

Federal Court



Cour fédérale

Date: 20101207

Docket: IMM-644-10

Citation: 2010 FC 1237

Ottawa, Ontario, December 7, 2010

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PREDEEP NEUPANE

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 11 January 2010 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a married father and a citizen of Nepal. He was employed in that country as a general manager of a dairy processing company. The Applicant claims that he was kidnapped in September 2005 by Maoists, demanding that he and his company hire more people from the area and pay more money to the All Nepal Farmers Union, a sister organization of the Maoists. The Maoists also demanded that he make personal donations of money to their cause.

[3] In July 2007, a group of Maoists kidnapped the Applicant for a second time. They threatened to kill him if he did not meet their demands. The Applicant agreed to do so, in writing, in order to be released.

[4] The Applicant travelled to the United States for employment-related training between June 2006 and June 2007. During that time, the Applicant stated, the Maoists approached no one else in the company. However, they continued to visit his home and made threats to his wife and children that, if he did not fulfill his written obligations to them, they would kill him.

[5] In July 2007, one month after the Applicant returned from the United States, the Maoists again attempted to extort money from him and threatened his life. In consequence, the Board of the dairy company helped him to exit the country by registering him in a food exhibition in Ontario. He acquired a Canadian visitor's visa on 26 July 2007 and left Nepal on 27 September 2007.

[6] The Applicant received a December 2007 letter from his former boss at the dairy, saying that the company was trying to resolve the problems with the Maoists. The Applicant stated that, between the time of his departure and September 2009 (the date of his hearing before the RPD), the Maoists made thirteen threatening phone calls to his wife and children.

[7] The Applicant claims that he cannot return to Nepal because of the Maoists' threats. He alleges that he has been targeted primarily because he is a known monarchist and neither he nor his family will join the Maoist cause. Because he has refused to pay the money demanded by the Maoists, they will kill him if he returns.

[8] The Applicant appeared before the RPD on 23 September 2009. He was represented by counsel and an interpreter was present.

[9] At that hearing, the RPD found that the Applicant was neither a Convention refugee under section 96 of the Act nor a person in need of protection under section 97 of the Act. For this reason, it rejected the refugee claim. This is the Decision under review.

DECISION UNDER REVIEW

[10] The RPD stated five "determinative issues" that resulted in a refusal of the Applicant's refugee claim: i) credibility; ii) failure to establish the subjective component of a well-founded fear

of persecution; iii) failure to establish an objective, evidentiary basis for a well-founded fear of persecution; iv) delay in leaving Nepal; and v) failure to claim asylum in the United States.

[11] The RPD found much of the Applicant's oral evidence to be implausible. Jurisprudence indicates that the sworn testimony of the claimant is presumed to be true in the absence of a valid reason to doubt its truth. See *Maldonado v. Canada (Minister of Employment and Immigration)* (1979), [1980] 2 F.C. 302, [1979] F.C.J. No. 248 (QL) (C.A.) [*Maldonado*]. However, in the instance case, the RPD found that the Applicant's oral evidence was sufficiently "implausible" to rebut that presumption.

[12] For example, the RPD asked the Applicant why the Maoists would target him when his position at the dairy did not allow him to make any of the marketing or pricing decisions needed to achieve the Maoists' demands. The Applicant replied that he believed he was targeted because of his political affiliations: he and his family are monarchists. The RPD concluded that, had the Maoists been serious, they would likely have targeted the dairy owner or the Board members, who had the power to answer their demands. The RPD also found persuasive the fact that the Maoists approached no one else at the dairy while the Applicant was in the United States (2006 to 2007).

[13] The RPD found no evidence to explain why the Maoists would think that the Applicant could answer their demands for money and improved hiring at the dairy simply because he was a monarchist.

[14] The RPD identified additional reasons to doubt the Applicant's credibility. When asked if the Maoists had made demands of anyone at the dairy company since he left Nepal, the Applicant answered that the Maoists called his house thirteen times in two years. When the RPD questioned the Applicant about the letter from his boss and the negotiations regarding the Maoists, the Applicant's response was confusing and unsatisfactory. When the Applicant reported his boss's conclusions that the demands were directed at the Applicant personally, the RPD found that the demands of Maoists would not extend beyond the Applicant's perceived influence in the company. Since the Applicant was no longer employed by the company, the Maoists would no longer be interested in him.

