

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of the Application for
Political Asylum of X

MEMORANDUM OF LAW
IN SUPPORT OF APPLICATION FOR POLITICAL ASYLUM
OF X

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I. PRELIMINARY STATEMENT

X, a 27-year old Tibetan and unwilling citizen of the People's Republic of China ("PRC" or "China"), seeks asylum and withholding of removal in the United States. She has suffered actual past political persecution and has a well-founded fear that if forced to return to Tibet, she would face future persecution on account of (1) her political opinion; (2) her family's political opinions favoring Tibetan independence (which have been imputed to her); (3) her religious beliefs as a Buddhist; and (4) her membership in a particular social group.

Throughout her life, Mrs. X lived under the yoke of Chinese oppression against

Tibetans. This oppression was particularly targeted against wealthy Tibetans and those holding political or religious positions. Mrs. X grew up against a backdrop of discrimination and terror aimed at her family that included abuse, imprisonment, humiliation, torture and murder. The PRC imprisoned her father for eleven years, sent her mother to a Chinese labor camp during that period, and imprisoned and tortured Mrs. X because she possessed a symbol representing Tibetan liberation. Although Mrs. X has never actively advocated her family's political opinions regarding Tibetan independence, the Chinese authorities have always imputed her family's opinions to her. As a result, Mrs. X has always suffered at the hands of the authorities.

On November 18, 1996, Mrs. X married Y. Soon after their marriage, her already difficult life in Tibet worsened as her husband was targeted by the Chinese authorities due to his alleged affiliation with a Tibetan political group. Mrs. X's family history together with Y's alleged political affiliations resulted in intensified scrutiny of Mrs. X by the Chinese authorities.

In the prime of her life, Mrs. X was compelled to flee Tibet, leaving behind everyone and everything she loved -- her mother, sister, husband and her homeland -- because of the persecution she suffered, and would increasingly suffer at the hands of PRC officials due to her political opinion and the political opinions that were imputed to her. While in Tibet, Mrs. X experienced physical torture and continuous emotional degradation including:

- Being incarcerated for wearing a symbol representing Tibetan liberation while in school. During the first four days of her confinement, Mrs. X was not fed and was beaten regularly.
- The Chinese authorities confiscated all of her parents' possessions and property, including their family home, and forced them to live in a communal fashion as nomads.

- Her father was incarcerated for eleven years for advocating Tibetan independence as a member of Chep Shi Gon Tok, a Tibetan political group.
- While her father was incarcerated, her mother was beaten and forced to perform manual labor in a Chinese labor camp.
- Her father was jailed a second time without reason and died while in custody.
- Both of her uncles, who were Buddhist monks in the Montessori and Hyatt monastery, respectively, were each incarcerated for twenty-three years for being suspected of advocating Tibetan independence.
- Her husband was arrested and jailed in Shigatse prison on suspicions of membership in a political group that advocated Tibetan independence.
- Shortly after his release, Mrs. X's husband was severely beaten by two Chinese officers in their home because he would not confess to having any political affiliations. Fearing for his life, her husband fled Tibet. Mrs. X has no knowledge of his whereabouts.
- The Chinese authorities threatened Mrs. X with death.

As a result of these and other instances of past persecution by the Chinese authorities, and the likelihood that the PRC has imputed her family's political opinions to her, Mrs. X fears that, if forced to return to Tibet, she will be subjected to further discrimination, harassment, arrest, imprisonment, and even death at the hands of the PRC.

At present, conditions in Tibet remain highly dangerous for targeted individuals of the Chinese regime like Mrs. X. Numerous sources, including the press, human rights organizations and the U.S. State Department, have reported continued instances of violence, arrests, politically motivated assassinations and imprisonment of opposition dissidents by the Chinese government and by the military it controls. In addition, Mrs. X's description of the torture and discrimination she and her family endured while in Tibet is supported by her

Declaration attached hereto as Exhibit 1 ("X Dec.").

In sum, Mrs. X has suffered past persecution and has a well-founded fear of future persecution if compelled to return to Tibet. Accordingly, she qualifies for refugee status and withholding of deportation under the law and warrants asylum as a matter of discretion.

II. STATEMENT OF FACTS

A. Conditions in Tibet

1. Serious Human Rights Abuses in Tibet

At the dawn of the twenty-first century, Tibet continues to struggle under the oppressive yoke of Chinese rule. It has been fifty-two years since China invaded Tibet, stripping Tibet of its de facto statehood. During that time, the Chinese government imposed totalitarian rule over Tibetans, violating their religious, cultural and political rights.¹ Today, the Chinese government continues to commit serious human rights abuses against ethnic Tibetans, including torture, arbitrary arrests, detention without public trial, and detention of Tibetan nationalists who express their political and religious views.² According to the latest country report issued by the

¹ See A. Tom Grunfeld, The Making of Modern Tibet at 166 (1996), attached hereto as Exhibit 2.

² See United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, 1999 Country Reports on Human Rights Practices (Feb. 25, 2000), available at

U.S. State Department:

- Although the Chinese government permits various religious observances, it will not tolerate any religion that advocates Tibetan independence. The Chinese government condemns the Dalai Lama, his political activities and his followers, and continues its campaign to discredit the Dalai Lama, and actively persecutes followers of the Dalai Lama.
- There is a nationwide ban of the public display of photographs of the Dalai Lama. Numerous Tibetan monks have been arrested, charged with the distribution or possession of pictures of the Dalai Lama.
- Political protesters have been publicly beaten by the Chinese authorities. Many have been imprisoned and tortured or abused until they died.
- A "patriotic education campaign" imposed by the Chinese government forces ethnic Tibetans, particularly monks and nuns, to denounce the Dalai Lama, and accept the child recognized by the Chinese authorities as the spiritual leader. Tibetans refusing to cooperate are often beaten or imprisoned. Monks and nuns at two major religious sites (Jonang Kumbum monastery and Rakhor nunnery) were dispersed after they refused to accept the conditions laid out by the "patriotic education" teams, effectively closing the religious sites. It is reported that the Rakhor nunnery has been destroyed.
- Teenagers seeking to leave Tibet to study in monasteries and nunneries in India have been murdered, raped and imprisoned.
- Monks and nuns accused of political activism have been imprisoned and tortured or abused. Many died in prison or shortly after release.

http://www.state.gov/www/global/human_rights/1999_hrp_report/, attached hereto as Exhibit 3.

- In 1999, the Chinese authorities launched a three-year program to promote atheism and science, primarily designed to "stem the Dalai clique's reactionary infiltration."
- Tibet is heavily subsidized by the Chinese government and benefits from many favorable economic and tax policies. However, such favorable economic factors have attracted a growing number of ethnic Han (Chinese) and Hui (Muslim) immigrants who often displace Tibetans.³

As the U.S. State Department noted, "the Chinese government's repressive social and political controls continue to limit the fundamental freedoms of ethnic Tibetans and risk undermining Tibet's unique cultural, religious, and linguistic heritage."⁴

2. Historical Background

³ See Exhibit 3, United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, 1999 Country Reports on Human Rights Practices (Feb. 25, 2000).

⁴ Id.

