

Federal Court



Cour fédérale

**Date: 20190508**

**Docket: IMM-5029-18**

**Citation: 2019 FC 622**

**Toronto, Ontario, May 8, 2019**

**PRESENT: Mr. Justice Campbell**

**BETWEEN:**

**PREM BAHADUR GURUNG (A.K.A.  
GURUNG, PREM BAHADUR)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] By a decision dated August 11, 2017, the RPD accepted the Applicant's evidence that he is at risk of persecution in his home country of Nepal, but for an existing internal flight alternative (IFA). The RPD found that the Applicant would face a risk of personal targeting upon return:

In summary, the claimant alleges that he fears persecution in Nepal at the hands of Maoists including the Young Communist League (YCL) and their allies due to his real and perceived political

opinions. The claimant fears that the Maoists and/or YCL will abduct, torture or kill him because of a failure to comply with demands to join their party and pay “donations” up to 1,000,000 Rupees. He alleges he was abducted and his father assaulted because he did not obey them.

(Paras 2 and 3)

[...]

The panel therefore finds credible, on a balance of probabilities, that: The claimant was a member of the Nepali Student Union between 2003 and 2005. Maoists attempted to recruit him into the YCL in September 2006. The claimant worked in Saudi Arabia and the United Arab Emirates for periods of time between October 2006 and August 2012. In 2012 he obtained a work permit for Canada and moved to Calgary in September 2012. The claimant’s father was assaulted and seriously injured in an assault in March 2011. The claimant was abducted and assaulted in July 2012.

(Para 9)

[...]

However, as stated above the panel does not find that any of the credibility concerns on their own or taken together serve to rebut the presumption of truthfulness surrounding the core allegations namely that he was targeted by Maoists and fears future persecution due to his failure to comply with past demands.

(Para 17)

However, the panel finds that the claimant does not face a serious possibility of persecution in Nepal because there are parts of that country where he would be safe.

(Para 18)

[2] The current Application concerns the Applicant’s appeal to the RAD on only the RPD’s finding of an IFA. By a decision dated September 17, 2018, while making no clear finding of negative credibility, the RAD proceeded to refute cogent evidence advanced by the Applicant in

support of his position that Kathmandu is not a safe IFA. In this process, in my opinion, five findings made by the RAD render the decision under review unreasonable.

[3] As to current risk, the RAD cites evidence that the Maoists have reduced their extortion and predatory activities:

The RAD has considered if the Appellant will face risk in relocating to Kathmandu due to his profile as an individual who was being sought for extortion by his local YCL group in the town where he resided. The Appellant argues that the YCL/Maoists have a nationwide network and that they can locate him anywhere in Nepal.

The RAD notes the Appellant was asked if he had any evidence that the various Maoist groups in his village are connected to other areas. He answered in the positive stating that the YCL in his village is connected to other cities. When he was asked to explain how he was aware of this information, he stated "The YCL, they used to discuss these matters, they have this networking". The RAD finds the Appellant's explanation did not address the question as put to him and it amounts to simple speculation as to the communication ability.

The RAD has reviewed the documentary evidence before the RPD which includes both the Board's National Documentation Package (NDP) and the Appellant's documentary evidence. The RAD finds that the Board's objective evidence makes a statement that the YCL has a "nationwide network", but beyond that, the detailed information in this document addressing the actions of the YCL towards those associated with opposing political views, provides no additional information about the ability of various factions to communicate and share information throughout the country. The RAD has reviewed the articles submitted by the Appellant in the record and it finds little evidence to demonstrate the strength of the connections between regions within the large YCL network and if/how the different regions coordinate and share information including in circumstances such as the Appellant. The RAD has further assessed the articles addressed in the Board's RIR and notes that the focus in the identified YCL activities appears to be directed towards active political opponents and electoral disruption. The RAD further notes that there is limited evidence of extortion of violence towards individuals with a profile similar to that of the Appellant. The RAD further notes that while a few

articles indicate the Maoists/YCL may be involved in activities in Kathmandu, the evidence does not indicate that they have been active in extortion and kidnapping in Kathmandu.

