

Suman Panta v. Ministry of Home Affairs *et. al.*

This Client Briefing summarizes a judgment, dated October 23, 2017, rendered by a Division Bench of the Supreme Court of Nepal consisting of Honorable Justices Anandamohan Bhattarai and Tankbahadur Moktan in Case No. 073-WO-1054 on a Writ Petition for an Order of Mandamus and Certiorari filed by Ms. Suman Panta against the Ministry of Home Affairs (“MOHA”) and the Department of Immigration (“DOIM”). The full text of the judgment was published recently by the Supreme Court.

Background

Ms. Leslie Luin Melnik, an American citizen, married Ms. Suman Panta, a Nepalese Citizen, on December 18, 2015 at Sacramento County in Sacramento, California, United States. Ms. Melnik applied for a Non-Tourist Visa (“NT Visa”) at the DOIM on December 29, 2016 under Rule 8(1)(h) of the Immigration Rules 1994 (“Immigration Rules”) as a dependent of a Nepalese citizen. The DOIM verbally denied Ms. Melnik’s application on the ground that Nepali law does not recognize same-sex marriage, and the DOIM did not act on Ms. Melnik’s application. Ms. Melnik’s Nepali spouse, Ms. Panta, then filed a Writ Petition at the Supreme Court seeking an Order of Mandamus against the MOHA and the DOIM requiring these agencies to issue an NT Visa to Ms. Melnik.

Decision

The Supreme Court ruled that under Rule 8(1)(h) of the Immigration Rules, a foreign national who submits a valid marriage certificate establishing marriage with a Nepali citizen is eligible to obtain an NT Visa as a dependent. The Supreme Court further ruled that the Immigration Rules do not specify that a foreign national applying for an NT Visa as a dependent must either be of the same or opposite gender to be eligible for an NT Visa. According to the Supreme Court, Ms. Panta, as a member of a sexual minority community is entitled to the fundamental right to live a life with dignity without discrimination under the Constitution of Nepal. Thus, the DOIM cannot deny an NT Visa to Ms. Melnik, who is a spouse of a Nepali citizen. The Supreme Court issued an Order of Mandamus ordering the DOIM to grant an NT Visa to Ms. Melnik as a dependent of Ms. Panta.

Our Analysis

This is another landmark judgment by the Supreme Court recognizing same-sex marriage in Nepal where it guaranteed the rights of a foreign national spouse of the same-sex marriage with a Nepali citizen in obtaining an NT Visa as a dependent. The Order of the Supreme Court is in line with its previous judgments recognizing rights of sexual minorities. In *Sunilbabu Panta v. Prime Minister and the Office of the Council of Ministers et. al.*, Decision No. 7958, the Supreme Court in 2008, issued an Order to the Government of Nepal to make necessary legal arrangement to address the issue of same-sex marriage and marriage related to Lesbian, Gay, Bisexual, Transsexual and Intersex (LGBTI) community. Similarly, in *Premkumari Nepali v. National Women Commission et. al.*, Decision No. 8945, the Supreme Court in 2013, laid down that the Court cannot prohibit a person from cohabitating with member of the same gender.

Based on these precedents, Nepal’s legal jurisprudence on the rights of sexual minorities seems to be more progressive than that of in other Asian countries.

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