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Fax Memorandum

TO: Tibetan Justice Center

FROM: WILLIAM VELA, ESQ.

DATE: 6/05/03

RE: Indian Citizenship Question for Tibetans

PAGES: 20 (Including this cover sheet)

Message:

Attached is ~~the~~^a brief we have filed with the SF Immigration Court to help clarify this complicated issue for other Attorneys & your organization. Please feel free to refer this out to other people.

Thank you, Stacey, Paralegal

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U.S. Department of Justice

Executive Office of Immigration Review

San Francisco, California

IN THE MATTER OF)	File No: A 78-359-240
)	
NAMGYAL TENZIN)	Analysis of Indian Citizenship for
)	Tibetans
)	
)	
)	
)	

Mr. Namgyal Tenzin submits as Exhibit A, a query from an Asylum Officer for the Immigration and Naturalization Service explaining how Indian Citizenship Law applies to Tibetans. The response from John D. Evans at HQRIC of the Immigration and Naturalization Service dated January 29, 1998, cites the citizenship law for India and further states that, "Tibetan refugees do not have the right to acquire Indian nationality, even if they were born in India (July 20, 1992)." This important and credible statement from the UNHCR directly contradicts the Indian Citizenship Act of 1955 (which was submitted in Court by government Counsel) where citizenship is acquired by birth. More importantly, the Immigration and Naturalization Service (known presently as the Bureau of Citizenship and Immigration Services) has explicitly stated that Tibetans are not citizens

of India.

Mr. Namgyal Tenzin was born in India on August 23, 1972. The issue in question is whether or not Mr. Tenzin acquired Indian Citizenship at the time of his birth in India as is stipulated in the Indian Citizenship Act of 1955. The UNHCR memo cited above militates against the government position that Tibetans can become citizens if they are born on or after the 26th day of January 1950, but before the commencement of the Citizenship (Amendment) Act, 1986. Although technically this is the law for all persons born in India, the point of fact is that Tibetans are foreigners and governed under Foreigner's Act, regardless of their place of birth. It is also important to note that the UNHCR statement was made on July 20, 1992, after the Indian Citizenship (Amendment) Act of 1986. This latter statement by UNHCR should be controlling authority as to the possibility of Indian Citizenship for Tibetans.

Also in 1990, the U.S. Congress with the support of Senator Ted Kennedy, and Congressman Barney Frank, Charlie Rose, Ben Gilman, Tom Lantos, and John Porter, passed the Immigration Act of 1990, section 134 (Pub. L. 101-649) of which authorized the issuance of "1,000 immigrant visas to 'displaced' Tibetans living in India and Nepal"¹ during the fiscal years of 1991-1993. A "displaced Tibetan" is defined in Section 22 CFR 47.2 of the FAM Visas at page 1252 as including "not only a native of Tibet but also the son, daughter, grandson, or granddaughter of a person born in Tibet, who has been living continuously in India or Nepal since before November 29, 1990, and the spouse and child

¹ Rinchen, Dharlo, A Brief History of Tibetans in North America, Tibetan Rev., Oct. 1994 at 12, 13. ("[S]uch settlement projects contributed to the economic well being of the larger Tibetan community. While Tibetans learned a great deal from living abroad, they were able to preserve their identity and culture quite well and in doing so, they have become good representatives of the Tibetan people.").

if any, of such person if accompanying or following to join." This statutory law created by the Senate and Congress exemplifies that Tibetans living in India and Nepal were not firmly resettled or offered citizenship in their place of residence; otherwise they would not qualify as a refugee for this program under the Immigration Act of 1990.

At 22 CFR Section 47.5 of the FAM Visas at page 1257, entitled N3. *Not Firmly Resettled in India or Nepal*, it defines factors which are taken into account by consular officers to determine whether the applicant was firmly resettled. One factor addressed is whether the applicant was denied citizenship, as a benefit under the Act. Or to state it conversely, is the Tibetan applicant a citizen of India or Nepal? Given this program was highly successful in immigrating Tibetans to the U.S., it stands logic on its head that the U.S. government would create a program when, according to the Indian Citizenship Act of 1986, all Tibetans born in India between 1950 and 1986 were technically considered citizens of India. Of the privileged group of Tibetans granted amnesty under this program, they were found not to have possessed, nor were they offered, Indian Citizenship. The existence of this program elucidates that Tibetans living in India were not firmly resettled, being they successfully immigrated to the U.S. Please see Exhibit B.

