. The appellant claims that he was one of approximately 75 SJM district presidents throughout Nepal and that, in his particular district, there were 151 active members. It is thus convenient at the outset to set out some relevant country information.

Nepal is a land-locked country lying on the south side of the Himalayas. It has a population of approximately 21 million people and is predominantly rural. The country is a monarchy and, since November 1990, can best be described as a parliamentary democracy headed by a constitutional monarch. Between January 1961 and April 1990, political parties were banned but operated unofficially.

Since the advent of the November 1990 constitution, Nepal has been governed by a directly elected 205 House of Representatives, being the Lower Chamber of a two-Chamber legislature. Executive powers are vested in a Council of Ministers which is chaired by a Prime Minister drawn from the majority party grouping in the House of Representatives. The constitutional arrangements of Nepal are similar to the "Westminster" model.

The two main political parties currently operating in Nepal are the left-of-centre Nepalese Congress Party and the United Nepalese Communist Party. At the November 1994 elections, a "hung parliament" resulted. The United Nepalese Communist Party secured the largest number of seats (88) but fell 15 seats short of an absolute majority. The Nepalese Congress Party won 83 seats, a monarchist party won 20 seats and the Nepal Mazdoor Kisan Party four seats. The SJM Party won three seats. Between November 1994 and September 1995, the Prime Minister was the leader of the United Nepalese Communist Party (Man Mohan Adhikary). In September 1995, following a constitutional challenge in the Nepalese Supreme Court, a centre coalition headed by the Nepalese Congress Party of Sher Bahadur Deuba in coalition with a monarchist party became the government. (See generally, JD Derbyshire, Political Systems of the World 2nd ed. (1996)).

Country information makes it abundantly clear that so far as the Nepalese political scene is concerned, the SJM of which the appellant was a member, is a Marxist and revolutionary party. Amnesty International Report 1997 states:

“In February [1996] the Communist Party of Nepal (CPN) (Maoist) and its political wing, the Samyukta Jana Morcha (SJM) United People’s Front, declared a “People’s War” after the government failed to meet 40 demands they had submitted to Prime Minister Sher Bahadur Deuba. The demands included the abolition of royal privileges, the promulgation of a republican constitution and the abrogation of several treaties with India. In the following months, there were reports of CPN attacks on police stations, banks, offices of village development committees, and against local landlords and politicians, particularly in the mid-western region. ...

Scores of possible prisoners of conscience were detained on suspicion of being members or sympathisers of the CPN (Maoist) or SJM. They included people holding office in the local administration, teachers, journalists and human rights activists based in the mid-western region.... By the end of November, 1358 people had been arrested. Approximately 600 remained in detention awaiting trial at the end of the year.”

The report goes on to detail widespread torture and ill-treatment of people arrested in the context of the “People’s War”; the inhumane treatment of detainees on the part of the police; sexual assaults; and at least five cases of deaths in police custody. There were also reports of civilian deaths at the hands of armed Maoist activists.

A further Amnesty International publication, “Nepal, Human Rights Violations in the Context of the Maoist People’s War”(March 1997) states *inter alia* (p3):

“According to an editorial in “People’s War” the “people’s war” declared on ... 13 February 1996 ... aims to “bring an end to the rule of vengeful regime and to establish a people’s new democracy” and constitutes an “historical revolt against feudalism, imperialism, and so-called reformists”. The SJM announced that it was joining the “people’s war” because the government had failed to respond to a memorandum presented by its representatives to Prime Minister Sher Bahadur Deuba on 4 February 1996. The memorandum had listed 40 demands, including the abolition of royal privileges and the promulgation of a republican constitution, the abrogation of the Tanakpur Treaty with India on the distribution of water and electricity and the delineation of the border between the two countries. To Amnesty International’s knowledge, the government did not officially respond to the memorandum.

On 13 February 1996 itself the day of the formal declaration of “people’s war”, there were eight incidents reported from five districts, including attacks on police posts and local administrative offices such as offices of the CDOs and district development committees. In the following weeks the violence escalated particularly in Rolpa and Rukum districts. There were further reports of attacks on police stations, banks, offices of village development committees, local landowners, politicians of the Nepalese Congress party and other mainstream parties. There were also reports of a number of attacks on local offices of international non-governmental organisations.

In the initial phase, the attacks on politicians and landowners often resulted in serious injuries to their hands or legs. From about March 1996 onwards, however, the pattern changed into one of deliberate killings.