(a) The 1950s and 1960s In September 1949, China, without any provocation, invaded Tibet, which had been a sovereign nation for centuries. On November 17, 1950, His Holiness the Fourteenth Dalai Lama assumed full spiritual and temporal powers as the Head of State because of the grave crisis facing the country, although he was barely sixteen years old. In 1951, a Tibetan delegation, which had gone to China to protest the invasion, was forced to sign the so-called Seventeen-Point Agreement on Measures for the Peaceful Liberation of Tibet, a document that enabled the Chinese authorities to turn Tibet into a colony of China disregarding the strong resistance by the Tibetans. Later that year, thousands of Chinese troops forcibly occupied Tibet, marking the occasion by the systematic destruction of monasteries, suppression of religion, denial of political freedom, widespread arrests and imprisonment and massacre of innocent men, women and children.⁵ Under the threat of PRC troops stationed in Tibet, the Dalai Lama ceded political control to PRC authorities.⁶

⁵ See Brief History of Tibet, available at <http://www.friends-of-tibet.org.nz/tibet.html>, attached hereto as Exhibit 4.

⁶ See International Comm. of Lawyers for Tibet: Legal Materials on Tibet, Seventeen-Point Plan for the Peaceful Liberation of Tibet: The Agreement of the Central People's Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet (May 23, 1951), available at <http://www.tibetictl.org/materials/china/china3.html>, attached hereto as Exhibit 5.

On March 10, 1959, in an attempt to reclaim their country's independence, Tibetan nationalists staged a brief uprising against the PRC occupation. The PRC reacted immediately, killing approximately 87,000 Tibetans.⁷ In particular, the PRC singled out Tibetan political and religious figures, no matter their rank or status, for execution, torture or imprisonment.⁸ On March 17, 1959, the Dalai Lama escaped from the pursuing Chinese to seek political asylum in India. He was followed by an unprecedented exodus of Tibetans into exile.⁹ By 1963, 1.2 million Tibetans had been killed by the Chinese military or starved in labor camps.¹⁰

⁷ See Fox Butterfield, Tibet Strife Seen as Major Challenge to China, N.Y. Times, Mar. 8, 1989, at A11, attached hereto as Exhibit 6.

⁸ See Tenzin Gyatso (His Holiness The Fourteenth Dalai Lama of Tibet), Freedom in Exile: The Autobiography of the Dalai Lama at 236 (1990), attached hereto as Exhibit 7.

⁹ See Exhibit 4, Brief History of Tibet, available at <http://www.friends-of-tibet.org.nz/tibet.html>.

¹⁰ See Maura Moynihan, High Drama: Tibet's Unglamorous Reality, The New Republic, Jul. 6, 1998, at 18, attached hereto as Exhibit 8.

In the late 1950s and early 1960s, the international community began to publicly condemn the actions of the PRC in Tibet. The International Commission of Jurists declared in 1960 that "acts of genocide" had been committed in Tibet by the PRC authorities in an attempt to destroy Tibetans as a religious group.¹¹ The following year, the United Nations passed a resolution calling for an end to practices that deprived the Tibetan people of their right to self-determination.¹²

¹¹ See Physicians for Human Rights, The Suppression of a People: Accounts of Torture and Imprisonment in Tibet at 201 (1989) (appended to U.S. Policy Toward China: Hearings Before the Comm. on Foreign Relations, S. Hr'g No. 101-605 (1990), attached hereto as Exhibit 9.

¹² Id. (calling for an end to PRC practices that deprive Tibetans of the right to self-determination).

The period from 1966 to 1976, gave birth to the "Cultural Revolution" in Tibet. The "Cultural Revolution" was the PRC's campaign to eradicate all vestiges of Tibetan identity. Tibetan language and dress, as well as icons and cultural traditions, were banned.¹³ Countless individuals who were deemed "counter-revolutionaries" were publicly scorned, humiliated, imprisoned and killed throughout Tibet.¹⁴ Recognizing the close ties between politics and religion in Tibet, the Chinese government believed that by repressing the free practice of Buddhism, it could suppress free expression and dissent on Tibet's major political issues. Consequently, the PRC closed Tibet's Buddhist monasteries in an effort to systematically suppress Tibetan religious and cultural observances.¹⁵

(b) The 1970s and 1980s During the late 1970s and early 1980s, the PRC orchestrated a massive resettlement campaign, forcing millions of ethnic Chinese from China's Han province to Tibet. This policy was designed to make Tibetans a minority in their

¹³ See Exhibit 2, A. Tom Grunfeld, The Making of Modern Tibet at 185 (1996).

¹⁴ See United States Dep't of State, Bureau of Democracy, Human Rights and Labor, China Human Rights Practices, 1995 at 27 (Mar. 30, 1996), available in <http://www.usis.usemb.se/human/human95/china.htm>, attached hereto as Exhibit 10.

¹⁵ See An Asia Watch Report, Merciless Repression: Human Rights Abuses in Tibet, at 65-71 (1990), attached hereto as Exhibit 11.

own country, and effectively created a system of apartheid between Tibetans and non-Tibetans, with Tibetans forced into the status of "second-class citizens."¹⁶

¹⁶ See 137 Cong. Rec. E1642 (daily ed. May 7, 1991) (statement of Rep. Benjamin A. Gilman), attached hereto as Exhibit 12.

In the 1980s, ethnic Tibetans began to stage demonstrations for Tibetan independence from China, culminating in confrontations with the PRC security forces between 1987 and 1989. During this period, PRC security forces killed thousands of Tibetan demonstrators.¹⁷ The largest and deadliest of these confrontations occurred in March 1989 when Tibetans held demonstrations to mark the 30th anniversary of the 1959 uprisings against PRC rule. The Chinese government once again reacted swiftly and brutally, killing hundreds of people when PRC soldiers fired into the crowds of demonstrators without any warning. Thousands more were arrested, injured or tortured during this time.¹⁸

¹⁷ See Amnesty International, People's Republic of China: Continued Patterns of Human Rights Violations in China, at 19-20 (May 1992), attached hereto as Exhibit 13.

¹⁸ See id.; see also, Peter Ellingsen, Tibetans Fear Witch-Hunt After Lhasa Riots, Financial Times (London), Overseas News at page 4, Mar. 13, 1989., attached hereto as Exhibit 14.

(c) The 1990s to Present Conditions in Tibet have progressively worsened. In 1989, the PRC authorities imposed martial law on Tibet, imposing a round-the-clock curfew and deploying large numbers of troops to deter any further demonstrations.¹⁹ Conditions continued to decline in 1993 and 1994, when the Chinese government tightened controls on Tibetans' freedom of speech and expression. For example, the PRC government enacted a prohibition on the sale and display of photographs of the Dalai Lama, seizing all photographs, and severely curtailed expressions of pro-Tibetan independence rhetoric by arresting political activists.²⁰ In 1996, the PRC widened the scope of its 1994 ban on photographs of the Dalai Lama to include a ban on photographs within private homes, and conducted house-to-house searches.²¹

In 1997, Chinese authorities revised their criminal law to include bold anti-terrorist provisions and to intensify the persecution of political dissidents. The Tibetan Centre for Human Rights and Democracy reported that there were 1200 political prisoners in Chinese jails in Tibet. Many prisoners reportedly died, and scores were interrogated, beaten and placed in solitary confinement, following protests in the Drapchi prison during which the prisoners shouted

¹⁹ See generally, Tibet Information Network, Extracts from Interviews on Situation in Tibet, at 418 (May 25, 1990).

