

ar

Appeal No. HX32040-2001
GC (Relocation-Maoists) Nepal CG [2002] UKIAT 05241

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 1 October 2002

Date Determination notified:

13 November 2002.....

Before:

Mr M W Rapinet (Chairman)
Mr A Smith

GUNI KHATRI CHHETRI

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation

For the appellant : Ms M. Canavan of the Refugee Legal Centre

For the respondent : Ms A. Green, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nepal who appeals by leave of the Tribunal against the determination of an Adjudicator, Mrs E.S. Martins, dismissing her appeal against the respondent's decision to refuse to grant asylum and to give removal directions to Nepal. The grounds of appeal are in the bundle before us.
2. The appellant arrived in this country on 9 September 2000 and claimed asylum on 21 December. The basis of her claim is that she is a member of the Maoist Party and was involved in meetings, rallies, demonstrations and the distribution of leaflets. She was arrested by the Nepalese Police in July 1998 and detained for three months and maltreated. She was arrested again in December 1999 and detained for twenty-one days and again maltreated. On her release she was told that if seen again she would be imprisoned for ever and could possibly be killed. The Adjudicator has rejected the whole basis of the claim for the reasons which are set out in paragraphs 58 to 62 of the determination.

3. This is yet another case where unfortunately the respondent was not represented. The grounds of appeal allege errors of law and in particular undue intervention by the Adjudicator. We have before us a statement of Kofi Kuranchie dated 9 July this year. Miss Kuranchie is a caseworker with the RLC and she appeared before the Adjudicator. At paragraph 3 of that statement she alleges that the Adjudicator asked an excessive number of questions.
4. Miss Canavan in her submissions maintained that the Adjudicator has erred in law by failing to give due consideration to the evidence that the appellant was a member of the Maoist Party. This evidence comprised a membership card which was in the bundle before us and was before the Adjudicator. The Adjudicator makes no reference to this in her determination. She also emphasised the unnecessary intervention by the Adjudicator and referred us to Miss Kuranchie's statement and also to Miss Kuranchie's record of proceedings which indicates the number of times the Adjudicator asked questions. Miss Canavan also referred us to a supplementary statement of the appellant and relied upon her grounds of appeal.
5. Miss Green in her submissions maintained that there was no obligation upon the Adjudicator to take account of the membership card. It was an untranslated document and was therefore not strictly before the Adjudicator. Questions asked by the Adjudicator were in order to clarify the nature of the appellant's claim, in Miss Green's submission, these questions were not excessive and did not infringe the guidelines set out by the Tribunal, known as the Surendran Guidelines, to which the Tribunal refers in the case of NNM (00/TH/02423). She submitted that the record of proceedings of the RLC should be compared with those of the Adjudicator. She asked us to reject the supplementary statement of the appellant as this postdates the hearing and cannot be relied upon. The conclusions of the Adjudicator are perfectly valid. The objective evidence shows that if the appellant were to return to Nepal it would be safe for her to live in a large city such as Kathmandu. She had managed to attend public meetings. We were referred to a Belgian report with regard to the current position in Nepal.
6. Dealing first with Miss Canavan's submission that the Adjudicator had exceeded the guidelines set out in Surendran, we have had an opportunity of considering the Adjudicator's record of proceedings. We were referred to these at the hearing, and in particular drew the attention of both parties to a discrepancy between the record of proceedings of the RLC and those of the Adjudicator in relation to how the alleged arrest warrants and come into the appellant's possession. The Adjudicator's record of proceedings gives details of the examination-in-chief and these run to three pages. The record then goes on to indicate the questions asked by the Adjudicator and these run to five pages. They appear to cover a number of matters which were not dealt with in the examination-in-chief and deal in particular with the nature of the appellant's activities and why the appellant's family did not follow her to this country for medical treatment which the appellant maintains she receives after her maltreatment. They also deal with the manner in which the appellant left the country. The remaining four pages of the record merely record the submissions made by Miss Kuranchie.