About a dozen people have reportedly been killed by armed Maoist activists since. These killings and other human rights abuses have been reported from [named districts].”

The same publication (p6) deals with the SJM stance to this turmoil thus:

“Baburam Bhattarai the leader of the SJM, in a statement issued on 9 March 1996, indirectly admitted that people had been deliberately and arbitrarily killed. He was reported as having stated:

“Targets for the war are selected only because of the role as exploiters and not because of their affiliation with any particular political party.””

This somewhat lengthy exposition of political events in Nepal has been necessary in part to set the scene for the appellant’s narrative and in particular to describe the role of the SJM in Nepal in the first half of 1996.

THE APPELLANT’S CASE

As stated at the outset of the previous section of this decision, the appellant claims that there is a real chance he will be persecuted because of his political opinion, particularly because of his District leadership role of the SJM. On the basis of the country information just outlined, if the appellant were indeed the X District president of the SJM, then the activities of that body and its CPN (Maoist) arm would expose the appellant to the risk of human rights violations of the type referred to in the Amnesty International publications detailed above. So too, on the basis of the 9 March 1996 statement of the SJM’s leader, one might have expected the appellant to have had some involvement in the “people’s war” which his party supported. Thus, as will be apparent from this decision as it unfolds, the appellant’s credibility, and in particular, his narrative of his involvement in events in Nepal in March 1996, are of particular importance.

The appellant states that he is the only son of a landowner. His formal education at school lasted 12 years. As a child he visited India on a number of occasions. In 1987, he spent approximately three months in the northern Indian city of Kanpur undergoing professional training as an optician. The appellant is married and has two sons aged nine and seven. His father is in his mid-50s.

Shortly after his return from India in 1987, the appellant obtained employment in a shop as an optician. He states that in October 1990 he became a member of the SJM. When asked why he chose to become politically involved, the appellant informed the Authority that the SJM was the party which coincided most closely with his own thoughts. For him, the most important feature of the SJM party was its opposition to the Nepalese monarchy. He also considered the party was an appropriate vehicle to combat poverty and corruption in Nepal. Prior to 1990, the appellant appears to have had no political involvement (indeed political parties, although active, were banned until 1990). The appellant stated that he was an "active" member of the students' union during his high school years. The union's activities, however, appear to have been limited to cultural and fund-raising events of a non-political nature.

The appellant states that he was elected as president of X District branch of the SJM in June 1994. Until certain events, which will shortly be described, occurred in March 1996, the appellant had no problems with the police or the Nepalese authorities. He was never detained. His political activities appear to have been unimpeded. These activities were, in the main, limited to distributing pamphlets and making speeches. In the X District there were 151 active members. The extent of his political commitment ranged from between 10 to 15 hours per week if the political scene was quiet, to up to two days per week when the party had some specific programme of action in mind.

The appellant stated that on 1 March 1996, his party staged a peaceful demonstration in Gorkha. Gorkha was approximately a five or six hour journey from where the appellant lived. The appellant stated that at Gorkha he, along with others, made a speech which would be regarded as defaming the Nepalese monarchy. He was also involved in organising and planning (along with others) a mass rally at Gorkha. He was personally involved in a demonstration in the grounds of a Gorkha school. The police intervened and opened fire on the rally. Two SJM members were apparently killed by the police.

In the days following the disturbances at Gorkha, the appellant travelled to a small village called Mati on the Indian border. Whilst at Mati, he received orders from his party that he was to travel to Rolpa, some three days' journey away in north western Nepal. The reason why he was sent to Rolpa was to take over the position in that District as SJM president. For approximately two months, the appellant lived in hiding in a village named H, where he carried out the function of

the Rolpa District president. His predecessor had apparently been arrested by the police. According to the appellant, most party activities took place clandestinely at night, there being an unofficial curfew in place. Whilst in the Rolpa District, the appellant learned that the police had been seeking him at home.

After a stay of approximately two months in H, the appellant then left the Rolpa District. He went to Bhairawa, a town close to the Indian border in the southern part of Nepal, where he lived for approximately three or four months. Whilst in Bhairawa, although the appellant kept up some interest in politics, he was not actively involved. He stated that nobody was politically active because the situation was too dangerous and a curfew was in place. Party workers were still being arrested.

