

Printed By: Diana P Elby

ORIGIN DRL-02

INFO	LOG-00	ACDA-08	ACDE-00	AID-00	AMAD-01	CA-02	CIAE-00
	DODE-00	SRPP-00	EAP-01	EB-00	UTED-00	H-01	TEDE-00
	INR-00	INSE-00	IO-00	L-01	ADS-00	NEA-01	NSAE-00
	NSCE-00	OIC-02	OPIC-01	PPT-01	PRS-00	P-00	SP-00
	STR-00	TRSE-00	USIE-00	SA-01	PRM-01	G-00	SAS-00

/023R

031511

SOURCE: CLOUTCLS.005243

DRAFTED BY: DRL/ASY:CDENNISON:CD -- 02/19/99 776-8503

APPROVED BY: DRL/ASY:WMBARTLETT

SA/INS:CBUCK SA/INS:RHAYNES

EAP/CH:RPATTERSON PRM:KFRIEDRICH

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P 192124Z FEB 99

FM SECSTATE WASHDC

TO AMEMBASSY KATHMANDU PRIORITY

AMEMBASSY NEW DELHI PRIORITY

UNCLAS STATE 031511

SENSITIVE

E.O. 12958: N/A

TAGS: PHUM, CVIS, IN, NP

SUBJECT: REQUEST FOR INFORMATION: TIBETAN ASYLUM CLAIMS

1. SENSITIVE BUT UNCLASSIFIED - ENTIRE TEXT.
2. (U) THE NEW YORK INS OFFICE HAS SEEN A RECENT INCREASE IN THE NUMBER OF ETHNIC TIBETANS THAT ARE CLAIMING ASYLUM FROM TIBET, INDIA, AND NEPAL AFTER HAVING LIVED ALL OR MOST OF THEIR LIVES OUTSIDE OF TIBET. INS HAS COMPILED A LIST OF RECURRING THEMES/QUESTIONS WHICH FOLLOW. POSTS' RESPONSE TO THIS INQUIRY WILL PROVIDE INVALUABLE ASSISTANCE TO INS IN ADJUDICATING OVER 250 TIBETAN CLAIMS. POSTS' ASSISTANCE IS APPRECIATED.

QUESTIONS FOR NEW DELHI:

1. (U) ARE ETHNIC TIBETANS, BORN IN INDIA BETWEEN 1/26/50 AND THE COMMENCEMENT OF THE CITIZENSHIP ACT OF 1986, AFFORDED CITIZENSHIP AT BIRTH?
 - A. (U) WHAT ARE THE NATURALIZATION LAWS IN INDIA? INS INFORMATION SEEMS TO INDICATE THAT AFTER 10 YEARS IN INDIA, ANYONE CAN ACQUIRE PERMANENT RESIDENCE. DOES MARRIAGE TO A CITIZEN GIVE RISE TO STATUS?
 - B. (U) THE FULL TEXT OF THE LAW WOULD BE VERY HELPFUL.
2. (U) IS THE OFFICE OF THE REPRESENTATIVE OF HIS HOLINESS THE DALAI LAMA THE SAME AS THE OFFICE FOR THE TIBETAN FREEDOM MOVEMENT COMMITTEE? INS HAS HEARD IN COURT THAT BECAUSE THE NAME WAS "TOO POLITICAL," THE TFMC GOES UNDER THE "GUISE" OF THE DALAI LAMA.
 - A. (U) WHAT IS THE MEMBERSHIP CONTRIBUTION BOOKLET OF THE TIBETAN FREEDOM MOVEMENT FUND? WHAT IS THE PURPOSE OF THIS BOOKLET?
3. (U) CAN ETHNIC TIBETANS, WHOSE TRAVEL DOCUMENTS EXPIRE WHILE IN THE U.S., RETURN TO INDIA?
4. (U) CAN A PERSON WHO WAS BORN IN TIBET, BUT MOVED TO INDIA AS A MEXOR AND RECEIVED NO DOCUMENTATION, RETURN TO

UNCLASSIFIED

QUESTIONS

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INDIA AFTER TRAVELLING ABROAD?

5. (U) WHAT SECURITY MEASURES, IF ANY, ARE TAKEN BY THE OFFICE OF THE REPRESENTATIVE OF THE DALAI LAMA WHEN ISSUING 'BIRTH CERTIFICATES' OR "MARRIAGE CERTIFICATES" TO ENSURE THE INFORMATION THEREIN IS ACCURATE?

QUESTIONS FOR KATHMANDU:

1. (U) PLEASE PROVIDE THE FULL TEXT OF THE NATURALIZATION LAW IN NEPAL.

