

February 28, 1999

U.S. Immigration and Naturalization Service Asylum Office  
1 Cross Island Plaza  
Merrick & Brookville Boulevard  
Rosedale, NY 11422

Re: Asylum Application for REFUGEE

**I-589 Application for Asylum  
On Behalf of REFUGEE**

Dear Sir or Madam:

In support of the affirmative application of REFUGEE for political asylum, we enclose the following:

**EXHIBITS**

- A. REFUGEE's I-589 form (original and two copies);
- B. REFUGEE's affidavit in support of his application, with exhibits: B1-B14 (original and two copies);
- C. Two passport photographs of REFUGEE taken within thirty days of the date of this application;
- D. Passport photographs of REFUGEE's wife, \_\_\_\_\_, and son, \_\_\_\_\_.
- E. Our Attorney Notice of Appearance, Form G-28 (original and two copies);
- F. Affidavit of Jonathan A. Leviss, M.D., Bellevue/NYU Program for Survivors of Torture, dated February 7, 2000, discussing REFUGEE's physical injury (long-term damage to his arm) that result from his persecution by the Chinese security police (original and two copies);
- G. Affidavit of Dennis Cusack, Esq., International Committee of Lawyers for Tibet (ICLT), dated February 23, 2000, discussing his knowledge of the circumstances in Tibet from the late 1980s to 1992 (the time of REFUGEE's political activity in Tibet and flight from Tibet), and current circumstances in Tibet (original and two copies);
- H. Affidavit of PERSON, dated February 23, 2000, discussing his personal acquaintance with REFUGEE, and his knowledge of REFUGEE's story and circumstances (original and two copies);

- I. Other supporting materials, including U.S. State Department Country Reports (original and two copies).

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

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In the Matter of the Application for Asylum of :  
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REFUGEE :  
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**MEMORANDUM IN SUPPORT OF THE  
APPLICATION FOR POLITICAL ASYLUM AND  
WITHHOLDING OF REMOVAL OF REFUGEE**

**PRELIMINARY STATEMENT**

REFUGEE deserves to be granted political asylum in the United States because he has been persecuted by the Chinese government due to his race, religion, nationality and political beliefs; because he reasonably fears he will be tortured or killed if he returns to China; and because there is no other safe country willing to receive him. Alternatively, even if REFUGEE is not granted asylum, he should not be removed either to China, where his life and freedom will again be threatened, or to countries that allow his removal to China.

REFUGEE, a twenty-five year-old ethnic Tibetan man and unwilling Chinese national, fled Tibet in 1992 to escape the Chinese government's increasing persecution of advocates of Tibetan independence. REFUGEE has lived almost his entire life under an authoritarian government determined to stamp out Tibetan nationalism, to prevent any sort of political freedom in Tibet, to eradicate Tibetan Buddhism, and to subjugate ethnic Tibetans. Like virtually all Tibetans in China, REFUGEE has experienced discrimination and persecution at the hands of the Chinese government, on the basis of his race (Tibetan), nationality (Tibetan), religion (Buddhism) and membership in a particular social group (affiliation with the Tibetan

Youth Congress and other activist groups of the Tibetan pro-independence movement), any of which would support a plea for asylum. REFUGEE's case merits special attention, however, because the Chinese authorities persecuted REFUGEE and arrested REFUGEE's father because of REFUGEE's political beliefs.

Over the past fifty years, the Chinese government has brutally terrorized, tortured, and murdered like-minded advocates of Tibetan independence, and this repression has dramatically escalated since REFUGEE's flight from Tibet in November of 1992. If REFUGEE is forced to return to Tibet, he will most likely be imprisoned, tortured, and even killed.

REFUGEE passed through Nepal, India and Romania as part of his flight to the United States. None of these countries offered him permanent resettlement. On November 12, 1998, six years after he began his flight, REFUGEE arrived in the United States seeking a safe haven. Increasingly fearing to return to Tibet and unable to resettle elsewhere, he decided to seek political asylum here.

REFUGEE meets the threshold requirements for asylum. First, REFUGEE's application for asylum is timely. REFUGEE's date of entry into the United States was November 2, 1998. His completed asylum application was received by the Immigration and Naturalization Service ("INS") on October 31, 1999, a time within the one-year limit imposed by 8 U.S.C. § 1158. Second, REFUGEE has clearly suffered from severe past persecution, and has a well-founded fear of future persecution. None of the exceptions to eligibility for asylum listed in 8 U.S.C. § 1158(c)(2) applies to REFUGEE.

### **FACTUAL BACKGROUND**

The factual background of the case is divided into three categories. The first part reviews the history of human rights abuses in Tibet under Chinese rule and summarizes the general

human rights conditions in Tibet before REFUGEE fled. The second part describes REFUGEE's persecution and suffering at the hands of the Chinese government, his flight from Tibet, and his search for a safe haven in the United States. The third part discusses how the Chinese government has continued to violate the human rights of Tibetans since REFUGEE fled, and demonstrates how those conditions inhibit his return.

As noted above, REFUGEE has suffered persecution on several distinct statutory grounds sufficient for granting asylum. The Chinese police targeted him as a Tibetan by race and nationality. The police's action of stamping on REFUGEE's picture of the Dalai Lama constituted religious persecution (of REFUGEE as a Buddhist), racial and nationality-driven persecution (of REFUGEE as a Tibetan), and persecution of REFUGEE as a member of a particular social group (the Tibetan pro-independence movement and its affiliated activist groups). Above all, REFUGEE has experienced persecution on the basis of his political opinions and activity.

**I. China's Rule Of Tibet Has Been Characterized By Human Rights Abuses And Persecution Of The Tibetan People**

**A. History of Chinese Rule and Human Rights Abuses in Tibet**

The Chinese People's Liberation Army invaded Tibet in 1949, beginning a period of totalitarian control and brutal subjugation of the Tibetan people that lasts to this day. Following the invasion, the Chinese government eliminated Tibet's de facto statehood and began assimilating Tibet into the People's Republic of China. Since the invasion, China has waged a campaign of cultural genocide against the Tibetan people, characterized by widespread human rights abuses. Over the past five decades, the Chinese government has consistently violated the Tibetan people's most fundamental political and religious rights, including the right to self-determination.

In 1959, China abolished the administration of the Dalai Lama, Tibet's political and spiritual leader, and forced him to flee into exile in India. The Dalai Lama established the Tibetan Government-in-Exile in the town of Dharamsala, India, and he and his government have since advocated the peaceful return of Tibet's freedom and independence.