As for the question raised in Court on Mr. Narngyal's true identity being he entered under a false name on a Nepalese passport, a report conducted by the Tibetan Justice Center found that Tibetans in Nepal reside in unstable legal status. In *Tibet's Stateless Nationals: Tibetan Refugees in Nepal*, it states at page 52 that, "few [Tibetans] can become Nepalese citizens. Their status remains uncertain and insecure because no law or regulation defines it." It continues by saying Tibetans "are not permanent residents. Once the Tibet problems are resolved, we will repatriate them to Tibet."

The above statement confirms our position that Mr. Namgyal Tenzin is not a Citizen of Nepal, nor was he firmly resettled, rather he entered the U.S. under a false name on a Nepalese passport in order to circumvent the eminent persecution he would have faced by Indian authorities as a Tibetan political activist. To clarify this matter, a status check for Mr. Namgyal Tenzin was conducted by The Ministry of Foreign Affairs in Nepal on March 24, 2003 and found that his passport was not issued by their office when checked in their registration book. They further affirmed that his passport "is not original and it is illegal or false." Please *see* Exhibit C.

The situation remains for Tibetans that they are stateless residents. This is defined in the report by the Tibetan Justice Center as "residents with no defined legal status and severely limited political and economic rights, and nowhere else to go. In general, no country claims Tibetans in exile as nationals. While China periodically informs them that they may return to "the Motherland," it conditions this right of return on untenable restrictions on their civil and political rights." (Tibet's Stateless Nationals: Tibetan Refugees in Nepal, p. 52). Mr. Namgyal Tenzin lives in legal limbo as a stateless citizen and his political activism is predicated on the arrival of a "Free Tibet", thereby resolving his legal predicament.

Tibetans remain steadfast in their struggle to maintain their Tibetan identity while displaced from their native Tibet. The Immigration and Nationality Act at section 101(a)(21) defines the term "national" as "a person owing permanent allegiance to a state." Indeed his Registration Certificate ("RC") describes Mr. Namgyal Tenzin's nationality as a "Tibetan refugee" and not an Indian national. Other evidence attesting to his bona fide status as a Tibetan was submitted to the Court such as his Identity Card

("IC"), registration book, and his pledge book (for whom he makes contributions to the Tibetan Government in Exile. These documents facially attest to Mr. Namgyal Tenzin's legal status as a stateless citizen who is governed under the Foreigner's Act of 1946 and not the Indian Citizenship Act of 1955.

In an article from China News dated July 13, 1999, the commissioner of the Mongolian and Tibetan Affairs Commission (MTAC) stated in response to Tibetans leaving India and Nepal on false passports to procure resident status in Taiwan that "Tibetans are not entitled to apply for Indian passports." This statement affirms our position that Tibetans in India are not eligible for Indian Citizenship as they have no right to apply for Indian passports. Please *see* Exhibit D.

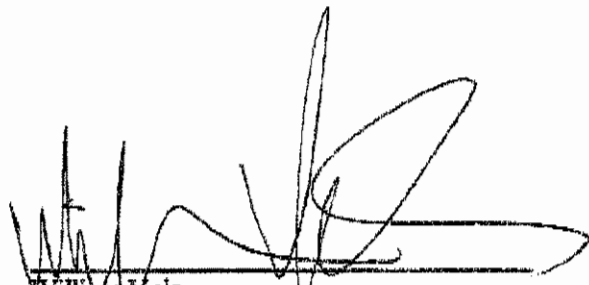
Additionally, in a country condition report issued by the State Department in August of 1997, entitled "Tibetan Refugees in India", it states, "Tibetan refugees, numbering about 100,000 now live in India. They do not have the rights of Indian citizens such as voting or carrying an Indian passport..." This document was submitted by a Trial Attorney for a different case involving a Tibetan in the state of New York. Although the date has been covered, a highly respected and very credible Attorney who handled this case, Mr. Yi Lin, said the date for this report was August of 1997. Attorney Lin also affirmed this document was in its present condition with the date marked out when it was given by the Trial Attorney in New York. Mr. Lin is on our witness list and he can testify to the authenticity of this document. In addition, present Counsel fully understands that this document is a country condition issued by the State Department which cannot be fabricated from its original version. Please *see* Exhibit E and Exhibit F.