2. (U) ARE ETHNIC TIBETANS PERMITTED TO ENGAGE IN ANY FORM OF PEACEFUL POLITICAL EXPRESSION IN NEPAL?

3. (U) CAN ETHNIC TIBETANS, WHOSE TRAVEL DOCUMENTS EXPIRE WHILE IN THE U.S., RETURN TO NEPAL?

4. (U) CAN YOU PROVIDE A DETAILED DESCRIPTION OF THE PROCEDURES IN PLACE FOR ACQUIRING A RESIDENCY CARD OR AN IDENTITY CERTIFICATE IN NEPAL?

5. (U) INS SEES MANY NEPALESE PASSPORTS WITH VALID VISAS, WHICH APPLICANTS CLAIM TO HAVE OBTAINED FRAUDULENTLY. CAN YOU SHED ANY LIGHT ON THE PROCESS BY WHICH VALID PASSPORTS ARE BEING OBTAINED "ON THE STREET?"

6. (U) CAN A PERSON WHO WAS BORN IN TIBET, BUT MOVED TO NEPAL AS A MINOR AND RECEIVED NO DOCUMENTATION, RETURN TO NEPAL AFTER TRAVELLING ABROAD?

7. (U) WHAT IS THE SIGNIFICANCE OF A NEPALESE REFUGEE CERTIFICATE?
ALBRIGHT

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ACTION DRL-02

INFO LOG-00 ACDA-01 ACDE-00 AID-00 AMAD-01 CA-02 EB-00
 UTED-00 TEDE-00 INSE-00 L-01 ADS-00 NEA-01 NSAE-00
 VO-03 SA-01 PRM-01 SAS-00 /013W
 -----B91A75 080732Z /38

R 080727Z APR 99
 FM AMEMBASSY NEW DELHI
 TO SECSTATE WASHDC 2479
 INFO AMEMBASSY KATHMANDU
 AMCONSUL MUMBAI
 AMCONSUL CALCUTTA
 AMCONSUL CHENNAI

UNCLAS NEW DELHI 002730

DEPT ALSO PASS TO INS NEW YORK OFFICE

E.O. 12958: DECL: N/A
 TAGS: PHUM, CVIS, IN
 SUBJECT: REQUEST FOR INFORMATION: TIBETAN ASYLUM CLAIMS

REF: STATE 31511

THE FOLLOWING RESPONSES ARE KEYED TO REFTEL QUESTIONS
 ABOUT THE STATUS OF TIBETANS IN INDIA:

1. TIBETANS BORN TO TIBETAN (NON-INDIAN CITIZEN) REFUGEE PARENTS BETWEEN 1950 AND 1986 DO NOT AUTOMATICALLY RECEIVE CITIZENSHIP AT BIRTH. THEY ARE ELIGIBLE TO APPLY FOR CITIZENSHIP AFTER FIVE YEARS OF RESIDENCY IN INDIA. THE VAST MAJORITY OF TIBETANS CHOOSE NOT TO SEEK INDIAN CITIZENSHIP.

1.A. FIVE YEARS OF PHYSICAL RESIDENCE IN INDIA OR MARRIAGE TO AN INDIAN CITIZEN MAY BOTH BE USED AS A BASIS FOR APPLYING FOR INDIAN CITIZENSHIP. THE GOVERNMENT OF INDIA HAS STOPPED FORMALLY ADMITTING TIBETAN REFUGEES. RECENT REFUGEES HAVE NO LEGAL STATUS AND THEREFORE HAVE NO ABILITY TO SHOW FIVE YEARS OF LEGAL RESIDENCE IN INDIA TO QUALIFY FOR CITIZENSHIP.

1.B. POST HAS REQUESTED A COPY OF THE NATURALIZATION LAW WHICH IT WILL POUCH TO CONSULAR AFFAIRS/OFFICE OF INTERAGENCY LIAISON UPON RECEIPT.

2. NO, THE TIBETAN FREEDOM MOVEMENT COMMITTEE IS AN NGO AND THE OFFICE OF THE SPECIAL ENVOY OF THE DALAI LAMA IN WASHINGTON IS (WITHIN THE STRUCTURE OF THE CENTRAL TIBETAN ADMINISTRATION) A GOVERNMENTAL UNIT SIMILAR TO AN EMBASSY. THERE ARE CERTAINLY LINKS BETWEEN THE TFMC AND THE GOVERNMENT-IN-EXILE BUT THEY ARE UNOFFICIAL LINKS.

