



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

NEPAL

IAA reference: IAA17/03020

Date and time of decision: 29 November 2017 09:27:00

Suhad Kamand, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant claims to be a national of Nepal. [In] December 2016 he lodged an application for a Safe Haven Enterprise Visa (a protection visa). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa in a decision dated [June] 2017.
2. The delegate accepted some of the applicant's circumstances were as claimed but found others had been embellished and/or were not credible. Based on those findings together with available country information detailed in the review material, the delegate was not satisfied that the applicant faces a real chance of persecution, or a real risk of significant harm in Nepal for any of the reasons claimed or arising on the evidence.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No additional information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims for protection can be summarised as follows:
 - he was born in [Village 1, District 1] Nepal, where he lived until [February] 2006. After that time he lived in Kathmandu until fleeing for [Country 1] in around February 2013, where he commenced his journey to Australia
 - he was an active and senior member of the monarchist Rastriya Prajatantra Party (RPP)
 - because of his political involvement with the RPP, his promotion of the monarchy and his opposition to a republic and to secularism, he was targeted for harm by Maoists, including the associated Young Communist League (YCL)
 - [in] February 2006 his home in [District 1] was attacked by Maoists who came shouting slogans. They placed their flags on his land and house and attacked the house with the intention of killing him. He and his family managed to escape unharmed. The applicant fled to Kathmandu and did not return to his home village
 - in Kathmandu he increased his involvement with the RPP. He continued to be targeted and to receive death threats from political opponents, namely the Maoists and the Terai Tiger Party (TTP), as well as other violent groups
 - [in] February 2013 (also given as 2012), [he] was working at the Committee of [District 1]-Kathmandu Contact Forum for the RPP. Members of the YCL and 'paid professional goons' attacked their gathering with sticks, rods, knives and spears. They vandalised and set fire to the venue and chased its participants with intent to harm and/or kill
 - he escaped on foot to his friend's house and then to a nearby temple. His friend told him that his pursuers were looking to harm him, so he decided to leave Nepal. That same night he fled to [Country 1] by truck and has not returned to Nepal since

- the Maoists and TTP have networks in [Country 1]. While in [Country 1] he received threatening phone calls on his mobile phone and felt compelled to flee [Country 1] for Australia
 - he fears being harmed and/or killed by his political opponents in Nepal, in particular the YCL, Maoists and the TTP. He fears such harm because of his political profile and opinions
 - he does not believe the authorities of Nepal can protect him as they are afraid of the Maoists
 - he also thinks his political opponents can find him and harm him in [Country 1].
6. Submissions from the applicant's representative to the Department dated [March] 2017 argue that the applicant faces a real chance of persecution in Nepal for reason of his political opinion linked to RPP, and his campaign to reinstate the King as Nepal's head of state. His representative argues that, for these reasons, the applicant will be killed or seriously harmed by Maoists and/or the TTP in Nepal. Based on the same claimed facts it is also submitted that the applicant faces a real risk of significant harm in Nepal.

Refugee assessment

7. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

8. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Identity and Nationality

9. The applicant has been consistent in his evidence to Australian authorities in respect of his identity, including his name, his date of birth, his Chhetri ethnicity/caste and his Hindu faith.
10. He submitted to the delegate photocopies of his Nepalese Citizenship Certificate and his Birth Registration Certificate, together with English translations. He is also recorded in the delegate's

decision record to have provided his original citizenship certificate during his Protection interview [in] June 2017.