In an article entitled "INS Rules put Tibetan refugee in Immigration Limbo"

published by The Record out of Bergen County, New Jersey, it states, "Tibet no longer exists as an independent nation. China does not consider Tibetans outside the territory to be citizens. Neither does India, which provides Tibetans with travel documents but considers them refugees. Those documents must be renewed every two years, and Phuntsok has let his lapse, meaning he can't return to the place he was born." The focus of this article involves a Tibetan similarly situated as our client in that he was born in India to parents who fled Tibet when it was annexed by China in the 1950s. The legal position of Tibetans highlighted in this article are consistent with the country condition reports found on this subject showing Tibetans in India are deemed refugees and not considered citizens. Please see Exhibit G.

In sum, Mr. Narngyal Tenzin (and other Tibetans situated like him) are not accorded the same rights and privileges enjoyed by citizens of India, which is not a signatory to the U.N. refugee conventions. Tibetans in India are classified under Indian law as foreigners and are subject to substantial restrictions. Please see the attached memorandum on firm resettlement and safe haven doctrines. In India, a Tibetan foreigner cannot be found to be a citizen of India.

Dated: April 11, 2003



William Vela
Attorney at Respondent

Reply Separator

Subject: Pwd:RIC Query
Author: RIC Queries (Sellers, Camille E)
Date: 1/29/98 10:21 AM

Exhibit A.

for assignment

Forward Header

Subject: RIC Query
Author: John Shandorf
Date: 1/29/98 8:43 AM

Please see the following query. Thanks. John Shandorf

Forward Header

Subject: RIC Query
Author: Anita Tadeo at ERO-ZNY-001
Date: 1/28/98 5:27 PM

I would like to have comments from RIC on the following questions:

1) Under the citizenship laws of India, would a person born on 6/6/66 in India of Tibetan parents who had fled to India from Tibet in 1959 have Indian citizenship?

2) In the Republic of the Congo (with Brazzaville as capital, not the former Zaire), would any particular ethnic group be targeted for persecution by the current government of Nguesso per se? My Applicant claims that Soninkes are merchants and that the Congolese are resentful of the Soninke's success in education and commerce. However, he combines the race/social group factor with political opinion as the bases for his claim of asylum. He further states that Soninkes are perceived to be advocating a democratic form of government. He specifically claims he gave financial support to the political party UPADS and attended their meetings and some demonstrations even though he is not a member of UPADS, and was arrested during Nguesso's regime before the 1992 elections. Would past support of the UPADS by itself put him at risk of harm if he were to return now that Nguesso is back in power ?

May I kindly request for an answer by Friday morning at the latest when my assessments are due? Thanks.

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

Exhibit A.

----- 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:Pwd:RIC Query
Author: John D Evans at EORIC
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 REFworld 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?

Exhibit B.

1251 FAM VISAS § 47.1

22 CFR 47

PART 47

Documentation of Immigrants Under Section 134 of Pub. L. 101-649

Section 47.0 Immigrants under Section 134 of Pub. L. No. 101-649

Section 47.1 General Related Statutory Provisions

Sec. 134 of the Immigration Act of 1990 (Pub. L. 101-649), in part

NOTES

N1. Background of Section 134 of Pub. L. No. 101-649.

Section 134 of Pub. L. No. 101-649 authorizes the issuance, during fiscal years 1991-1993, of 1,000 immigrant visas to "displaced Tibetans," their spouses and children. [See 22 CFR 47.2 for the definition of displaced Tibetans.]

N2. Few Exceptions to General Rules.

Consular officers should bear in mind that section 134 of Pub. L. No. 101-649 exempts beneficiary Tibetans only from the standard numerical limitation and chargeability provisions of the Immigration and Nationality Act. All other provisions of law and visa regulations, including exclusionary provisions other than 212(a)(5), apply to these applicants.

N3. Impact on Posts Worldwide.

Since applications for immigrant visas pursuant to section 134 must be submitted to, and adjudicated by consular officers assigned to, the U.S. Embassy at New Delhi, India, other posts need only familiarize themselves with Part 47 for purposes of providing information should inquiries on this part arise. In the unlikely event that a post might receive an application from an alien wishing to immigrate under this section, the post shall return the application to the applicant and instruct the applicant to submit the application directly to the U.S. Embassy in New Delhi.

