

Immigration and Refugee Board of Canada

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Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website.

15 August 2013

IND104530.E

India: Citizenship recognition for Indian-born children of Tibetan refugees in the context of the 22 December 2010 Delhi High Court Ruling; whether it has become procedural or if it requires legal action (2011-August 2013)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Citizenship Recognition for Indian-Born Children of Tibetan Refugees in the Context of the 22 December 2010 Delhi High Court Ruling

For background information the 22 December 2010 Delhi High Court decision (Namgyal Dolkar v. Ministry of External Affairs), please see the Response to Information Request IND103724.

Without providing further detail, the US Department of State's *Country Reports for Human Rights Practices for 2012* noted that "[e]thnic Tibetans sometimes faced difficulty acquiring citizenship even if they met the requirements set out in the law" (US 19 Apr. 2013, 32).

In 15 August 2013 correspondence with the Research Directorate, a representative of the Tibet Justice Centre (TJC), an organization based in California advocating for the right of Tibetan people to self-determination (TJC n.d.), stated the following:

Our research and monitoring after 2011 indicates that despite the Delhi High Court's decision, the executive branch continues to treat Tibetans born in India from 26 Jan 1950 to 1 July 1987 as foreigners, not citizens. Whilst Namgyal Dolkar was successful in her landmark case for gaining Indian citizenship, we are not aware, based on both our research and discourse with other Tibetan groups, and lawyers including Namgyal Dolkar's own attorney, of any other Tibetans in India who have received proof of citizenship, or who have been treated as an Indian citizen, based on the High Court's judgment. (15 Aug. 2013)

The representative of the TJC also observed the following:

[U]nder Indian law, anyone born between January 26, 1950 and July 1, 1987 on Indian soil is or at least should be, according to the letter of the law [...] and as affirmed by the High Court of Delhi, automatically an Indian citizen. This was proved to include Tibetans by a Delhi High Court decision on 22 December 2010. However, there is a large gap between this right, and a person being able to have that right recognized, and to then be able to access the related rights and privileges. Rather than there being a series of simple steps to follow in order to attain citizenship, our research findings show that in practice, Tibetans in India who were born within the correct time period in India are still unable to have their status as citizens officially recognized.

Referencing a report from September 2011 by the TJC on the legal status and situation of Tibetan Refugees in India (TJC Sept. 2011, 5), the representative indicated that

in practice it is very difficult for Tibetans to be able to access Indian citizenship for two reasons: 1. The Indian authorities continue to treat Tibetans as foreigners, and 2. There is an unwritten policy of the Central Tibetan Administration to not release No Objection Certificates (NOC). (15 Aug. 2013)

The TJC report notes that the Indian government has a "longstanding executive policy" requiring Tibetans to provide a "no objection" certificate from the Central Tibetan Administration (CTA) in order to obtain citizenship by birth (TJC Sept. 2011, 53). The report also notes that while the official position of the CTA is to not withhold its approval, "many" Tibetans reported to TJC that "the CTA is reluctant to issue 'no objection' certificates" (ibid.).

Similarly, an article posted on the Internet site of the Rangzen Alliance, a movement for the independence of Tibet (Rangzen Alliance n.d.), stated that "many Tibetans in India report that the CTA actively discourages or impedes efforts to obtain Indian citizenship in many ways, including reportedly depriving candidates of the ability to receive NORI (No Objection to Return to India) permits" (ibid. 28 Oct. 2012).

On 26 April 2013, the *Tibetan Political Review*, an online journal whose focus is current political issues related to Tibet (n.d.), noted that "[t]he Delhi High Court has made clear that any Tibetan born in India between January 26, 1950 and July 1, 1987 (and likely their children too) are automatically Indian citizens from the moment they were born [...] They may have to prove it [...] but this citizenship is theirs by birth, not anything they have to apply for." In addition, the article states that "[a]s a practical matter, however, these Tibetans [born in India between 26 January 1950 and 1 July 1987] are viewed as stateless refugees until they actively assert their citizenship birthright" (*Tibetan Political Review* 26 Apr. 2013).

The *Tibetan Political Review* also observed on 27 August 2012 that "[t]he verdict in Ms. Lhagyari's lawsuit encouraged Tibetans to apply for Indian citizenship, but many report that they were told that the Lhagyari case did not establish a legal precedent; each individual must launch their own long and costly court case" (ibid. 27 Aug. 2012). The article from 26 April 2013 noted that

[w]hile the Delhi High Court's holding only applies directly to the Delhi area, its jurisdiction includes the Home Ministry headquarters, and its ruling is based on the Citizenship Act that applies nationwide. The Court's holding is a precedent for Tibetans anywhere in India to make the same case. ibid. 26 Apr. 2013)

The September 2011 TJC report quoting Ms. Dolkar's Lawyer, Ms. Roxna Swamy, observed that the judgment technically applies only within Delhi. Because Delhi is the seat of the Ministry of Home Affairs (MHA), however, it should bind the Ministry wherever it acts and therefore apply throughout India. Furthermore, the High Court of Delhi is a respected and significant court, making it likely that courts throughout India and beyond the jurisdiction of the Delhi High Court will find the judgment persuasive (even though it is not technically binding). (TJC Sept. 2011, 55)

Further information on the procedure for citizenship recognition for children born between 26 January 1950 and 1 July 1987 to Tibetan refugees in India could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Citizenship Rights

The *Tibetan Political Review* observed that as citizens, Tibetans born in India between January 1950 and July 1987 would be entitled to benefits such as an Indian passport and the right to own land in Himachal Pradesh under the condition that they were living in that state before 1972 (26 April 2013).

India's national magazine *Power Politics* published an article on Namgyal Dolkar, the woman the Delhi High Court ruled was entitled Indian citizenship, in their August 2011 issue, reporting that Dolkar stated she was prevented from voting in the March 2011 Tibetan General Elections; however, the Chief Election Commissioner upheld her right to vote in April. Corroborating and further information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

Power Politics. August 2011. "How Namgyal Became An Indian Citizen."

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United States (US). 19 April 2013. "India." *Country Reports on Human Rights Practices for 2012*.

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dldid=204399>> [Accessed 19 July 2013].

Additional Sources Consulted

Oral sources: Attempts to contact the following organizations were unsuccessful: Bureau of His Holiness the Dalai Lama; Ministry of External Affairs, Government of India; Canadian Tibet Committee; High Commission of Canada, New Delhi. Representatives of the UNHCR Mission in India and the Office of Tibet in New York did not respond within the time constraints of this Response. Representatives of the following organizations were unable to provide information: High Commission of India in Canada, the Vivekananda International Foundation.

Internet sites, including: Asian Centre for Human Rights; Canadian Tibet Committee; Central Tibetan Administration; ecoi.net; Factiva; Freedom House; India – Ministry of External Affairs, Ministry of Home Affairs (Foreigners Division), Indian Courts; *India Express*; IndLaw.com; Minority Rights Group International; Office of Tibet in New York; Phayul.com; Refugee Council USA; South Asia Human Rights Documentation Centre; Tibetan Centre for Human Rights and Democracy; The Tibet Post; *The Times of India*; United Kingdom – Border Office; United Nations – Office of the High Commissioner for Human Rights, Refworld, UNHCR; US Committee for Refugees and Migrants; Vivekananda International Foundation.

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