

Federal Court



Cour fédérale

**Date: 20180126**

**Docket: IMM-2947-17**

**Citation: 2018 FC 89**

**Ottawa, Ontario, January 26, 2018**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**JAYARAM GHIMIRE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Jayaram Ghimire, is a citizen of Nepal. He arrived in Canada from the United Arab Emirates [UAE] in 2014, having been approved for a Canadian work visa. He initiated a claim for refugee protection in 2016. The Refugee Protection Division [RPD] denied the claim finding Mr. Ghimire is neither a convention refugee nor a person in need of protection

as contemplated by sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The RPD found Mr. Ghimire was: (1) not credible; and (2) had an internal flight alternative [IFA] in Kathmandu. The Refugee Appeal Division [RAD] dismissed his appeal and confirmed the RPD's decision. In this judicial review of the RAD decision Mr. Ghimire submits that the RAD ignored or unreasonably assessed evidence, including documentary evidence he had submitted in response to country condition documentation disclosed by the RAD.

[3] As explained below the Application is granted. I have concluded the RAD failed to address evidence that was directly contradictory to its conclusions and corroborative of Mr. Ghimire's narrative. The failure to address the contradictory evidence in light of the RAD's findings renders the decision, including the IFA finding, unreasonable.

## II. Background

[4] Mr. Ghimire reports that he and his brother were teachers in Nepal and members of the Nepali Congress. In 2004 they were approached to join the Maoists who were involved in an insurgency against the Nepalese government. Shortly thereafter 14 suspected Maoists were killed by the Royal Nepal Army. The Maoists accused Mr. Ghimire and his brother of being connected with the killings and attacked them. Mr. Ghimire's brother was killed in the attack but Mr. Ghimire managed to escape.

[5] Mr. Ghimire reports that after killing his brother Maoists sought him out at the family home, where they assaulted and threatened his father. The family abandoned the home and established themselves in another location. Mr. Ghimire fled to the UAE on a work visa. He returned to Nepal on a number of occasions between 2004 and 2012. On each occasion he reports in his Basis of Claim Form [BOC] his family was threatened and he was required to return to the UAE. Mr. Ghimire was married in Nepal in 2011, but returned to the UAE while his wife remained in Nepal.

[6] Mr. Ghimire's BOC states that in 2012 the Maoists pushed his elderly father into a wall while looking for him and that his father later died in hospital. He reports that after his father's death he returned to Nepal on three additional occasions for short periods to visit his wife and mother, apparently without incident.

[7] In 2014 Mr. Ghimire was approved for a Canadian work visa and went to Alberta to work. He claims that in January 2016 his wife called to tell him that members of the Maoist Party, specifically members of the "Chand-led" Maoist faction had visited her: they were still looking for him in connection with the 2004 killing of the 14 Maoists. They also gave her a letter, addressed to him, accusing him of spying on the Maoists in 2004 and demanding he present himself in person to explain his actions.

[8] After unsuccessfully applying for an extension to his work visa and for permanent residence, Mr. Ghimire pursued his claim for refugee protection. He appealed the negative RPD decision to the RAD.

[9] In denying the appeal the RAD refused Mr. Ghimire's new evidence and request for an oral hearing. The RAD concluded that Mr. Ghimire's testimony before the RPD regarding an extortion threat undermined the credibility of his claimed fear of persecution after January 2016 because neither his Basis of Claim form nor the Maoist threat letter referred to a demand for money.

[10] The RAD conducted its own review of the record and the documentary evidence, including documentation Mr. Ghimire had submitted in response to further country condition disclosure from the RAD. In considering a document submitted by Mr. Ghimire entitled "Enduring Dilemmas: Nepal Insurgency Redux," the RAD found he had not provided any specific references or raised any arguments concerning the document and that the document on its own did not establish any error which would warrant granting the appeal.