§ 472

FAM VISAS

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Section 47.2 Definition

Related Statutory Provisions

Sec. 134 of the Immigration Act of 1990 (Pub. L. 101-649), in part

NOTES

N1. Including "Displaced Tibetan"

For the purpose of section 134 of Pub. L. No. 101-649, a "displaced Tibetan" includes not only a native of Tibet but also the son, daughter, grandson, or granddaughter of a person born in Tibet, who has been living continuously in India or Nepal since before November 29, 1990, and the spouse and child, if any, of such person if accompanying or following to join.

N2. Tracking Genealogies.

a. The Department recognizes that applicants who are second or third generation residents of India or Nepal may have difficulty establishing their descent from a parent or grandparent who was born in Tibet. Consular officers should evaluate evidence relating to relationship, including affidavits, in terms of consistency and probability. If a reasonable family history is presented, consular officers should give applicants the benefit of the doubt. On the other hand, if the consular officer has reason to believe that the evidence presented does not form a cohesive pattern, the consular officer may request whatever other documents might be helpful to resolve the doubts.

b. The Department believes that those who more recently arrived in India or Nepal should have little or no difficulty in presenting normal documentation as to place of birth and/or genealogy.

N3. Destrative Beneficiaries.

a. The spouse or child of an alien entitled to status under section 134 is also eligible under the same status and entitled to the same order of consideration if accompanying or following to join the principal alien.

b. The spouse or child of a qualified Tibetan, regardless of place of birth, shall be changed to Tibet, pursuant to the provisions of INA 202(b)(2) or (1) respectively.

Section 47.3 Place of Application

Related Statutory Provisions

(See § 47.7 for provisions of sec. 134(c) of the Immigration Act of 1990.)

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FAM VISAS

§ 47.3

NOTES

N1. Formed Application at New Delhi

The U.S. Embassy at New Delhi has been designated as the visa issuing office for all aliens seeking admission under section 134 of the Immigration Act of 1990 even though some of the beneficiaries will be located in Nepal. The Embassy at New Delhi will coordinate with the Central Tibetan Administration (CTA) to facilitate the orderly processing of visa applications. [See also FAM 9 § 47.4 Notes.]

N2. "Pre-Embassy Applications."

The consular officer at New Delhi shall provide representatives of CTA, or other such private voluntary agencies which may be identified by CTA as cooperating with it, with copies of Form OF-222 and instructions concerning completion of the Form and the supporting documents to be submitted. [See FAM 9 § 47.3 Exhibit 1.]

Section 47.4 **Visas With The Central Tibetan Administration**

Related Statutory Provisions

[See § 47.7 for provisions of sec. 134(c) of the Immigration Act of 1990]

NOTES

N1. Coordinating With Central Tibetan Administration (CTA).

The Central Tibetan Administration (CTA) is the organization which represents the Tibetan community both in India and Nepal. It has therefore been determined that all applications for visas under section 134 of the Immigration Act of 1990 should be submitted through this organization.

N2. CTA Duties.

With the assistance of other interested voluntary agencies CTA shall perform the following duties:

- (1) Screen individual Tibetans who may wish to avail themselves of the benefit under section 134;
- (2) Provide applicants with the preliminary application Form OF-222, Preliminary Questionnaire to Determine Immigration Status;
- (3) Forward to the consular officer all cases with recommendations as to which applicants CTA believes meet the requirements;
- (4) Meet with the responsible consular officers to discuss in detail the preparation of dossiers on the candidates;
- (5) Coordinate with other voluntary agencies to arrange necessary sponsorship and support for the candidates after admission to the United States.

Section 47.5 **Determination Regarding Successful Resettlement**

Related Statutory Provisions

[See § 47.7 for provisions of sec. 134(c) of the Immigration Act of 1990]

NOTES

N1. Background.

Section 134 of the Immigration Act of 1990 requires that visas be made available in an equitable manner, with preference being given to those:

- (1) Most likely to settle successfully in the United States; and
- (2) Not firmly resettled in India or Nepal.

N2. Successful Resettlement.

Consular officers must determine which applicants are most likely to resettle successfully in the United States. Many factors can influence this determination, some of the more obvious are enumerated below. Consular officers are not limited, however, to those specifically identified elements. An alien who might initially appear highly unlikely to resettle may do so nonetheless if appropriate arrangements are made for resettlement assistance and support, both financial and other, on a continuing basis. For example, family and friends in the area of resettlement and/or early employment can provide social and emotional support and a generally hospitable environment for adjustment. Although consular officers should accept as credible the assessment of the CTA and other voluntary agencies, consular officers must make a further personal determination regarding resettlement in each case.