²⁰ See Human Rights Watch, Human Rights Watch World Report 1995, at 145

²¹ See United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, China Country Report on Human Rights Practices for 1997 at 31 (Jan. 30, 1998), available at http://www.state.gov/www/global/humanrights/1997_hrp_report/china.htm, attached hereto as Exhibit 15; see also, Exhibit 3, United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, 1999 Country Reports on Human Rights Practices (Feb. 25, 2000).

slogans in support for Tibetan independence and the Dalai Lama.²²

China tightened its control over Tibet in 1999, resulting in further violations of the rights of the Tibetan people in every aspect and sector of society.²³ For example:

- In March 1999, the Chinese authorities detained more than eighty Tibetans prior to the celebration of the fortieth anniversary of the Tibetan uprising against Chinese rule in Tibet.
- A young monk, imprisoned for refusing to cooperate with a "patriotic education program," died from injuries he sustained during a severe beating by the Chinese authorities.
- At the National Minority Games in August 1999, Tashi Tsering, an advocate of Tibetan independence, raised the Tibetan flag during the ceremonies. In full view of the public, the Chinese security forces brutally beat him, and an unconfirmed report indicated that he died from his injuries.

²² See id at 31-32.

²³ See Tibetan Centre for Human Rights and Democracy, Tibet: Tightening of Control, at www.tchrd.org/public/annual99.htm, attached hereto as Exhibit 16.

- A teenage monk was also subjected to a prolonged beating in front of the hundreds of spectators because he shouted pro-independence slogans during the rehearsal ceremonies for the National Minority Games.²⁴

Mere suspicion of anti-PRC political activity is sufficient cause for the police to take Tibetans from their homes.²⁵ Many political activists and detainees receive sentences for so-called "counter-revolutionary" or "splitist" crimes (crimes of attempting to split Tibet from China).²⁶ As politically aware and active persons, former Tibetan governmental officials and their families are continually singled out as targets for persecution. Out of 130 known arrests in 1999, 115 Tibetans were arrested for peacefully exercising their rights to freedom of

²⁴ See Exhibit 3, United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, 1999 Country Reports on Human Rights Practices (Feb. 25, 2000).

²⁵ See Amnesty International, Amnesty International Report 1999, at 127-28, attached hereto as Exhibit 17.

²⁶ See Exhibit 3, United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, 1999 Country Reports on Human Rights Practices (Feb. 25, 2000). See also, Exhibit 23, Human Rights Watch, Human Rights Watch World Report 1999.

expression.²⁷ Countless more Tibetans have been detained and tortured without being officially charged with any offense. It is also significant to note that two major prison complexes (Drapchi Prison and Sangyip Detention Center) have been expanded in the last year, indicating an intention on the part of the Chinese authorities to incarcerate more political activists.²⁸

3. Persecution Faced By Tibetans

Consistent with its past practices, persecution of Tibetans by PRC authorities has largely taken the form of political, religious, and ethnic persecution.

²⁷ See Exhibit 16, Tibetan Centre for Human Rights and Democracy, Tibet: Tightening of Control, at www.tchrd.org/public/annual99.htm.

²⁸ See id.; Tibet Information Network, New Prison Capacity in Lhasa: Photographs Indicate Increase in Prisoners and New Factory Inside Drapchi, (Oct. 27, 1999), available at <http://www.tibetinfo.net/news-updates/nu271099.htm>, attached hereto as Exhibit 18.

(a) Political Under PRC law, government authorities may incarcerate political detainees without evidence, fair trial or any form of legal representation, and countless Tibetans have been detained, arrested, and tortured without being officially charged with any offense.²⁹ Moreover, Tibetans suspected of advocating Tibetan independence may, without any evidence, be taken from their homes, detained and even arrested.³⁰

²⁹ See World Tibet Network News, China Tightened Repression on Tibet in 1999, Rights Group Says (Jan. 4, 2000), available at http://www.tibet/ca.wtnarchive/2000/1/4_2.html, attached hereto as Exhibit 19.

³⁰ See Exhibit 17, Amnesty International, Amnesty International Report 1999, at 128; see also, Exhibit 3, United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, 1999 Country Reports on Human Rights Practices (Feb. 25, 2000).

Of 130 reported arrests in 1999, 115 were Tibetans, arrested for peacefully exercising their rights to freedom of expression.³¹ This political persecution is facilitated by the fact that trial procedures under Chinese law do not meet the minimum standards for fair trials set out in international human rights documents, such as the Universal Declaration of Human Rights.³² For example, ethnic Tibetans are frequently charged and sentenced en masse without being permitted to present a defense. To exacerbate matters, the judiciary in Tibet is subject to the Chinese Communist Party's "policy guidance," which results in verdicts and sentences predetermined by party and government leaders, even in death penalty cases.³³

Torture is readily employed by PRC authorities as a means of "investigation" and

³¹ See Exhibit 16, Tibetan Centre for Human Rights and Democracy, Tibet: Tightening of Control, at www.tchrd.org/public/annual99.htm.

³² See Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948), available at <http://www.udhr50.org/UDHR/udhr.HTM>, attached hereto as Exhibit 20.

³³ See Exhibit 15, United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, China Country Report on Human Rights Practices for 1997 (Jan. 30, 1998).

fact-finding, despite China's 1986 ratification of the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment. Methods of torture include electric shocks to sensitive areas of the body, extreme prolonged isolation, and sensory deprivation.³⁴ Since 1986, it is estimated that at least 70 Tibetans have died as a direct result of torture by Chinese government officials.³⁵

³⁴ See Tibet Information Network & Human Rights Watch/Asia, Cutting Off the Serpent's Head: Tightening Control in Tibet, 1994-1995 100 (Mar. 1996), attached hereto as Exhibit 21.

³⁵ See Exhibit 16, Tibetan Centre for Human Rights and Democracy, Tibet: Tightening of Control, at www.tchrd.org/public/annual99.htm.

(b) Religious The PRC tolerates no religion that promotes Tibetan independence. Because most Tibetans practice Buddhism to some extent, and Buddhism and pro-independence activism are closely associated in Tibet, many of those detained, tortured, or killed by the PRC have been Tibetan Buddhists.³⁶ In an effort to thwart religious affiliation, in January 1999, the Chinese authorities initiated a drive to promote atheism and science among government workers. Under this initiative, Tibetan government employees who have religious objects or pictures of the Dalai Lama in their homes, or whose children attend school in India -- where the Dalai Lama's government-in-exile is located -- risk termination, or worse.³⁷ The Chinese government continues to implement its "patriotic education campaign" begun in 1996. Under this campaign, Tibetan monks and nuns must officially denounce the Dalai Lama, reject Tibetan independence and the boy recognized by the Dalai Lama as a spiritual leader. Dire consequences await those Tibetans who resist or attempt to flee to India, including expulsion, abuse and torture.³⁸

(c) Ethnic In an effort to control Tibet, the PRC repressed all aspects of Tibetan cultural rights, and commenced a widespread campaign of discrimination of ethnic Tibetans.³⁹

³⁶ See Exhibit 3, United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, 1999 Country Reports on Human Rights Practices (Feb. 25, 2000); see also, Human Rights Watch, Human Rights Watch World Report 2000, (September 2000).

³⁷ See Exhibit 3 United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, 1999 Country Reports on Human Rights Practices (Feb. 25, 2000).