An estimated 1.2 million Tibetans, one-sixth of the population, are said to have died as a result of Chinese policies in Tibet (armed conflicts and famine). Many others have been detained and tortured. According to credible reports, Chinese government authorities continue to commit serious human rights abuses in Tibet, including instances of torture, arbitrary arrest, detention without public trial, and long detention of Tibetan nationalists for peacefully expressing their political views. U.S. Department of State, China Country Report on Human Rights Practices for 1997, Addendum on Tibet ("Country Report"), Exhibit I-1. Physicians for Human Rights, Striking Hard: Torture in Tibet (1997), Exhibit I-2. China also has sought to eradicate the Buddhist religion in Tibet, destroying over 6,250 monasteries and curtailing basic religious practices. Id. In 1960, the International Commission of Jurists concluded that the Chinese government had committed genocide in Tibet in an attempt to destroy the Tibetan people as a religious group. U.S. Committee for Refugees, citing the International Commission of Jurists, I-3. The Commission reported that China had engaged in systematic killings of Tibetan religious figures, the large-scale relocation of Tibetan children to China, propaganda, arrests, forced labor, and the forcible indoctrination of Tibetans with socialist thought. Id.

The Chinese campaign of genocide and persecution led many Tibetans to flee their homeland, seeking to escape to India, Nepal, Bhutan, or elsewhere. Evidence suggests that nearly one million Tibetans tried to escape in the wake of the 1959 exile of the Dalai Lama. See Human Rights Watch, 1994-1995, Exhibit I-4. The refugees confronted the vast distances and harsh

conditions of the mountains, and the vigilance of the Chinese army; as a result, many of the refugees either surrendered to the Chinese or died in flight. Id. Only 110,000 Tibetans survived the journey over the Himalayas to join the Dalai Lama in exile in Dharamsala, India. Id.

During the Cultural Revolution in the 1960s, China only increased its repression in Tibet. It made every effort to fully integrate Tibet into the People's Republic of China, exerting its political, economic, and social control over the country. Its effort to stamp out all resistance to Chinese rule and all vestiges of political and religious freedom led to the killings of thousands of Tibetans. A. Tom Grunfeld, *The Making of Modern Tibet* 185 (“The Making of Modern Tibet”), Exhibit I-5. Chinese authorities sought to destroy every single religious location or item, including the Buddhist monasteries that had served for thousands of years as the centers of Tibetan religion and knowledge. Id. Only a few monasteries survived this campaign of destruction. Id.

The harshness of the Chinese persecution of the Tibetan people sparked a growing resistance. Activism for religious and political rights went hand-in-hand; much of the pro-independence activity in Tibet has been led by Buddhist monks. During the 1970s, China attempted to defuse some of this resistance by temporarily moderating its repressive policies. Educational and economic reforms helped boost the standard of living, but this respite did not last. By the late 1980s, the Chinese government had resumed its efforts to eliminate religious and political activism in Tibet. See *The Making of Modern Tibet* at 225-237. Furthermore, peace talks between Dharamsala and Beijing had broken down. Id. at 231.

In September, 1987, the Dalai Lama visited the United States to advocate a five-point plan in support of Tibetan freedom; he 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.”

The Making of Modern Tibet 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, arresting hundreds of protestors. 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. Security police quickly attacked the protestors, using tear gas and electric cattle prods, imprisoning many activists, and torturing many of these prisoners. Id. The government also imposed martial law in Tibet and temporarily banned foreign tourists. Id. at 235.

Since the late 1980s, China has continued its relentless campaign of religious and political persecution of the Tibetan people. Its violations of the most basic human rights are well documented. The government disregards the procedural safeguards in its own laws and constitution, particularly in Tibet, as demonstrated by documented cases of arrest without warrants, use of force to obtain confessions, detention without charge, lack of fair trial, leveling of fabricated charges, punishment vastly disproportionate to the crime, and severe forms of torture. Thousands of Tibetans have been detained without trial, often for political activity or protests. The Chinese security forces have tortured and executed many of these prisoners. Unarmed protestors have also been killed on the spot by Chinese security police. Id. at 233.

Many of the victims of this repression have been Buddhist monks and nuns, who have tended to be the most vocal in their dissent against Chinese rule. Mere possession of religious texts supporting the Dalai Lama or pro-independence leaflets continues to be punished by imprisonment.

## **B. Conditions in Tibet Immediately Before REFUGEE's Flight**

Human rights conditions in Tibet were dismal in 1991 and 1992, immediately preceding REFUGEE's Flight from Tibet. According to Amnesty International's 1992 annual report, over 100 prisoners of conscience were then known to be held in Tibet, including Buddhist monks and nuns held for peacefully advocating Tibet's independence from China. REFUGEE's flight. See, e.g., 1996 Country Report; Amnesty International, Amnesty International Report 1996 (1996), Exhibit I-6. More than 200 political prisoners, including dozens of prisoners of conscience, were being detained in Tibet as of 1991. *Id.* Reports indicated widespread torture, ill-treatment and death of detainees. *Id.* Unfair trials were the norm. *Id.* Numerous executions had taken place. *Id.* Up to 30 refugees per month fleeing to Nepal were robbed, beaten, forcibly returned to Tibet and again beaten and/or detained by the Chinese authorities. US Committee for Refugees, 1992.

## **II. REFUGEE Suffered Persecution By The Chinese Government And Subsequently Fled From Tibet**

### **A. China's Persecution of REFUGEE**

REFUGEE was instilled from an early age to identify with the pro-independence movement in Tibet, while understanding the very real threat of persecution that came with it. In his final days, REFUGEE's grandfather, \_\_\_\_\_, told his story to REFUGEE's father, \_\_\_\_\_, who later recounted it to REFUGEE. The political activity of REFUGEE's grandfather (i.e., being outspoken about his support of the Tibetan independence movement), and his persecution by the Chinese government, was an early influence in REFUGEE's life. Affidavit of REFUGEE, dated February 15, 2000 ("REFUGEE Aff.") at ¶2, Exhibit B. REFUGEE's grandfather's efforts for independence from early Chinese rule had led to his arrest. He was never formally charged and never had any sort of hearing, trial or legal process in front of a

judge. He was not afforded access to legal counsel or any other opportunity to challenge his imprisonment. He had no opportunity to obtain any counsel or other support. He was imprisoned for ten years and tortured severely for participating in pro-independence activities. He was not offered any opportunity to contact his family or others outside the prison. At no time did he have the opportunity to challenge his arrest. He was beaten with electric rods; his bare feet were exposed repeatedly to ice; he was strung upside down by his toes; he was deprived of food, water, a hygienic environment and adequate plumbing. He was forced to perform arduous agricultural and hard labor. The Chinese police also attempted to brainwash him with slogans about the superiority of China. The police would defile pictures of the Dalai Lama (stamping on them, etc.) and malign the Tibetan culture and government. REFUGEE's grandfather became extremely weak and ill, dying on the Tibetan new year in 1990, a few days after his release. Though he was unable to speak much of his hardships to REFUGEE in his final days, he spoke with his son, \_\_\_\_\_, who recounted the story to his son, REFUGEE. Though REFUGEE's father was not as openly politically active as REFUGEE's grandfather had been, he did support the cause of Tibetan independence, and he taught REFUGEE much of what he was to know about Tibetan history, the Chinese occupation, and the exile of the Dalai Lama.