11. In his Protection visa application dated [December] 2016 and in his arrival interview held [in] July 2013 (Arrival Interview), the applicant declared his date of birth to be [Date 1]. His Australian Immigration Card and his driver's licence reflect those details. However, his Nepalese identity documents referred to above give his date of birth as [Date 2]. When this anomaly was put to him during his Protection Interview the applicant responded that the date of birth he has given Australian authorities, being [Date 1], is his correct date of birth; he gave that same date of birth to Nepali authorities when seeking the above-mentioned identity documents, however the Nepali authorities incorrectly recorded his date of birth as [Date 2]; while he tried to correct the record in Nepal his attempts were rejected because he made the request outside the permitted timeframe.
12. Given the consistency of his evidence to Australian authorities over time regarding his identity, I accept the explanation summarised above and find that the applicant's identity is [name], born on [Date 1]. I also accept that he is recorded in Nepali identity documents as [name], born on [Date 2].
13. Regarding his nationality, the applicant claimed in his Arrival Interview, Protection visa application, written statement dated [February] 2017 (2017 Statement) and Protection interview held [in] June 2017 (Protection Interview), that he is a national of Nepal and of no other country. He indicated that he speaks, reads and writes only in the Nepali language, although he speaks some limited Hindi. In his Arrival Interview and Protection Interview he spoke fluently in the Nepali language, assisted by an interpreter in the Nepali and English languages.
14. During his Arrival Interview and Protection Interview he said that he had been issued with a Nepali passport by the Nepali authorities in around 2009, and that he used that passport to enter [Country 2] en route to Australia in 2013. He said that he passed through immigration clearance in [Country 2] using that passport. He said that his passport was taken by the smuggler in [Country 2] when the applicant boarded the boat bound for Australia in around February 2013. I find the applicant's explanation as to how and when his passport was issued and lost to be convincing. I accept that he held a Nepal passport and that it is no longer in his possession.
15. On the evidence before me, and in the absence of any evidence to the contrary, I accept that the applicant is a national of Nepal and of no other country. I find that Nepal is the receiving country for the purposes of the Act.

Consideration of Facts - credibility

16. The applicant's evidence regarding his past circumstances generally, and his claims specifically, are credible in parts, while problematic and unconvincing in others. My consideration of the applicant's claimed circumstances is detailed below.
17. The applicant has been consistent in his evidence that he was born in [Village 1, District 1], Nepal, where he remained until 2006. His Protection visa application form also indicates that his [siblings] comprising [brothers] and [sisters] continue to reside in [Village 1]. I accept that this is where the applicant was born, where he grew up, and where he continues to have immediate family members residing.

18. The applicant said in his Protection Interview that his wife and children continue to reside in Kathmandu, where he lived with them before departing Nepal in 2013; his son is now studying in [Country 3]; he maintains contact with his family by phone and 'social sites'; and his wife works as [Occupation 1]. He claims in his written statement that he and his family had been adversely targeted by Maoists since the commencement of the People's War. He also refers in that statement to death threats and attacks he received 'from time-to-time' 'for financial reasons' in Kathmandu. In addition he referred, in his Protection Interview, to experiencing harm many times in both Kathmandu and [District 1] in connection with his political profile. However, he did not refer in his Arrival Interview or his Protection Interview or in any of his written evidence to himself or any member of his family being targeted for harm except for one incident in 2006 and another in 2012/13. He also said in his Protection Interview that he had to be careful 'walking along' in Kathmandu and referred generally to being hit on the head with wood. He did not elaborate further. He did not give any examples of adverse incidents during the course of the People's War which spanned 1996 to 2006 during which 13,000 people were killed and 1300 disappeared¹, despite his written claim that his family was targeted by Maoists since the commencement of that war.
19. Regarding his employment, his evidence is conflicting. In his Protection visa application form which was completed with the assistance of a Registered Migration Agent, he indicates that he was unemployed from birth until 1989, and that he worked as [Occupation 2] in [District 1]², until February 2013 when he went to [Country 1] and commenced his journey to Australia. However, during his Protection Interview he was expressly asked whether he ever returned to [District 1] after fleeing in 2006. He responded that he did not. This is difficult to reconcile with his evidence that he continued to work on family farm land in his home village in [District 1] until he departed Nepal for [Country 1] in February 2013. It is also difficult to reconcile this evidence with his claim that he was targeted for harm in [District 1]. I am mindful also that, during his Protection Interview the applicant was asked whether he worked as [Occupation 2] until leaving Nepal. To this he initially responded that he did. However, during that interview he modified his response, adding that after moving to Kathmandu in 2006 he committed himself entirely to unpaid work for the RPP and did not undertake any paid employment for the seven years he remained in Nepal after 2006. I am mindful that, from information contained in his Protection visa application, his [children] would have been aged between [age] and [age] years at the time he claims to have moved to Kathmandu. He also said during his Protection Interview that he was paying rent in Kathmandu and that his family was financially assisted by his in-laws. However, on the evidence advanced I have doubts that the applicant, with a young family to support, would have foregone paid employment for a period of seven to eight years to devote himself entirely to volunteering for the RPP as claimed. I also have doubts about the truth of the applicant's claims that he ceased working as [Occupation 2] in [District 1], in 2006.
20. The above concerns are compounded by the considerations below regarding specific adverse incidents the applicant claims to have experienced in Nepal.