[15] On the question of credibility, the RPD concluded that the evidence was "totally untrustworthy and lacking in any credibility and that, on the balance of probabilities, the incidents as described, never occurred and, therefore, do not believe what the claimant has alleged" The RPD relied on *Orelien v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 592 (C.A.), in which Justice Patrick Mahoney observed: "It seems to me one cannot be satisfied that evidence is credible or trustworthy unless satisfied that it is probably so, not just possibly so."

[16] The RPD found that the Applicant had no reasonable explanation for the two-month delay between receiving his visitor's visa to Canada (on 26 July 2007) and departing for Canada (on 27 September 2007). The Applicant's claim that it took him two months to arrange for the money to pay for the ticket was rejected. He had a good job and a supportive employer. The RPD expected that, if he feared for his personal safety, he would have found the money and fled at the earliest

opportunity. Because the Applicant did not do this, the RPD drew a negative inference and found that the Applicant lacked a subjective fear of persecution.

[17] With respect to an objective fear of persecution, the RPD acknowledged documentary evidence that “extortions and abductions continue” and that Maoists continue to extort money from truck drivers and to “recruit villagers into their army, regardless of the peace agreement.” However, due to the “negative credibility findings in all this claimant’s particular circumstances,” the RPD found that it would be unreasonable to conclude that the Maoists would be more interested in the Applicant than they would in any other person in Nepal. Also, the RPD found it unreasonable to conclude that, after two years, the Maoists would bother to track down the Applicant if he were to return to Nepal. Finally, the RPD found it impossible to conclude that, simply because the Applicant was a monarchist who worked for a dairy company, he would face more than a mere possibility of persecution were he to return to Nepal. For this reason, the Applicant did not meet the definition of a Convention refugee under section 96 of the Act nor a person in need of protection under section 97 of the Act.

ISSUES

[18] The Applicant has raised the following issues:

1. Whether the RPD’s credibility findings were unreasonable;
2. Whether the RPD ignored relevant evidence, took into account irrelevant evidence or misinterpreted the evidence;

3. Whether the RPD's finding that the Applicant did not have a well-founded fear of persecution was based on an erroneous finding of fact;
4. Whether the RPD applied the correct test in determining that the Applicant did not have a well-founded fear of persecution;
5. Whether the RPD denied the Applicant an opportunity to respond to its concerns or whether it failed to provide procedural fairness or to conduct itself in accordance with the principles of natural justice in any way.

STATUTORY PROVISIONS

[19] The following provisions of the Act are applicable in these proceedings:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions,

(iii) la menace ou le risque ne résulte pas de sanctions

unless imposed in disregard of accepted international standards, and	légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[20] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[21] The RPD's decision is based, in part, on its assessment of the Applicant's credibility. The determination of credibility is within the expertise of the Board. For this reason, credibility findings attract a standard of reasonableness on review. See *Aguirre v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] F.C.J. No. 732 (QL) at paragraph 14.

[22] The Applicant has also brought an issue before the Court concerning the RPD's treatment of the evidence before it. In considering whether the RPD ignored material evidence, considered irrelevant evidence, incorrectly dismissed the probative value of certain documents or misunderstood the evidence, the appropriate standard is one of reasonableness. See *Dunsmuir*, above, at paragraphs 51 and 53.

[23] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[24] Whether the RPD applied the correct test in determining that the Applicant did not have a well-founded fear of persecution attracts a standard of correctness. See *Pinter v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 296; *Mooker v. Canada (Minister of Citizenship and*

Immigration), 2007 FC 779 at paragraph 16; and *Kim v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 632 at paragraphs 24, 29.

[25] Whether the RPD provided the Applicant an opportunity to respond to its concerns raises a question of procedural fairness and natural justice. The appropriate standard is correctness. See *Li v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1284 at paragraph 35.

ARGUMENTS

The Applicant

Credibility Findings Were Unreasonable

[26] The Applicant argues that the RPD's credibility findings were unreasonable. He swore to the truth of his allegations and, absent evidence to the contrary, the RPD must presume that evidence to be true. See, for example, *Maldonado*, above, at 305.