While REFUGEE's father, mother and two sisters worked at agricultural jobs in Kardze, Tibetan custom dictated that REFUGEE, as the only son to his parents, must be sent to study at a monastery. In 1985, when he was eleven, REFUGEE went to study at the Dhargyal Monastery, in a remote area two hours from Kardze. He stayed at the monastery for six years until 1991 when he was seventeen, studying Tibetan language and literature. He became a monk. In 1991, at the age of seventeen, REFUGEE went on a pilgrimage to Lhasa in central Tibet, where he

participated in his first major public demonstration in support of Tibetan independence.

REFUGEE Aff. ¶6.

On December 10, 1992, he joined with one hundred and sixty fellow Tibetans (mostly monks and nuns) in a pro-independence demonstration in Bargkor, central Lhasa. REFUGEE Aff. ¶7. The Chinese government's response to the demonstration was quick and merciless. The police arrested nearly one hundred protesters, of whom REFUGEE was one of the first. Id. ¶7. REFUGEE was carrying a picture of the Dalai Lama, marching and shouting in opposition to Chinese rule. Within five minutes, the Chinese police intervened. REFUGEE and two of his fellow monks from the monastery were caught at gunpoint by two Chinese officials in civilian dress. The picture of the Dalai Lama was thrown upon the ground, and the police stamped and spat on it. REFUGEE was ordered several times to stamp on it. When he refused, the policemen twisted his right arm, causing severe pain and fracturing his bones. He was beaten with a rod. Id. ¶8. Then without explanation, he was thrown into a van with the two other monks. In the back of the van there were five policemen (three uniformed and two in civilian clothing). The van drove through the crowd for about three minutes. While three of these policemen focused on catching other demonstrators, two of them held REFUGEE and the two other monks with a rifle. The three monks waited for a few moments and then pushed their two guards and jumped out of the van, running into a crowd in the square at central Lhasa. They were chased briefly by the policemen, but the scene was so chaotic, they soon lost the policemen. Id. ¶8.

Though REFUGEE managed to evade arrest, his situation became so precarious that he could not even obtain medical treatment. He and the two other monks went to the house of a private Tibetan doctor in Lhasa, who lived near Potala Palace. The doctor was identifiable from a medical sign on a board outside the house. The doctor cursorily examined REFUGEE's arm,

asking him questions. REFUGEE stated that he could not move his hand, and that he felt extreme pain. The doctor confirmed that REFUGEE's arm was broken, and required medical attention. But he refused to treat REFUGEE, because he was afraid of repercussions by the Chinese. REFUGEE and the others went to a friend's home in Lhasa, where his arm was bound in a makeshift sling. Id. ¶9. The absence of timely surgical intervention prevented REFUGEE's fractured arm from healing properly and allowed the muscles in his arm to atrophy. See Affidavit of Jonathan A. Leviss, M.D., Bellevue/NYU Program for Survivors of Torture, dated February 7, 2000 ("Leviss, MD Aff."), Exhibit F.

REFUGEE stayed with his friend in Lhasa for three days. When he called his family, his father fearing REFUGEE's life was in great danger, warned him neither to stay in Lhasa nor to return home. REFUGEE and the two other monks made arrangements with a Tibetan businessman to be transported in his truck to the border. Id. ¶10.

Later in Nepal, REFUGEE heard that through the use of video cameras, the Chinese police had in fact come to know REFUGEE's identity. Id. ¶12. REFUGEE cannot confirm the existence or location of any video tape of his arrest that might exist, but he heard that within five days of the Chinese police's discovery of his identity, eight policemen went to his parents' home to seize him. When they did not find him at home, the police interrogated and arrested his father. At the present time, REFUGEE does not know the whereabouts of his father. Id. ¶12. Experts state that it is very common in Tibet for Chinese authorities to harass and persecute family members of political dissidents, as they have done to REFUGEE's father. See Affidavit of Dennis Cusack, Esq., International Committee of Lawyers for Tibet (ICLT), dated February 23, 2000 ("Cusack Aff."), ¶9, Exhibit G.

## **B. REFUGEE's Flight from Tibet and Search for a Safe Haven**

REFUGEE's journey from Tibet to India was long and arduous, taking him through Nepal on his way to seek a safe haven. On the night of December 14, 1992, REFUGEE and his two fellow monks hid in the back of a truck loaded with goods. They traveled eleven days, and were dropped off on the Tibetan side of the Nepalese border in Drum. They were very afraid to be caught crossing the border. Tibetan business men (who routinely crossed the border by bribing the Nepalese border police) advised them to stay in the area for a few days to study the situation. For three days, they observed the Nepalese laborers who freely moved across the border in both directions. They dressed as Nepalese laborers and crossed the border without being asked to produce papers or a bribe. Id. ¶11.

Once in Nepal, they went to the Tibetan Reception Center in Kathmandu by bus, which took nine hours. They stayed at the dormitory there for twenty days. During their stay, REFUGEE met PERSON, whose affidavit is attached. He told PERSON about his background and the events of the demonstration. See Affidavit of PERSON, dated February 23, 2000 ("PERSON Aff.") Exhibit H. REFUGEE also met PERSON, a woman from his area of Tibet who was bound for Dharamsala to admit her two children in the Tibetan Children Village School. She told REFUGEE of his father's arrest. Since that time REFUGEE has repeatedly tried to find out further information of his family, to no avail.

REFUGEE and his two fellow monks were told by workers at the Tibetan Reception Center that refugee status in Nepal was impossible to obtain. REFUGEE did not intend to remain in Nepal, nor was it safe for him to do so. REFUGEE Aff. ¶13. The Nepalese government has a policy of deporting Tibetan refugees back to China, and has consistently enforced the policy by arresting hundreds of Tibetans every year. See U.S. Committee for Refugees (1992).

During his time in Nepal, REFUGEE greatly feared being arrested and sent back to China. He knew that he must seek refuge elsewhere. Leaving the two other monks, he traveled alone by overnight bus to the Indian border, caught a train at Pathankot, and traveled for two days by bus from the Indian border to the Tibetan Reception Center in Dharamsala, India. He did not encounter any problems crossing the Indian border. He was not asked to present documents.

