

Federal Court



Cour fédérale

Date: 20160829

Docket: IMM-405-16

Citation: 2016 FC 978

Ottawa, Ontario, August 29, 2016

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

KRISHNA PRASAD POUDEL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Minister appealed the positive decision of the Refugee Protection Division [RPD] regarding Mr. Poudel's claim for protection to the Refugee Appeal Division [RAD]. The RPD determined that Mr. Poudel was credible and, as he claimed, was a citizen of Nepal, and would be at risk if he returned there.

[2] The Minister submitted new evidence with the appeal that raised questions regarding both the credibility and the nationality of Mr. Poudel. Specifically, the Minister tendered biometric evidence from the USA and the UK which established that Mr. Poudel used an Indian Passport bearing the name Sandil, for non-immigrant visa applications in 2013 from New Delhi for both the USA and the UK. The evidence established that Mr. Poudel was issued visas to enter the USA in December 2013 and May 2014. Moreover, a search of the CBSA FOSS database revealed that Mr. Poudel also made an application and was issued a temporary visa to Canada from New Delhi in August 2013 under the name Sandil. He attempted to enter Canada a second time in September 2013, using that visa, but was denied entry when he was found to be in possession of pornographic videos of children and other videos depicting sex between persons and animals.

[3] Mr. Poudel entered Canada in January 2015 using the passport of Parmjeet Singh. Before the RPD, he testified that he was not Parmjeet Singh but was Krishna Prasad Poudel. He was in possession a Nepalese passport in that name.

[4] The RAD allowed the Minister's appeal, finding "based on the totality of the evidence, that [Mr. Poudel] has failed to provide sufficient reliable documents and evidence to establish his identity as required by section 106 of the IRPA and Rule 11 of the *Refugee Protection Division Rules*."

[5] Mr. Poudel states that the sole issue in this application is "whether the RAD erred in finding the [he] failed to establish his identity." The issue, properly stated, is whether the RAD's

finding that Mr. Poudel failed to establish his identity was a reasonable decision based on the record before it, because, the standard of review applicable to the decision of the RAD is reasonableness.

[6] Mr. Poudel submits that the RAD's finding "on a balance of probabilities, that the Indian passport in the name of Sandil used by [Mr. Poudel] was not a fraudulent passport but rather was a genuine passport issued to him" is unreasonable. The RAD based that decision, in part, on its observation that the passport in question had been vetted by immigration authorities from at least four countries in the application process for visas and had been further vetted by border control agencies of three countries when he used the passport to enter those countries. The RAD finds "it reasonable to expect that, if the passport was fraudulent as [Mr. Poudel] has alleged, it would have been detected by at least one of the countries involved as a fraudulent passport." I am not persuaded that the RAD's finding and the reasoning behind it is unreasonable.

[7] Mr. Poudel submitted additional documents to the RAD to establish and confirm that he is a citizen of Nepal. These were given no weight by the RAD in light of Mr. Poudel's evidence that he has obtained and used fraudulent documents in the past, and because fraudulent document production in Nepal is prevalent. As the RAD further noted "even if the documents tendered ... are genuine documents, they do not establish that he did not obtain them through unlawful means or that he does not hold additional identities in other countries such as India." I can find no fault with this reasoning in light of the conduct of Mr. Poudel in obtaining and using documents when travelling to other countries.

[8] Had Mr. Poudel disclosed these other identity documents and his trips outside Nepal in his Basis of Claim form or at the RPD hearing, he may have been able to persuade the RAD of his honesty. However, he did not, and the RAD did not accept his explanation that his adviser told him not to disclose it earlier but to do so at the RPD. In light of this advice, it was not unreasonable to find his response, that he did not disclose this information at the RPD because he was not asked questions concerning the issue, not to be credible. I agree with the RAD, and this finding is not challenged by Mr. Poudel, that his explanation lacks credibility when he signs a Basis of Claim form attesting that it is “complete, true and correct.”

[9] It is hardly surprising and most certainly is not unreasonable when three different passports have been used, and a claimant has failed to disclose that fact, that his identity is found not to have been established.

[10] Neither party proposed a question for certification nor is there one.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-405-16

STYLE OF CAUSE: KRISHNA PRASAD POUDEL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 14, 2016

JUDGMENT AND REASONS: ZINN J.

DATED: AUGUST 29, 2016

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