[27] Moreover, where the RPD had credibility concerns with the Applicant's evidence, it was duty-bound to state its concerns and give reasons for the credibility findings. It failed to do so. See *Ababio v. Canada (Minister of Employment and Immigration)* (1988), 5 Imm. L.R. (2d) 174 (F.C.A.); *Armson v. Canada (Minister of Employment and Immigration)* (1989), 9 Imm. L.R. (2d) 150 (F.C.A.) (*Armson*); *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.).

[28] The RPD failed to take into account, in assessing the Applicant's credibility, that he was presenting his oral evidence through an interpreter. For this reason, the RPD should have resisted being "over-vigilant" and, in comparing statements made on different occasions, the RPD should have exercised caution. The RPD erred in this regard. See *Attakora v. Canada (Minister of Employment and Immigration)* (1989), 99 N.R. 168 (F.C.A.) (*Attakora*).

[29] The RPD's adverse credibility findings were also unreasonable because the RPD ignored evidence offered by the claimant to explain the apparent inconsistencies. See *Owusu-Ansah v. Canada (Minister of Employment and Immigration)* (1989), 8 Imm. L.R. (2d) 106 (F.C.A.).

[30] Where the RPD based its findings on inferences drawn from the Applicant's evidence, the Court can determine the reasonableness of those inferences. See *Frimpong v. Canada (Minister of Employment and Immigration)* (1990), 8 Imm. L.R. (2d) 183 (F.C.A.).

[31] Even if the RPD found the Applicant not to be a credible witness, that finding does not automatically mean that the Applicant is not a Convention refugee. If the Applicant establishes the subjective and objective components of the test for refugee status, he should be deemed a Convention refugee. See *Attakora*, above; and *Armson*, above. Moreover, if the RPD accepted some of the Applicant's evidence, then it must consider the accepted evidence when determining whether the Applicant qualified as a Convention refugee, and the RPD failed to do this. See *Yaliniz v. Canada (Minister of Employment and Immigration)* (1988), 7 Imm. L.R. (2d) 163 (F.C.A.). As

Justice Arthur Stone observed in *Rajaratnam v. Canada (Minister of Employment and Immigration)* (1991), 135 N.R. 300, [1991] F.C.J. No. 1271:

If it is apparent that a decision of the Board was based on the claimant's credibility, pure and simple, and this assessment was properly arrived at, no basis in law would exist for interference by this Court (*Brar v. Minister of Employment and Immigration*, Court File No. A-937-84, Judgment rendered May 29, 1986).

Contradictions or discrepancies in the evidence of a refugee claimant is a well accepted basis for a finding of lack of credibility. See *Dan-Ash v. Minister of Employment and Immigration* (1988), 93 N.R. 33 (F.C.A.), where Mr. Justice Hugessen observed, at page 35:

...unless one is prepared to postulate (and accept) unlimited credulity on the part of the Board, there must come a point at which a witness's contradictions will move even the most generous trier of fact to reject his evidence.

This Court has also recognized the peculiar position of a refugee claimant whose mother tongue is neither one of our two official languages, but who was able to complete a Personal Information Form and to testify at a hearing with the assistance of an interpreter. In *Owusu-Ansah v. Canada (MEI)*, (1989), 8 Imm. L.R. (2d) 106 (F.C.A.) by Mr. Justice Mahoney, at pages 107-108:

In many cases, this among them, the claimant's evidence has been given through interpreters, usually different at each proceeding. The process is fraught with the possibility of innocent misunderstanding.

RPD's Treatment of the Evidence Was Unreasonable

[32] The Applicant argues that the Expedited Report, dated 3 November 2008, and the Decision are contradictory in their credibility assessments of the Applicant. The former makes positive assessment, stating that the Applicant "testified in a straightforward manner" with no inconsistencies or hesitation and that the evidence offered supported his claim. The Decision, on the

other hand, found that the Applicant lacked credibility. The Applicant argues that the RPD's failure to adopt a credibility assessment that is harmonious with that of the Tribunal Officer who carried out the interview for the Expedited Report is contrary to the jurisprudence and represents a breach of natural justice.