February 2006 incident

21. In his 2017 Statement and his Protection visa application form the applicant claims that in [February] 2006, at midnight, an 'armed group' came to his home shouting slogans and putting their flags on the house and land. He states in very general terms that they 'attacked a whole family using arms with intention to kill', and that 'I somehow managed to save my life and ran

¹ Department of Foreign Affairs and Trade: 'Country Information Report, Nepal' 21 April 2016, CIS38A8012676

² Protection visa application form, question 84

away from my home village'³. He had mentioned this event in general terms during his Arrival Interview, in which he said his family's property had been confiscated by Maoists, leaving his family displaced from their village. He did not elaborate further in that interview.

22. During his Protection Interview he was asked whether he has any property in Nepal, including in [Village 1]. He responded that he does not, adding that the Maoists took everything. He said that before 2006 he had farming land around his house, plus [livestock]. While not determinative of any aspect of his claims, he provided no supporting evidence of having ever owned property in Nepal.
23. Regarding the confiscation of his land the applicant said, during his Protection Interview, that the Maoists came to his home at night while his family was sleeping. He said they put up flags on the house and land and said it is theirs. Initially he said that all supporters of the King were targeted that night before later saying that he was the only person targeted. He said that he was the main target for the Maoists because of his profile as an active member of the RPP and an active advocate for the monarchy. This, however, does not accord with the evidence he gave regarding the nature and evolution of his involvement with the RPP, which was to the effect that he had very little involvement with the RPP and/or politics generally before moving to Kathmandu in 2006. This is considered further under 'RPP Involvement' below.
24. During his Protection Interview the applicant was asked how he managed to escape the crowd which came to his home that night. He responded that he heard them coming and escaped with his wife and children from the back door. Despite claiming that it was dark, midnight, and that he did not see the attackers, he said that it 'sounded like' there were eight or ten people there. When asked where he escaped to his evidence was vague, to the effect that they went 'uphill'. When asked if he ever returned to his village after this incident he said he did not, however he also said that he returned to [District 1] to obtain his passport in 2009. When asked if he tried to reclaim his land he said he spoke to the local authorities at the time but they said it is a political matter and they cannot help. He did not identify any of his family members who remain in Nepal, including his [siblings] who continue to live in [Village 1], taking any steps to enquire about or reclaim his land in the years which have passed since the end of the civil war. This lack of action on the part of the applicant and his family, together with the cumulative concerns detailed in the balance of this decision, casts doubt on the truth of the applicant's claim that he owned land and/or other property in Nepal which was confiscated by Maoists.
25. I am mindful of country information referred to in the delegate's decision that Maoists began a nationwide violent insurgency against the government in Nepal in 1996⁴ and that before 2006 and during the conflict, confiscation of land was primarily a politically motivated act undertaken by the Maoist cadre's.⁵ However, in the context of the cumulative concerns detailed in this decision record, including the discrepancies regarding the applicant's continued work as [Occupation 2] on family farming land in [Village 1] until February 2013, I do not accept that that applicant owned property/land in Nepal which was confiscated by Maoists.