7. It is always very difficult for an Adjudicator where no Home Office representative appears. We are aware of the fact that this Adjudicator is a very experienced Adjudicator, and having considered her record of proceedings we take the view that she has not exceeded the guidelines set out in Surendran. Her questions were meant to clarify a number of matters raised in the appellant's witness statement. We therefore reject Miss Canavan's submissions in relation to this aspect of the grounds of appeal.
8. We accept that the Adjudicator has not dealt with the question of the membership card and, technically, Miss Green is correct in stating that there was no obligation on the part of the Adjudicator to do so as this is an untranslated document. We have this document before us and it is not strictly correct to say that it is untranslated. It is an odd document in our view in that it is written in Nepalese and in English. We find it somewhat strange that the Communist Party of Nepal should issue membership cards in such a manner, particularly as English is not, so far as we are aware, a language which is used extensively in that state. Although it describes the appellant as an executive member (in English and not in Nepalese) the dates of renewal are all in Nepalese. Within the context of the Adjudicator's findings as to the credibility of the appellant, we would be inclined to reject this document as being an authentic document and in doing so follow the guidelines of Ahmed. In our view the Adjudicator has not transgressed those guidelines as is claimed in paragraph 4 of the grounds of appeal. She has made findings on credibility but in fact has made no specific findings, either with regard to the membership card or the arrest warrant. She has rejected the appellant's claim to be a member of the Maoist Party but has not specifically dealt with the documents in support of that claim. We would be inclined to give the benefit of the doubt to the appellant and accept that she was a member of the Maoist Party. However with regard to the other documents, namely the arrest warrant and the judicial notice dated 17 July 2001 and 8 August 2001 respectively, we take the view that these are not valid documents so far as their content is concerned. They may well be issued on authentic paper. Our reason for so finding is that the appellant claims that she was last arrested in December 1999 and that she then went into hiding at a Maoist camp, some distance from where her activities originally took place, until her departure from the country in September 2000. The only activities on behalf of her party which she claims to have undertaken is arranging meetings and demonstrations and herself attending demonstrations. The Adjudicator has rejected her claim that she attended demonstrations after her 1999 arrest for reasons which are set out in paragraph 59, and we consider those reasons to be perfectly valid. Why, two years after her arrest she should be charged with acts of treason lacks a reasonable explanation. If she had carried out any treasonable activity the authorities had every opportunity to detain her on such a charge in December when she was in their custody but they failed to do so and in fact they released her with a warning accompanied by a threat. We do not consider that to be the action of a police force that is concerned with somebody who has committed a treasonable offence. If the appellant's claimed attendance at the demonstration before she left the country is sustainable we must ask ourselves why she was not arrested then if she was considered a

suspect on a treason charge. Taken over all, we are inclined to the view that these documents are not court documents containing a full record.

9. Whilst accepting therefore for the purposes of this appeal that the appellant may be a member of the Maoist Party, we find ourselves in complete agreement with the Adjudicator's findings as to the credibility of the appellant's evidence in relation to the incidents which she claim give rise to her leaving the country in need of international protection.
10. We turn now to consider the question of the risk to the appellant upon return and in doing so we have considered the report from the Ministry of Interior Affairs for Belgium dated March this year. In this report (page 17) certain districts are highlighted as being areas where there is a greater degree of activity between the Maoist Party and the police. These are referred to as stricken districts. We observe that the appellant who comes from Bhatakpur (which Miss Canavan informed us is close to Kathmandu) is not known as one of the most stricken districts. Neither does it come within a secondary tier of stricken districts referred to in the same paragraph. As Miss Green points out, the degree of Maoist activities is at its greatest in the provincial areas and least strong in the urban areas, and the appellant comes from an urban area, namely Kathmandu and its environs. We also observe that at page 20 when dealing with Maoist members it is stated:

‘During its mission, the Office of the Commissioner General came to the conclusion that not all the ranks of the Maoists are targeted to the same extent, at least not until the state of emergency had been proclaimed on the 26 November 2001. When we asked our contacts which group of Maobadi would fear persecution by the Nepalese government, at the most, most of the contacts answered that it mainly involves prominent and/or local leaders and militants but not common members.’

11. The basis of the Adjudicator's findings which we have accepted, and although we accept that the appellant is a member of the Maoist Party, we do not consider that she would come within the category of those who are prominent and/or local leaders and militants. The following paragraph on page 21 reads:

‘We have already indicated that low profile Maobadi who are in fact members of the party but who do not occupy an important function, not participate in armed actions (militant activities) should not have well-founded fears for persecution on a national level. The same goes for the sympathisers according to the contacts.’

12. Having considered the objective evidence and bearing in mind the Adjudicator's findings, which we accept, that the appellant has not been detained on two occasions as claimed, neither has her husband and child been taken by the authorities we are of the view that there is no reasonable

likelihood that this the appellant would be persecuted were she to be returned and the appeal is accordingly dismissed.

**M W RAPINET
VICE PRESIDENT**