[33] The RPD failed to give sufficient or, indeed, any weight to important evidence presented by the Applicant, including: evidence of his membership in the monarchist party; the letters from his former employers referencing the difficulties with the Maoists; and the letter from the Maoists, which proved that he had been threatened by them. The RPD did not properly evaluate the documentary evidence detailing the country conditions in Nepal, most especially the evidence describing the "massive human rights violation situation" and the 31 killings committed to advance the Maoist cause.

[34] For the above reasons, the Applicant submits that the RPD's Decision was unreasonable and unfair.

The Respondent

RPD's Credibility Findings Were Reasonable

[35] The Applicant assumes that the RPD was required to adopt the Tribunal Officer's assessment in the Expedited Report. This assumption is incorrect. The information guide provided on the RPD's website informs refugee claimants of the pre-hearing process and the reports

generated following the interviews. That guide clearly states that, although a Tribunal Officer will conduct an interview and prepare a report, claimants may be required to attend a hearing where an Immigration and Refugee Member will make a decision regarding the claim.

[36] Had the Tribunal Officer been convinced that the Applicant's case was credible and well-founded, he could have recommended that the claim be accepted without a hearing. That did not happen. The Applicant's reliance on the Expedited Report is without merit.

RPD's Treatment of the Evidence Was Reasonable

[37] The Applicant has failed to provide any persuasive arguments to demonstrate that the RPD erred in its Decision. What the Applicant is asking this Court to do is re-weigh the evidence. As that is not the duty of this Honourable Court, intervention is unwarranted. See *Medina v. Canada (Minister of Employment and Immigration)* (1990), 120 N.R. 385 (F.C.A.); *Boulis v. Canada (Minister of Manpower and Immigration)* (1972), 26 D.L.R. (3d) 216 (S.C.C.).

[38] Tribunals are assumed to have weighed all evidence unless this is proven to the contrary. The Applicant has provided no cogent argument to rebut that presumption. See *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.); *Woolaston v. Canada (Minister of Manpower and Immigration)*, [1973] S.C.R. 102. The Applicant refers explicitly to the letter from his former employer and his oral evidence in that regard. Despite this evidence, the RPD determined that his claim was "totally untrustworthy and lacking any credibility." On this point, the

Respondent relies on *Clifford v. Ontario*, 2009 ONCA 670, leave dismissed, [2009] S.C.C.A. No. 461, at paragraph 40:

[T]he majority faulted the Tribunal for not referring to evidence that could have led it to decide differently. Again, I disagree. As I have described, reasons need not refer to every piece of evidence to be sufficient, but must simply provide an adequate explanation of the basis upon which the decision was reached.

[39] Finally, the comments of Mr. Justice MacKay in *Pehtereva v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1491 (F.C.T.D.) at paragraph 13, answer the Applicant's argument regarding the RPD's references to, and assessment of, the documentary evidence:

Finally, the tribunal's decision does not set out in precise terms why it preferred certain documentary evidence and not other evidence, but that does not constitute error. Here, the applicant's concern is primarily that the documentary and other evidence offered by the RHO was relied upon without specifying why evidence of the applicant was not. But that preference of the tribunal, related to evidence of the general circumstances within Estonia, of which the applicant's experience was but an example. The general circumstances based on documentary evidence from recognized sources provided the basis for objectively assessing the applicant's expressed fear. In my opinion, the tribunal did not err by ignoring evidence offered by the applicant, or by failing to specify reasons for preferring other sources of evidence, particularly in seeking an objective overview of circumstances within Estonia. Nor am I persuaded that the tribunal misunderstood or misstated the evidence of the applicant in any way significant for its ultimate finding that the applicant is not a Convention refugee, because it found no serious possibility or reasonable chance she would be persecuted for any reason set out in the definition of Convention refugee should she return to Estonia.

[40] Applying these comments to the instant case, it cannot be said that the manner in which the RPD dealt with the documentary evidence was unreasonable.

ANALYSIS

[41] The Applicant represented himself in this matter at the review hearing. Having reviewed his written materials and heard his oral arguments, it seems to me that he has presented two principal grounds for reviewable error.

Contradictory Findings on Credibility

[42] The Applicant considers it unreasonable and inconsistent that the RPD's findings on credibility seem to conflict with those of the Tribunal Officer who interviewed him earlier and produced an expedited report.