February 2012/2013 Incident

26. From the time of his Arrival Interview the applicant has claimed that he was involved in an adverse incident [around] [February] 2012. However the detail he has given regarding that incident, including the year it occurred, has changed over time.

³ 2017 Statement

⁴ Department of Foreign Affairs and Trade, 'DFAT Country Information Report, Nepal, 21 April 2016

⁵ US Department of State, "Nepal - Country Reports on Human Rights Practices 2015", 13 April 2016, OGD95BE926172

27. In his Arrival Interview he claimed that, on that day in 2012 the YCL detained him with intent to kill him. However the detail of his evidence did not reveal him to have been captured or detained by anyone for any period of time. He said in his Arrival Interview that he and others were celebrating when the YCL came and disrupted the celebrations, dismantled 'everything' and wanted to kill 'us'. He said that he fled the scene, took shelter at a friend's home and escaped that house via the back door to a nearby temple.
28. His oral evidence at his Arrival and Protection Interview was that he departed Nepal for [Country 1] by truck the same night and did not return home first to collect any belongings. Yet in his Protection visa application form he states that he reported this incident to the local police but they were 'not keen' to help as they were afraid of the Maoists⁶. His oral evidence did not refer to him reporting this incident to police nor reveal any point in time where he could have done this before he claims to have fled to [Country 1].
29. His 2017 Statement was to the effect that he was working on a programme at the Committee of [District 1]-Kathmandu Contact Forum under the RPP [in] February 2013, not 2012, when suddenly members of the YCL and 'paid professional goons' came with arms, sticks, rods, knives and spears. His evidence does not explain how he knew who the attackers were or that they were 'paid' and/or 'professional' goons. He states that they vandalised and set fire to the premises and 'ruthlessly attacked people who were present at the programme with intention to kill'. They followed those who were running away, including the applicant. They threw things at him from behind, however he managed to get to his friend's house and escaped from the back door to a nearby temple. His friend owned a shop which transported supplied between Nepal and [Country 1] by truck, so the applicant was able to go to [Country 1] by truck that night. His oral evidence during his Protection Interview repeated these general claims but lacked further detail regarding this incident.
30. The applicant has claimed consistently that it took him five days to get to [Country 1], and that he remained there another ten days before departing for [Country 2], with the intention of coming to Australia. While his evidence regarding his journey from Nepal to Australia via [Country 1] was detailed and consistent over time, his evidence regarding why he could not remain in [Country 1] was varied and inconsistent. For instance, in his 2017 Statement he said that: Maoists and the TTP have networks there and could find him; there is a free border between [Country 1] and Nepal so anyone looking for him in Nepal could find him in [Country 1]; in [Country 1] he 'received many calls in my phone number with threats for my life and was compelled to leave [Country 1]'. However, in his Protection Interview he said initially that, in [Country 1], he received calls to his mobile phone from numbers he did not recognise and that when he answered the phone the caller would not speak. He then changed this evidence, saying that he would get phone calls from people who asked where he was but he did not tell them. When reminded that he had, only moments prior, said that the callers would not speak when he answered the phone he offered a further variation, stating that they would call and ask for his name and then not say anything, so he got the feeling that they might ask where he is so he knew it was a bad call and ended the call. His evidence on these matters was evolving in response to the questions and concerns put to him. I consider his evidence that he was adversely pursued by anyone in [Country 1] to be unconvincing and to compound my concerns regarding the reliability and truthfulness of significant aspects of the applicant's claims and evidence.

