

Federal Court



Cour fédérale

Date: 20230607

Docket: IMM-5268-22

Citation: 2023 FC 807

Ottawa, Ontario, June 7, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

PREM LAMSAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Prem Lamsal, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”) dated May 10, 2022, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The RAD upheld the RPD's refusal of the refugee claim on the basis that the Applicant has a viable internal flight alternative ("IFA") in Chitwan or Biratnagar, Nepal.

[3] The Applicant submits that the RAD breached procedural fairness in failing to admit certain evidence on appeal or provide the Applicant with an opportunity to respond to the updated National Documentation Package ("NDP") for Nepal. The Applicant further submits that the RAD conducted an unreasonable assessment of the IFA, which does not accord with the evidentiary record.

[4] For the reasons that follow, I find that the RAD's decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicant*

[5] The Applicant is a 46-year-old citizen of Nepal.

[6] The Applicant's family is involved with the Nepali Congress Party ("NCP"), to which he was exposed from a young age. As a college student in 2003, the Applicant joined the Nepal Student Union, the student wing of the NCP. He became an official member of the NCP in October 2006 and became involved in the NCP's political activities.

[7] The Applicant claims a fear of persecution by the Biplav Maoists, a political faction of the Communist Party of Nepal. The youth wing of the Communist Party, the Young Communist League (“YCL”), is known for its forceful recruitment and extortion.

[8] The Applicant and his wife owned and operated a stationery shop in their village. The Applicant became the founder and principal of a local boarding school in April 2008, while continuing his involvement with the NCP. YCL members would allegedly visit the boarding school and stationery shop, asking for donations. The Applicant claims that in order to avoid harassment, he would pay them in amounts ranging from 3,000 to 10,000 rupees.

[9] In 2013, the Applicant became actively involved in the political campaigns for the NCP’s local candidates in his constituency.

[10] The Applicant claims that in September 2016, he was appointed as chairperson of the management committee at a local secondary school.

[11] On May 8, 2017, the Applicant claims that he was assisting at a campaign event in a neighbouring village when several Biplav Maoist members came to the venue and demanded that the Applicant and his colleagues immediately end the event. The Applicant’s Basis of Claim (“BOC”) narrative states that the Biplav members attacked them, but does not specify the nature of the attack. The Applicant claims that the Biplav members warned him and the other NCP members to stop all campaign activities. The event was cancelled. After the local election was

over and local NCP candidates lost the election, Biplav members allegedly continued to visit his school and his shop to ask for money.

[12] The Applicant allegedly continued campaigning for local NCP candidates for the federal parliament and provincial assembly elections in 2017. He claims that he organized campaign initiatives, organized a group of youth members, distributed campaign materials, and organized a rally of more than 100 people in his village. The Applicant claims that following this rally, he received several threatening phone calls from Biplav Maoist members, warning him not to plan such events or encourage participation in the election.

[13] The Applicant claims that on December 21, 2017, he was returning home from a NCP meeting when he was stopped by a group of Biplav members. One of them allegedly slapped the Applicant, accused him of defying the Biplavs' wishes by encouraging voter participation in the election, and demanded 200,000 rupees as a penalty. The Applicant said he could not pay this amount and the Biplav member informed the Applicant that if he did not pay the amount within a week, the Biplavs would take "severe action" against him. The Applicant claims that he informed the police of the incident. He claims that the police did not file a report and instead informed him to settle the matter personally. Disappointed by this response and afraid for his safety, the Applicant claims that he paid the Biplav members 200,000 rupees after a week.

[14] In May 2019, the Applicant was tasked with organizing a NCP training event for new members. While planning for this event, the Applicant claims that he received several threatening phone calls from Biplav members. The event took place regardless.

[15] The Applicant claims that the Biplav Maoists would often demand that school owners and teachers strike in support for them. As an owner of a boarding school and chairperson of a school management committee at a secondary school, the Applicant allegedly defied these calls for school strikes. The Applicant claims that he experienced harassment by Biplav members as backlash for his decision.

[16] On November 9, 2019, the Applicant claims that he was again stopped on his way home by a group of Biplav Maoist members. One of them allegedly slapped the Applicant, accused him of defying the Biplavs' demands, and provoking school staff to do the same. The Applicant claims that the member threatened to shoot him. The Applicant was then allegedly held at gunpoint and given a letter demanding that he pay 1,200,000 rupees to the Biplavs within three weeks. The Biplav member informed the Applicant that the Biplavs would not leave him alone if he did not pay this amount and cautioned him against reporting the incident to the police. Once the group left, the Applicant allegedly called his neighbour, who escorted him to a pharmacy to treat his injuries.