[43] The Applicant is, however, failing to understand the purpose and status of an expedited report. As the RPD's website makes clear in its Claimant's guide, the RPD hold interviews for claims who appear to be straightforward and, at the "expedited interview," a Tribunal Officer will ask questions and prepare a report. The Tribunal Officer also makes a recommendation about whether or not a claim can be accepted without a hearing.

[44] Notwithstanding this expedited process, the guide makes it very clear that the "final decision about your claim is made by an IRB Member."

[45] This means that, if the Tribunal Officer recommends that the claim can be accepted without a hearing, it is open to the Member to either accept that recommendation or to reject it and proceed to a hearing.

[46] In the present case, after interviewing the Applicant, the Tribunal Officer did not recommend that the Applicant's claim be heard without a hearing. In fact the Tribunal Officer who had interviewed the Applicant recommended that a hearing be scheduled. In other words, the Tribunal Officer was of the view that, notwithstanding what he may have written in his own report, the Applicant's claim required a full RPD hearing in order to determine whether it was genuine.

[47] The comments in the Tribunal Officer's report, which the Applicant seeks to rely upon to dispute the RPD's finding on his credibility, have little relevance to the credibility issue. The Tribunal Officer's impressions of the Applicant gained during an expedited interview may well be entirely different from what eventually emerges as a result of a full hearing. As the guide makes abundantly clear, the Tribunal Officer's decision is not binding on the RPD, and for good reason. An expedited interview and a full hearing before the RPD are very different processes. The RPD hearing is much more thoroughgoing and many things are likely to emerge that are not detected at an expedited interview. In the present case, notwithstanding his own impressions that the Applicant testified in a straightforward and consistent manner and readily answered all questions without hesitation or evasiveness, the Tribunal Officer still recommended that a hearing was necessary in order to determine the claim. Obviously the Tribunal Officer was not so convinced by the Applicant that his claim could be accepted without a hearing.

[48] There is no inconsistency here and, in any event, as the guide on the website makes clear to applicants, it is always the RPD that makes a final decision on the claim, not a Tribunal Officer.

[49] There is no breach of natural justice in this process because all applicants are made aware up front that an expedited interview does not necessarily mean that a claim will be accepted without a hearing and, at both the expedited interview and any eventual hearing, each applicant is given a full opportunity to make his or her case. The Applicant in this case is simply disappointed that, after a full hearing before the RPD, the earlier impressions of the Tribunal Officer following the expedited interview were not sustained or confirmed by the RPD. This does not give rise to a reviewable error.

The Country Situation

[50] The Applicant says that the RPD erred in its failure to evaluate the whole country situation in Nepal. As the Decision makes clear, however, the RPD reviewed all of the country documentation and confirmed reports that Maoist extortions and abductions continue. As the RPD makes clear at paragraph 13 of the Decision, however, the general country conditions were not the real issue in the Decision. The Decision is based upon a negative credibility finding concerning the Applicant's particular circumstances. The RPD simply found it "unreasonable to conclude that the Maoists would have any more interest in this claimant than any other person in Nepal."

Credibility Issues

[51] In assessing the Applicant's personal credibility, the Applicant says, the RPD erred in overlooking documentation that supports his narrative of threats from the Maoists.

[52] The RPD found the Applicant's testimony implausible:

The panel has credibility concerns with the claimant's rational (*sic*) as to why the Maoists, if their intent was to achieve their demands of the company, that they would choose the person in the company who had no influence to activate the changes demanded.

[53] The Applicant's explanation was that he was being targeted because he and his family were monarchists, but there was nothing in the objective evidence to suggest that a monarchist association would cause the Maoists to believe that the Applicant would be able to influence their demands upon the dairy company for which he worked:

There is no evidence before the panel that the claimant was a target outside of his association with the company and, according to the claimant's own testimony, his position as an employee afforded him no jurisdiction over monetary or policy decisions.

[54] There were, however, three letters which the Applicant introduced into evidence, one of which the RPD refers to in its Decision, but only in a passing way.