³⁸ Id.; see also, Exhibit 22, Human Rights Watch, Human Rights Watch World Report 1999.

³⁹ See Exhibit 15, United States Dep't of State, Bureau of Democracy, Human Rights, and

Labor, China Country Report on Human Rights Practices for 1997 at 741-42; see also Exhibit 4, Brief History of Tibet, available at <http://www.friends-of-tibet.org.nz/tibet.html>.

(i) Education The PRC prohibited Tibetans from studying Tibetan history and culture, and virtually eliminated the Tibetan language from all levels of education, forcing Tibetans to converse in Chinese.⁴⁰ The PRC actively encouraged the massive influx of Han Chinese into Tibet, which overwhelmed Tibet's traditional culture and demographic influence and effectively established a system of apartheid in which Tibetans receive separate and lesser services.⁴¹

(ii) Housing Housing discrimination against Tibetans is rampant. While housing space in major Tibetan cities may be increasing, it is almost exclusively occupied by Chinese settlers. The PRC destroyed traditional Tibetan homes, providing Tibetans with cramped cinder-block structures without running water, yet provided the ethnic Chinese immigrants with comparatively luxurious accommodations.⁴²

(iii) Employment Dominance of Chinese people and Chinese language in the field of employment has made it difficult for Tibetans to obtain employment. Traditional Tibetan businesses have been taken over by Chinese immigrants, leaving Tibetans to perform hard manual labor for which they are not remunerated or are

⁴⁰ See Exhibit 15, United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, China Country Report on Human Rights Practices for 1997 at 741-42.

⁴¹ See Exhibit 3, United States Dep't of State, Bureau of Democracy, Human Rights, and Labor, 1999 Country Reports on Human Rights Practices (Feb. 25, 2000).

⁴² See International Commission of Jurists, Tibet: Human Rights and the Rule of Law, at 220-22 (Dec. 1997), attached hereto as Exhibit 23; see also, Exhibit 16 Tibetan Centre for Human Rights and Democracy, Tibet: Tightening of Control, at www.tchrd.org/public/annual99.htm.

underpaid compared to Chinese workers⁴³

In sum, and as is discussed more fully in the Argument section below, the situation in Tibet remains highly perilous for ethnic Tibetans who oppose the current Chinese regime and are active supporters of the Dalai Lama.

B. Personal History

Mrs. X, an unwilling citizen of the PRC, has suffered persecution on account of (1) her political opinion, (2) her family's political opinions favoring Tibetan independence (which have been imputed to her), (3) her religious beliefs as a Buddhist, and (4) her membership in a particular social group.

1. Personal Background

Mrs. X was born in Nalam Tsongdu, Tibet on October 18, 1974. Prior to 1949, her parents were economically successful and very active in Tibetan politics. They employed several Tibetans in their business, which involved the sale of milk, cheese, yak hair and different types of crops. (X Dec. ¶ 8.) However, after China invaded Tibet in 1949, the Chinese government assumed power and targeted Mrs. X's family, and other Tibetans that were involved in politics, religion or that had wealth. Under the Chinese regime, Tibetans that fit into any of those three categories were abused, humiliated, tortured, imprisoned and murdered. (X Dec. ¶ 6.) According to Mrs. X's testimony, some telling examples of the enduring persecution against Mrs. X's family at the hands of the PRC

⁴³ See Exhibit 16, Tibetan Centre for Human Rights and Democracy, Tibet: Tightening of Control, at www.tchrd.org/public/annual99.htm.

included the incarceration and death of her father, her mother being sent to a labor camp for eleven years, the twenty-three year incarceration of each of her two uncles, and the incarceration and severe beating received by her husband. (X Dec. ¶ 6.)

Stripped of their possessions and individual liberties by the PRC, the X family was forced to live communally with strangers, and to work as nomadic farmers and yak herders. The nomadic life was harsh and only permitted the family to subsist during the year. During the warmer months, the X family grew crops and maintained a herd of yaks from which they derived milk and yak hair that they sold. As the colder months approached, the X family sold everything, including the herd of yaks, and used the proceeds to survive the winter. Mrs. X grew up in the midst of this discrimination and abuse forced upon her family by the PRC.

2. The Chinese Authorities Suspect Mrs. X of Advocating Tibetan Independence

Although there were schools available in Tibet, Mrs. X was unable to attend school for most of her life due to her family's forced nomadic lifestyle. (X Dec. ¶ 10.) In 1988, at age 14, Mrs. X finally got the opportunity to attend school at the Tsongdu School in Tsongdu, Tibet. One day, during class time, two English-speaking visitors offered Mrs. X and five other class mates pins representing the Tibetan flag. (X Dec. ¶ 11.) Although Tibetan flags are strictly banned in Tibet and their possession carries dangerous consequences, Mrs. X and her five classmates accepted the pins fully aware they represented Tibetan independence. (X Dec. ¶ 11.) Later that afternoon, the Chinese police conducted a random search of the school and of all the students. In the search, the authorities discovered Mrs. X and her classmates wearing the pins.

Although Mrs. X was only seventeen years old at the time, the Chinese officers dragged her and the five other classmates directly to prison with no explanation or charges against her and with no opportunity to call her parents. Mrs. X was incarcerated with two other female students in a dark, cramped cell with a dirt floor. The cell had no bathroom, windows or furniture. For the first three days, Mrs. X was routinely beaten on her back with a stick about three feet long and an inch in diameter. (X Dec. ¶ 14.) In addition, she was not given food, water or medical attention for her bruises. Then on the fourth day, Mrs. X was taken from the cell by herself to a separate room where she was again beaten and then questioned for the first time.

During the interrogation, the Chinese officers insisted on asking her where the pins came from and who they were for. After approximately three hours of questioning, the police forced Mrs. X to sign a paper stating that she would never receive banned materials and threatened to kill her if she ever did so again. (X Dec. ¶¶ 14-15.) However, even after all this torment, Mrs. X was still incarcerated for eleven more days and was insufficiently fed until her release in late January of 1991. Although the Chinese officers never asked Mrs. X about her father, she is convinced that the severe treatment she received in prison was related to her father's history of advocating Tibetan independence. (X Dec. ¶ 18.)

3. The X Family is the Focus of the Chinese Authorities

In late January 1991, as Mrs. X was being released from prison, the Chinese authorities arrested her father while he was waiting to pick her up. (X Dec. ¶ 16.) As Mrs. X was escorted out, she saw her father in custody, but was prevented from talking to him by

the Chinese police. For two years, Mrs. X and her mother lived in fear knowing that their family was a target of the Chinese authorities. In October of 1993, their fear became a reality when the Chinese police told Mrs. X that her father had died while in their custody. (X Dec. ¶ 17.) Although the X family was not given any other information, they assume that he had been killed because of his history of advocating Tibetan independence from China. (X Dec. ¶ 18.)