N3. Not Firmly Resettled in India or Nepal.

In determining whether an applicant is not firmly resettled in India or Nepal consular officers should take into account the following:

- (1) How long the applicant has been residing in India or Nepal;
- (2) Whether the applicant has permanent housing available;
- (3) Whether the applicant has been offered permanent employment; and
- (4) Whether the applicant has been denied benefits offered to other residents, such as the right to own property, travel documentation, education, public welfare, or citizenship.

Section 47.6 **Order of Consideration**

Related Statutory Provisions

[See § 47.7 for provisions of sec. 134(c) of the Immigration Act of 1990]

N3. Statistical Reporting.

The post shall include on the monthly TV workload report (Form OF-186) the number of immigrant visas issued under this section.

Sections 47.8-47.9 **[Unassigned]**

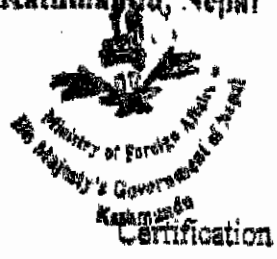
Exhibit C.



His Majesty's Government of Nepal
Ministry of Foreign Affairs, Sital Niwas
Kathmandu, Nepal

Dispatch No. 344/059/60

Date: 24th March 2003



Sub:-

To Whom It May Concern

This is to certify that Ven. Namgyal Lama with false permanent address as Jhong V.D.C ward no: 5, Mustang district has a Nepali passport No -888895 issued on 10-06-1998. The passport mentioned above is not issued from this office when checked in the registration book maintained by this office. It is hereby certified by The Ministry of Foreign Affairs that the passport is not original and it is illegal or false.

R. Pandey
Dy. Chief of Protocol
Rajendra Pandey
Dy. Chief of Protocol

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Copyright 1999 CHINA NEWS

July 13, 1999

SECTION: News

LENGTH: 439 words

HEADLINE: Tibetan refugees seek resident status in Taiwan

BODY:

A Kuomintang (KMT) legislator called on the government yesterday to give resident status and working rights to some 100 Tibetans staying illegally in Taiwan as a gesture of humanitarian care and aid for international refugees.

While there are 1,000 Tibetans living in Taiwan who obtained citizenships through their families here, approximately 100 Tibetans have entered the country with false Indian or Nepalese passports and are staying here illegally. The minority group receives little attention from the authorities.

Meanwhile, local police have arrested more than 10 Tibetans and have kept them in Shanhsia's Alien Detention Center and Tucheng Prison. According to KMT lawmaker Chen Shei-saint, these people were considered foreign tourists and were arrested when their 15-day tourist visas had expired.

"Recently, our government has been spending a lot of money on international aid in the name of humanitarianism," said Chen. "But Tibetan refugees are also international refugees. If we can give NT(USDollar) 300 million to Kosovar refugees, why can't we do something to help Tibetans?" he asked.

Chen urged the government to draw up regulations on shelters for refugees and to assist them in obtaining legal resident status.

"Most of the Tibetans cannot speak or read Chinese," Chen said. "They thought if they came to Taiwan, the Executive Yuan's Mongolian and Tibetan Affairs Commission (MTAC) would take care of them so they could stay here for a long time," he said.

However, Chueh-an Teering, commissioner of the MTAC, said authorities cannot help the Tibetans because they used foreign passports to enter the country. He added that the MTAC has no authority to supervise them.

08/03/2000 08:00 41000710
"It is very easy to buy false passports in India and Nepal," Chueh-an said, adding that ~~Tibetans are not encouraged to apply for Indian passports.~~ However, a "refugee certificate" is granted by the Dalai Lama's exiled government in India which allows Tibetans to work and reside in India and Nepal according to a special agreement signed by the three parties.

Chueh-an urged the government to include Tibetan refugees under the new immigration law passed in May which allows overseas Chinese refugees from Thailand, Myanmar and Indonesia to stay in Taiwan as long as they have valid passports.

Many Tibetans flooded into India and Nepal after China took over Tibet in 1949. The anti-communist uprising in March 1959 led more Tibetans to seek sanctuary in neighboring countries. Currently, there are more than 120,000 Tibetan refugees all over the world.