[17] The Applicant claims that he reported this incident to the police the following day. After a week, he allegedly received a call from the same Biplav member who threatened him, who told the Applicant that he had made a mistake by reporting the incident and further threatening him to pay the demanded amount of 1,200,000 rupees within three weeks or they would kill him. The Applicant and his wife allegedly relocated to Kathmandu on November 17, 2019, where they resided with a friend of the Applicant's wife.

[18] Although the Applicant cancelled his phone plan so the Biplavs could not contact him, his wife allegedly began receiving threatening phone calls. Biplav members informed her that they would locate the Applicant through their network across the country. The Applicant learned that some Biplav members visited his colleagues in his school, asking about his whereabouts.

[19] Fearing for his safety, the Applicant travelled to Canada on November 28, 2019. He made a claim for refugee protection on February 20, 2020.

B. *RPD Decision*

[20] In a decision dated October 6, 2021, the RPD found that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of *IRPA*.

[21] The RPD found the determinative issue to be the availability of an IFA in Chitawan or Biratnagar. The test to determine a viable IFA requires that: (1) there is no serious possibility of persecution or risk of harm in the IFA, and (2) it is reasonable in the Applicant's circumstances to relocate to the IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)* (C.A.), [1992] 1 FC 706). The second prong of the test places a high evidentiary burden on the Applicant to demonstrate that relocation to the IFA would be unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1367).

[22] On the first prong of the test, the RPD found insufficient evidence to substantiate a serious possibility of harm to the Applicant in either of the proposed IFAs. Prior to the RPD hearing, the Applicant was provided notice of the Nepalese government's peace agreement with

the Biplav Maoist faction, agreeing to engage in political activities peacefully in exchange for decriminalizing the party and releasing over 2,000 Biplav members from prison. In response, the Applicant raised the concern that the Biplavs' weapons were not seized, the agreement was only to release members, and this did not mean his life was not still at risk. The RPD found no evidence to support the finding that the Nepalese government's peace agreement with the Biplav Maoists is short-lived or otherwise ineffective, or to support the finding that some Biplav members have broken off into their own factions to continue violence.

[23] The RPD also found insufficient evidence to demonstrate that the Biplavs would be motivated to pursue the Applicant throughout Nepal. Although the Applicant submitted that the Biplavs targeted him due to his defiance of their calls to strike in schools, the RPD found that this risk was mitigated by the Applicant's own testimony that the schools could no longer fully implement the "no strike" decrees and that the Applicant is no longer managing these schools.

[24] The Applicant also submitted that his wife continued to receive threatening phone calls and that after he travelled to Canada. She was allegedly confronted by three Biplav members in Kathmandu and asked to pay the unpaid debt, causing her to relocate to another area in Kathmandu, according to her affidavit dated April 27, 2021. The RPD found these allegations insufficient to show that the Biplavs have the means or motivation to pursue the Applicant and that he would face a serious risk of harm in either of the proposed IFAs. The RPD further found that the fact that the Applicant was attacked by several Biplav Maoist members in November 2019 does not establish that he would experience the same violence in the proposed IFAs.

[25] Additionally, the RPD found that the Applicant proffered insufficient evidence to show that anyone in either of the proposed IFAs would recognize him due to his successful election as the chairperson of a local secondary school. The RPD also found no evidence that the Applicant's sibling, who lives in Chitawan, has experienced any harassment from the Biplavs or that anyone linked to the Biplavs in Biratnagar knows him. For these reasons, the RPD found that the Applicant would not be at risk of serious harm in either of the proposed IFAs.

[26] On the second prong, the RPD assigned little weight to the Applicant's testimony regarding the differences in lifestyle dress in Biratnagar because it is vague and unsupported by evidence to establish that the cultural differences would affect the viability of his relocation to Biratnagar. The RPD noted that, in any event, this evidence only applies to one of the two proposed IFAs.