On November 18, 1996, Mrs. X married Y from Thingry, Tibet. Not long after, in October of 1997, Y was arrested on suspicions of being affiliated with a Tibetan political group. (X Dec. ¶ 19.) Although, Mrs. X is unsure whether Y was a member of such a group, Y was jailed in Shigatse prison on this mere suspicion and was released two years later in May of 1999. Then in August of 1999, two Chinese officers came to their home and brutally beat Y for nearly three consecutive hours. (X Dec. ¶ 19.) Mrs. X was forced into another room while Y was tortured, but she could still hear Y's screams. The Chinese officers wanted Y to confess to membership in a political group, but he had nothing to confess so eventually they left. Afterwards she found him soaked in blood and with a broken leg. At that point, Y feared the Chinese authorities would eventually kill him, so he fled to Nepal, promising to send for Mrs. X if conditions were safe. That was the last time that Mrs. X saw her husband and to this day, Mrs. X does not know his whereabouts or whether he is still alive. (X Dec. ¶ 20.)

The following month, the Chinese authorities came looking for Y, but Mrs. X told them he had left for his mother's house. The police came to Mrs. X's house a second time in February of 2000 seeking Y but again Mrs. X told them he was at his mother's house.

However, this time the authorities refused to believe her and instead demanded Y's presence at the police station by May of that year or they would kill him. The final visit from the police came in May when they again demanded to know Y's whereabouts. On this visit the police threatened to kill Mrs. X and Y if they were not present at the police station by June 13, 2000. (X Dec. ¶ 23.) Because the police gave her a specific date and also threatened her life, Mrs. X knew that the third visit was her final warning. Mrs. X realized that she must flee Tibet in order to save her life. (X Dec. ¶ 23.)

On May 28, 2000, Mrs. X fled Tibet and walked from Tsongdu to the city of Dham in Tibet. (X Dec. ¶ 24.) At Dham, she met and joined nine other Tibetans that were also making the journey to Kathmandu in Nepal. Mrs. X made the long journey across the mountains to Kathmandu on foot. The arduous trek took two weeks and was very difficult. For nourishment, she brought a bottle of barley powder and collected water along the way. The journey was excruciating, but on June 18, 2000, she arrived at the Tibetan Reception Center in Kathmandu where she stayed for two weeks. The Tibetan center was a hostel for Tibetan refugees that were traveling and it provided them with two weeks of free housing and food. Thereafter, Mrs. X sought out and lived with Z, a friend of her husband, who helped her obtain unauthorized documents to leave Nepal. (X Dec. ¶ 26.) Finally, on July 30, 2000, Mrs. X flew directly to the United States with three other Tibetans seeking refuge and two Tibetans that served as guides. She currently resides with a friend in Queens, New York.

Since Mrs. X's arrival in the United States, she has attempted to monitor the situation in Tibet. However, since May 28, 2000, Mrs. X has been unable to speak to her

mother and sister and still does not know her husband's whereabouts or whether he is still alive. (X Dec. ¶ 29.) To this day, Mrs. X continues to live with the memories of the beatings and torture that she suffered at the hands of the Chinese authorities and with fear for the welfare of her family. (X Dec. ¶ 29.) But as the situation in Tibet has continued to worsen Mrs. X's return to Tibet is not possible, especially since the Chinese authorities have very likely increased their surveillance of the X family because of Mrs. X's escape. (X Dec. ¶ 29.)

ARGUMENT

III. MRS. X SHOULD BE GRANTED ASYLUM BECAUSE SHE IS A REFUGEE

A. The Applicable Standard For Asylum

Pursuant to Section 208 of the Immigration and Nationality Act of 1952 (the "Refugee Act"), the Attorney General may grant asylum, at her discretion, to any alien physically present in the United States if the alien demonstrates that he is a "refugee." 8 U.S.C. § 1158(a) (1999). The Refugee Act defines a "refugee" as:

Any person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1101(a)(42)(A) (1999).

Aliens applying for asylum have the burden of showing that they are "refugees" within the meaning of the statute. See 8 C.F.R. § 208.13(a) (1999). Once the

applicant has met that burden, the applicant is eligible for asylum as a matter of discretion. Applicants may establish their refugee status by showing either (1) actual past persecution, or (2) a well-founded fear of future persecution. See 8 C.F.R. § 208.13(b) (1999); see, e.g., Osorio v. Immigration & Naturalization Serv., 18 F.3d 1017, 1027 (2d Cir. 1994). As set forth in the foregoing section, in the accompanying Declaration and discussed more fully below, Mrs. X qualifies under both prongs of this test because she has suffered persecution on account of (1) her political opinion, (2) her family's political opinions favoring Tibetan independence (which have been imputed to her) (3) her religious beliefs as a Buddhist, and (4) her membership in a particular social group.

1. Actual Past Persecution

Under the first prong of the test, applicants must show that they have suffered actual past persecution based on one or more of the five grounds determined by Congress as appropriate grounds for asylum: political opinion, religion, membership in a particular social group, race or nationality. See 8 U.S.C. § 1101(a)(42)(A) (1999); 8 C.F.R. § 208.13(b)(1), (2) (1999). "Once an applicant has demonstrated that he suffered past persecution, there is a presumption that he faces a similar threat on return." See Singh v. Ilchert, 63 F.3d 1501, 1510 (9th Cir. 1995); 8 C.F.R. § 208.13(b)(1)(i) (1999). Such a presumption is rebuttable only by a preponderance of evidence showing that country conditions have changed dramatically since the time the persecution occurred, making the applicant's fear no longer well-founded. See Singh, 63 F.3d at 1510.

(a) On Account of Actual Political Opinion

Although the Refugee Act does not define persecution on account of

"political opinion," the United Nations has provided guidance as to its meaning in its Handbook.⁴⁴ With respect to the term "political opinion," the Handbook provides that:

80. Holding political opinions different from those of the Government is not in itself a ground for claiming refugee status, and an applicant must show that he has a fear of persecution for holding such opinions. This presupposes that the applicant holds opinions not tolerated by the authorities, which are critical of their policies or methods. It also presupposes that such opinions have come to the notice of the authorities or are attributed by them to the applicant.

Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status ¶ 80 (emphasis added) (hereinafter "UNHCR Handbook"). In other words, the term "political opinion" means "the political opinion of the victim as seen by the persecutor," in this case the Chinese authorities. Lazo-Majano v. Immigration & Naturalization Serv., 813 F.2d 1432, 1435 (9th Cir. 1987). The applicant need not show that he actually held or acted upon any political beliefs in order to meet the standard of persecution on account of political opinion. An applicant may, instead, show that the persecutor had a protected basis (such as the victim's political opinion) in mind in undertaking the persecution.

Mrs. X was clearly persecuted on account of her political opinion. She was expelled from school and imprisoned for possessing a symbol representing Tibetan independence from China. She was never officially charged, never informed of what

⁴⁴ The Supreme Court has recognized the UNHCR Handbook as "significant guidance" in interpreting the Protocol and consequently the Refugee Act. Immigration & Naturalization Serv. v. Cardoza-Fonseca, 480 U.S. 421, 439 n.22 (1987).

specific laws she was accused of violating and never prosecuted or tried. The failure to conform to procedures for criminal prosecution suggests that the authorities had a political motive for punishing Mrs. X. See Rajaratnam v. Moyer, 832 F. Supp. 1219, 1222 (N.D. Ill. 1993) (reversing BIA's finding that the Sri Lankan authorities' beating, torture and detention of the petitioners was not persecution but a governmental investigation into potential terrorists). See In re S-P-, No. A72971091, 1996 WL 422990, at *7, 21 I. & N. Dec. 486 (BIA June 18, 1996). Mrs. X's acceptance of the Tibetan flag was a political gesture that the Chinese authorities saw as repugnant to their communist ideology. Once the Chinese authorities discovered her pin, Mrs. X was thrown into a small cell with two other prisoners, deprived of food and water and subjected to torture over a period of four days. Additionally, Mrs. X was forced to sign a paper stating she would never receive such banned materials.

For Mrs. X, the situation in Tibet has become more threatening ever since she was arrested for possessing a symbol of Tibetan resistance. She has been harassed, interrogated, physically abused and even threatened with death -- a textbook example of an abusive government's repressive response to a dissident voice. (X Dec. ¶ 3.) Such discrimination constitutes persecution where the measures "lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on her privacy and the right to earn her livelihood" UNHCR Handbook ¶ 54. Moreover, if forced to return to Tibet, Mrs. X's flight from Tibet will be used against her as evidence of her conspiracy with the "enemy."

(b) On Account of Imputed Political Opinion

As set forth in her Declaration, Mrs. X has been persecuted and fears future

persecution on account of her family's political opinion of the current Chinese government in Tibet. Mrs. X comes from a politically active family that has long been associated with the resistance to the PRC invasion and continued occupation of Tibet. Political opinions, like those held by Mrs. X's family, are and have been repugnant to the PRC ever since Tibet fell under the rule of the PRC. (X Dec. ¶¶ 2, 6.) Her fathers' career-long attempt to instill in Tibetans a sense of pride in the Tibetan culture and his advocacy of Tibetan nationalism resulted in frequent abuse of the family by the Chinese authorities. (X Dec. ¶ 6.) As a result of her father's advocacy, he was incarcerated for a total of thirteen years and was later killed in prison by the authorities, while her mother was sent to perform hard labor in a Chinese labor camp. (X Dec. ¶¶ 6, 16.) Mrs. X's family's political position has come to the notice of the authorities -- indeed, it is precisely because the authorities had such "notice" of her family's political opinions that the PRC targeted her for abuse. (X Dec. ¶¶ 12-15.) Also, Mrs. X's father, close family members and her husband have been imprisoned and physically abused for that reason. As set forth in detail above and in Mrs. X's Declaration, Mrs. X's family has been a visible opponent of the PRC government for over twenty years. (X Dec. ¶ 28.) Because of Mrs. X's association with a family of active opponents of the PRC regime, she has been labeled a political opponent and singled out for persecution throughout her life.

Therefore, once the Chinese authorities discovered Mrs. X's pin representing the Tibetan flag, they assumed that she also advocated Tibetan independence. In addition, after discovering Mrs. X's pin, the Chinese authorities imputed her family's political opinions to her. This would explain the harsh treatment she received afterwards which

included denying her an education, incarcerating her for two weeks with insufficient food, and subjecting her to brutal beatings in jail.

The record clearly establishes that Mrs. X was persecuted because her family's political opinions were imputed to her. Mrs. X's testimony, "if credible, may be sufficient to sustain the burden of proof without corroboration." 8 C.F.R. § 208.13(a) (1999). Thus, Mrs. X's testimony should be found credible in light of the general conditions in Tibet and China, as documented by the United States State Department, Amnesty International, Human Rights Watch, Physicians for Human Rights, and others.

(c) On Account of Her Religion as a Tibetan Buddhist

A refugee is entitled to asylum if he has been forced to renounce his religious beliefs or to desecrate an object of religious importance. See Fatin, v. INS 12 F.3d 1233, 1242. (3d Cir. 1993) Mrs. X is a devout Buddhist who grew up in a family that regularly worshiped and practiced their religion. (X Dec. ¶ 7.) The X family belonged to the Buddhist religion's Glugpa sect and as part of their religious beliefs, revered the Dalai Lama as the spiritual and political leader of the Tibetan people. However, as a youth growing up in Tibet, Mrs. X never had the opportunity to openly advocate her Buddhist beliefs.

Once the PRC invaded Tibet in 1949, all Tibetans were forced to publicly renounce their belief in the highest leader of Tibetan Buddhism, the Dalai Lama, and to refrain from worship. Yet, despite the danger of observing the Buddhist religion in Tibet, the X family secretly kept pictures of the Dalai Lama and other religious articles used to observe their Buddhist faith. (X Dec. ¶ 7.) Currently, the Chinese authorities have increased religious repression in Tibet. In fact, the Chinese authorities explicitly forbid the

dissemination or possession of materials that discuss favorably the Dalai Lama or that are considered symbolic of the Buddhist religion. (X Dec. ¶ 7.) In many cases, possession of such types of materials are considered tantamount to a conspiracy in Tibet and their possession carries dangerous consequences, such as imprisonment, torture and even death. Forcing an individual to renounce his religious beliefs by denying him the right to worship or practice his religion amounts to a form of "torture" and falls within the definition of "persecution." See Fatin, 12 F.3d at 1242. Therefore, Mrs. X's deprivation of the right to worship the Dalai Lama is an example of religious persecution and on this ground Mrs. X qualifies for asylum.

(d) On Account of Race, Nationality and Membership in a Particular Social Group

Mrs. X has been persecuted by the PRC in the past, and fears future persecution, on account of her race, nationality and membership in a family that had a history of advocating Tibetan independence.

As an ethnic Tibetan, Mrs. X grew up under the oppressive rule of the PRC that treated ethnic Tibetans as second-class citizens. She lived through the repression of the Tibetan culture by the PRC and was forbidden to formally study the Tibetan language or culture until she was fourteen years old. (X Dec. ¶ 10.) Moreover, because Mrs. X's family was ethnic Tibetan, the Chinese government took away her parents' possessions and subjected them to cruel torture when they killed her father, jailed her uncles, and jailed and severely beat her husband. (X Dec. ¶ 6.)

The Refugee Act does not define persecution on account of membership in a "particular social group," but here again, the United Nations provides authoritative guidance:

77. A "particular social group" normally comprises persons of similar background, habits or social status. A claim to fear of persecution under this heading may frequently overlap with a claim to fear of persecution on other grounds, i.e. race, nationality or religion.

78. Membership of such a particular social group may be at the root of persecution because there is no confidence in the group's loyalty to the Government or because the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such, is held to be an obstacle to the Government's policies.

UNHCR Handbook ¶¶ 77-78 (emphasis added). In addition, the BIA has interpreted "social group" to include a family. See In re H--, No. A73 149 072, 1996 BIA LEXIS 31, at *12-15 (BIA May 30, 1996).

Under any potentially applicable definition, the "social group" to which Mrs. X belongs -- the X family, ethnic Tibetans and a group of political dissidents characterized by familial lineage and united in their opposition to the PRC role in Tibet -- has been the subject of longstanding, pervasive and invidious abuse at the hands of the PRC in Tibet. As is set forth in detail in Mrs. X's Declaration, the X family has suffered for advocating Tibetan independence. Mrs. X and her husband have been arrested, tortured and imprisoned. Her father was imprisoned for thirteen years and later killed in jail, while her mother was sent to a Chinese labor camp. Finally, two of her uncles, who were Buddhist monks, were each imprisoned for twenty-three years. A person whose family suffered under such atrocious forms of persecution should not be expected to willingly return to the country (and regime) that inflicted such persecution. See In re Chen, No A-26219652, 1989 BIA LEXIS 10, at *19 (BIA Apr. 25, 1989).