Detention by/harm from the TTP

⁶ Protection visa application form, question 91

31. During his Arrival Interview the applicant said that he had been 'detained' by the TTP which intended to kill him. He did not give any further details about his claimed detention, such as when it was, its duration, his release from detention and/or why he was not killed if it was their intention to kill him. He added only, during that interview, that they attempted to kill him 'several times' but were not successful. He did not elaborate further.
32. In his Protection visa application he also states that he fears being tortured or killed by the Maoists and the TTP in Nepal, and that the TTP looked for him when he was in [Country 1]. During his Protection Interview he also referred in very general terms to being targeted by the TTP while in Kathmandu and [Country 1]. He provided no evidence of any specific threats made by the TTP or any actual incidents involving the TTP, offering only that the TTP was advocating for separate states in Nepal, which is opposed by the RPP. When pressed on any specific examples of adverse attention from the TTP he referred to the events of February 2013, considered above, as a co-ordinated attack by Maoists and the TTP. However, in his 2017 Statement he refers to those claimed attackers as Maoists and 'paid professional goons' and makes no reference to members of the TTP, except to claim in general terms that the TTP, together with Maoists and other violent groups threatened him for 'financial reasons' in Kathmandu.
33. I consider the applicant's evidence regarding past threats, detention and mistreatment by the TTP to be very general and lacking in detail. On the totality of evidence advanced and the cumulative concerns detailed in the balance of this decision, I do not accept that the applicant was ever pursued, threatened or mistreated in any way by members of the TTP for any reason, or that he has ever had any adverse profile with members or supporters of any organisation named the TTP or similar.

RPP Involvement

34. The applicant has claimed, since his Arrival Interview, that he was involved with the RPP.
35. He was asked during that interview to describe his involvement with the RPP. He responded that he worked for them as a member, campaigning to not overthrow the King; for a multi-party democracy headed by the King; and against a federal republic. He said that later, when he moved to Kathmandu, he was the contact person in his village at the RPP headquarters in Kathmandu and devoted his time entirely to unpaid work for the RPP for around seven years.
36. In his 2017 Statement he said that as a member of the RPP he wanted to reinstate the King; unlike the Maoists he wanted decisions to be made by referendum; Nepal is 82% Hindu and the RPP was demanding that the majority wish to abandon secularism be observed. He said that he was serving his village and society through RPP politics, including in Kathmandu. He stated that he promoted monarchist ideas, opposed secularism and federalism and was seen as a threat to his political opponents. He stated that this was the main reason they sought to kill him. However, as discussed throughout this decision, his evidence did not demonstrate any occasion in which the applicant was individually targeted for harm by anyone.
37. When questioned about his political involvement during his Protection Interview, the applicant said that he began his involvement with the RPP when he was aged around [age], ie in around 1980. He said, however, that he was working on his family farm in [District 1] and was not able to dedicate much time to politics until moving to Kathmandu in 2006. He expressly said that he had little involvement with the RPP until moving to Kathmandu in 2006. This evidence is very difficult to reconcile with his claim that his family farm in [District 1] was targeted for confiscation by Maoists in 2006 because he already had a profile as an active and vocal monarchist and member of the RPP.