[27] The RPD further found that the Applicant testified that he continues to receive income from his boarding school, which could provide smoother transition into a new location. It noted that he is an able-bodied man with a diverse employment experience and 15 years of education, mitigating the difficulties associated with relocation and finding new employment. The RPD ultimately found that the Applicant failed to discharge the high evidentiary burden to demonstrate that relocation to the proposed IFAs would be unreasonable in his particular circumstances. The RPD therefore denied the Applicant's claim for refugee protection.

C. *Decision Under Review*

[28] In a decision dated May 10, 2022, the RAD dismissed the Applicant’s appeal and upheld the RPD’s decision that the Applicant is neither a Convention refugee nor a person in need of protection as per sections 96 or 97 of *IRPA*.

(1) New Evidence

[29] The Applicant submitted new evidence before the RAD. Subsection 110(3) of *IRPA* stipulates the general rule that the RAD “must proceed without a hearing, on the basis of the record of the proceedings of the [RPD].” Subsection 110(4) enumerates the exceptions to this general rule, in which a claimant may present evidence to the RAD that was not before the RPD:

Evidence that may be presented

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

Éléments de preuve admissibles

(4) Dans le cadre de l’appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n’étaient alors pas normalement accessibles ou, s’ils l’étaient, qu’elle n’aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[30] Once the RAD finds that new evidence meets the criteria under subsection 110(4) of *IRPA*, the RAD must then consider whether that evidence is credible, relevant, and material (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at paras 38-49, citing *Raza v*

Canada (Citizenship and Immigration), 2007 FCA 385 (“*Raza*”) at paras 13-15). These latter admission criteria are known as the “*Raza* factors.”

[31] Under subsection 110(6) of *IRPA*, the RAD may hold an oral hearing if it admits new evidence that raises a serious issue about the claimant’s credibility and that is central and determinative.

[32] Considering the newly adduced evidence in light of these factors, the RAD admitted only three out of the 18 documents proffered by the Applicant on appeal. The RAD found that although some of the documents were dated after the RPD decision was issued, the information contained in a majority of the newly submitted documents was not new and were mainly repeating information that had already been before and considered by the RPD in its decision. The RAD found three admissible documents that contain information that was sufficiently relevant and of probative value such, that it provided insight into country conditions in Nepal after the peace agreement between the Nepalese government and the Biplav Maoist faction.

[33] The RAD did not hold an oral hearing because it found that the new evidence was insufficient to establish the alleged risks or the credibility of the Applicant’s allegations that the Biplavs have the means and motivation to locate him in the proposed IFAs.

(2) IFA

[34] On the first prong of the IFA test, the RAD noted the Applicant’s testimony that the Biplav Maoists’ November 2019 attack against him could be attributed to his defiance of their

calls for strikes in his schools. However, the RAD also noted the Applicant's testimony that after he left Nepal, he renounced his management duties at the schools and was unsure whether the same "no strike" decrees were being implemented. On the basis of this evidence, the RAD found insufficient evidence to support the finding that the Biplavs would still be motivated to pursue the Applicant throughout Nepal.

[35] The RAD acknowledged the Response to Information Request ("RIR") that forms part of the NDP for Nepal, which was raised by the Applicant on appeal and states that the Biplav Maoists engaged in extortion of businesses owners, state-owned industries, schools, and foreign-owned enterprises. However, the RAD noted that the RIR also states that extortion has mainly occurred in regions outside the proposed IFAs and that following the peace agreement, extortion and kidnapping by Maoist groups are no longer common. The RAD found insufficient evidence to establish that these practices have increased or that they occur in the IFAs. It further found that the November 2019 attack against the Applicant occurred in the context of the Biplav Maoists' insurgency in Nepal, and there is no evidence to demonstrate that the same conditions exist following the peace agreement.

[36] The RAD noted the Applicant's submission that the RPD erred by relying on the peace agreement in its assessment of a forward-looking risk in the IFAs because the hearing took place only three months after the agreement was concluded and it was therefore too early to determine whether it would be effective. The Applicant further argued that the peace agreement is not durable, has no political significance, and that his claim should be considered in light of his particular circumstances rather than general political improvements in Nepal. The RAD found

that upon assessing the country documentation, the RPD rightly found insufficient evidence that the Applicant's political profile is such that he would face persecution after the peace agreement. The RAD referenced the evidence demonstrating that the Biplav Maoists' leader committed to stopping violence and entering peaceful politics. Although certain documents on the record stated that the effectiveness of the agreement depends on the smoothness of the implementation process, the RAD found that this does not amount to a finding that the agreement is not politically significant or has not reduced the level of personalized risk facing the Applicant.