On January 26, 1993, REFUGEE was admitted to the Tibetan Reception Center in Dharamsala. REFUGEE Aff. ¶14. A week later, he was admitted to the Namgyal Monastery in Dharamsala, where he stayed for six months. In August, he left the monastery and went to live with his future wife, \_\_\_\_\_. He stayed at her uncle's house in the staff quarters of the Tibetan Medical Center in Dharamsala for the next four years. During this time, he unsuccessfully searched for employment; the majority of jobs available in Dharamsala require Indian citizenship.

In 1993, REFUGEE joined the Tibetan Youth Congress, to which he was introduced upon his arrival at the Tibetan Reception Center in Dharamsala. Through the Tibetan Youth Center, REFUGEE participated in many pro-independence demonstrations, including four candlelight vigils and two hunger strikes. He participated in two demonstrations in Chandigarh, on March 10, 1993 and March 10, 1995—the Uprising Day for Tibetans. REFUGEE Aff. ¶15.

Dharamsala is full of visitors from other countries, including English-speaking countries. In 1995 and 1996, REFUGEE was briefly instructed in written and spoken English by English tourists, and through subsequent use in reading and conversation, his English has continued to improve.

REFUGEE married \_\_\_\_\_ on February 23, 1997. They rented a one-room house near the Namgyal monastery. His wife was born in India and currently has a temporary refugee status, which she renews annually at the Foreign Registration Office. By the terms of her status, she cannot become a citizen and cannot own land or other immovable property. REFUGEE and REFUGEE's wife's son, \_\_\_\_\_, was born on May 15, 1997. REFUGEE Aff. ¶17.

At all times when he was in India, REFUGEE feared arrest and deportation to Tibet. Due to Dharamsala's position as a functional Tibetan government office and outpost, Chinese police and local police continually harassed the Tibetan nationals residing there. REFUGEE never applied to the Indian government for refugee status because the consensus among Tibetans was that this status was not issued. During REFUGEE's stay in India, Tibetans who applied invariably failed to obtain status, and their names were noted in a register. When a Tibetan was routinely checked by the police, he would be arrested if he was found to lack status and his name was in the register. He would be ordered to appear in court, and could very well be subject to deportation to China. There were numerous checks by the police, and REFUGEE's position was increasingly perilous.

In 1995, REFUGEE heard that the U.S. government allowed 1000 Tibetan nationals to resettle in the United States. REFUGEE Aff. ¶19. Though the possibility had not occurred to REFUGEE before, he soon became determined to attempt to secure political asylum in the United States. He focused on gathering funds for the trip. With the help of his wife's uncle, he saved a bit of money each month. In September, 1998, REFUGEE returned briefly to Nepal in order to obtain travel documents. He traveled from Dharamsala to Putango by bus, took the train to the border, and took a bus to Kathmandu, Nepal, where he stayed for one week.

During that time, a Tibetan man fabricated a refugee travel document for him, and arranged an invitation to a religious center in the United States. REFUGEE relied on this fraudulent travel document because he was anxious to enter the United States, and he had heard from many Tibetans that this was the only viable path to take.<sup>1</sup>

On September 14, 1998, REFUGEE applied for a visa at the U.S. embassy in Kathmandu and was issued one that day. He proceeded to Delhi to purchase an airline ticket, and from there, returned to Dharamsala to see his family. On November 2, 1998, REFUGEE flew from Delhi, via an eight-hour stopover in Bucharest, Romania, to JFK.

REFUGEE arrived in the United States on November 2, 1998 and entered the country with an R-1 visa (issued for religious studies). REFUGEE Aff. ¶20. For some months, he lived in Manhattan with assistance from the Tibetan Youth Congress; then he moved into a place in Queens, New York, which he shares with roommates. While in the United States, he has remained actively involved in the Tibetan independence movement. He has participated in two protests, when the Chinese Premier Zhirong Zi came to New York in early 1999. He fears he will be especially targeted because of his ongoing participation in demonstrations both in India and the United States. His authorization to remain in the United States expired on December 14, 1998. He now seeks political asylum in the United States. He filed a pro se application for asylum on October 31, 1999.

Other than his persecution by the Chinese security forces in 1992, described above, he has never been arrested by the authorities of any country. He has never been formally charged

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<sup>1</sup> See Matter of Pula, Interim Decision No. 3033 (BIA 1987) (“Although...entry into the United States with false travel documents is an adverse factor to be considered in discretionary grants of asylum, the manner of entry or attempted entry should not be the sole factor considered to deny asylum, but is only one of a number of factors which should be balanced in exercising discretion, and the weight to be accorded to this factor may vary depending on the facts of a particular case”; “The circumvention of orderly refugee procedures...should not be considered in such a way that the practical effect is to deny relief”).

with or convicted of any crime in any country. Other than his political activity in Tibet, he has never committed any crimes.

He has never ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, membership in a particular social group, or political opinion.

### **III. Human Rights Conditions In Tibet Have Worsened Since REFUGEE's Flight**

Human rights conditions in Tibet have continued to deteriorate since REFUGEE's flight in November 1992. In 1994, China imposed a ban on all pictures of the Dalai Lama as part of its continuing effort to undermine his position of authority among the Tibetan people. Human Rights Watch, 1994-1995. As the U.S. State Department notes, Tibetans have not been allowed to peacefully voice their political dissent against Chinese rule or to exercise their religion free of persecution. Department of State, China Country Report on Human Rights Practices for 1997 (1997).

In 1994 to 1995, according to Human Rights Watch:

The most evident impact of the change in Chinese policy on Tibet has been on the nature and scope of political imprisonment...Most of those arrests involve violations of freedom of expression, assembly, and association. But other forms of human rights violations have continued or intensified, including torture, compulsory labor, and restrictions on freedom of religion.

See Human Rights Watch, 1994-1995.

The situation escalated in 1996. According to the U.S. Department of State:

[D]uring 1996 Chinese government authorities continued to commit widespread human rights abuses in Tibet, including instances of death in detention, torture, arbitrary arrest, detention without public trial, long detention of Tibetan nationalists for peacefully expressing their religious and political views, and intensified controls on religion and on freedom of speech and the press, particularly for ethnic Tibetans...Individuals accused of political activism faced increased persecution during the year.

See 1997 Country Report at 640.

In 1996, China issued orders to close all politically active monasteries, aiming to “limit criminal activity in the guise of religious practice.” It forcibly shut down numerous monasteries for “political problems.” It initiated a nationwide anti-crime crackdown known as “strike hard,” targeting nationalist and religious groups, including those in Tibet. See Amnesty International, Amnesty International Report 1996 (1997) , Exhibit I-7. While enforcing a widened ban on photographs of the Dalai Lama, security forces injured or killed several monks at the Ganden monastery and detained scores of other monks. In addition to its use of violence to suppress religious and political activity in Tibet, China resorted to a political “re-education” program carried out by propaganda teams and leading to the arrests of dozens of monks and lay Tibetan activists. More generally, the “strike hard” campaign involved “mass summary trials and executions on a scale unprecedented since 1983.” *Id.* at 118.