38. When asked during his Protection Interview to give more details about his role in the RPP he said that he was a contact person for people who came to Kathmandu from [District 1] and helped them access services in Kathmandu, such as accommodation. He also shared any problems they had with the party. When asked to explain how he made contact with people from [District 1] who moved to Kathmandu he said that he worked in a committee office and those people would come to the office for assistance with social issues such as access to accommodation in Kathmandu. When asked about the frequency of his involvement with the RPP he said that he was 'fully involved' in Kathmandu. The delegate put to the applicant that it sounds like he was working in social services and asked whether he had any official role within the RPP. His response was very general, to the effect that he explained RPP policies to the public. When asked to give an example he said that Nepal was a kingdom before but this was ended by the Maoists who were not elected by the people.
39. Regarding why he decided to get involved with the RPP he said that he liked their policies and programs. When asked to elaborate on what, specifically, he liked, he referred generally to a multi-party system and problems in Nepal after it became a republic. He said that Nepal is small and the RPP opposed it being split into small states. He said that the RPP promotes the return of Nepal to a Hindu country.
40. When asked whether he was a member as distinct from a supporter of the RPP he said he was a member of the [District 1] Kathmandu Contact Committee after he moved to Kathmandu and a member of the RPP. When asked which parties formed the RPP at the time of its initial formation he did not answer directly, offering that he thinks it is now called the RRP-N, is comprised of parties supporting the King, and is chaired by Kamal Thapa.
41. When asked about the RPP more generally he gave evidence that it was formed in 1990, that they won 24 seats in the latest Constituent Assembly elections, and that the party symbol is a cow. When asked about the RPP stand on republicanism he said that it is the same as when the RPP was established, which is opposed to a republic. He said that the RPP accepts that the constitution is 'already there' and they don't want to break it, so they are going to the people to seek their opinions.
42. When asked if he has any documentary evidence of his involvement with the RPP he told the delegate during his Protection Interview that he does not have it with him but he can ask his family in Nepal for it. There is no evidence before me that any such document was provided to the delegate or subsequently, or that the applicant has taken any steps to obtain it, despite the applicant's suggestion to the delegate that such evidence may be available.
43. Considering the totality of the evidence advanced by the applicant, I accept that he has demonstrated some understanding of the RPP and the monarchist agenda. I accept that he supports the concept of a monarchy, and that he is opposed to secularism and republicanism in Nepal. I also accept that he supports the RPP. However, I consider his evidence regarding his actual role as an active and committed member of the RPP to be unsupported by the detail of the evidence he has provided over time. I consider his evidence and understanding of the RPP to be very general, and to not reflect the committed level of involvement he claims to have had since 2006 until leaving Nepal in 2013. I do not accept that the applicant was an actual member of the RPP at any time, although, as reasoned above, I do accept that he was and remains a general supporter of the RPP. I accept that he has participated in some RPP events as an ordinary supporter. However I do not accept that he devoted himself to unpaid work for the RPP in Kathmandu or that he ceased working on his family farm in [District 1] in 2006 as he has claimed. I do not accept that he had an active or committed role within the RPP or that he has ever been perceived to have such a role. I do not accept that he has ever been perceived as a political threat to any political movement, including the Maoists, the YCL and/or the TTP.

44. I accept that, should the applicant return to Nepal he would continue to be an ordinary supporter of the monarchy and the RPP, and that he would continue to be opposed to the Maoists, republicanism and secularism. I find that he will express those views as he has done in the past, namely by attending some events of the RPP as an ordinary supporter. I do not accept that he has currently, or will have in the reasonably foreseeable future, any political profile which would make him an actual or perceived threat to any political movement in Nepal, including the Maoists, the YCL and/or the TTP.

Summary of findings of fact

45. Based on all the evidence advanced, including the cumulative concerns detailed above, I find that

- the applicant was born in [Village 1, District 1], Nepal
- his [siblings] continue to reside there
- he was and remains an ordinary supporter of the monarchy and the RPP
- he was and remains opposed to secularism, republicanism and federalism
- he does not and will not, in the reasonably foreseeable future, support the TTP or the Maoists, including the YCL
- he has participated in RPP events as an ordinary supporter in the past, and will continue to do so in the reasonably foreseeable future

46. However, I do not accept that

- his home or property, including his family's farm land in [District 1], was attacked or confiscated by Maoists in 2006 or at any other time
- he was or is unable to live and work in his home area of [Village 1, District 1]
- he stopped working as [Occupation 2] on family farm land in [Village 1] in 2006
- he dedicated himself to unpaid work for the RPP from 2006 until February 2013 or at any other time
- he was a formal member of the RPP or any other party
- he was actively involved with the RPP or perceived to be
- he was perceived as a political threat to any political cause at any time in Nepal
- he was present at an RPP event in February 2013 or 2012 which was attacked
- he was personally pursued for harm or actually harmed, detained or threatened on any occasion in Nepal by anyone, including supporters of the Maoists, YCL, TTP or 'paid professional goons'.