[37] The RAD found that the RPD correctly assessed the evidence of previous violence against the Applicant, finding it insufficient to demonstrate that the Biplavs would be motivated to pursue him in the proposed IFAs. The RAD found that the Applicant did not provide any evidence that he faced punitive measures for continuing his political activity after the Biplavs warned him not to do so in December 2017, even though he was still living in his hometown. The Applicant testified that he received threatening phone calls from the Biplavs in May 2019 for helping to organize a NCP training event, but did not provide evidence that the Biplavs ever acted on these threats. The RAD ultimately found that evidence of threatening phone calls or the possibility that Biplav Maoists are still visiting his old schools for donations is insufficient to establish that he faces a serious forward-facing risk in either of the proposed IFAs.

[38] The RAD rejected the Applicant's contention that he has a high political profile or that this profile would result in the Biplavs being able and motivated to locate him throughout Nepal. The RAD found that the Applicant failed to establish that he ran in any elections or occupied a high-ranking position in the NCP. It found that the RPD correctly drew a negative inference

from the fact that the Applicant's sibling in Chitwan has not experienced any harassment from the Biplavs. The RAD noted that the Applicant's parents, who still reside in the Applicant's hometown, have not suffered harm or been harassed by the Biplavs, which provides a reasonable basis to conclude that the Biplavs lack the motivation to pursue the Applicant.

[39] On the second prong of the IFA test, concerning whether the Applicant demonstrated that relocation to the proposed IFAs would be unreasonable; the RAD found that the Applicant failed to discharge this burden. The RAD found that the Applicant failed to prove that differences in language, culture, and lifestyle would render the conditions in the IFAs unreasonable, or that he would be unable to find employment given his past experiences.

[40] The RAD considered the Applicant's submission that he had discharged his onus of proving that there is no adequate state protection in Nepal on the basis that he reported the Biplavs' November 2019 attack against him to the police but failed to receive protection. The RAD found it unnecessary to consider the issue of state protection, since it found that the Applicant does not face a reasonable possibility of persecution in the proposed IFAs.

[41] For these reasons, the RAD dismissed the Applicant's appeal of the RPD decision and upheld the finding that the Applicant is neither a Convention nor a person in need of protection, on the basis that he has an available IFA in either Chitwan or Biratnagar.

III. Issues and Standard of Review

[42] The issues raised in this application for judicial review can be framed as follows:

- A. *Whether there was a breach of procedural fairness.*
- B. *Whether the decision is reasonable.*

[43] The Applicant submits that the RAD's assessment of the admissibility of new evidence is an issue of procedural fairness. However, reasonableness is the applicable standard of review for the RAD's admission of evidence under subsection 110(4) of *IRPA*, as this issue involves the RAD's interpretation and application of its home statute (*Ifogah v Canada (Citizenship and Immigration)*, 2020 FC 1139 at para 35, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("Vavilov"); *Ibrahim v Canada (Citizenship and Immigration)*, 2020 FC 1148 at para 9). I therefore do not agree with the Applicant's submission that the RAD's decision not to admit certain evidence on appeal raises an issue of procedural fairness that is reviewable on a correctness standard (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 ("Canadian Association of Refugee Lawyers") at para 35).

[44] The applicable standard of review of the RAD's assessment of the IFA is reasonableness, as per the Supreme Court of Canada's decision in *Vavilov* at paragraphs 16-17. The issue of procedural fairness pertaining to the new version of the NDP for Nepal is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("Canadian Pacific Railway Company") at paras 37-56; *Canadian Association of Refugee Lawyers* at para 35).

[45] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13).

The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[46] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

[47] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

IV. Analysis

[48] The Applicant submits that the RAD breached procedural fairness in entering the updated version of the NDP on Nepal into evidence and not giving the Applicant the opportunity to make submissions on the updated NDP. The Applicant also submits that the RAD erred in refusing to admit certain evidence proffered by the Applicant on appeal and in its assessment of the IFAs.

[49] In my view, the RAD's decision is both reasonable and procedurally fair.