During 1997, according to the U.S. Department of State, the Chinese government intensified its crackdown on all political and religious activity among the Tibetan people.

The State Department’s 1997 Country Report concludes:

Chinese government authorities continued to commit serious human rights abuses in Tibet, including instances of torture, arbitrary arrest, detention without public trial, and long detention of Tibetan nationalists for peacefully expressing their political views. Tight controls on religion and other fundamental freedoms continued and in some cases intensified. Those activities viewed as vehicles for political dissent are not tolerated and are promptly and forcibly suppressed. Individuals accused of political activism faced serious persecution during the year, as the Government proceeded with its largely unsuccessful campaign to discredit the Dalai Lama as a religious leader and limit the power of religious persons and secular leaders sympathetic to him. The campaign was carried out under the slogan ‘Buddhism must conform to Socialism and not Socialism to Buddhism.’ Efforts to reeducate monks and nuns continued as part of the campaign. The ban on photographs of the Dalai Lama continued. There were reports of imprisonment and abuse or torture of monks and nuns accused of political activism, as well as the closure of several monasteries...[R]epressive

social and political controls continue to limit the fundamental freedoms of ethnic Tibetans.

1997 Country Report at 739, 742.

Amnesty International concurs with this assessment, noting that “[a] crackdown on Tibetan nationalists and religious groups continued in the Tibet Autonomous Region,” and documenting numerous cases of arrest, imprisonment, and torture of monks and other political activists. Amnesty International, Amnesty International Report 1998 at 130-32 (1998), Exhibit I-8. For example, in April, a monk and two other Tibetans were tried in secret for communicating with the Dalai Lama, were convicted of crimes against the state, and were sentenced to long prison terms. *Id.* at 131-32. China also continued its widespread use of the death penalty for non-violent, anti-government offenses as well as for crimes involving violence. *Id.* at 132.

On another front, the Chinese government renewed its efforts to destroy the separate Tibetan culture and integrate Tibet into China by any means necessary. The government has given employment preferences to ethnic Han Chinese who move to Tibet, and has otherwise “encourage[d] a massive influx of Han Chinese into Tibet, which has the effect of overwhelming Tibet’s traditional culture and diluting Tibetan demographic dominance.” 1997 Country Report at 742.

While the United States has made efforts to draw China’s leadership into a dialogue concerning Tibet--most notably during President Clinton's visit to China in the summer of 1998—China has failed to moderate its policies. China’s President, Jiang Zemin, has demanded that the Dalai Lama acknowledge that Tibet has always been part of China, which the Dalai Lama is naturally unwilling to do. See *The Making of Modern Tibet* at 233. Meanwhile,

Tibetan protests against Chinese rule have helped keep international attention focused on China's ongoing abuse of the fundamental rights of the Tibetan people.

In January, 1999, the Chinese launched a new propaganda campaign to persuade Tibetans to abandon their religion and adopt atheism. Tibet Info News Updates, October 13, 1999. In March, 1999, a study found that one in 33 Tibetan political prisoners held in Drapchi prison since 1987 had died, either in custody or shortly after release, as a result of maltreatment. Tibet Info News Updates, February 16, 1999. Several incidents of dissent coincided with the Sixth National Minority Games in Lhasa. A young man who had staged a protest during the Games by lowering the Chinese flag, died after being severely beaten when he was arrested. Tibet Info News Updates, October 13, 1999. Two young Tibetan girls were raped by Chinese policemen after they were caught trying to escape across the border into Nepal. Tibet Info News Updates, September 10, 1999.

During 1999 overall, according to Amnesty International, hundreds, possibly thousands, of activists and suspected opponents of the government were detained. Thousands of political prisoners jailed in previous years remained imprisoned, many of them prisoners of conscience. Some had been sentenced after unfair trials, others were still held without charge or trial. Political trials continued to fall short of international fair trial standards. Torture and ill-treatment remained endemic, in some cases resulting in death. The death penalty continued to be used extensively. 1999 Amnesty International Report.

In view of these recent conditions and China's continued campaign of repression and persecution, human rights conditions in Tibet appear likely to continue to worsen rather than improve.

## LEGAL ARGUMENT

### **I. REFUGEE Is Eligible For Asylum**

REFUGEE is eligible for political asylum in the United States and should be granted asylum. In order to qualify for political asylum, REFUGEE must be a refugee according to the definition set forth in the Immigration and Nationality Act (the “Act”). I.N.A. 101(a)(42)(A); 8 U.S.C. 1101(a)(42)(A) (West 1998). The Act permits the Attorney General to grant an alien’s application for asylum “if the Attorney General determines that such alien is a refugee within the meaning of Section 1101(a)(42)(A) of this Title” and no disqualifying exceptions apply. I.N.A. 208(b)(1); 8 U.S.C. 1158(b)(1) (West 1999).

The Act defines “refugee” as:

[A]ny person who is outside any country of such person’s nationality . . . 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...

I.N.A. §101(a)(42)(A); 8 U.S.C. 1101(a)(42)(A) (West 1999).

The applicant therefore must prove that he or she is a refugee “either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution.”

8 C.F.R. §208.13(b) (1998); Osorio v. INS, 18 F.3d 1017, 1027 (2d Cir. 1993). REFUGEE qualifies as a refugee on both grounds and should be granted asylum in the United States.

#### **A. REFUGEE Has Suffered Past Persecution Based On His Political Opinion**

REFUGEE has been persecuted in the past by the Chinese government because of his political opinion that Tibet should be independent. Past persecution, “without more, satisfies

the...[definition of refugee], even independent of establishing a well-founded fear of future persecution.” INS v. Cardoza-Fonseca, 480 U.S. 421, 441 (1987).

Persecution has been held to involve “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 (9<sup>th</sup> Cir. 1969)). Persecution includes, among other things, arbitrary arrest and abuse. See Desir v. Ilchert, 840 F.2d at 727. An applicant who claims that he has been persecuted in his home country “need only to establish that objective fact.” See Matter of Chen, Interim Decision No. 3104 (BIA 1989), 1989 WL 331860 at \*4. The applicant’s own testimony, “if credible, may be sufficient to sustain the burden of proof without corroboration”, 8 C.F.R. §208.13(a) (1998), although corroborating documentation should be provided where reasonably available. See In re S-M-J-, Interim Decision No. 3303 (BIA 1997), 1997 WL 80984 at \*3-4; Matter of Dass, 20 I.& N. Dec. 120 (BIA 1989), 1989 WL 331876 at \*4-5.