Assessment of risks in the reasonably foreseeable future

47. As discussed in the delegate's decision, reliable country information, including from the Australian Department of Foreign Affairs and Trade⁷ (DFAT), indicates a significant shift in the political climate in Nepal since the applicant departed in early 2013. Significant developments in Nepal since that time include elections for the second Constituent Assembly which were held in November 2013, described by international observers as free and fair. They attracted a voter turnout of around 78%, delivering a decisive victory to the coalition NCP/Communist Party of Nepal (Unified Marxist-Leninist), giving them an almost two thirds majority of the Assembly. By contrast, the Maoists, which had led the ten year insurgency from 1996 to 2006 and dominated the 2008 election, secured only 80 of the 575 directly elected seats⁸.
48. Further, on 16 September 2015 an 85% majority vote of the Constituent Assembly lawmakers approved a new constitution which was promulgated on 20 September 2015. A range of Prime Ministers representing a range of political interests have since been elected under the new Constitution. They have comprised Khadga Prasad Oli of the CPN-UML, elected in October 2015. He was succeeded by Pushpa Kamal Dahal, who had led the Maoists. As a reflection of the shift in the political environment in Nepal, Dahal was supported during the parliamentary vote by the NCP. In June 2017, Sher Bahadur, Deuba, chairman of the NCP, was elected as the fourth Prime Minister of Nepal. He was reported to have been elected with the support of a diverse range of parties, including elements of the Maoists, the Loktantrik Forum, the Rastriya Janata Party, Rastriya Prajatantra Party and others.⁹
49. While noting the political plurality and general stability in Nepal in recent years, I am also mindful that sources report that poverty, unemployment, weak rule of law and a culture of impunity are reported as causes of insecurity in Nepal; political party interference in security processes and criminal investigations is reported to further undermining effective security and justice; and political protests and demonstrations occur regularly and can turn violent without warning.¹⁰ Despite this, Nepal has been described recently as having a lively political environment which provides an opportunity for diverse political parties and views, with an individual's membership of a political party, along with their ability to be identified as a member and to be politically active, being generally respected¹¹.
50. Regarding supporters of the Monarchy and the RPP specifically, country information cited in the delegate's decision identifies only two incidents of Maoist violence against pro-monarchists. Those incidents date back to 2011, with the South Asia Terrorism Portal not identifying any recent examples of Maoist violence against conservative, pro-monarchy party members.¹² No additional information suggesting any escalation in violence against RPP/monarchist supporters in recent times is before me.
51. In light of the cumulative findings of fact made in respect of the applicant, and the country information summarised above, I am not satisfied that the applicant has ever had or will have in the reasonably foreseeable future, a political profile giving rise to a real chance of any type of harm in Nepal, including serious harm or persecution as contemplated by the relevant law.
52. In light of the above, I am not satisfied that the applicant has a well-founded fear of persecution in Nepal for any of the reasons claimed or arising on the evidence.

⁷ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report, Nepal", 21 April 2016,

⁸ *ibid*

⁹ Asian News International 'Sher Bahadur Deuba elected Nepal's PM for the 4th time", 6 June 2017, CXC9040668656

¹⁰ DFAT report, *op cit*

¹¹ DFAT report, *op cit*

¹² South Asia Terrorism Portal 'Nepal Assessment 2015' and 'Nepal Assessment 2016' (CISEC96CF1246 and CIS38A80123355 respectively)

Refugee: conclusion

53. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

54. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

55. Under s.36(2A), a person will suffer 'significant harm' if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

56. Based on all the evidence advanced, the cumulative findings of fact made in respect of the applicant, and country information detailed above, I do not accept that the applicant has had or will have, in the reasonably foreseeable future in Nepal, a political profile which gives rise to a real risk of any type of harm, including significant harm, as contemplated by the relevant law.

57. I am not satisfied that the applicant faces a real risk of significant harm in Nepal for any of the reasons claimed or arising on the evidence.

Complementary protection: conclusion

58. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Applicable law

Migration Act 1958

5 (1) Interpretation

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or
 - (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.
- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:

- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
- (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
- (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
 - (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
 - (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
 - (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
 - (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to produce such evidence.

- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...