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LOAD-DATE: July 13, 1999

August, 1997

1997

Exhibit E. TIBETAN REFUGEES IN INDIA

Tibetan refugees, numbering about 100,000 now live in India. They but do not have the rights of Indian citizens such as voting or carrying an Indian passport, but they are free to work on the Indian economy or in the numerous Tibetan settlements established by the Indian Government. They can marry Indian citizens, although few do.

Most Tibetans who do work are small shopkeepers, foodstand owners and peddlers. They are subject to the same rules governing the purchase of property as are other non-Indian citizens, i.e. they must first obtain the permission of the Reserve Bank of India. Tibetans are known to own land and houses in India. Most Indian citizens are provided with food ration cards which allow them to purchase government-subsidized necessities at greatly reduced cost. Tibetan refugees also receive ration cards, usually from the governments of the states in which they reside. Village health centers run by State governments and subsidized by the Indian Health Minister also provide free health care to rural Indians. Tibetan refugees can avail themselves of this free health care, although the demand for medications frequently exceeds available supplies. Health care providers generally require sub-rosa payment of some sort.

While there have been isolated anti-Tibetan incidents (usually in the form of attacks by Indian criminals), Tibetan refugees in India are generally able to lead productive, peaceful lives in India. The Government of India does not harass or mistreat Tibetans, nor does it threaten to return Tibetans to Tibet. Stories of government mistreatment contained in asylum applications are not consistent with country conditions.

Beginning at age 18, Tibetan refugees in India receive a Residential Certificate issued by the Home Ministry through the District Superintendent of Police in the locality where the individual resides. The certificates are valid for one year and renewable. Tibetans must carry the Residential Certificate when travelling within India. For international travel, Tibetan refugees resident in India use an "Identity Certificate" issued by the Home Ministry valid for two years and renewable. When stamped with a "no objection to return to India stamp" (NORI) these documents permit the bearer to travel internationally and to return to India. Our understanding is that the Government issues NORI stamps after clearance with the government of the state in which the individual lives. Refusal to issue such stamps is rare, although bureaucratic delays have sometimes resulted in de facto refusals.

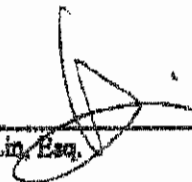
-We are not aware that the Government of India has forced any Tibetan refugees to return to Tibet, although some Tibetans visit India and then return voluntarily to Tibet. We do not generally consider that travel to Tibet is a viable option for a Tibetan who has illegally left China. According to our Embassy in New Delhi and our knowledge of conditions and practices in China, the Chinese government considers Tibetan refugees living in India to be Chinese. A Tibetan refugee wishing to travel legally to Tibet must obtain a travel document from the Chinese Embassy in New Delhi by completing a form identifying the individual as a Chinese citizen living outside China. The Indian Government then places an exit stamp in the Chinese-issued document. Tibetans do not travel to Tibet from India on an Indian-issued Identification Certificate.

Exhibit F.

DECLARATION OF ATTORNEY YI LIN

1. My name is Yi Lin and I practice immigration law in the New York, NY.
2. I was given this document (labeled as Exhibit E on Mr. Vela's motion), a State Department Country Condition on Tibetans in India, approximately one hundred (100) times by Trail Attorneys in the State of New York.
3. This is a standard submission by the government that I have received in my course of practice handling Tibetan cases.
4. I was told that the date this document was issued by the State Department was August of 1997.
5. Additionally, I can testify telephonically that this document has in no way been altered or changed from its original state.
6. I also affirm that the faxed version of this declaration will serve in place of my original signature.

I affirm that the above statements are true and correct under penalty of perjury.



 Yi Lin, Esq.

4/11/03

 Dated

Exhibit G



1904 Franklin Street, Suite 900, Oakland, CA 94612 USA • tel: 510.835.4692 • fax: 510.835.3017 • web: www.datacenter.org

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The Record (Bergen County, NJ)

June 25, 1999; FRIDAY

SECTION: NEWS; 2 Star B, ALSO IN, 2 Star P, 1 Star Early; Pg. L01

LENGTH: 904 words

HEADLINE: INS RULES PUT TIBETAN REFUGEE IN IMMIGRATION LIMBO

BYLINE: ADAM GELLER, Staff Writer

BODY:

Thupten Phuntsok was born without a country.

But now the Cresskill man's statelessness could cost him a home, too.