Accordingly, in addition to the abuse she suffered for her political opinion,

her family's political opinions (which were imputed to her), and her religious beliefs, Mrs. X should be granted asylum because the PRC persecuted her on account of her race, nationality and membership in a particular social group.

2. Well-Founded Fear of Future Persecution

Alternatively, under the second prong, applicants must show that they have well-founded fears of future persecution if forced to return to their native land. Fear of persecution is considered well-founded if the applicants can establish to a reasonable degree of certainty that returning to their country would result in their persecution based on one of the five grounds enumerated in the statute. Immigration & Naturalization Serv. v. Cardoza-Fonseca, 480 U.S. 421, 439 (1987). "So long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is enough that persecution is a reasonable possibility." Id. at 440 (citation omitted) (emphasis added). The applicant need not prove "that it is more likely than not that he will be persecuted," id. at 438, but rather, the applicant's fear of persecution will be deemed well-founded if the applicant shows that a reasonable person in the applicant's circumstances would fear persecution. In re Mogharrabi, Nos. A23267920, A26850376, 1987 BIA LEXIS 5, at *14-15, 19 I. & N. Dec. 439 (B.I.A. June 12, 1987). A victim of past persecution is entitled to a presumption that he faces a similar threat upon return, provided that conditions in the country have not "changed to such an extent that it is no longer more likely than not that the applicant would be so persecuted there." 8 C.F.R. § 208.16 (b) (2); see Singh v. Ilchert, 63 F.3d 1501, 1510 (9th Cir. 1995). Alternatively, to establish a well-founded fear an applicant may show (1) that he has a fear of persecution in China on account of his political

opinion, (2) there is a reasonable possibility of actually suffering such persecution if he were to return to Tibet and (3) he is unable or unwilling to return to or avail himself of the protection of the Chinese government because of such fear. See Osorio, 18 F.3d at 1301; see also 8 C.F.R. § 208.13 (b) (2).

(a) Mrs. X's Well-Founded Fear of Future Persecution May Be Presumed Based on Her Past Persecution

The Chinese authorities imprisoned and tortured Mrs. X because of the political statement she made by possessing a symbol of Tibetan independence from China and because they imputed to her the political opinions of her family and husband. In an attempt to suppress her political opinion, the Chinese authorities tortured her in jail and forced her to sign a paper stating she would never receive materials banned by the Chinese government. Her political opinion was known to her persecutors, therefore, her persecution was on account of her political opinion. Thus, Mrs. X has established a presumption of a well-founded fear of future persecution. See In re S-P-, 1996 WL 422990, at *10.

The presumption may be rebutted upon a showing that country conditions have changed such that an applicant would no longer face persecution upon return. See id.; 8 C.F.R. § 208.13 (b) (1) (i). All indications of the current treatment of Tibetan independence supporters by the Chinese authorities establish that conditions in Tibet have worsened rather than improved since Mrs. X fled in May of 2000. A State Department report on human rights in China states:

Chinese government authorities continue to commit serious human rights abuses in Tibet, including instances of torture, arbitrary arrest, detention without public trial and lengthy detention of Tibetan nationalists for peacefully expressing their political and religious views . . . The clampdown throughout China is being felt in Tibet, and security

Tibetan Buddhism has come under increasing attack.

See 1999 Country Report, supra at 61. Under these circumstances, the presumption of a well-founded fear of future persecution cannot be rebutted.

(b) Mrs. X Has Established a Reasonable Fear of Future Persecution if She is Returned to Tibet

The applicant must show four elements to establish a well-founded fear: (1) that the alien possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment; (2) the persecutor is aware or could become aware of the alien's belief or characteristic; (3) the persecutor has the capability of punishing the alien; and (4) the persecutor is inclined to punish the alien. Mogharrabi, 19 I. & N. Dec. at 446. Mrs. X satisfies all four elements which form a well-founded fear of persecution.

As a former political prisoner and a person labeled a political advocate by the authorities because of her family's history, Mrs. X is viewed as a supporter of the Tibetan independence movement by the Chinese government. The Chinese government severely punishes any individual who is connected to the pro-independence movement. See 1999 Country Report, supra, at 33. Therefore, Mrs. X possesses beliefs which the Chinese government routinely seeks to eradicate from Tibetan society.

Mrs. X's imprisonment, torture and harassment by the authorities demonstrates that the Chinese government is already aware of her opinion in favor of Tibetan independence. In addition, the Chinese government's treatment of her direct family and her other relatives shows that the authorities view the X family as politically subversive and a threat to the government. These same facts prove that the Chinese government has the capability of punishing Mrs. X and that they are inclined to do so. For the foregoing

reasons, Mrs. X satisfies the elements of a well-founded fear, as set forth in Mogharrabi. See, e.g. Matter of Iztula, No. A-39060863, 1990 BIA LEXIS 2, 20 I. & N. Dec. 149 (BIA Feb. 6, 1990) (holding that applicant who had demonstrated that he was at risk of arrest and imprisonment because of his political activities in Afghanistan had demonstrated a well-founded fear of persecution).

A well-founded fear of future persecution includes both subjective and objective components. See Cardoza-Fonseca, 480 U.S. at 430, 107 S. Ct. at 1212; Matter of Mogharrabi, 19 I. & N. Dec. at 442. Mrs. X satisfies the subjective fear component. She has stated that she fears being subjected to interrogation, torture, imprisonment and possibly even execution if she returns to Tibet. (X Dec. ¶ 30.) Furthermore, Mrs. X has stated that to this day she still lives with the memories of the torture she received while in prison. (X Dec. 29.)

The objective component of a well-founded fear is satisfied by adducing "plausible, detailed, and internally consistent testimony," combined with documentation of the conditions in the applicant's country that are the basis for the well-founded fear. See Abankwah v. INS, 185 F.3d 18, 26 (2d Cir. 1999) (holding that the applicant's fear that she would be subject to female genital mutilation if returned to Ghana satisfied the objective element of the test through the applicant's own testimony and objective documentation). The Chinese authorities are certainly aware of Mrs. X's political inclinations and are determined to punish Mrs. X on account of her political opinion and the political opinion of her family and husband which has been imputed to her. Thus, her fear of persecution is well-founded because objective evidence establishes the basis for her fear. See Matter of

Mogharrabi, 19 I. & N. Dec. at 443.

Mrs. X also states that she fears being returned to Tibet because she did not obtain official exit permission prior to fleeing. (X Dec. ¶ 26.) Punishment for illegal departure is grounds for refugee status where the applicant originally fled her own country for political reasons and faces severe punishment for the crime of illegal departure. See Rodriguez-Roman v. INS, 98 F.3d 416, 428 (9th Cir. 1996) (citations omitted). The U.N. Handbook states that a person who is liable for severe penalties imposed for his illegal departure or unauthorized stay abroad is entitled to refugee status if he can show that his motives for leaving or remaining outside the country are related to the reasons why he was persecuted. U.N. Handbook, ¶¶ 61, 66. Tibetans who are caught fleeing without obtaining official permission are subject to punishment and surveillance. See Kevin Platt, Tibetans Flee Homeland, Christian Science Monitor, Jan. 10, 2000, at 8, ("the families of [the Tibetans] who make it to India are often held as virtual hostages by the Chinese government").

Mrs. X was unable to obtain official exit permission because to apply for it would have been the same as turning herself in to the authorities who, at that time, were looking for her. (X Dec. ¶ 23.) Under such circumstances, Mrs. X's fear that she would be severely punished for fleeing to the United States without obtaining departure permission is objectively reasonable and well-founded. In sum, Mrs. X should be granted asylum because she has a reasonable fear of being persecuted in the future for the same reasons she was persecuted in the past, if she is returned to Tibet.

IV. MRS. X SHOULD NOT BE BARRED FROM ASYLUM BECAUSE SHE WAS NEVER FIRMLY RESETTLED IN NEPAL

A refugee's firm resettlement in a third country prior to arriving in the United States is an adverse factor which may be taken into account in an application for asylum in the United States. In re Soleimani, No. A-26157647, 1989 BIA LEXIS 18, 20 I. & N. Dec. 99, 104 (BIA July 13, 1989).

An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another nation with, or while in that nation received, citizenship, or some other type of permanent resettlement

8 C.F.R. § 208.15 (1999).

Firm resettlement in a third country is not present where an applicant's physical presence in the United States is a consequence of her flight from persecution, reasonably proximate to her flight and not remote in time from the original flight, or interrupted by a stay in a third country that constitutes a permanent stay. Id. at 106 (citations omitted). Factors, such as the conditions in the third country, the housing and employment available to the refugee and whether the refugee was eligible to enjoy other rights and privileges which are granted to permanent residents in that country contribute to an analysis of whether a refugee resettled in that country. See 8 C.F.R. § 208.15(b) (1999); see also Andrasian v. Immigration & Naturalization Serv., 180 F.3d 1033, 1044 (9th Cir. 1999).

Mrs. X arrived in Nepal on June 18, 2000, and left on July 30, 2000. (X Dec. ¶¶ 24, 27.) The short amount of time she stayed in Nepal indicates that she was not resettling there. Upon arriving in Nepal, Mrs. X stayed at the Tibetan Reception Center in Nepal for two weeks. Since she did not have legal documents to travel to the United States,

Mrs. X then went to stay with her husband's friend, Z. Although, Mrs. X asked Mr. Z about the possibility of looking for her lost husband in Nepal, she was told that remaining in Nepal or trying to look for her husband was not a viable option for two reasons.

First, many Tibetan refugees are summarily deported back to China by the Nepalese officials. See Rachel Lostumbo, Tibetan Refugees in Nepal: From Established Settlements to Forcible Repatriation, 9 Geo. Immigr. L.J. 911, 913 (1995). Second, Mrs. X knew no one in Nepal, spoke no Nepalese and had no permanent place to stay in Nepal, other than living on the temporary charity of her husband's friend, Mr. Z. (X Dec. ¶ 26.)

Mrs. X's stay in Nepal is analogous to that of Soleimani. She had no relatives or personal friends in Nepal and was at the mercy of her husband's friend. See Matter of Soleimani, 20 I & N. Dec. at 106-07 (finding no firm resettlement where the applicant stayed in the third country at a relative's home for only ten months, was never offered permanent resettlement, never worked and did not seek any financial or other benefits). Her stay in Nepal does not justify a discretionary denial because if she were returned to Nepal Mrs. X would face harm or persecution because she is a Tibetan refugee. See Andrasian, 180 F.3d at 1045. Tibetan refugees living in Nepal face discrimination, harassment and the continual threat of forced repatriation to China. See Lostumbo, supra, at 913. Mrs. X's five and a half week residence in Nepal is not an adverse factor in determining whether she merits asylum.

V. DISCRETIONARY FACTORS WARRANT THE GRANT OF ASYLUM

The Attorney General has delegated authority to Immigration Judges to make

discretionary asylum decisions under 8 C.F.R. § 3.10 (1999). See also 8 C.F.R. § 208.14(a) (1999). The discretion is exercised by "balancing the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented in his behalf." See Joseph v. Immigration & Naturalization Serv., 909 F.2d 605, 606 (1st Cir. 1990) (quoting In re Marin, 16 I. & N. Dec. 581 (BIA 1978)). As demonstrated above, Mrs. X meets the statutory requirements for refugee status. In addition, she should be granted asylum in the exercise of sound discretion.

First, Mrs. X's entry into the United States was not authorized, but still warrants a favorable exercise of discretion. As a refugee from Tibet, Mrs. X did not have a passport or other necessary documents. Also, since she had fled Tibet, there was no way for her to return to China to get valid Chinese travel documents. Therefore, in order for Mrs. X to find her way to the United States and save her life, she had no choice but to acquire and use unauthorized documents. (X Dec. ¶ 26.) Mrs. X entered the United States on July 30, 2000, with an unauthorized Nepalese passport and sought asylum several months later. (X Dec. ¶ 27.) Second, the gravity of Mrs. X's claim itself supports a favorable exercise of discretion. This Court should weigh heavily the current situation in Tibet and the additional grounds the PRC will have against Mrs. X if she is forced to return to Tibet. For example, the discovery by the Chinese authorities that Mrs. X has fled Tibet is sufficient to warrant Mrs. X's immediate arrest and possible execution. Moreover, the Chinese authorities' suspicion of Mrs. X's complicity, with respect to the disappearance of her husband Y from Tibet, is a sure death sentence if Mrs. X is forced to return to Tibet. (X Dec. ¶ 23.) Clearly, this unacceptable level of risk to the safety of Mrs. X militates in favor of granting her

application for asylum.

VI. BECAUSE IT IS MORE LIKELY THAN NOT THAT MRS. X WILL BE PERSECUTED IF FORCED TO RETURN TO TIBET, HER APPLICATION FOR WITHHOLDING OF REMOVAL SHOULD BE GRANTED

An application for asylum is also regarded as an application for withholding of removal. 8 C.F.R. § 208.3(b) (1999). The Attorney General may not remove an alien to a country if the Attorney General decides that the alien's "life or freedom would be threatened in that country because of the alien's political opinion, religion, membership in a particular social group, race or nationality." 8 U.S.C. § 1231(b)(3) (1999). In order to make this showing, the applicant must establish that his life or freedom would be threatened in the proposed country of removal on account of political opinion, religion, membership in a particular social group, race or nationality. 8 C.F.R. § 208.16(b) (1999). The credible testimony of the applicant is sufficient to establish the burden of proof without corroboration. 8 C.F.R. § 208.16(b) (1999). An applicant's life or freedom shall be found to be threatened if it is more likely than not that he would be persecuted on account of one of the foregoing grounds. 8 C.F.R. § 208.16(b)(1); Immigration & Naturalization Serv. v. Stevic, 467 U.S. 407, 428-30 (1984). Where an applicant has suffered past persecution under which the applicant's life or freedom was threatened, the applicant satisfies the required showing that future persecution is more likely than not. Stevic, 467 U.S. at 413 (1984); 8 C.F.R. § 208.16(b)(2) (1999).

As has been demonstrated above, Mrs. X has suffered past persecution and it is more likely than not that Mrs. X will be persecuted by the Chinese authorities if forced to

return to Tibet for her political opinions, her family's political opinions, her religious beliefs and her membership in a particular social group. Accordingly, Mrs. X qualifies for withholding of removal pursuant to the Refugee Act.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court, in the exercise of its discretion, should grant Mrs. X's application for asylum and withholding of deportation.

Respectfully Submitted

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