REFUGEE’s affidavit, corroborated by the exhibits attached to that affidavit and by the record of Chinese abuses in Tibet compiled by the U.S. State Department and others, provides a detailed and credible account of his past persecution due to his political opinion. Experiences similar to REFUGEE’s were considered past persecution on the basis of political opinion. See, e.g., Desir v. Ilchert, 840 F.2d at 728 (beating, threats, imprisonment); In re B-, Interim Decision No. 3251 (BIA 1995), 1995 WL 326740 (beating, interrogation); In re O-Z- & I-Z-, Interim Decision No. 3346 (BIA 1998) (beating, threats).

As described, the Chinese security police beat and injured REFUGEE, and created an environment in Lhasa in which REFUGEE could not procure medical treatment. The absence of timely surgical intervention prevented REFUGEE’s fractured arm from healing properly and

allowed the muscles in his arm to atrophy. See Leviss, M.D. Aff. The Chinese police arrested REFUGEE at the time of the demonstration, and made clear through their continuing interest in his case after his escape, and the arrest of his father, that they suspected him of political activity in support of Tibetan independence. Therefore, the record clearly establishes that REFUGEE was persecuted because of his political opinions.

REFUGEE's testimony, "if credible, may be sufficient to sustain the burden of proof without corroboration." 8 C.F.R. §208.13(a) (1997). Here, REFUGEE's testimony is corroborated by his prior narration of his story to PERSON in Nepal, whose affidavit is attached. The extent of lasting physical injury he sustained from the actions of the Chinese police at the 1992 demonstration are corroborated by the affidavit of Dr. Jonathan Leviss of the Bellevue/NYU Program for Survivors of Torture, whose affidavit is attached. The general state of affairs in Tibet up to 1992 are corroborated by the affidavit of Dennis Cusack, Esq., of the International Committee of Lawyers for Tibet (ICLT). Moreover, REFUGEE's testimony should be found credible due to the general conditions in Tibet and China, as documented by the U.S. State Department, Amnesty International, Human Rights Watch, Physicians for Human Rights, and others. REFUGEE's testimony is corroborated by the documented conditions in Tibet.

#### **A. REFUGEE Has A Well-Founded Fear Of Future Persecution By China**

REFUGEE is also eligible for political asylum because he has a well-founded fear that if he is forced to return to China, he will be imprisoned, tortured and possibly executed by the government due to his political beliefs. REFUGEE's fear is well-founded for two reasons. First, he has testified credibly that the Chinese government persecuted him in the past because of his pro-independence activities. Past persecution creates a presumption that the applicant has a well-

founded fear of future persecution, unless circumstances in the applicant's home country have changed significantly. See 8 C.F.R. §208.13(b)(1)(i) (1998).

Second, even absent the presumption, REFUGEE's fear of persecution by the Chinese government is well-founded because a reasonable person in his circumstances would fear persecution. See Matter of Mogharrabi, Interim Decision No. 3028, 19 I.&N. Dec. 439 (BIA 1987); 8 C.F.R. §208.13(b)(2)(i), (ii) (1998). In order to establish a well-founded fear of persecution, an asylum applicant does not need to reach an unduly high threshold. "A reasonable person may well fear persecution even where its likelihood is significantly less than clearly probable." Mogharrabi, 19 I.&N. Dec. 439. "An alien need not prove that it is more likely than not that he or she will be persecuted in his or her home country." Cardoza-Fonseca, 480 U.S. at 449. REFUGEE readily satisfies this threshold, demonstrating a well-founded fear of future persecution by the Chinese government.

**1. Because He Has Suffered Past Persecution by China, REFUGEE is Entitled to a Presumption that He Has a Well-Founded Fear of Future Persecution**

As described, the Chinese police had previously tortured, imprisoned and brought about the death of REFUGEE's grandfather. At the 1992 demonstration, the Chinese police beat and injured REFUGEE, causing injury to his arm which became permanent injury when he could not receive medical treatment, as a result of widespread fear in Lhasa of the Chinese police. See Leviss, MD Aff. The Chinese police arrested him, and when he escaped, seized his father, whose whereabouts are still unknown. This occurred because of REFUGEE's race, nationality, religion, membership in particular social groups (affiliated with the Tibetan pro-independence movement) and above all, his political activities on behalf of Tibetan independence. REFUGEE's credible and corroborated testimony provides ample evidence of past persecution.

Therefore, REFUGEE is entitled to the regulatory presumption that he has a well-founded fear of future persecution. See 8 C.F.R. §208.13(b)(1)(i) (1998).

Where an alien has shown that he has been persecuted in the past on account of race, religion, nationality, membership in a particular social group, or political opinion, the burden shifts to the INS to show “little likelihood” of future persecution. See Matter of Chen, Interim Decision No. 3104 (BIA 1989), 1989 WL 331860 at \*2. REFUGEE should only be deprived of this presumption if “a preponderance of the evidence establishes that since the time the persecution occurred conditions in the applicant’s country of nationality or last habitual residence 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.” 8 C.F.R. §208.13(b)(1)(i) (1998). To the contrary, available evidence indicates that the deterioration of human rights conditions in Tibet has accelerated since REFUGEE’s flight. See, e.g., 1999 Country Report; Amnesty International, Amnesty International Report 1998 (1998), Exhibit I-9. Conditions in Tibet are particularly dangerous for individuals like REFUGEE: ethnic Tibetans associated with the movement for Tibetan independence. China continues to perpetrate widespread human rights abuses on the Tibetan people. These abuses include “torture, arbitrary arrest, detention without public trial, and long detention of Tibetan nationalists for peacefully expressing their political views.” 1997 Country Report at 739. China also continues its severe restrictions on religious practice and its persecution of followers of the Dalai Lama. Id. at 739-40. China’s ongoing crackdown on crime has targeted political activists and religious groups in Tibet, leading to mass arrests and other abuses. Amnesty International, Amnesty International Report 1998 at 130-32 (1998). Chinese President Jiang Zemin continues to insist that the Dalai Lama acknowledge that Tibet has always been part of China. Id. Furthermore, Human Rights Watch issued a report concluding that there

had been an escalation of Chinese repression in Tibet since the beginning of 1996. Human Rights Watch, (1997). Until conditions in Tibet improve, REFUGEE remains entitled to the presumption of a well-founded fear of future persecution.

## **2. A Reasonable Person In REFUGEE's Circumstances Would Fear Persecution By China**

In proving a well-founded fear of persecution, a claim should establish that: (1) the alien possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment of some sort; (2) the persecutor is already aware, or could become aware, that the alien possesses this belief or characteristic; (3) the persecutor has the capability of punishing the alien; and (4) the persecutor has the inclination to punish the alien. See Matter of Mogharrabi, Interim Decision No. 3028, 19 I.&N. Dec. 439 (BIA 1987).