A. *Procedural Fairness*

[50] The Applicant submits that at the time of the RPD decision, the NDP for Nepal dated April 30, 2021 was entered into evidence, which the Applicant then relied on in his submissions on appeal. However, the RAD entered the updated version of the NDP, dated April 29, 2022, into evidence. The Applicant submits that since this new NDP updated, added, and removed several items from the previous version, the RAD breached procedural fairness by not allowing the Applicant the opportunity to provide submissions on the new version.

[51] The Respondent submits that the Applicant's argument lacks merit because the RAD only has a duty to disclose an updated NDP if it contains information that arose after an applicant perfected their appeal and made submissions on appeal, and that information is different and demonstrates a change in country conditions (*Zhang v Canada (Citizenship and Immigration)*, 2015 FC 1031 at para 54 (“*Zhang*”); *Lin v Canada (Citizenship and Immigration)*, 2021 FC 380 (“*Lin*”) at para 26). Claimants are also deemed to be aware of publicly available documents

describing general country conditions, such as the NDP. The Respondent submits that the Applicant has failed to demonstrate how the updated NDP was different than the previous version, or what updated information it contained such that the Applicant was owed the opportunity to respond to it. The Respondent notes that the RPD informed the Applicant of new information regarding the peace agreement between the Nepalese government and the Biplav Maoists and this information was contained in the previous NDP from April 2021.

[52] I agree with the Respondent. The Applicant's submissions on this point are brief and unsubstantiated by the evidence. The Applicant failed to demonstrate how the two versions of the NDP for Nepal were different, such that the duty of fairness owed to the Applicant demanded that the RAD allow him to make submissions on the new NDP.

[53] I acknowledge that the Applicant perfected his appeal on November 29, 2021, and the updated NDP is dated April 29, 2022, meaning that the NDP relied on by the RAD was not publicly available and accessible when the Applicant made his submissions on appeal. However, this is not the only factor when considering whether the RAD had a duty to allow the Applicant to make submissions on the new NDP. As stated by this Court in *Zhang*, the RAD has an obligation to disclose to an applicant that it is relying on new information “where that recent information arises after an applicant has perfected their appeal and made their submissions and that information is different and shows a change in the general country conditions” [emphasis added] (at para 54; see also *Lin* at para 11).

[54] Firstly, the Applicant has not pointed to any substantive difference between the two versions of the NDP for Nepal. Secondly, a finding that the two versions of the NDP were sufficiently different to create this duty is undermined by the fact that when referring to specific documents in the NDP, the RAD's reasons explicitly state the corresponding document in "the April 2021 NDP on Nepal that was available to the Appellant during the RPD hearing" (at footnote 45 of the RAD's reasons). For these reasons, I find that the RAD's decision not to disclose to the Applicant that it relied on the new version of the NDP does not raise an issue of procedural fairness.

B. *Reasonableness*

(1) *New Evidence*

[55] The Applicant submits that the RAD erred in rejecting new documentary evidence submitted on appeal, only accepting three articles as new evidence. The Applicant contends that contrary to the RAD's assessment of whether the evidence was admissible on appeal, the evidence was relevant, new, and had probative value to establish that the Applicant's risk of persecution on either of the proposed IFAs. The Applicant submits that the documents that were not admitted by the RAD speak directly to the Biplav Maoists' violence, including after the peace agreement was signed. The Applicant further submits that the RAD erred in finding that many of the documents were not new, given that they were newspaper articles published in the months following the RPD hearing.

[56] The Respondent maintains that the RAD conducted a reasonable assessment of the admissibility of the new evidence proffered on appeal, and reasonably found a majority of the documents to be inadmissible in light of the relevant factors. The Respondent notes that assessing a document's newness is not judged exclusively by the date it was created, but when the event sought to be proven by the evidence occurred and, specifically, whether this event or circumstance occurred after the RPD's decision (*Galamb v Canada (Citizenship and Immigration)*, 2016 FC 1230 ("*Galamb*") at paras 19-20, citing *Raza* at para 16). The Respondent further notes that a demonstration of the documents' relevance is also necessary under subsection 110(4) of *IRPA*, which the Applicant did not provide (*Galamb* at para 19).

[57] I agree with the Respondent. The Applicant has not raised a reviewable error in the RAD's assessment of whether to admit the new evidence submitted on appeal. A bulk of the Applicant's submissions on this issue are merely disagreeing with the RAD's decision regarding the new evidence, rather than pointing to unreasonableness in the RAD's assessment of the admissibility of the evidence. However, it is not this Court's role to reassess or reweigh the evidence on review (*Vavilov* at para 125).