During the course of the hearing the appellant was closely questioned about the links between the SJM and the CPN (Maoist) group. The country information on Nepal makes it abundantly clear that the two groups are closely linked and that the SJM, a legal political party in Nepal, was the political wing of the CPN (Maoist). The appellant unequivocally describes himself as an SJM District president. On the basis of his narrative, the SJM obviously regarded him as a valuable resource, ordering him to the Rolpa District at a time of crisis. This line of questioning by the Authority was necessary not only to test the veracity of the appellant's story but also to ascertain whether he was personally involved in atrocities and human rights violations which might bring Article 1F of the Convention into play.

On this topic, the appellant's evidence was surprisingly imprecise and vague, and frequently at variance with the facts. The appellant stated that the CPN (Maoist) was "officially" part of the SJM but that "unofficially" it was a group which had broken away and established its own structure approximately one year before March 1996. The Nepalese government, however, saw the two groups as being one and the same. The appellant claimed that he was not a member of the CPN (Maoist). He stated that the goals of the two groups were the same but the Maoist faction was more revolutionary. He stated that the CPN (Maoist) group could still use the SJM name but it was not the SJM's responsibility to stop this splinter group's activities and indeed no steps were taken to stop them. At a later stage in his evidence, the appellant shifted ground somewhat and stated that the Maoist faction in fact regarded the SJM as "enemies". Since the SJM was "not allowed to support" the Maoist group and their activities, they were *ipso facto* enemies.

During the time the appellant lived in Bhairawa (he was slightly vague on chronology but appears to have lived in that town from April/May 1996 until his departure from Nepal in December 1996), the appellant stated that he lived in hiding and was always on the move in the district, staying with different people. The appellant was asked how he managed financially during this period. He replied that the shop-keeper in X (where the appellant worked as an optician) sent him money because this person had a lot of sympathy for the appellant. Whilst the appellant was in Bhairawa, he received a message that his father had been detained for a short period by the police and “shoved around and beaten” in an attempt to persuade the father to reveal the whereabouts of his son. This information was conveyed to the appellant approximately one week after he arrived in Bhairawa. The appellant’s father was, on the appellant’s admission, a wealthy man who was a landowner who had a number of large land holdings.

In approximately October 1996, the appellant took steps to leave Nepal. Despite the proximity of Bhairawa to the Indian border, and despite the fact that he had previously travelled to India and lived there for a time, the appellant made no attempt whatever to find safety in India. There are few restrictions on Nepalese citizens entering India. All that is required is an identity card. When asked by the Authority why he had not fled to India, the appellant stated that the Nepalese police would have been able to follow him into India and find him there. Why the Nepalese police should be able to find the appellant more easily in India than had been the case in Nepal, was not explained. In any event, for the equivalent sum of US\$10,000 the appellant obtained a Nepalese passport (issued on 4 November 1996), a visitor’s permit and tickets to New Zealand. He left Kathmandu without mishap, travelling on his own name on 3 December 1996. The appellant stated that he was able to raise the large sum involved (approximately 500,000 Nepalese rupees) to pay for his travel with assistance from his father. The sum involved was, he stated, approximately one year’s income for himself and his father. His father raised money from his friends but did not reveal the precise figures to his son.

The appellant stated that he had had no contact since February 1996 with his wife and children. This lack of contact seems somewhat odd, given the financial assistance the appellant says he received from his father. Since his arrival in New Zealand, the appellant has spoken twice to his father on the telephone. The first telephone conversation took place in May 1997. The second conversation took place four weeks before the hearing of this appeal on 30 September 1997. In this

latter conversation, the appellant's father told him that the situation in Nepal was still unsettled and advised his son not to contact him too frequently. The appellant's father also indicated that the police were still visiting the appellant's home ("at least once or twice per month") looking for him.

At the hearing of this appeal, the appellant produced a photocopy of a Nepalese newspaper, the "Weekly Narayani" dated 18 September 1997. This newspaper contained an article purportedly of relevance to the appellant's case, the translation of which appears below. The photocopy of the newspaper in question had been sent by airmail from Kathmandu to the appellant's New Zealand address. The article apparently only arrived a few days before the hearing. Significantly, although the most recent telephone conversation between the appellant and his father took place on 30 September, 12 days after the publication date of the newspaper, the appellant's father made no reference to this publication during their telephone conversation.

The date of the article assumes some importance. The interview between the appellant and the RSB took place on 6 March 1997. The NZIS letter declining refugee status was dated 30 June 1997. The appellant's representative appealed by a letter dated 18 July 1997. The Authority's Secretariat informed the appellant's representative of the hearing date of the appeal (28 October 1997) by letter dated 9 September 1997. The newspaper article thus appeared nine days later.