Applying the well-founded fear standards to REFUGEE's record, it is clear that REFUGEE possesses strong Tibetan pro-independence beliefs which the Chinese police are determined to overcome by means of punishment. REFUGEE has continued to participate in demonstrations after his flight from Tibet, such that the Chinese police are aware or could become aware that REFUGEE possesses such beliefs. Furthermore, should REFUGEE be forced to return to Tibet or countries that allow his deportation to Tibet, the Chinese police clearly are capable of punishing him. Finally, the Chinese police certainly have the inclination to punish REFUGEE, as they did before.

Even absent the presumption of a well-founded fear of future persecution, a reasonable person in REFUGEE's circumstances would fear persecution if returned to Tibet. First, REFUGEE has testified concerning his genuine, subjective fear that the Chinese government will persecute him if he returns. REFUGEE Aff. ¶23. Second, a reasonable person in REFUGEE's circumstances would fear persecution if returned to China—either because he might be singled

out due to his past activities, or because he might be associated with others whom the government seeks to persecute. See C.F.R. §208.13(b)(2) (1998).

**a. REFUGEE May Be Singled Out By The Chinese Government For Persecution**

The Chinese government may single out REFUGEE for imprisonment, torture, or even execution, because the government considers his advocacy of Tibetan independence to be a crime. The Chinese authorities beat and injured him and took him into their custody; though he escaped, the Chinese police investigated him further and arrested his father. REFUGEE has continued to participate in the Tibetan pro-independence movement. It is highly likely that the Chinese authorities will persecute him if he is forced to return to Tibet.

**b. The Chinese Government Will Associate REFUGEE With Tibetan Political Activists, A Group It Subjects To Constant, Ongoing Persecution**

REFUGEE's fear is also well-founded because China has a long-standing "pattern or practice" of persecuting advocates of Tibetan independence, and because REFUGEE will readily be identified with the pro-independence movement. See 8 C.F.R. §208.13(b)(2)(i), (ii) (1998); see also Osorio v. INS, 18 F.3d at 1031. As discussed, REFUGEE engaged in political activity in support of Tibetan independence within Tibet in 1992, and continues to engage in such political activity in America. Due to his ongoing participation in the movement for Tibetan independence, the Chinese government will very likely associate him with the independence movement, and his contacts with the Tibetan Youth Congress (since 1993) and other international pro-Tibet activist groups.

Because of his association with the movement for Tibetan independence, REFUGEE's fear of future persecution is clearly grounded in reality. China's abuse of Tibetan nationalists is well-documented.

According to the U.S. Department of State, for example, during 1997:

Chinese government authorities continued to commit serious human rights abuses in Tibet, including instance of torture, arbitrary arrest, detention without public trial, and long detention of Tibetan nationalists for peacefully expressing their political views. . . . Those activities viewed as vehicles for political dissent . . . are not tolerated and are promptly and forcibly suppressed. Individuals accused of political activism faced serious persecution during the year.

1997 Country Report at 739.

If REFUGEE were detained upon his return because of his political activities, he would most likely have no opportunity to challenge any abuses against him. "Legal safeguards for ethnic Tibetans detained or imprisoned are the same as those in the rest of China and are inadequate in design and implementation...[T]here are many credible reports that prisoners are tortured, beaten, and otherwise mistreated." 1997 Country Report at 739. The same repressive government that persecuted REFUGEE remains in power today. It appears, if anything, even more determined to eradicate dissent concerning Tibetan independence. For this reason, REFUGEE's fear of future persecution in Tibet is well founded.

### **C. 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) (1998). Nothing disqualifies REFUGEE's application, and he deserves a favorable exercise of discretion.

**1. REFUGEE's reliance on a fraudulent travel document to apply for a visa to enter the United States does not bar his chance to obtain political asylum**

REFUGEE relied on a fraudulent travel document to apply for a visa to enter the United States because he was anxious to enter the United States, and he heard from other Tibetans that this was the only viable means to gain entry. But this fact does not bar his chance to obtain political asylum. Although entry into the United States with false travel documents is an adverse factor to be considered in discretionary grants of asylum, the manner of entry or attempted entry should not be the sole factor considered to deny asylum, but is only one of a number of factors which should be balanced in exercising discretion, and the weight to be accorded to this factor may vary depending on the facts of a particular case. See Matter of Pula, Interim Decision No. 3033 (BIA 1987). The circumvention of orderly refugee procedures...should not be considered in such a way that the practical effect is to deny relief. Id.

Like the applicant in Pula, REFUGEE has no significant ties to any other country except for countries where he fears persecution. In Pula, the court held that this fact overcame the applicant's circumvention of orderly refugee procedures, and granted asylum.

**2. REFUGEE cannot be removed to a safe third country**

No country but the United States currently offers REFUGEE a safe haven from his persecution in China. No nation has entered into a bilateral or multilateral agreement with the United States providing for the removal of Tibetan refugees. No nation has declared an intention to offer permanent protection to Tibetan refugees. If REFUGEE is removed from the United States, the only nation with an obligation to accept him is China, where he would face further persecution, torture, and possibly execution. The only refuge available to REFUGEE is the United States.

### 3. REFUGEE never firmly resettled in another country

REFUGEE never received an offer of permanent resettlement from any other country prior to his arrival in the United States. See 8 C.F.R. 208.15 (1998); Matter of Soleimani, 1989 WL 331872 (BIA 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”).

An alien will not be found to have been firmly resettled in a third country if his presence in the United States is a consequence of flight in search of refuge, and if the alien’s entry is reasonably proximate to the flight. Matter of Soleimani, 1989 WL 331872 (BIA 1989). Yet the question of firm resettlement is not always limited solely to the inquiry of how much time has elapsed between the alien’s flight and the asylum application, but to other factors such as intent and opportunity (business and personal). Id.

REFUGEE’s presence in the United States is a consequence of his flight in search of refuge. While it is true that six years elapsed between REFUGEE’s flight from Tibet and his arrival in the United States, other relevant factors demonstrate that REFUGEE did not firmly resettle in India (where he spent the majority of these years). As in Soleimani, REFUGEE never worked or owned property in India and was never offered Indian citizenship, permanent resettlement or resident status. Id. Furthermore, REFUGEE lacked freedom of movement, freedom of expression, the ability to own immovable property, the ability to hold most jobs, and other fundamental rights which would indicate firm resettlement. As soon as the idea occurred to him and he could obtain the means to do so, REFUGEE went about seeking political asylum in the United States.