[58] Furthermore, the RAD's reasons demonstrate a justified assessment of the documents submitted in light of the relevant criteria under subsection 110(4) of *IRPA* and the *Raza* factors. The RAD explained its reasoning for admitting three specific documents, establishing a clear line of analysis between the legal threshold for admissibility of evidence on appeal and the contents of the documents provided (*Vavilov* at para 102). This reasoning bears the hallmarks of reasonableness and does not warrant this Court's intervention.

(2) IFA

[59] The Applicant submits that the RAD erred in its assessment of the proposed IFAs in Biratnagar or Chitwan. The Applicant submits that in assessing whether the Applicant would face a serious risk in the proposed IFAs, the RAD erroneously sought proof of whether the Applicant would necessarily be located by the agents of persecution, which is an unduly high standard as per this Court's reasons in *Chowdhury v Canada*, 2008 FC 18 at para 30. The Applicant contends that he need only provide objective documents that demonstrate that the Biplav Maoists are active in the proposed IFAs, and he claims that he has done so.

[60] The Applicant further submits that the RAD's conclusion that there is insufficient evidence to demonstrate that the Biplavs pose a serious risk to the Applicant in the IFAs fails to accord with the totality of the evidence on the record. The Applicant submits that this includes documentary evidence pointing to the Biplavs' nationwide network, violent incidents held across the country, and "threat letters" being issued throughout Nepal. The Applicant relies on this Court's decision in *Ghimire v Canada (Citizenship and Immigration)*, 2018 FC 89, where my colleague Justice Gleeson found that the RAD unreasonably ignored NDP evidence stating that such threat letters are issued nationwide, which contradicted the RAD's finding that such initiatives were localized (at paras 16-17). The Applicant submits that given the same evidence before the RAD in his case, the RAD's finding that a threat to the Applicant's safety does not exist in the proposed IFAs fails to accord with the record and is therefore unreasonable.

[61] The Respondent maintains that the RAD reasonably found that the Applicant failed to discharge his onus to demonstrate that the proposed IFAs are not viable, and did so in light of the evidence available. The Respondent contends that the RAD is tasked with considering whether the agents of persecution have the interest, motivation, means or resources to pursue the Applicant in the proposed IFAs and the RAD conducted a thorough and reasonable assessment of these factors. The Respondent submits that once again, the Applicant's arguments on this issue amount to a request that this Court reweigh the evidence before the RAD.

[62] I agree with the Respondent. At both prongs of the IFA test, the RAD's assessment of the viability of the proposed IFAs is justified, transparent and intelligible (*Vavilov* at para 100). The RAD's conclusions that the Applicant has failed to provide sufficient evidence that the Biplav Maoists pose a serious risk to him in either of the proposed IFAs, and that relocation to the IFAs would be unreasonable, is based on a thorough and cogent review of the NDP evidence and the Applicant's circumstances.

[63] The RAD reasonably noted that the Applicant was previously pursued for his involvement in the schools, which has since ceased; that the Biplavs' methods of collecting funds from business owners and schools were occurring in regions outside the proposed IFAs; that there was insufficient evidence to show that the peace agreement between the Nepalese government and the Biplavs is temporary or ineffective; and that the Applicant failed to show that he has a political profile of someone who would be actively pursued throughout Nepal by the Biplavs. On the basis of this evidence and more, the RAD reasonably found that the Applicant failed to discharge his burden at both stages of the IFA test.

[64] I further agree with the Respondent that similar to the Applicant's submissions on the other issues raised in this application, his submissions on the RAD's assessment of the IFA appear to disagree with the RAD's conclusions, rather than raise a reviewable error in the RAD's analysis of the issues and evidence. For these reasons, I find that the RAD's assessment of the proposed IFAs and, in turn, the decision as a whole, is reasonable.

V. Conclusion

[65] This application for judicial review is dismissed. The RAD's decision is justified in light of the evidentiary record, and does not raise an issue of procedural fairness. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-5268-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5268-22

STYLE OF CAUSE: PREM LAMSAL v THE MINISTER OF CITIZENSHIP
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PLACE OF HEARING: TORONTO, ONTARIO

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DATED: JUNE 7, 2023

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