2.A. IF THE BOOKLET IS ISSUED BY THE TFMC IT WOULD NOT BE AN OFFICIAL DOCUMENT OF THE CENTRAL TIBETAN ADMINISTRATION. NOTE THAT THE U.S. GOVERNMENT DOES NOT RECOGNIZE THE CENTRAL TIBETAN ADMINISTRATION AS A GOVERNMENT.

3. ETHNIC TIBETANS WHOSE TRAVEL DOCUMENTS EXPIRE WHILE OVERSEAS CAN IN PRINCIPLE SEEK A TEMPORARY TRAVEL DOCUMENT THROUGH INDIAN EMBASSIES OR CONSULATES. ALL TIBETANS PLANNING TO RETURN TO INDIA MUST FIRST OBTAIN AN INDIAN RE-ENTRY VISA.

4. NO, THERE IS NO LEGAL BASIS FOR A TIBETAN WHO LIVED IN INDIA WITH NO DOCUMENTATION TO RETURN TO INDIA FROM

New Delhi Response

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ABROAD. IN PRACTICE, TIBETANS WITHOUT LEGAL STATUS IN INDIA REGULARLY TRAVEL BETWEEN THE POROUS BORDERS OF INDIA, NEPAL, BHUTAN AND TIBET. THE GOVERNMENT OF INDIA HAS AN UNOFFICIAL POLICY OF ALLOWING NEW TIBETAN REFUGEES TO ENTER INDIA FROM NEIGHBORING STATES. THE GOI, HOWEVER, DOES NOT ACCORD THEM LEGAL STATUS.

5. REPRESENTATIVES OF THE CENTRAL TIBETAN ADMINISTRATION ADMIT THAT THERE ARE NO HARD AND FAST REQUIREMENTS FOR THE ISSUANCE OF A MARRIAGE LICENSE. A MARRIAGE LICENSE IS VIEWED AS ONLY A REQUIREMENT FOR TRAVEL ABROAD. MANY TIBETANS DO NOT REGISTER THEIR MARRIAGE WITH THE GOVERNMENT-IN-EXILE. TIBETANS ARE ELIGIBLE TO REGISTER THEIR MARRIAGE THROUGH THE INDIAN COURTS SYSTEM. RECORDS FOR CHILDREN BORN IN INDIA ARE VERIFIED BY TIBETAN WELFARE OFFICERS. IN THE CASE OF TIBETANS BORN OUTSIDE OF INDIA, WELFARE OFFICERS MUST VERIFY BIRTH DETAILS THROUGH A REVIEW OF DOCUMENTS HELD BY THE GOVERNMENT-IN-EXILE OR PRESENTED BY THE PETITIONER.

CELESTE

Author: John Shandorf at ERO-ZNY-001
Date: 1/29/98 4:26 PM
Priority: Normal
TO: Mail List - #ZNY Officers and Supervisors
Subject: Re:Fwd:RIC Query

----- Message Contents -----

Here is another Partial response to Anita's query. They are still working to come up with the best answers. It may turn out that there is no one right answer. I have a feeling we will be contemplating this situation for months to come. Thank you.

----- Forward Header -----

Subject: Re:Fwd:RIC Query
Author: John D Evans at HQRIC
Date: 1/29/98 12:07 PM

Your Query, dated today, just arrived on my workstation...Sorry, but we really can't be expected to do a 24 hour turn-around. If this info is that critical to your assessment, then you'd better cancel the pick-up and put the case on hold. As luck would have it, my Africa specialist is in training this morning and my SE Asia specialist is over at the Carnegie until at least 2:30 today. They will get the requests this afternoon, but as I said, this kind of turn-around isn't likely to happen.

A quick look at REF WORLD Legal Database seems to indicate that a person born in India does acquire citizenship by birth, at least between 1950 and 1986. Afterwards, it appears one of the parents needs to be a citizen of India:

3 Citizenship by birth.

- (1) Except as provided in sub-section (2), every person born in India, -
 - (a) on or after the 26th day of January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1986;
 - (b) on or after such commencement and either of whose parents is a citizen of India at the time of his birth, shall be a citizen of India by birth.
- (2) A person shall not be such a citizen by virtue of this section if at the time of his birth-
 - (a) his father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India; or
 - (b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

However, in the Country database, Canadian REFINFO response IND11239 quotes the Indian representative in Ottawa in 1992 with directly contradictory information:

"According to the High Commission of India in Ottawa, Tibetan refugees do not have the right to acquire Indian nationality, even if they were born in India (20 July 1992)." This latter info seems pretty definitive, but we will have to continue researching to address the apparent conflict between the Citizenship Law and the diplomatic interpretation. This is exactly why we need more time. More later, unless you tell us to stop?