By law, Phuntsok, a former Tibetan monk who, along with his sister, found a home with a North Jersey woman last year, has until Monday to leave the United States.

Thanks to a tangled web of immigration rules and international policies on refugees, however, Phuntsok faces a dilemma: Although he cannot stay, he has nowhere to go.

Unsure of what to do, Phuntsok was planning to fly to Buffalo, N.Y., this morning and possibly apply for political asylum in neighboring Canada if his dilemma is not solved within the next few days.

But a U.S. immigration officer said Thursday that seeking asylum would almost certainly void the Tibetan's request to stay in this country.

"There's no place to go because no country is compassionate enough to simply issue a visa to this man," said Lisa Hochman, the Cresskill woman playing host to Phuntsok and his sister. "Everybody has this set rule, and there aren't any human beings out there willing to make an exception."

Ironically, Phuntsok's dilemma springs from Washington's recent approval of his request to stay in this country permanently. There was just one catch: To take the United States up on its offer, Phuntsok is required to go to a U.S. Embassy overseas to have his case heard and

pick up his visa. He was given 120 days to arrange the trip and leave the United States.

Only two U.S. Embassies, in France and in Spain, agreed to hear Phuntsok's case. Other embassies, including Canada's, said they were too busy. To enter France or Spain, however, Phuntsok needed a tourist visa from one of the two countries.

Obtaining such a visa would be a matter of course for most Americans. But without a U.S. visa proving his intention to return to this country, Phuntsok, 28, was turned down by both the French and Spanish consulates in New York. Officials told him they were not willing to take the risk that he would stay in their countries once he arrived.

"Unfortunately, he's stuck between a rock and hard place," said Amy Gottlieb, an attorney with the American Friends Service Committee in Newark, representing Phuntsok. "He wants to comply with the requirement to leave the country, but nobody's accepting him."

The case is complicated by the fact that Phuntsok has no country he can turn to as his own. He was born in Tibet, a region that is now part of China. His parents, who fled Tibet when it was annexed by China, are also in the United States.

Tibet no longer exists as an independent nation. Neither does India, which provides Tibetans with travel documents but considers them refugees. Those documents must be renewed every two years, and Phuntsok has let his lapse, meaning he can't return to the place he was born.

Getting new Indian travel documents would take three months, and Phuntsok cannot afford to wait.

"I feel like I'm hanging around in the sky with nowhere to land," said Phuntsok, until a month ago a student at Bergen Community College.

"I don't know what I will do."

A spokeswoman for the Immigration and Naturalization Service said the law appears to offer Phuntsok no way out.

Under a change in immigration law last year, most people granted visas obtain them by returning to their native countries, said Amy Otten, a spokeswoman for the INS Eastern Region, based in Burlington, Vt. She was unfamiliar with cases such as Phuntsok's, where people don't possess citizenship or the right to travel to another country.

Otten said that if Phuntsok stays in the United States beyond the deadline, he will be considered illegal and the agency could seek to deport him. Yet if he leaves and applies for asylum in another country, she said, the agency would consider his application for an American visa abandoned.

Phuntsok first came to the United States in late 1996 on a visitor's visa, before applying for political asylum in 1997. That allowed him to stay in the country while the asylum application was under review.

Simultaneously, Phuntsok sought another route to remain in the

United States, applying for a visa that would allow him to stay because of his unique artistic skills. Phuntsok's specialty, learned during years of study at a monastery in northern India, is the construction of sand mandhalas, intricate motifs that represent the universe in abstract.

When the United States granted Phuntsok the artist's visa in February, his lawyer withdrew his application for asylum, assuming it was no longer needed. But without that application pending, the law required Phuntsok to leave the United States within 120 days. That period ends Monday.

The time limit would have been no problem if another country were willing to allow Phuntsok entry. Bill Westerman, who directs a Jersey City program for immigrant artists, says the denial of that entry amounts to discrimination based on Phuntsok's refugee status.

"Is the fact that you're a refugee so stigmatizing that European countries won't even let you come in as a tourist?" Westerman said.

"I've heard the phrase 'the new untouchables' used to refer to refugees, and it's cases like this that really make you understand that phrase."

GRAPHIC: PHOTO - DANIELLE P. RICHARDS / STAFF PHOTOGRAPHER - "I feel like I'm hanging around in the sky with nowhere to land," says former monk Thupten Phuntsok. "I don't know what I will do."

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