[55] One of the letters, dated 5 August 2007, was from the National Democratic Party (the Monarchists) and was signed by Hari bahadur Basnet as Chairman of the Village Party Unit. This letter says that the Applicant is an "active member of this National Democratic Party" and that he

has “been participating actively in various political activities organized in village/community level.”

The letter then says: “It has been making known that personal life and liberty of Mr. Neupane and his family member are in danger from Maoist Cadres.” I quote from the translation. This letter does not explain very much and one can see why the RPD might not consider it to be of any great significance. However, it has to be read in conjunction with the other letters.

[56] There is also a letter from the Applicant’s old boss at Kapan Dairy Udhyog Pvt. Ltd., which appears to be the letter referred to by the RPD in its Decision, although the date on the letter is 24 September 2007.

[57] This letter reads as follows:

It is hereby inform to all the concern parties and employees of this company that GENERAL MANAGER Mr. Pradeep neupane, is being abused, tortured, threatened, attempt of kidnapping by insurgents Nepal Community Party (Maoist) and it’s fraternal organizations All Nepal Farmer Union Revolutionary and Young communist league time to time. The management of this company is trying to deals with the individual groups to solve this problem.

As per the board meeting decision on 9th July 2007, Mr Neupane is going to take participate in the world largest organic food exposition: ethnic & specialty Food Expo 2007 in Ontario, Canada. The company has arranged all necessary requirements for the participation on to that program in Canada.

We always wishing Mr. Neupane’s safe life.

[58] In its Decision the RPD had the following to say about this letter:

The claimant submitted in evidence a letter from his ex-boss dated December (*sic*) 2007, suggesting that the company was trying to work out the problems with the Maoists and, when questioned at the

hearing regarding this information, the claimant testified in a confusing manner, indicating first that he did not know, that he did not ask, that he had no information and that when he asked his boss, he did not get a satisfactory response.

[59] The Applicant has appeared before me. He does have language problems and he does seem confused at times, but I put this down to problems with understanding my language and what I was asking him. More important, however, is the fact that the RPD says nothing about the other important aspect of the letter to the effect that the Applicant is being abused, tortured, threatened by Maoists who are trying to kidnap him. This information supports the Applicant's narrative and is evidence that is directly contrary to the RPD's conclusion that the Applicant is of no interest to the Maoists.

[60] A third letter that was introduced into evidence is addressed to the Applicant and comes from the Maoists themselves. It is dated 25 January 2006. It reads as follows in translation:

It is hereby informed that you, Mr. Pradeep Neupane, General Manager of Kapan Dairy Udhyog, had agreed verbally to arrange make payment to milk producer farmer of Pachkhal, Kusadevi village and its' surrounding areas of Kavre District (*sic*) the amount which is owed by your employer company Kapan Dairy Udhyog. In this concern we sent you a letter number of times to fulfill that verbal agreement from your side but you never give an attention to our letter. Therefore we informed you regarding this from time to time from the side of our party. You gave no any positive response even after. That is why being forced to decide of your own consequence we would like to inform you that our party has decided any possible action taken as a punishment.

[61] Once again, this letter supports the Applicant's narrative that he is under threats from the Maoists and it is also evidence that contradicts the RPD's conclusions on this point.

[62] The RPD either does not refer to this evidence or, in the case of the ex-boss' letter, it does not refer to that portion of the letter that supports the Applicant's narrative. I am not, of course, saying that the RPD had to accept this evidence, but it was contrary evidence and, in accordance with the well-known principles in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, [1998] F.C.J. No. 1425 at paragraphs 15 and 17, the RPD should have specifically dealt with it. The fact that it did not leads me to the conclusion that the RPD either overlooked it entirely or simply ignored it because it inconveniently contradicted a conclusion that the RPD was determined to reach no matter what the contrary evidence. Either way, this was a reviewable error.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is allowed. The Decision is quashed and returned for reconsideration by a differently constituted RPD.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-644-10

STYLE OF CAUSE: PREDEEP NEUPANE

Applicant

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 27, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: December 7, 2010

APPEARANCES:

Mr. Predeep Neupane APPLICANT (Self-represented)

Mr. John Loncar RESPONDENT

SOLICITORS OF RECORD:

Mr. Predeep Neupane APPLICANT

Myles J. Kirvan
Deputy Attorney General of Canada RESPONDENT