[11] In considering the country documentation relating to threats and extortion—which included reports of fake or forged threat letters being used to support asylum claims in Europe and North America—the RAD noted that there was limited evidence of extortion by Maoist groups after 2006, that Mr. Ghimire did not fit the profile of the typical targets, and found Mr. Ghimire's threat letter to be fraudulent. The RPD decision was confirmed and the appeal dismissed.

### III. Analysis

[12] Mr. Ghimire submits that threats against him originated with the Chand-led Maoist faction, a faction specifically addressed in the objective documentation. He states the RAD

findings relating to this faction's reliance on threatening letters—that (1) it was implausible a group would make threatening demands on formal letterhead and (2) a threat letter would be a local initiative—are inconsistent with the objective documentation and render the decision unreasonable.

[13] The respondent submits the RAD did not ignore evidence, and in fact set out a detailed summary of its review of the documentary evidence. The respondent characterizes the substance of Mr. Ghimire's submissions as a disagreement with the RAD's conclusions which does not render the analysis or outcome unreasonable. I am unpersuaded by the respondent's arguments.

[14] The RAD states in its decision that “no aspect of the documentary evidence leads one to believe that threat letters are being issued.” This is directly contradicted by a Response to Information Request dated August 8, 2016 [August 8 RIR] that states there were news reports in August of 2015 that the Chand led faction, the Biplav-led CPN-M, “intensified the extortion of money” in the Khotang district by sending letters to governmental and non-governmental offices, traders and businessmen who, reportedly, felt “terrorized” by these letters.

[15] The RAD further noted that “[i]t is not plausible that a group would, on formal letterhead, demand that the Appellant appear before them and answer for an action that lead (*sic*) to the death of their members.” However, the August 8 RIR states “the Secretary General of HURON stated that threat letters might be handwritten or printed and signed on letterhead, or they might take the form of personal letters from commanders or regional leaders... The NPI representative

indicated that these letters were “normally” issued in the party’s letterhead and signed by the district or regional commander under pseudonyms that were given by the party.”

[16] The country condition documentation also states that in December 2014 “the Netyra Bikram Chand faction of the CPN-M launched a nationwide campaign for funds that involved the use of text message, letters and phone calls described as “threatening in nature.”” This contradicts the RAD finding that any use of a threat letter would have been a local initiative.

[17] The RAD failed to identify and address evidence that was consistent with Mr. Ghimire’s narrative and that directly contradicted its conclusions about the use and form of threat letters and the geographical scope of the Maoist group’s activities. This leads me to conclude the RAD failed to have regard for the evidence before it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 15, 1998 CanLII 8667 (TD)), rendering the decision unreasonable.

[18] It is true Mr. Ghimire’s profile is not consistent with the profile of those identified in the country documentation as targets for extortion demands or threatening letters (business people, private industry, foreign employment recruiting agencies, etc.). However the evidence does disclose a basis upon which Mr. Ghimire may have been targeted by the Chand-led faction: his alleged involvement in the 2004 deaths of members of the Maoist movement. The evidence also indicated that Maoist groups had continued to seek him out as late as 2012. The RAD did not take issue with any of this evidence. Mr. Ghimire’s profile does not render the RAD’s failure to address the contradictory evidence inconsequential in this case.

[19] I need not address Mr. Ghimire's argument that the RAD erred in its treatment of his documentary evidence.

IV. Conclusion

[20] The application is granted. The parties have not proposed a question for certification and none arises.

**JUDGMENT IN IMM-2947-17**

**THIS COURT'S JUDGMENT is that:**

1. The application is granted.
2. The matter is returned for reconsideration by a different decision-maker.
3. No question is certified.

"Patrick Gleeson"

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Judge



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

**DOCKET:** IMM-2947-17

**STYLE OF CAUSE:** JAYARAM GHIMIRE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 15, 2018

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** JANUARY 26, 2018

**APPEARANCES:**

Dov Maierovitz

FOR THE APPLICANT

Khatidja Alam

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Dov Maierovitz  
Barrister and Solicitor  
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT