

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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In the Matter of the Application for Asylum of : No. A
Refugee :

MEMORANDUM OF LAW IN SUPPORT OF THE
ASYLUM APPLICATION OF REFUGEE

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MEMORANDUM IN SUPPORT OF REFUGEE'S
I-589 APPLICATION FOR ASYLUM

Preliminary Statement

Refugee deserves to be granted political asylum in the United States because she has been persecuted by the Chinese government due to her political beliefs (advocating a free Tibet), religion (Buddhism), nationality (Tibetan) and membership in a social group (Buddhist nuns). In addition, she has a well-founded fear that she will be arrested, tortured, and killed if she returns to Tibet. Her fear of persecution is well-founded because of the mistreatment she has experienced in the past as well as the Chinese government's suppression of ethnic Tibetans and Tibetan activities, and especially its suppression of followers of the Dalai Lama. The Chinese government has imprisoned, tortured and killed many monks, nuns and political activists whose actions and beliefs were similar to those of Refugee. Refugee's subjective fear is well-corroborated and well-documented by the objective evidence of the current Chinese government's history of persecution of Tibetans. This evidence demonstrates that Refugee's fear of persecution if she is forced to return to Tibet is well-founded and that a discretionary grant of political asylum is merited.

The facts are fully set forth in the accompanying affidavit of Refugee, sworn to on December 22, 1999 (hereinafter "Refugee Aff.")¹. In summary, Refugee fled Tibet² in mid-1997 to escape from the Chinese government's continued persecution of her on the basis of her political opinions, religion, nationality and membership in a social group. As with most Tibetans, Refugee has spent most of her life under a government determined to eliminate Tibetan nationalism and Buddhism and to subjugate ethnic Tibetans. Refugee's case merits special attention, however, because the Chinese government imprisoned and tortured her due to her political opinion. She has been arrested three times for celebrating the Dalai Lama's Nobel Peace Prize, demonstrating in support of a free Tibet and peacefully protesting against the human rights abuses perpetrated by the Chinese government against ethnic Tibetans. While in prison, Refugee

¹ References to "Refugee Aff." are to the Affidavit of Refugee, sworn to on December 22, 1999 (attached hereto as Exhibit 1).

² In this application, unless otherwise stated, "Tibet" refers to the areas presently occupied by China that were once considered part of Tibet. These areas include what is now the Tibet Autonomous Region (the "TAR") as well as the eastern regions of Ando (now incorporated into Qinghai and part of Gansu and Sichuan provinces) and Kham (now incorporated into Sichuan and Yunnan provinces). For purposes of its annual country reports, the U.S. State Department defines Tibet to include only the TAR. See United States Department of State, China Country Report on Human Rights Practices for 1997, Jan. 30, 1998, at 31 (attached hereto as Exhibit 2) (hereinafter "1997 State Dep't Report"); United States Department of State, China Country Report on Human Rights Practices for 1996, Jan. 30, 1997, at 29 (attached hereto as Exhibit 3) (hereinafter "1996 State Dep't Report").

was regularly tortured, beaten, interrogated and denied basic human rights. She was never charged with a crime, offered a lawyer or given an opportunity to challenge her unlawful detention.

It is this actual persecution and fear of persecution that led to Refugee's flight from Tibet. It is the same actual persecution, well-founded fear of future persecution and the corresponding certainty that her life or freedom will be threatened if she is returned to Tibet that now make Refugee unwilling to return to Tibet or to any other country where she would risk being deported to Tibet.

The persecution which Refugee has already suffered and fears suffering in the future if returned to Tibet is unquestionably on account of her political opinions advocating for Tibetan independence, her religious beliefs and support of His Holiness the Dalai Lama, her Tibetan nationality and her membership in a social group comprised of Buddhist nuns. The current Chinese government's well-documented record of repression and persecution of advocates of Tibetan independence and human rights provides compelling support for the conclusion that Refugee's fear of persecution if she returns to Tibet is well-founded.

On the basis of her past persecution and well-founded fear of future persecution, Refugee qualifies for refugee status as a matter of law, and merits asylum as a matter of discretion. Justice requires that this most courageous woman be permitted to partake of the liberties of this country fully.

I.

History of Human Rights Abuses in Chinese-Occupied Tibet, Refugee's Repeated Persecution and Her Flight from Tibet

A. China's Long History of Human Rights Abuses and Persecution of the Tibetan People

The Chinese government has violated the fundamental human rights of the Tibetan people since it invaded Tibet in 1949. Over one million Tibetans have died as a direct result of Chinese occupation and over 6,000 monasteries and religious institutions, the principal centers for education and religious practice, have been destroyed. Rachel Lostumbo, Tibetan Refugees in Nepal: From Established Settlements to Forcible Repatriation, 9 Geo. Immigr. L.J. 911, 916 (1995) (attached hereto as Exhibit 4). The United Nations General Assembly has condemned these violations in three separate resolutions. Id.

Since 1949, when the Chinese People's Liberation Army stripped Tibet of its de facto statehood, the Chinese government has imposed totalitarian rule on the Tibetan people. In 1959, when China abolished his administration, His Holiness the Dalai Lama and countless others were forced to flee Tibet and assume exile in India. The Dalai Lama established the Tibetan Government-in-Exile in the north Indian town of Dharamsala and he and his government have since advocated a peaceful return of Tibet's independent status.

During the Cultural Revolution (1966 - 1976), the People's Republic of China (the "PRC") further increased its repression of political, social, and religious expression in Tibet by attempting to absorb Tibet into the PRC's political, economic and social spheres. A. Tom Grunfeld, The Making of Modern Tibet 169 (1996) (attached hereto as Exhibit 5). The Chinese attempted to eradicate all manifestations of Buddhism and destroyed all but a handful of monasteries and temples in Tibet. Id. at 185.

Due to growing resistance among Tibetans, the Chinese government attempted to alleviate its pressure on Tibet during the 1970's by implementing a number of reforms. This "reform program," however, consisted of importing ethnic Chinese into Tibet to run businesses and continuing restrictions on religious activities and the size of monasteries. Tibet Information Network and Human Rights Watch/Asia, Cutting Off the Serpent's Head: Tightening Control in Tibet, 1994-1995, at 22-23 (1996) (attached hereto as Exhibit 6). The reforms caused a superficial improvement in the standard of living for lay Tibetans, but were short-lived. By the late 1980's, the Chinese government had resumed its efforts to eliminate religious and political activism in Tibet. See Grunfeld, supra, at 225-237.

In September 1987, the Dalai Lama visited the United States and introduced a five-point plan in support of Tibetan freedom. The Dalai Lama called for "(1) Tibet to be a zone of peace, (2) an abandonment of Chinese migration to Tibet, (3) respect for human rights and democratic freedoms, (4) respect for the environment, and (5) negotiations on the future status of Tibet." Grunfeld, supra, at 232. Only days

later, Tibetans in Lhasa held the city's first public demonstrations in twenty-eight years to support the Dalai Lama's five-point plan and to protest the recent executions of two Tibetans. Id. The Chinese authorities forcefully responded both to this demonstration and to a subsequent demonstration on October 1, 1987, and arrested hundreds of protesters. Id. The resistance only grew, leading to Tibet's largest demonstration to that date on March 5, 1988. Id. at 233. Thousands of Tibetans joined the protest. Id. Security police quickly attacked the protesters, using tear gas and electric cattle prods, imprisoning many activists and torturing many of these prisoners. Id.

Since the late 1980's, China has continued its relentless campaign of religious and political persecution of the Tibetan people. Its violations of Tibetans' most basic human rights are well documented.³ Human rights conditions in Tibet worsened significantly in 1995. Early in the year, Gyaltesen Kelsang, a Buddhist nun reportedly involved in a pro-independence protest, died shortly after her release from police custody. Amnesty International, China: Update on 11 Tibetan nuns arrested in 1993, Apr. 27, 1995, (attached hereto as Exhibit 11). In addition, the controversy over the selection of

³ See Amnesty International, Amnesty International Report 1998: China (1998) (attached hereto as Exhibit 7) (hereinafter "1998 Amnesty Report"); Amnesty International, Amnesty International Report 1997: China (1997) (attached hereto as Exhibit 8); Tom Johnson, Human Rights Watch World Report 1997: Events of 1996 (1997) (review) (attached hereto as Exhibit 9); Physicians for Human Rights, Striking Hard: Torture in Tibet, Oct. 24, 1997, (attached hereto as Exhibit 10).

the Panchen Lama, the most significant spiritual leader after the Dalai Lama, began to raise tensions in May 1995. The Chinese government reneged on its 1989 promise to Tibetan religious leaders that they would be given free rein in locating the next Panchen Lama. When the Dalai Lama confirmed the choice of the new Panchen Lama in May 1995, the Chinese government reacted by arresting Tibetan leaders who had assisted the Dalai Lama in this search and requiring them to denounce the Dalai Lama's choice. The PRC also vigorously condemned the boy selected by the Dalai Lama, the nine-year old boy's family, and the Dalai Lama himself. The Chinese government then appointed its own PRC-sponsored candidate to be the Panchen Lama. It is unknown whether the boy chosen by the Dalai Lama is under house arrest or some other form of custody. China Says the Lama It Named Has Appeared in Tibet Capital, N.Y. Times, June 19, 1999, at A8 (attached hereto as Exhibit 12).

In April 1996, the PRC launched the nationwide "Strike Hard" or "Crack Down Severely on Crimes" campaign, targeted at eliminating corruption and crime. Within Tibet, this campaign focused on "splittists" — individuals who support Tibetan independence and the leadership of the Dalai Lama. Tibetan Centre for Human Rights and Democracy, Tibet: one more year of political repression (Annual Report 1996: Human Rights Violations in Tibet), at 6 (1997) (attached hereto as Exhibit 13). The main sub-campaign of "Strike Hard" in Tibet was the so-called "Patriotic Re-education Campaign" aimed at stifling politically active monks and nuns. Id. The "Patriotic Re-education" campaign has led to wide-spread arrests and the expulsion from monasteries

and convents of those monks and nuns who refused to be "re-educated" along Chinese communist lines. Id.

Human rights conditions in Tibet deteriorated during 1997, the year of Refugee's flight. According to the U.S. State Department,

"[A]ccording to credible reports, Chinese government authorities continued 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 views. Tight controls on religion and on other fundamental freedoms continued, and intensified during the year. According to the Tibet Information Network (TIN) political protests by and detention of Tibetans is both increasing and spreading throughout ethnic Tibetan areas. . . . TIN reports indicated that the rate at which Tibetan political prisoners are dying under detention or as a demonstrable result of detention shortly after release is increasing. . . . [F]emale political prisoners, particularly those held at Lhasa's Drapchi prison, are at the greatest risk. The TIN reports that it confirmed six deaths in 1998 compared with two deaths in the period from 1987 to 1997."⁴

United States Department of State, China Country Report on Human Rights Practices for 1998, February 26, 1999, at 40 (emphasis added) (attached hereto as Exhibit 14)

(hereinafter "1998 State Dep't Report"). A crack-down on Tibetan nationalists and religious groups continued in Tibet during 1997. Official propaganda teams continued to carry out "patriotic re-education" in Tibetan monasteries and nunneries. Protests by

⁴ Refugee herself was a political prisoner at Drapchi Prison in Lhasa. See infra, from 12 to 15.

monks and nuns who refused to denounce the Dalai Lama led to expulsions from monasteries and convents. Some monks and nuns went into hiding and others, like Refugee, fled the country to escape arrest. In February, a group of nuns in Lhoka Choenkye county were reportedly detained for peacefully protesting when local government officials came to their nunnery to enforce a ban on pictures of the Dalai Lama. Taken to Nethang county prison, they were still reportedly detained several weeks later. See 1998 Amnesty Report at 2.

While the 1979 Criminal Law was revised, the human rights situation remained the same. Counterrevolutionary offenses abolished by the revisions were merely replaced by a new, largely identical set of offenses called "crimes of endangering state security." Human Rights Watch, Human Rights Watch World Report 1998, at 177 (1998) (attached hereto as Exhibit 15) (hereinafter "1998 Human Rights Watch Report"). These changes make virtually any type of dissident activity criminal and those who engage in the activity can be sentenced to terms of up to life imprisonment. Id. In addition, the reforms do not include any review of over 2,000 cases of sentenced "counterrevolutionaries" still officially said to be imprisoned in China. Id. Furthermore, the "Strike Hard" campaign resulted in the highest number of judicial executions (more than 4,000) and suspended death sentences since a similar campaign in 1983. Id. at 178.

**B. Refugee's Experience of Repeated Persecution
At the Hands of the Chinese Government**

Refugee's frightening experiences in Tibet are thoroughly recounted in her affidavit, which is submitted with her instant application for asylum. As she relates first-hand, Chinese authorities have sought for decades to eradicate Tibetan religion and culture. Refugee Aff. ¶ 4. Moreover, as discussed previously, political advocates of an independent Tibet, Buddhist nuns like Refugee in particular, are special targets of the Chinese persecution in Tibet. See infra, section ID(2); Refugee Aff. ¶ 4.

As Refugee's affidavit relates, she has been arrested three times for peacefully expressing her political and religious beliefs. If she were forced to return to Tibet, she would surely be arrested, imprisoned, tortured and she fears eventually killed.

From her youth, Refugee has been a victim of Chinese oppression and torture. Her father was arrested shortly after she was born. Id. ¶ 6. The Chinese authorities did not give the family any explanation for his arrest. Id. In 1975, she and her mother received news that her father had "disappeared" in prison. Id. ¶ 7. Refugee's mother passed away shortly after they received this devastating news. Id. Later, Refugee was expelled from elementary school because Chinese officials said she was "too religious" as she had too many friends who were nuns. Id. ¶ 9.

In January 1988, Refugee joined Tsakung Convent and became a nun. Id. ¶ 12 She took vows of a Buddhist nun: she vowed that she would not (1) steal; (2) lie; (3) kill; or (4) engage in any sexual misconduct. Id. ¶ 13. Refugee is a member of the

Gelugpa sect of Buddhism. Id. ¶ 14. She believes in reincarnation, i.e., after death, each of us will be reborn. Id. To be reborn as a human being, the highest form of life, individuals must engage in positive activities such as praying, having compassion towards others, and being kind. Id. Refugee's vows as nun were a first step in achieving a life filled with positive acts. Id.

In 1989, Refugee was arrested for the first time for celebrating the news that His Holiness the Dalai Lama had been awarded the Nobel Peace Prize. Id. ¶¶ 17-18. She and the other nuns at Tsakung Convent had gathered to celebrate the award and pray for the success of the Dalai Lama's plan and his return to Tibet. Id. ¶ 17. They also encouraged other Tibetans to rejoice. Id. At no time, however, did the nuns' celebration and prayer become a boisterous affair that could be deemed a disturbance requiring the intervention of the police. Id. Instead, as part of their campaign to quash any and all political activity, Chinese guards arrested Refugee and a few other nuns. Id. Refugee was singled out because of her position as a supervisor in the convent. Id.

Refugee and the nuns were taken to a detention center where they were questioned repeatedly about who had told them to celebrate and who had informed them that the Dalai Lama had received the Nobel Peace Prize. Id. ¶ 19. They refused to answer. Id. Refugee was locked in a filthy room that had no furniture and no heat. Id. ¶ 20. Her prayer beads were taken away from her. Id. During the week, Refugee was repeatedly interrogated. Id. ¶ 21. She was never brought before a judge, given a lawyer or provided with an opportunity to challenge her arrest and detention. Id. ¶ 20. After one

week, Refugee was released with a warning not to engage in such activity in the future.

Id. ¶ 21. She returned to the convent. Id.

In February 1992, Refugee was arrested again, this time for participating in a peaceful protest in support of an independent Tibet, the return of His Holiness the Dalai Lama and for human rights. Id. ¶ 22. Refugee and other Tibetan Buddhists were circling Jokhang Temple as part of their prayer ritual. Id. Some Tibetan people began to protest and shout slogans such as "Free Tibet," "We need human rights," or "Chinese out of Tibet." Id. Some waved the Tibetan national flag. According to Refugee, her religion does not require that she participate in demonstrations, but political activity is encouraged to protect Tibetan identity and culture. Id. ¶ 23. As an ethnic Tibetan, as well as a Buddhist nun, she felt it was her obligation to protest against the abuses perpetrated by the Chinese authorities against the Tibetan people. Id. Therefore, Refugee joined the demonstrators. Id.

The police imprisoned Refugee in Drapchi prison, infamous for its cruel and inhumane treatment of prisoners. Id. ¶ 24. Upon arrest, the police beat Refugee, punched her and kicked her. Id. They also shocked her by sticking a cattle prod onto the middle of her tongue. Id. They kept her handcuffed with her hands cuffed diagonally across her back throughout the time they beat her. Id. The beatings were so severe that Refugee lost consciousness. Id. She awoke in a tiny jail cell that was completely dark and filthy. Id.

The next afternoon, Refugee was taken to an interrogation room and showed various instruments of torture. Id. ¶ 25. Chinese officials then proceeded to interrogate her about who had displayed the Tibetan national flag and why she had participated in the demonstration. Id. Refugee remained silent, however, because she knew that the Chinese guards would beat her regardless of what she said. Id. Indeed, just as Refugee believed, the guards kicked her in her stomach and shoulder, punched her and hit her, leaving her with extensive bruises and severe pain. Id.

Refugee was interrogated repeatedly during her time at Drapchi prison. Id. ¶ 26. During these interrogations, the guards would beat her. Id. She was kept handcuffed and had no way to defend herself. Id. Furthermore, the interrogations would sometimes take place at night. Id. Not only would Refugee be questioned and beaten, but she was also forced to endure a "re-education" campaign in which the guards "instructed" her that Tibet had always been a part of China and "taught" her the way to become a good Communist. Id. ¶ 28.

For one and a half years, Refugee was regularly beaten and kicked by the guards. Id. ¶ 29. The guards also used electric cattle prods on occasion to torture her. Id. Refugee and the other prisoners were forced to labor around the prison. Id. ¶ 30. They had to clean the hallways and cut firewood. Id. The guards confiscated all pictures, books and religious items. Id. ¶ 31. They told Refugee that she could not pray, despite her strong religious beliefs. Id. She could not speak to the other prisoners. Id. There was no toilet: Refugee had to use an outhouse located outside her cellblock. Id. She was

not permitted to bathe for the entire time she was in prison. Id. Furthermore, Refugee had to wear an outer garment marked with a number identifying her as a prisoner. Id. Her cell had no furniture and no heat; she only had one blanket on which to sleep. Id. There was also no light in the cell and it was often so dark that Refugee could not even see the palm of her hand if she held it in front of her face. Id. Each day, the prisoners were fed only one meal of steamed bread and light rice porridge. Id. Refugee had no contact with anyone from the outside. Id.

In 1993, Refugee was released from prison and put on probation. Id. ¶ 35. As part of her probation, she was required to report all of her activities to the Chinese authorities twice a week. Id. ¶ 34. She did not contact her friends or even visit the convent because she feared that the police would arrest her friends or close the convent in retaliation. Id. ¶ 35.

On March 10, 1994, Refugee was arrested for a third time for participating in demonstrations commemorating the anniversary of China's invasion of Tibet. Id. ¶ 37. She had refrained from participating in any political activity for the previous year because she feared arrest and torture by the police. Id. At the March 10, 1994 demonstration, however, she felt she could not stand by. Id. During the demonstration, the police began firing into the crowd, creating confusion. Id. Refugee was frightened and did not know what to do. Id. Then, she was arrested by the police and taken to Drapchi prison. Id.

At Drapchi prison, the beatings were even more severe than before because of her prior arrest history. Id. ¶ 38. The Chinese officials told Refugee that she

"needed beating." Id. The guards kicked her and punched her. Id. Furthermore, the guards removed Refugee's clothes and sexually assailed her. Id. In so doing, they attempted to violate her vows as a nun. Id. Such behavior not only offended her but also traumatized her. Id. The abuse and prison conditions became so bad that after two years, Refugee was hospitalized. Id. ¶ 42.

In the hospital, doctors treated Refugee and fed her nourishing food, replenishing the losses her body had endured while in prison. Id. Because she was ill, Refugee lost track of how much time passed while she was in the hospital. Id. While Refugee was still recovering in the hospital, a Tibetan nurse informed her one evening that she would soon be returned to prison. Id. ¶ 43. Rather than face continued torture, Refugee escaped from the hospital early the next morning. Id. She walked to her aunt's home. Id. ¶ 44. Early that same morning, with her aunt, Refugee began a harrowing flight to the Nepal border. Id. They traveled only at night for fear of capture by the police. Id. If they were captured, they would be imprisoned and severely punished. Id. They had to beg for food from nomadic families they met on the road. Id. After thirteen nights, they arrived in the border town of Dham. Id. ¶ 45.

During her flight from Lhasa, Refugee met two other nuns, _____ and _____, who were also fleeing to Nepal. Id. _____ had a brother in Dham who agreed to hire a guide to lead the three women, including Refugee, into Nepal. Id. ¶ 46. Refugee's aunt gave her 500 Chinese yuan and returned to Lhasa. Id. Refugee

has not had any contact with her aunt since then because she fears Chinese retribution against her aunt. Id. ¶ 61.

For two weeks, Refugee and the other two nuns hid in a warehouse basement while _____ brother made arrangements to hire a guide who spoke Tibetan. Id. ¶ 47. Refugee gave _____ brother 200 yuan to pay the guide. Id. Finally, the arrangements were completed and the second stage of Refugee's flight to safety began. The trek over the Himalayan Mountains from Dham to Katmandu, Nepal took fifteen days. Id.

Once in Nepal, the guide took Refugee and the two other nuns to a refugee center in Katmandu run by the Tibetan government-in-exile. Id. ¶ 48. Refugee was permitted to remain at the refugee center for only two weeks. Id. The staff at the refugee center warned Refugee against walking on the streets because the Nepalese authorities would deport her to Tibet if they found her. Id. After two weeks, Refugee was forced to leave the refugee center and find shelter on her own. Id.

With nowhere else to go, Refugee hid in the home of a fellow nun's uncle, _____. Id. ¶ 49. Because of her illegal and undocumented status, Refugee was constantly afraid she would be discovered, arrested and deported back to Tibet. Id. ¶ 50. Members of the household repeatedly told her that life in Nepal would be very difficult without legal papers. Id. ¶ 51. Therefore, Refugee sought a way to leave Nepal and find a truly safe haven. To assist her, _____ obtained a false passport, visa and airplane ticket for Refugee. Id. ¶ 52. Refugee gave _____ all the money she had left. Id.

With these papers in hand, she took a bus from Nepal to India where she boarded a plane bound for Boston, Massachusetts. Id. ¶ 53.

At no time did Refugee seek asylum in Nepal or India and those governments did not offer her any immigration relief or refugee protection. Id. ¶¶ 50, 53. Moreover, Refugee feared for her life and the possibility of forcible return to Tibet where she would be immediately arrested, tortured and most likely killed. Id. ¶ 66. Refugee felt a sense of safety only upon her arrival in the United States. Id. ¶ 54.

Refugee arrived in Boston on February 20, 1998 with no money and only one carry-on bag. Id. Her flight from Tibet had been terrifying and arduous. She had lived in a constant state of fear. Id.

In Boston, Refugee was met by _____. Id. ¶ 55. Attached as Exhibit 16 is _____'s affidavit, dated December 23, 1999, swearing to Refugee's identity and confirming her account of events upon her arrival in the United States.

_____ had traveled to Lhasa in 1994 to visit his sister who was a nun in Tsakung Convent. Refugee Aff. ¶ 55; _____ Aff. ¶ 5.⁵ While in Tibet, _____ met Refugee, who was a friend of his sister. Refugee Aff. ¶ 55; _____ Aff. ¶ 5.

_____ had received a call from a reliable source in Nepal informing him of _____

⁵ References to "_____ Aff." are to the Affidavit of _____, sworn to on December 23, 1999.

Refugee's arrival date and flight information. _____ Aff. ¶ 6. Based on this information, he greeted her at the airport. Id.

Refugee lived with _____ and his family in Boston for some time. Id. ¶ 7. During these months, Refugee often had nightmares about her experiences in Drapchi prison and the memories of her torture often disrupted her daily activities, including her prayers. Refugee Aff. ¶ 56. Refugee was afraid to leave the house unaccompanied. Id. She remained traumatized by the torture and persecution she suffered in prison and her difficult and frightening flight from Tibet to the United States. Id. She was unaware that she could apply for political asylum in the United States and no one ever mentioned the possibility of asylum to her. Id. ¶ 57; _____ Aff. ¶ 9.

After some time, _____ and Refugee agreed that she should find other shelter. Refugee Aff. ¶ 58; _____ Aff. ¶ 8. In September 1999, Refugee left Boston and went to New York in search of a nun who was a friend of hers. Refugee Aff. ¶ 59. While in New York, Refugee learned that she could seek political asylum in the United States when she discovered that one of her housemates was seeking political asylum. Id. ¶ 60. After she learned of this news, Refugee acted as quickly as possible to submit her application for asylum. Id.

Refugee has no other family members living in the United States, India or Nepal. Id. ¶ 61. Although she was lucky to escape from Tibet, she continues to have nightmares about her experiences in Drapchi prison until this day. Id. ¶ 33. For Refugee

to return to Tibet while the country remains under the rule of the People's Republic of China would risk the strong likelihood of further persecution and torture.

**C. Human Rights Conditions In Tibet
Have Worsened Since Refugee's Flight**

Conditions have become even more restrictive in Tibet since Refugee's flight. China's continuing repression in Tibet provoked an additional 3,100 Tibetans to flee to Nepal in 1998. U.S. Committee For Refugees, Country Report: Nepal, at 1 (1999) (attached hereto as Exhibit 17).

A number of recent developments highlight the worsening conditions in Tibet. In September 1998, Mary Robinson, the United Nations High Commissioner for Human Rights, made her first visit to China and briefly stopped in Tibet. Ms. Robinson characterized the region as "very restrictive and very difficult." U.S. Committee for Refugees, Country Report: China, at 4 (1999) (attached hereto as Exhibit 18). On October 5, 1998, China signed a key human rights document, the International Covenant on Civil and Political Rights. By the end of the year, however, China's legislature had neither ratified the accord nor eliminated laws that conflicted with it. Id.

The "Strike Hard" campaign, introduced in May 1996, intensified in 1998. This campaign of comprehensive repression of religion in Tibet has led to an overwhelming increase in the number of expulsions of monks and nuns from their institutions. This is only one of the many ways China has restricted religious practices in Tibet. Tibetan Centre for Human Rights and Democracy, Tibet: Crackdown on Humanity

(Annual Report 1998: Human Rights Violations in Tibet), at 2 (1999) (attached hereto as Exhibit 19).

During 1998, at least 10 prisoners of conscience were reported to have died — one was reportedly shot dead — following a protest in Drapchi prison at the time European Union representatives visited the prison in early May. 1998 State Dep't Report at 41. Drapchi is the prison to which Refugee would have been returned had she not escaped from the hospital. Many prisoners who had taken part in the protest were beaten and placed in solitary confinement. Ngawang Sungrab, a monk from Drepun monastery, and Gyaltzen Choephel, a layman from Lhasa, were beaten so severely that they needed hospital treatment. The authorities later admitted that "minor disturbances" had occurred at the prison in early May, but denied that any prisoners had died as a result. Amnesty International, Amnesty International Report 1999: China, at 2 (1999) (attached hereto as Exhibit 20) (hereinafter "1999 Amnesty Report").

On June 7, 1998, four imprisoned nuns, Choekyi Wangmo, Tashi Lhamo, Dekyi Yangzom and Khedron Yonten, who had been placed in solitary confinement in May, reportedly died in Drapchi prison. Id. Prison officials said they had committed suicide but did not explain how they had all done so on the same day while in solitary confinement. Id.

In the most recent manifestation of the patriotic re-education campaign, Chinese authorities have clearly stated their intent to expand their teaching of atheism. An official report on a government meeting held in January 1999 states:

"Improving the publicizing of atheism is an important responsibility of the propaganda and ideological front by the Communist Party. It is also an important measure in the waging of an in-depth struggle against separatism, resisting the reactionary infiltration of the Dalai Lama clique."

Seth Faison, In the Dalai Lama's Homeland, Tibetans Get Lessons in Atheism, N.Y. Times, Feb. 4, 1999, at A15 (attached hereto as Exhibit 21).

D. Arbitrary Arrests, Detention and Torture Continue in China

1. PRC's Disregard for Procedural Safeguards

The PRC's disregard for procedural safeguards in its own laws and constitution has a disproportionately detrimental effect in Tibet. The effect of this disregard is seen in documented cases of arrest without warrants, forced confessions, detention without charge, the lack of a fair trial, leveling of fabricated charges, punishment that is vastly disproportionate to the nature of the crime, and severe forms of torture. Amnesty International, Amnesty International Report 1996, at 118-120 (1996) (attached hereto as Exhibit 22). Predictably, monks and nuns, who embody the most obvious resistance to Chinese rule, and have been the most vocal in their dissent of Chinese rule, have been mercilessly detained, imprisoned, tortured and killed. See 1998 State Dep't Report at 40-43.

2. Arrests, Detention and Torture of Nuns like Refugee

In Tibet, religious persecution is closely linked to the suppression of political dissent. Buddhist monasteries and pro-independence activism are closely

associated. Id. at 42. The vast majority of political prisoners known to Amnesty International in Tibet are Buddhist nuns and monks⁶ detained solely for their peaceful expression of support for Tibetan independence. Amnesty International, Women in China: Detained, Victimized But Mobilized, at 4 (July 1996) (attached hereto as Exhibit 23) (hereinafter "1996 Report on Women in China"). Some are held without charge or trial; others are serving long prison terms imposed after unfair trials. Many have been tortured. Id.

"Nuns account for approximately one third of [the total number of political prisoners]. Over 200 have been reported detained since 1989, at least 74 are believed to be imprisoned as of July 1996. With few confirmed releases, the current status of the remainder is unknown. Almost all were arrested for participating in small-scale demonstrations in support of Tibetan independence, many of which have lasted no more than five minutes. Demonstrators have even been arrested before any protest has begun. Many nuns are serving sentences of up to three years of "re-education through labour" imposed without charge or trial. Others have been sentenced to prison terms for "counter-revolutionary incitement and propaganda". Some were under 18 when first imprisoned. Reports

⁶ According to the U.S. State Department, the acting Chief Procurator for Tibet reported that in 1994 out of 164 people arrested, 137 individuals were lamas and nuns. United States Department of State, China Country Report on Human Rights Practices for 1995, Mar. 1996, at 29 (attached hereto as Exhibit 24) (hereinafter "1995 State Dep't Report").

of torture and ill-treatment of nuns during interrogation and detention are common."⁷

Id. (emphasis added).

Tibetan nuns arrested for participating in demonstrations have reportedly been victims of especially brutal treatment during interrogations. Id. at 19. Accounts by nuns of their experiences in prison are notably consistent and indicate that nuns have been singled out for special treatment. Types of torture that appear to be reserved for nuns include the use of dogs to bite prisoners, lighted cigarettes being applied to the torso and face and the use of electric batons in the genitals. Women in detention have reportedly been beaten with sticks, rifle butts and leather belts. Id. at 16-17.⁸ "Some women have alleged they were beaten with electric batons until they could not control their bladders." Id. at 17. "Women have also been handcuffed or shackled for long periods. Others have had their arms cuffed diagonally behind their back" ⁹ Id. According to the U.S.

⁷ Fourteen nuns at Drapchi prison had their sentences dramatically increased for recording pro-independence songs in prison. They are all prisoners of conscience. Their current sentences range from 8 to 17 years. 1996 Report on Women in China 4.

⁸ See also The Tibetan Administration in Dharamsala, India, National Report on Tibetan Women: Tibetan Women - Oppression and Discription in Occupied Tibet, at 9 (Sept. 1995) (attached hereto as Exhibit 25).

⁹ Refugee's account of her physical suffering at the hands of the prison authorities bears striking similarities to the reported accounts, e.g., being shackled with her hands cuffed diagonally across her back for long periods and being beaten with belts.

Department of State Report, there have been credible reports that some female detainees in Tibet have been raped. 1995 State Dep't Report at 29. Officials appear most violent in their determination to "break the spirit" of nuns who are proud of their involvement in protest or who defend themselves with vigor. 1996 Report on Women in China at 18.

Indeed, a growing trend since the late 1980's of politically-motivated arrests targeting Tibetan nuns has emerged. China Rights Forum, Tibetan Nuns Punished for Singing, at 1-2 (Fall 1995) (attached as Exhibit 26). The number of women political prisoners in Drapchi has more than tripled since 1991, and almost all of them are nuns. Id. One female prisoner, Phuntsog Nyidron, is now serving a total of 17 years in prison — the longest-known current sentence for a female political prisoner in Tibet — for marching and chanting slogans at a demonstration and then singing in prison. Id. at 2.

Women have also died in prisons or shortly after they have been temporarily released on medical bail. Chinese authorities refuse to acknowledge the vast majority of deaths under these circumstances. 1996 Report on Women in China at 21-22. Many such deaths are reported to result from ill-treatment combined with harsh prison conditions and denial of adequate medical care. For example, the explanations from the authorities for the deaths of several young Tibetan nuns who have died in custody or shortly after release on medical bail between 1992 and 1995 have not been adequate. Id. Amnesty International has been calling for the Chinese authorities to account fully for the deaths. Id. Women awaiting execution have been shackled to boards for months and

there are unresolved cases of suspected deaths in custody following ill-treatment. Id. at 20.

II.

Refugee Qualifies For and Merits Asylum Under INA § 208

A. Refugee Qualifies For Political Asylum Because of Both Past Persecution and Her Real Fear of Future Persecution if Forced to Return to Tibet

Refugee is qualified to receive political asylum under Section 208(a) of the Immigration and Nationality Act ("INA"), which authorizes a grant of asylum to any alien who qualifies as a "refugee." 8 U.S.C. § 1158(b)(1) (1999). The INA defines a refugee as:

"any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is 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.A. § 1101(a)(42)(A) (1999).

Thus, an asylum applicant may establish eligibility for relief by showing either (i) that he has been persecuted in the past on account of one of the statutory grounds or (ii) that he has a well-founded fear of present or future persecution on account of one of those grounds if forced to return to his home country. Matter of Chen, Interim Decision No. 3104, 20 I. & N. Dec. 16, 17 (BIA Apr. 25, 1989); Matter of Mogharrabi,

Interim Decision No. 3028, 19 I. & N. Dec. 439 (BIA June 12, 1987); see also Mendoza Perez v. INS, 902 F.2d 760, 763 (9th Cir. 1990); Desir v. Ilchert, 840 F.2d 723, 729 (9th Cir. 1988).

Refugee can establish not only that she was persecuted by Chinese authorities in Tibet in the past, but also that she has a well-founded fear of additional persecution if she were forced to return to Chinese-occupied Tibet. Thus, she qualifies as a refugee on both grounds and is therefore eligible for asylum.

B. Refugee Has Suffered Past Persecution Based On Her Political Opinion

Refugee qualifies as a refugee under the statute because she has suffered past persecution for expressing her political opinion that Tibet should be self-governing and free of Chinese rule. Courts have defined "persecution" as "the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive." Desir v. Ilchert, 840 F.2d at 727 (citing Kovac v. INS, 407 F.2d 102, 107 (9th Cir. 1969)). Arbitrary arrest and detention without trial, physical and mental torture, beatings, interrogation, threats and electric shocks have been found to constitute persecution. See, e.g., Desir v. Ilchert, 840 F.2d at 726-29 (applicant had been persecuted when he suffered, inter alia, beatings, threats and imprisonment); In re B-, Interim Decision (BIA) 3251 (1995), 1995 WL 326740 (interrogation, beatings, and electric shock of applicant constituted persecution). "If an alien establishes that he has been persecuted in the past for one of the five reasons listed in the statute, he is eligible for a

grant of asylum." Matter of Chen, Interim Decision No. 3104, 20 I. & N. Dec. at 18; accord 8 C.F.R. § 208.13(b)(1) (1999).

As described above, and further detailed in Refugee's affidavit, Refugee was first detained in 1989, when she celebrated the Dalai Lama's Nobel Peace Prize. Refugee Aff. ¶¶ 17-18. She was held captive for a week although she was never charged with any crime. Id. ¶ 21. Refugee was interrogated for four or five hours on the day she was arrested, and was interrogated several more times during her imprisonment. Id. ¶ 19. She had to sleep on the floor in the same cell as two other nuns, and was fed only once a day. Id. ¶ 20. The Chinese authorities also did not allow Refugee to retain her prayer beads, which are traditionally used by Buddhists during prayer. Id. When Refugee was released after one week, the Chinese authorities warned her not to take part in political activity in the future. Id. ¶ 21.

In 1992, Refugee was arrested again, this time for taking part in a demonstration in support of an independent Tibet and human rights. Id. ¶¶ 22, 24. At the time of her arrest, she was handcuffed, with her left hand behind her back and her right hand over her shoulder. Id. ¶ 24. The police brutally beat her and shocked her by placing a cattle prod in her mouth. Id. The beating was so severe that Refugee lost consciousness. Id. She awoke in a dark, filthy jail cell with the handcuffs still on. Id. The next day she was interrogated and beaten again (kicked in the stomach and shoulder and punched). Id. ¶ 25. She was imprisoned for the next 18 months, during which the guards would often kick, punch and slap Refugee. Id. ¶¶ 26, 29. Refugee was also

interrogated and beaten at night. Id. ¶ 28. At these interrogations, Refugee was "taught" that Tibet had always been a part of China and that she should be a good Communist. Id. Although she was imprisoned for more than a year, Refugee was never charged with any crime, was never brought before a judge and had no opportunity to challenge her arrest or imprisonment. Id. ¶ 33. When she was released, she was put on probation. Id. ¶ 34. Under the terms of this probation, she was not allowed to leave Lhasa and had to report her activities to the authorities every two weeks. Id. Moreover, Refugee was not allowed to return to the convent which had been her home for the past six years (except during the time she was in prison). Id. ¶ 35.

On March 10, 1994, Refugee was imprisoned a third time because she took part in a demonstration commemorating the anniversary of the Tibetan uprising. Id. ¶¶ 36, 37. This time, she was beaten severely, as the authorities had identified her as a repeat offender. Id. ¶ 38. Refugee was kicked and punched repeatedly. Id. Her clothes were torn off by Chinese officers who touched her breasts and private parts and repeatedly threatened to rape her. Id. Again, despite her lengthy imprisonment, Refugee was never charged with any crime, was never brought before a judge and had no opportunity to challenge her arrest or imprisonment. Id. ¶ 41. Moreover, Refugee was never told the length of her sentence and never knew if or when she would be released. Id. The abuse Refugee suffered during her second and third imprisonments rises to the level of torture under the Convention Against Torture. United Nations Convention Against Torture, Article 1(1) ("torture" means any act by which severe pain or suffering,

whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him information or a confession . . . when such pain or suffering is inflicted by . . . a public official . . .") (hereinafter the "Convention"). By the terms of the Convention, no State Party may return a person to another State where there are substantial grounds for believing that he or she would be in danger of being tortured. Id., Art. 3 (1).

The persecution detailed above was clearly done because of Refugee's political opinions. In 1989, Refugee took part in a peaceful celebration of the Dalai Lama's receipt of the Nobel Peace Prize. Id. ¶ 17. She gathered with other nuns in her convent, put on new clothing, feasted and prayed for the Dalai Lama and the success of his plan. Id. For this peaceful celebration, Refugee was imprisoned for a week and interrogated repeatedly. Id. ¶ 21. In 1992, she took part in a peaceful demonstration in which she walked around her temple shouting slogans, accompanied by other Tibetans who were displaying the Tibetan flag. Id. ¶ 22. In return for this, Refugee was beaten, tortured and imprisoned for one and a half years. Id. ¶ 29. Refugee took part in another peaceful demonstration for Tibetan independence in 1994. Id. ¶ 37. Because she took part in that peaceful demonstration, Refugee was imprisoned for three years, during which she was very badly beaten, sexually abused and threatened with rape. Id. ¶¶ 38, 40.

In addition, during each arrest and imprisonment, the Chinese authorities themselves made it very clear that Refugee was being persecuted for her political opinions. In 1989, the authorities repeatedly asked her to identify the person who had

told her that the Dalai Lama had won the Nobel Peace Prize and to identify the person who had told her to celebrate. Id. ¶ 19. In 1992, she was interrogated again and was repeatedly asked which demonstrators had displayed the Tibetan flag, an act deemed to be a high crime in China; she was not tortured until after she refused to inform the authorities about others' peaceful political activities. Id. ¶ 25. During Refugee's 1994 arrest and imprisonment, the police told her that she "needed beating" because she continued participating in political demonstrations. Id. ¶ 38.

An applicant for asylum need not provide any other evidence to corroborate accounts of persecution in her home country. 8 C.F.R. § 208.13(a) (1999) (The applicant's own testimony, "if credible, may be sufficient to sustain the burden of proof without corroboration."); see also In re B-, Interim Decision (BIA) 3251 (1995), 1995 WL 326740 ("Corroborating evidence, however, is not necessary if an alien's own testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account. . . .").

Although corroborating evidence is not required, in this instance, Refugee's testimony is well-corroborated. Attached is a declaration by Mr. Dennis Cusack, Esq., President of the International Committee of Lawyers for Tibet, an organization dedicated to monitoring the human rights situation in Tibet, dated

December 7, 1999. Mr. Cusack states that based on his extensive experience and knowledge of human rights conditions in Tibet, he finds Refugee's account of her imprisonments to be "consistent with scores of others." Cusack Dec. ¶ 8.¹⁰ He concludes that "Refugee would be at serious risk if she were to return to Tibet." Cusack Dec. ¶ 7. In addition, _____, Refugee's friend, stated that Refugee told him in 1994 that she had been tortured. _____ Aff. ¶ 5. Furthermore, it is known that the Chinese authorities in Tibet "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 views." 1998 State Dep't Report at 40; see supra, at section IA, ID(1), (2).

Refugee's testimony, which is well-corroborated by the declaration of Mr. Cusack, the affidavit of _____ and accounts published by, inter alia, the U.S. Department of State, Amnesty International and Human Rights Watch, shows that she suffered past persecution in Tibet. Because of this past persecution, Refugee qualifies as a refugee and may be granted political asylum.

¹⁰ References to "Cusack Dec." are to the Declaration of Dennis Cusack, Esq., dated December 7, 1999, attached hereto as Exhibit 27.

C. Refugee Has Also Suffered Past Persecution Based on Her Nationality, Religion and Membership in a Social Group

Although Refugee need only establish past persecution on the basis of one of the statutory grounds to qualify for asylum, Refugee has suffered past persecution based on a number of the grounds, namely, her nationality (Tibetan), religion (Buddhist) and membership in a social group (as a Buddhist nun). See 8 U.S.C.A. § 1101(a)(42)(A) (1999). Any one of these independent statutory grounds, standing alone, would compel a grant of asylum for Refugee. When read together, however, the above grounds provide even greater support in favor of granting her asylum application.

Refugee has suffered persecution on the basis of her Tibetan nationality. Refugee's imprisonment in 1992 occurred because she participated in a demonstration in which the Tibetan flag was displayed. Refugee Aff. ¶ 22. Such a display is illegal in China. Id. ¶ 25. In addition, Refugee was repeatedly forced to listen to "instructions" in Drapchi prison about her country, including statements that Tibet had always been a part of China. Id. ¶ 28. Moreover, strengthening the Tibetan national and cultural identity was a primary motivation for Refugee's activities, which led to her imprisonments. Id. ¶ 23.

Refugee was also persecuted for her religious beliefs. She was expelled from elementary school because she was "too religious." Id. ¶ 9. She was arrested in 1989 in part because of her prayers for the success of His Holiness the Dalai Lama's plan and for his return to Tibet. Id. ¶ 17. Indeed, Refugee's support for the Dalai Lama was

predicated on her religious beliefs as a Buddhist and her belief that His Holiness the Dalai Lama is Tibet's spiritual and religious leader. Id. ¶ 18. In addition, during Refugee's imprisonment following her 1989 arrest, the guards took away her prayer beads, which are traditionally used by Buddhists during prayer. Id. ¶ 20. Following her 1992 arrest, the authorities confiscated all of Refugee's religious items and pictures. Id. ¶ 31. She could not pray because the guards told her that religious activity was not allowed in the prison. Id. During her 1994 imprisonment, the prison guards repeatedly sexually assaulted Refugee. Id. ¶ 38. She believes that they did so in an attempt to violate her religious vow of chastity. Id.

Refugee has been persecuted on the basis of her membership in a social group, Tibetan nuns. A social group is defined as "a group of persons all of whom share a common, immutable characteristic." Matter of Acosta, Interim Decision No. 2986, 19 I. & N. Dec. 211, 233-34 (BIA Mar. 1, 1985). An "immutable" characteristic is one that "members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." Id. Refugee should not have been required to relinquish her status as a nun, as being a nun was fundamental to her identity and conscience. The persecution Refugee suffered was clearly a result of her status as a Tibetan nun. In 1989, the police arrested her because she was a supervisor in the convent. Refugee Aff. ¶ 18. During her third imprisonment, the guards sexually assaulted her as an attack on her vows. Id. ¶ 38. In addition, nuns and monks have been repeatedly singled out for persecution in Chinese-occupied Tibet. See supra, section

ID(2).

Because Refugee suffered past persecution on the basis of her nationality, religion and membership in a social group, she is eligible for asylum.

D. Refugee Has a Well-Founded Fear of Future Persecution in China

Past persecution, "without more, satisfies the . . . [definition of refugee], even independent of establishing a well-founded fear of future persecution." Desir v. Ilchert, 840 F.2d at 729, accord, Chen, Interim Decision No. 3104, 20 I. & N. Dec. at 18, (granting asylum to applicant who had been persecuted in past, although he failed to establish a well-founded fear of future persecution). In addition to suffering past persecution, Refugee also has a well-founded fear that if returned to Chinese-occupied Tibet she will be imprisoned, tortured and possibly killed for her political beliefs. Her belief is well-founded for two reasons. First, she has testified credibly that the Chinese government persecuted her in the past for her participation in peaceful demonstrations on behalf of Tibetan independence. See generally Refugee Aff. Past persecution raises a presumption of well-founded fear of future persecution, which can only be rebutted if a preponderance of the evidence establishes that circumstances in the applicant's country of origin have changed for the better. See 8 C.F.R. § 208.13(b)(1)(i) (1999); Chen, Interim Decision No. 3104, 20 I. & N. Dec. at 18. Second, even absent this presumption, Refugee's fear of the Chinese government is well-founded because her application for asylum and affidavit set forth her own fear of persecution and a sufficient factual basis for a reasonable person in her circumstances to fear persecution on account of his political

opinion. See 8 C.F.R. § 208.13(b)(2)(i), (ii) (1999); Mogharrabi, Interim Decision No. 3028, 19 I & N. Dec. at 445.

"[S]o 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." INS v. Cardoza-Fonseca, 480 U.S. 421, 440 (1987) (quoting INS v. Stevic, 467 U.S. 407, 424-25, 104 S. Ct. 2489, 2498 (1984)). If an applicant can establish that there is even a 10% chance that he will suffer persecution if he returns to his home country, he has established a well-founded fear of such persecution. Id. at 440, 449. Refugee more than satisfies that threshold.

E. Because She Has Suffered Past Persecution By China, Refugee is Entitled to a Presumption That She Has a Well-Founded Fear of Future Persecution

As described above, and further described at length in Refugee's affidavit, Refugee was imprisoned on three separate occasions and repeatedly interrogated, beaten, tortured, sexually abused and threatened with rape because of her non-violent political activities on behalf of Tibetan independence. Her credible testimony, which has been corroborated by the affidavit of _____, by the declaration of Mr. Cusack, and by published accounts from the U.S. Department of State and other sources, provides strong evidence of past persecution. Therefore, Refugee is entitled to a presumption that she has a well-founded fear of future persecution if she were forced to return to Chinese-occupied Tibet. See 8 C.F.R. § 208.13(b)(1)(i) (1999).

"To rebut this presumption, the INS must show by a preponderance of the evidence that, 'since the time the persecution occurred conditions in the applicant's country of nationality . . . have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted'" if he or she were to return. Singh v. INS, 94 F.3d 1353, 1361 (9th Cir. 1996) (quoting 8 C.F.R. § 208.13(b)(1)(i) (1998)). In Tibet, conditions have not changed for the better, but, in fact, they have actually become worse. See, e.g. 1998 State Dep't Report (detailing persecution suffered by Tibetan political activists occurring in 1998); 1999 Amnesty Report (same); 1998 Human Rights Watch Report (In 1998, "[s]uspected supporters of nationalist movements in Tibet . . . were subjected to increasingly severe policies of surveillance, harassment and persecution."). Until conditions in Tibet improve, which does not seem likely to occur, Refugee must still retain the benefit of the presumption of a well-founded fear of future persecution if she is forced to return to Chinese-occupied Tibet.

**F. A Reasonable Person in Refugee's Circumstances
Would Fear Persecution By Chinese Authorities in Tibet**

Even if Refugee were not entitled to the presumption of a well-founded fear of future persecution, Refugee has adequately demonstrated a well-founded fear of future persecution. First, Refugee has testified at length regarding her genuine, subjective fear that the Chinese government will imprison, torture and possibly execute her if she is forced to return to Tibet. Refugee Aff. ¶¶ 64-66. Second, a reasonable person in Refugee's circumstances would fear persecution if he or she were returned to China —

either because he or she might be singled out by the authorities or because he or she might be associated with others whom the Chinese government persecutes. See 8 C.F.R. § 208.13(b)(2) (1999).

1. Refugee May Be Singled Out For Persecution By the Chinese Authorities

The Chinese authorities might single out Refugee for persecution, including imprisonment, torture and possibly execution, because she is well-known to them. The Chinese government imprisoned Refugee on three separate occasions, once for a week, once for eighteen months, and once for three years. Refugee Aff. ¶¶ 21, 29, 40. The authorities beat, tortured, threatened and sexually abused Refugee during her second and third times in prison. Id. ¶¶ 29, 38, 39. Between Refugee's second and third detention, she was forced to report to the police every two weeks, and when she was arrested for the third time, the authorities clearly indicated that she was known to them as a political activist. Id. ¶ 34. In addition, Refugee escaped from a Chinese hospital just before she was about to be returned to prison. Id. ¶ 43. There is every reason to believe that if Refugee is returned to Tibet, the Chinese police will immediately return her to the prison where she had previously been beaten, tortured, threatened and sexually abused.

2. Refugee Will Be Associated With a Group Subject to Persecution

Refugee's fear is also well-founded because there is a well-documented pattern of Chinese persecution of Tibetan activists for independence. See Osorio v. INS, 18 F.3d 1017, 1031 (2d Cir. 1994) (pattern of persecution compels the court to conclude that applicant "had a well-founded fear of persecution"). In addition, Tibetan nuns and

monks have been singled out as victims by the Chinese authorities and "are not permitted to freely practice their religion in Tibet." Lostumbo, supra, at 912; see also additional material on persecution of nuns and monks in Tibet supra, section ID(2).

Because of Refugee's association with the movement for Tibetan independence and her status as a Buddhist nun, her fear of future persecution is clearly well-founded. Chinese treatment of Tibetan political activists and nuns strengthens her case.

"The more the group to which an applicant belongs is discriminated against, harassed or subject to violence, the less the individualized showing an applicant must make to establish eligibility for asylum. . . . Such evidence is relevant to show that there is a pattern of persecution directed at the particular group, and that there is a reasonable likelihood that the applicant, as a member of that group, will be personally persecuted if he is deported to his home country."

Singh v. INS, 94 F.3d at 1359.

There is ample evidence that Tibetan political activists and nuns are regularly persecuted and subjected to violence and violation of the most basic human rights. See Universal Declaration of Human Rights, Articles 5, 9, 18. The same government that persecuted Refugee in the past still controls China. It continues to persecute those who advocate Tibetan independence, especially Tibetan nuns who do so. That same government is well aware of Refugee's existence and her past political activities. Refugee's fear of future persecution if she were returned to Tibet is thus very well-founded.

III.

Refugee Should Be Granted Asylum as a Matter of Discretion

In the absence of particularly unfavorable facts, asylum should be granted to a refugee who, like Refugee, has demonstrated a well-founded fear of persecution.

Matter of Pula, Interim Decision No. 3033, 19 I. & N. Dec. 467, 474 (BIA Sept. 22, 1987)

(holding that, when making a discretionary determination, "the danger of persecution should generally outweigh all but the most egregious of adverse factors"). It is well-established that the factors relevant to the discretionary grant of asylum to an alien who has established a well-founded fear of persecution should be considered in light of "the totality of the circumstances and actions of an alien in his flight from the country where he fears persecution." Id. at 473.

Refugee arrived in the United States after a long and arduous escape from tortuous conditions in Tibet. While Refugee fled Tibet and entered the United States without valid documentation, she did so only because she had no other alternative. The fact that Refugee entered the United States with false documents should be considered in the totality of the circumstances under which she fled persecution. It would have been impossible for Refugee to flee Tibet using her own proper identification. It was also impracticable for Refugee to remain in Nepal or India.

When the circumstances of Refugee's plight are considered in their totality, it is clear that she should be granted asylum in the United States as a matter of discretion.

A. Nothing Disqualifies Refugee's Application

After an applicant establishes that he is a refugee, an asylum officer or immigration judge may grant asylum unless the application is disqualified by some other factor. 8 C.F.R. § 208.14(a), (b)(1) (1999). Nothing disqualifies Refugee's application, and she deserves a favorable exercise of discretion. Refugee never received an offer of permanent resettlement from any other country prior to her arrival in the United States, and therefore has not been "firmly resettled." See 8 C.F.R. § 208.15 (1999).¹¹

Furthermore, Refugee had not found a safe haven prior to entering the United States.

¹¹ 8 C.F.R. § 208.15 states:

"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, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that nation was a necessary consequence of his or her flight from persecution, that he or she remained in that nation only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that nation; or

(b) That the conditions of his or her residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the Asylum Officer or Immigration Judge shall consider the conditions under which other residents of the country live,

(Cont'd on following page)

1. Refugee Never Resettled in Another Country

Refugee never received an offer of permanent resettlement from any other country prior to her arrival in the United States. Refugee Aff. ¶¶ 50, 53; see also 8 C.F.R. § 208.15 (1999); Matter of Soleimani, Interim Decision No. 3118, 20 I. & N. Dec. 99, 105 (BIA July 13, 1989) (holding that "an alien is deemed to be firmly resettled if he has been offered permanent resettlement by another country as a consequence of his flight from persecution").

(a) Nepal

Nepal did not offer any type of refugee status, permanent resident status, citizenship or other type of resettlement to Refugee. Indeed, Refugee was not eligible for permanent resettlement in Nepal. Nepal is not a signatory to the 1951 Convention Relating to the Status of Refugees. United States Department of State, Nepal Country Report on Human Rights Practices for 1997, Jan. 30, 1998, at 6 (attached hereto as Exhibit 28) (hereinafter "1998 Nepal Country Report"). The office of the United Nations

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the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country."

High Commissioner for Refugees ("UNHCR") assists Tibetans passing through Nepal with the Tibetan Refugee Welfare Office. Id. Undocumented Tibetan residents face difficulties in obtaining basic citizens' rights. Id. Refugee never attained any legal refugee status in Nepal. Refugee Aff. ¶ 50.

Refugee fled to Nepal because it was the only feasible way to leave Tibet. Once in Nepal, Refugee spent two weeks at a refugee center run by the Tibetan government-in-exile. Id. ¶ 48. Forced to leave the refugee center after two weeks, Refugee hid in the home of _____, the uncle of a nun she had met during her flight to Nepal, for six months. Id. ¶ 49.

Because of her undocumented status, Refugee faced a constant risk of arrest and deportation. Refugee was afraid to venture outside of _____'s home because she had entered Nepal illegally and was afraid that if she were caught, she would be deported to Tibet. Id. ¶ 51. _____ offered Refugee advice on how to escape Nepal and where to seek a safe haven. Id. ¶ 52. In exchange for the remainder of her money, _____ obtained a false passport for Refugee, as well as an invitation from someone in the United States that allowed her to apply for a visa. Id. In addition, _____ purchased a plane ticket for Refugee to travel to the United States from India. Id. Refugee spent the six months in Nepal hiding in fear of being found and planning her journey to the United States.

Although Refugee obtained a false passport from _____, Refugee could not reasonably expect to pass as a Nepalese citizen if confronted by Nepalese

authorities as she did not speak the language and was not sufficiently familiar with Nepalese culture. Given her lack of legal status and the risk that she could be deported to Tibet, Refugee could not remain in Nepal. Id. ¶¶ 50, 51. Refugee knew that she could not find a safe haven in Nepal.

Refugee did not apply for permanent resident or refugee status in Nepal as she knew that it was not safe to do so. Id. ¶ 50. Refugee's decision not to take affirmative steps toward seeking residency in Nepal is reasonable since she knew that Nepalese authorities were likely to send her back to Tibet. Moreover, the proximity of Nepal to Tibet and China made it impossible for Refugee to live a life free from fear of the Chinese in Nepal. In Damaize-Job v. INS, 787 F.2d 1332 (9th Cir. 1986), the court held that it is reasonable for an individual who has experienced persecution in his or her native country, to seek a new homeland that is insulated from the instability of that area and that offers more promising economic opportunities. The Nicaraguan appellant in Damaize-Job did not seek asylum in Costa Rica or Mexico, where he had lived for over a year following his departure from Nicaragua. Id. at 1334-35. The court found that the appellant's failure to seek asylum in these countries was perfectly consistent with his fear of persecution. Id. at 1337. See also Pula, Interim Decision No. 3033, 19 I. & N. Dec. at 474 (holding that "an alien who is forced to remain in hiding to elude persecutors, or who faces imminent deportation back to the country where he fears persecution, may not have found a safe haven even though he has escaped to another country"). Similarly, Refugee

did not seek asylum in Nepal because she feared immediate deportation and such fear was reasonable.

(b) India

India did not offer permanent resettlement to Refugee. As set forth in her affidavit, Refugee merely remained in India for a few hours — the amount of time necessary to reach the airport in New Dehli and board a flight to the United States. Refugee Aff. ¶ 53. Refugee wished to reach the United States as quickly as possible and did not remain in India any longer than necessary. The few hours she spent in India were merely a brief stop on her journey to the United States.

2. The Use of False Documents Does Not Warrant an Unfavorable Exercise of Discretion

The fact that Refugee traveled with a false passport does not warrant an unfavorable exercise of discretion. See Pula, Interim Decision No. 3033, 19 I. & N. Dec. at 473-74 (holding that "the totality of the circumstances and actions of an alien in his flight from the country where he fears persecution should be examined in determining whether a favorable exercise of discretion is warranted . . . [t]he use of fraudulent documents to escape the country of persecution itself is not a significant adverse factor"). In Pula, the court listed a number of factors, in addition to the use of false documents, that should be considered in determining whether asylum should be granted. These factors include: whether the alien passed through any other countries or arrived in the United States directly from his country; whether orderly refugee procedures were in fact

available to help him in any country he passed through; whether he made any attempts to seek asylum before coming to the United States; the length of time the alien remained in a third country; his living conditions, safety, and potential for long-term residency; and whether the alien has relatives residing legally in the United States or other personal ties to the United States. *Id.* at 473-74. The court further found that circumvention of orderly refugee procedures is only one of a number of factors that should be balanced in exercising discretion. *Id.* at 474.

Assessing Refugee's actions in the totality of the circumstances, it is clear that her use of a false passport does not warrant an unfavorable exercise of discretion. Refugee was living in Nepal in constant fear of being returned to Tibet. Since _____, in whose home she hid, was the only person who she knew in Nepal, and since she did not speak Nepalese, Refugee was completely dependent on _____. _____ never explained the procedure of applying for asylum to Refugee. _____ *Aff.* ¶ 57; *see Damaize-Job*, 787 F.2d at 1337 (failure to contact U.S. embassies in countries through which the alien passed may simply indicate a lack of awareness about this procedure, a fear of authority or rejection, or both). Refugee used false documents because she was in fear of being returned to Tibet, her country of persecution, and because the false documents were recommended to her by the only person upon whom she could depend.

**B. Extraordinary Circumstances Excuse
Refugee's Delay in Filing Her Application**

To be sure, Refugee's instant application for asylum was not filed by February 20, 1999, the one-year anniversary of her last arrival in the United States, as would normally be required by 8 C.F.R. § 208.4(a)(2)(B)(ii) (1999). Refugee's delay, however, was reasonable under the circumstances, and qualifies for the statutory exception providing for extraordinary circumstances beyond the applicant's control that caused her to fail to meet the one-year deadline. 8 C.F.R. § 208.4(a)(5) (1999).

Refugee's delay in filing her asylum application is excusable for both statutory and practical reasons. First, the statutory reason that excuses Refugee's delay in filing her asylum application is that extraordinary circumstances beyond her control caused the delay in filing her application. For nearly three years prior to her arrival in the United States, Refugee was tortured, beaten, abused and malnourished by the Chinese authorities while unlawfully detained in Drapchi prison in Lhasa, Tibet. Her physical condition deteriorated to the point where she had to be hospitalized for some time. Then, Refugee was forced to flee Tibet and begin an arduous and terrifying journey by foot, through the Himalayan Mountains, hiding at every step from the authorities, living in a constant state of fear, until arriving in Nepal. Refugee Aff. ¶ 44. Once in Nepal, Refugee's fear and anxiety did not diminish as she searched for a way to find safe haven. Id. ¶ 48. Until she arrived in the United States, Refugee did not have a moment's peace or sense of security. Id. ¶ 54.

Since then, Refugee's body has had a chance to recover, but the healing of her mind and spirit has just begun. The torture and beatings that Refugee endured pushed her to the limit. She needed a stable and safe environment, absent of fear, in which to heal. _____ provided a safe haven for Refugee in Boston. During that time, however, Refugee still had nightmares about her experience in Drapchi prison. Id. ¶ 56. The horrible memories of her torture and persecution would flash unbidden through her mind during the day, disrupting her prayers. Id. She was afraid to leave the house and would go outside only when accompanied by a member of the household. Id. She did not speak a word of English and had no means of seeking help. Id. Refugee's experience of persecution accentuated her fear of the big city and heightened her sense of isolation.

Second, the practical reason for Refugee's instant application for asylum not being filed before February 20, 1999 was that she was not aware whether and how she could do so until she learned in September 1999 that her housemate in New York was applying for political asylum. Id. ¶ 60. Through other friends in New York's Tibetan community, Refugee encountered the Lawyers Committee for Human Rights. Id. Refugee does not recall ever being informed of the procedures or deadline associated with applying for asylum when she entered the United States in 1998. Id. ¶ 57. _____ was unaware of the asylum process in the United States. _____ Aff. ¶ 9. Refugee first learned of the significance of asylum and the asylum process, including the then-passed deadline, when she met with the Lawyers Committee for Human Rights in

September 1999. Refugee Aff. ¶ 60. As a result, it was practically impossible for her to have applied before the February 20, 1999 deadline.

Since learning of the procedures for asylum, Refugee has proceeded diligently to complete her application for asylum submitted herewith. Given the clear basis for Refugee's well-founded fear of persecution, a discretionary grant of asylum should not be withheld based on her reasonable delay in filing. See Pula, Interim Decision No. 3033, 19 I. & N. Dec. at 475 (applicant's credible statement that he did not know that he could apply for asylum at the American Embassy in a foreign country he stayed in before entering the United States was found to excuse his not having done so). When one considers Refugee's delay of less than one year in conjunction with the extraordinary circumstances of her life, it is clear that Refugee's late filing should not outweigh the compelling basis in favor of a grant of asylum discussed herein.

Conclusion

In light of the facts set forth above, it is not only a reasonable probability, but actually very likely that Refugee would face immediate imprisonment, torture and persecution from the Chinese government if she were forced to return to Tibet. Her political and religious activities are well known. Refugee has satisfied her burden of proof that she is a refugee because of her past persecution and well-founded fear of future persecution. Refugee has not firmly settled in another country since her flight from Tibet. She is entitled to a favorable exercise of discretion granting her asylum. For these reasons, and all of the reasons set forth in Refugee's application, this memorandum, and all the supporting documents as well as under general humanitarian considerations, Refugee should be granted political asylum.

Respectfully submitted,

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