The article reads:

"INTENSIVE SEARCH FOR WORKING MEMBERS OF THE U.P.F.

Bhaktapur - The police are carrying out an intensive search for [the appellant], [A], [B], [X] and [Y], working members of the United People's Front (U.P.F.). [The appellant], [A] and [B], who are living in Gorkha but are currently working in Chitawan, are responsible working members of the United People's Front. Recently they disappeared. [An alternative translation was "They have been missing for some time".] According to a source the police questioned their families yesterday."

Finally, the appellant stated that, despite the fact that the SJM was a Marxist or Communist party, it had no policies (as far as he knew) on land ownership. The appellant saw no apparent contradiction between his position as the only son of a large and wealthy landowner and being the District president of a Marxist party. The appellant denied that he had been personally involved in the planning or execution of attacks on landowners and political opponents. He alleged that the

only time he was ever involved in a demonstration was at Gorkha in March 1996. He feared, however, that if he returned to Nepal he would be at risk at the hands of the police who did not differentiate between the political opponents of the government.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

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

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

DECISION

We have given careful consideration to the appellant's story. Central to the appellant's claim is his assertion that he was a high-ranking member of the SJM and was involved as the District president in two widely separated areas of Nepal in March 1996. Having considered the appellant's story, the country information, and the appellant's answers to the Authority with care, the Authority has reached the conclusion that the appellant's claim for refugee status is a fabrication. Our reasons for rejecting the appellant's credibility in this central area are as follows:

1. The appellant lacked both the fervour and the grasp of political theory which one would expect from the holder of a leadership position in a Marxist party. He spoke in generalities and had little or no detail about the SJM's political philosophy and political programme.

2. It is most unlikely that the only son of a wealthy landowner would be attracted to the SJM. Although the history of revolutionary parties of the left and their leadership is not devoid of examples of bourgeois membership, we think it improbable that the appellant's father, who would inevitably be regarded as a class enemy by his son, would have been prepared to assist a bona fide activist of a party plotting the downfall of the father's class.
3. On the issue of the precise links between the SJM and the CPN (Maoist) group, the appellant's evidence was unsatisfactory and evasive. On that issue he was glib and purported not to know information about activities of both groups which, as a District President, he would have inevitably known.
4. Although the appellant was purportedly directed by the SJM to take over the Presidency of the Rolpa District, the appellant was unaware of the various atrocities which were taking place in that District in the same time frame.
5. If the appellant was who he says he was, then the Authority finds it unbelievable that he would not, between April and October 1996, have availed himself of the opportunity to have sought refuge in India. The appellant was evasive and unconvincing in the answers which he gave as to why he had not adopted the relatively simple and cheap procedure of crossing into India when he was most at risk, rather than allegedly living and hiding in Bhairawa for six months.
6. In the event of the appellant being at risk for the reasons he has stated, we think it is improbable that he would have been able to leave Nepal in December 1996, travelling openly in his own name. He had previously had a passport issued to him and left Nepal through the country's largest airport.
7. Other than the newspaper article (dealt with below) there is no evidence whatsoever that the police in Nepal have any interest in the appellant.
8. We do not believe the appellant's assertion that he received financial support from his employer during the months he spent in hiding in Bhairawa.
9. We reject as a fabrication the newspaper article in the "Weekly Narayani" dated 18 September 1997. It is inconceivable that, had that publication

appeared, the appellant's father would have omitted to inform his son during the 30 September telephone conversation. We note too the convenient timing of the alleged publication between notification of the hearing of the appeal and the hearing date. We are satisfied that the newspaper article (of which we were produced a photocopy) is either a contrived forgery or (as is easy to achieve in South Asia) an insertion paid for by the appellant's supporters or family. The article is, in any event, internally inconsistent. If the appellant (as he stated) had no role or involvement with the SJM since mid-1996, there could be no conceivable reason as to why he should be reported in September 1997 as "living in Gorkha but currently working in Chitawan".

10. Given the undisputed country information that the SJM declared a "people's war" in February 1996, the appellant, being one of that party's 75 District presidents, had a totally inadequate grasp of the reasons which lay behind that stance of his party and, more importantly, the impact which the declaration would have brought to his position of president of the X District.

All the above reasons, both individually and more important cumulatively, cause us to reject unhesitatingly the appellant's narrative. He is not credible. There is no credible basis on which to claim refugee status. The appellant is not entitled to refugee status. The appeal is dismissed.

.....
Chairman