**a. Nepal**

REFUGEE was not firmly resettled in Nepal. REFUGEE was never even permitted to enter Nepal. He disguised himself to cross the border, and he lived there as an illegal alien. He could not obtain any identity papers from the Nepalese government. REFUGEE Aff. ¶¶11, 13. Like all Tibetans, he was prohibited from owning property, including significant items of personal property such as bicycles, from opening a bank account, from working in government and other jobs, and even from renting a post office box. *Id.* ¶13. He was absolutely prohibited from engaging in any pro-Tibetan political activity. REFUGEE’s experiences in Nepal were consistent with the documented experiences of other politically active and undocumented Tibetans. Given the substantial restrictions placed on REFUGEE’s residence in Nepal, he cannot be said to have been firmly resettled there.

Furthermore, as described, Nepal has a policy of deporting Tibetan refugees back to China, and has done so on many occasions in recent years. The government of Nepal considers Tibetans who enter Nepal without valid travel documents—refugees like REFUGEE—to be illegal immigrants subject to deportation. See *Profiles of Tibetan Exiles*, Human Rights Watch (1999). Nepalese authorities routinely arrest and often forcibly repatriate Tibetan refugees. In recent months, several large groups of Tibetan refugees have been arrested by Nepalese police and held in Kathmandu. *Id.* The current wave of forcible deportation of Tibetans began in 1995 and has escalated since then. *Id.* Additionally, Nepalese border guards demand “extensive bribes” from Tibetan refugees and frequently subject refugees to severe harassment, including beatings, rape and confiscation of all personal belongings and money. See *id.*; see also *Tibet Info News Updates: Tibetan Girls Raped by Police* (1999), Exhibit I-10.

At no point was REFUGEE offered any sort of resettlement, either permanent or temporary. He greatly feared for his safety during his stay in Nepal. He had to disguise himself as a local Nepalese in order to enter the country without travel documents, and he faced a constant risk of arrest and deportation. He knew that he could not find a safe haven in Nepal. He remained there for approximately 20 days, just long enough to formulate his plans to proceed to India. Fellow travelers offered him advice on how to escape from Nepal and where to seek a relatively safer haven. He used his time in Nepal to obtain travel documents and plan his flight to India.

**a. India**

India did not offer permanent resettlement to REFUGEE. While it is true that six years elapsed between REFUGEE's flight from Tibet and his arrival in the United States, other factors demonstrate that REFUGEE did not firmly resettle there. Like all Tibetans in India, REFUGEE was prohibited from owning property. REFUGEE Aff. ¶18. His freedom of movement was severely restricted: he was unable to travel from state to state within India without police permission, and such permission was difficult to obtain. He was prohibited from engaging in political activities and risked severe consequences including persecution and deportation as a result of his political activism. The Chinese police presence was a constant threat, and REFUGEE believed that an attempt to secure refugee status might lead to his deportation and further injury. His experiences in India are consistent with the documented experiences of other politically active Tibetans. He focused on remaining inconspicuous. Given the network of restrictions on REFUGEE's residence in India, and the length of time he spent there, it cannot be said that he was firmly resettled there. As soon as the prospect of political asylum in America presented itself, he saved the necessary money and obtained travel documents to reach America.

## **b. Romania**

Romania did not offer permanent resettlement to REFUGEE. As recited in his affidavit, REFUGEE's eight hours in Romania were merely a stopover on his flight from Delhi to JFK on November 2, 1998. He had no intention of remaining in the country.

### **D. REFUGEE Is Entitled To An Exercise Of Discretion Granting Him Asylum**

Once an applicant demonstrates that he is a refugee, an asylum officer or immigration judge has discretion to grant asylum. 8 C.F.R. §208.14(a) (1998). In adjudicating asylum applications, asylum officers and immigration judges should "take into account [their] affirmative obligations under international law to extend refuge to those who qualify for such relief." In Re O-D-, 1998 WL 24904 (BIA 1998). In general, asylum should be granted to eligible aliens unless adverse factors counsel against it. Matter of Pula, 19 I.& N. Dec. 467, 474 (BIA 1987). Where, as here, an applicant demonstrates a well-founded fear of persecution if he is returned to his country, "the danger of persecution should generally outweigh all but the most egregious of adverse factors." Id.

The Pula factors balance in REFUGEE's favor. REFUGEE arrived in the United States after having failed to receive an offer of permanent resettlement from the countries through which he passed. Contrast 8 C.F.R. §208.13(d) (1998). As with the applicant in Pula, REFUGEE has no significant ties to any other country except for countries where he fears persecution.

Because REFUGEE has demonstrated a well-founded fear of persecution and because of the severe nature of his past persecution, he urges the INS to exercise its discretion to grant him asylum.

## **II. REFUGEE Is Eligible For Withholding of Removal**

Alternatively, REFUGEE is entitled to withholding of removal to China and to countries that allow his deportation to China.

**A. Legal Standard**

The Attorney General may not remove or return any alien, subject to certain exceptions not applicable here, to any country where “the alien’s life or freedom would be threatened...because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” I.N.A. § 241(b)(3), 8 U.S.C. §1231(b)(3) (1998).

**B. Burden of Proof**

To have his or her removal withheld pursuant to I.N.A. §241(b)(3), an alien must establish a “clear probability of persecution”—in other words, that it is “more likely than not that the alien would be subject to persecution.” INS v. Stevic, 467 U.S. 407, 424 (1984); see also 8 C.F.R. §208.16(b)(1) (1998). If the applicant is found to have suffered past persecution “such that his or her life or freedom was threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion,” it is presumed that the applicant’s life or freedom would be threatened upon return “unless a preponderance of the evidence establishes that conditions in the country have changed to such an extent that it is no longer more likely than not” that the applicant would be persecuted there. 8 C.F.R. §208.16(b)(2) (1998).

Even in the absence of this presumption, the applicant may meet his burden by showing either that he would be “singled out individually” for persecution, or alternatively that there is a “pattern or practice in the country of proposed removal of persecution of a group of persons similarly situated to the applicant” based on one of the five grounds, and that the applicant would be included and identified with this group such that it would be more likely than not that his life

or freedom would be threatened upon his return. 8 C.F.R. §208.16(b)(3) (1998). The applicant's credible testimony may carry the burden of proof without corroboration, 8 C.F.R. §208.16(b) (1998). However, if the applicant is not relying on the favorable presumption based on past persecution, he must submit available evidence of both the pattern of persecution of group members, and of his identification with the group. See Matter of Dass, 1989 WL 331876, at \*2-4 (BIA 1989).

**C. REFUGEE Is Entitled to Withholding of Removal**

As demonstrated, REFUGEE has suffered past persecution such that his life and freedom were threatened in China. REFUGEE was injured and arrested; after he escaped, he was tracked down and his father was arrested. This persecution was the result of his political activity supporting Tibetan independence. For all these reasons, there is a clear probability that REFUGEE will be persecuted again if he is forced to return to China.

**CONCLUSION**

For the foregoing reasons, the INS should grant REFUGEE's application for political asylum, or in the alternative, should withhold REFUGEE's removal.

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