(Paras 12 to 14)

[4] The following comments arise from the RAD's statements.

[5] First, as argued by Counsel for the Applicant, the RAD misses the point that the Applicant's risk is not based on a "profile"; it is based on an established personalized risk:

It must be noted, foremost, that the Applicant's non-political profile is irrelevant to the issue of risks that he faces in Nepal. The Applicant has never been targeted for his political profile. He was targeted because of his personal history and antagonism with the YCL, in particular, his non-compliance to the YCL's demands in the past. Whether he has a political profile or not does not change that history, and it is squarely that history that endangers him in Nepal today. (Applicant's Further Memorandum of Argument, para 7)

[6] And second, the authoritative "nationwide network" evidence placed on the record, and confirmed by the RAD, constitutes evidence of a nationwide risk to the Applicant. I agree with Counsel for the Applicant's argument that lack of evidence on how the network performs is not the point. The point is that the agent of persecution, consisting of 700,000 people, has the potential to maintain a risk to the Applicant throughout Nepal.

[7] In the effort to refute the Applicant's evidence and argument of his nationwide risk, the RAD relies on three statements of speculation. The following is the first statement:

The RAD additionally notes that much of Nepal's communication infrastructure was destroyed in the 2015 earthquake. The country's telephone communication system is described as "poor", its

mobile-cellular network is described as "fair" and internet penetration is 17.6 percent of the population. The RAD finds the documentary evidence confirms that communication is limited.

[Emphasis added]

(Para 19)

[8] There is no evidence that the nationwide network is in any way limited now and in the future.

[9] The RAD's second speculative statement is as follow:

The RAD further notes that the Appellant alleged in his BOC narrative and his statements before the RPD that his father was attacked in 2011 by the YCL because of his association with the Appellant. The RAD finds there is a clear linkage between the threats from the YCL/Maoists and all of his family members. The RAD finds the Appellant's testimony confirming that his family members have lived for approximately five years in Kathmandu without any problems with the YCL/Maoists is persuasive evidence that the Appellant faces less than a mere possibility of persecution in the proposed IFA location.

(Para 29)

[10] I find that the statement is not only speculation, it is unintelligible. The fact that the Applicant's family members have not had problems cannot be extrapolated into a conclusion that the Applicant will not have problems.

[11] The third speculative statement relates to the issue of the reasonableness of the IFA. The RAD speculated that the Applicant would have no difficulty in finding employment in

Kathmandu. The Applicant's response provides a clear reason why the issues of risk and reasonableness are inextricably joined:

The Appellant was asked if there were any barriers or obstacles to finding employment in Kathmandu. He repeated his previous testimony that the Maoists would find out about his history with the YCL in his home area and this would ultimately lead to problems with employment. When refocused and asked if he would face any other problems securing employment, he stated that there are not many job opportunities in Kathmandu and he would not earn a good salary to look after his family.

The RAD finds, as did the RPD, that in the personal circumstances of the Appellant, that he has family, housing and no significant obstacles to finding employment in Kathmandu, he could reasonably support himself and his family in Kathmandu. There is a high threshold for what makes an IFA unreasonable and the RAD finds that the possibility the Appellant may earn less salary in Kathmandu than he does in Canada does not serve to make the IFA location unreasonable. The panel therefore finds it would not be objectively unreasonable for him to relocate to Kathmandu.

[Emphasis added]

(Paras 35 and 36)

[12] Considered on a cumulative basis, I find that the RAD's errors as identified above render the decision under review unreasonable.

**JUDGMENT in IMM-5029-18**

**THIS COURT'S JUDGMENT is that** the decision under review is set aside and the matter is referred back for determination by a different decision-maker.

There is no question to certify.

“Douglas R. Campbell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5029-18

**STYLE OF CAUSE:** PREM BAHADUR GURUNG (A.K.A. GURUNG,  
PREM BAHADUR) v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 1, 2019

**JUDGMENT AND REASONS:** CAMPBELL J.

**DATED:** MAY 8, 2019

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