

**Asylum and Immigration Tribunal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> August 2006**

**Determination Promulgated  
On 09<sup>th</sup> February 2007**

**Before**

SENIOR IMMIGRATION JUDGE STOREY  
SENIOR IMMIGRATION JUDGE McGEACHY  
MR D C WALKER

**Between**

**and**

Appellants

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellants: Mr M Mullins of Counsel instructed by Messrs Gillman-Smith Lee  
Solicitors

For the Respondent: Mr A Payne of Counsel instructed by the Treasury Solicitors

*Removal to People's Republic of China of Tibetans who left China illegally on the Tibet/Nepal route would give rise to a real risk of persecution, serious harm and treatment contrary to Article 3 of the ECHR.*

**DETERMINATION AND REASONS**

1. The appellants, to whom we shall refer as SP, WD and TL are nationals of the People's Republic of China. They were all born in the Tibet region, and are of Tibetans ethnicity.

2. Although much of the objective material still refers to that area as 'Tibet' it is more correctly described as the Tibet region of the People's Republic of China (hereafter Tibet region). Those born in the Tibet region and of Tibetan ethnicity are referred to in this determination as 'Tibetans'. The People's Republic of China is the relevant state: we have referred to it hereafter as 'China'.
3. The Tibet region is located in western China, formerly an independent state. It was occupied in October 1950 by Chinese Communist forces. It consists of three areas known collectively in the Tibetan as "Cholka-Sum". These are formed of three distinct geographic and cultural regions - U-Tsang (home of the capital Lhasa in central Tibet and roughly contiguous with the Tibetan Autonomous Region - TAR), a region which despite its name is no safer than the rest of Tibet region, and perhaps less safe because of heightened intelligence interest in that particular area. To the East, there are Amdo and Kham, bordering the Chinese regions of Ganzou and Sichuan respectively.
4. All the appellants claim to have left China illegally on the Tibet/Nepal route and that this is the risk factor for them if returned, since they will be perceived as supporters of the Dalai Lama, the Tibetan spiritual leader (who lives in exile in India) and/or as 'splittists', that is, Tibetan separatists who seek to restore Tibetan independence.
5. All the appellants appealed against decisions of the Secretary of State to refuse to grant asylum and to issue directions for their removal to China. They are aged 24, 29 and 32 respectively. The appeals of SP and TL were dismissed and that of WD was allowed. Their appeals come to us as second stage reconsiderations, errors of law having been found in the determinations of the Immigration Judges who heard their appeals.

#### The Issues

6. Although the facts of their individual claims are different, these appeals were joined together to be heard as country guidance cases focussed on the issues of whether or not Tibetans, merely by having left the China and having spent some time in the West, would face persecution, on the basis of their imputed political opinion, when returned to China. As there are no direct routes of return to Tibet region, it was accepted that they would be returned to the airports of Beijing or Shanghai and therefore we have considered the treatment which they would receive on return at the airport as well as the issue of whether or not they would face persecution in China.
7. On the basis that the appellants might face persecution in China but not at the airport we heard argument on whether internal relocation within China would be open to them, with particular reference to whether or not they could join the "floating" population there. China has a large 'floating population' (100-150 million economic migrants without official residence status in cities, according to the respondent's latest OGN). Many of these, like the appellants, are uneducated and often move to the cities from rural areas. The 'floating population' would not necessarily speak a Chinese national language; there are seven major dialects and many sub-dialects within the People's Republic of China.

### SP's claim

8. SP is the son of a Tibetan monk, whose monastery in Lhasa was bombed and who then moved to Phuntsoling. SP's father was arrested, detained, and tortured in 1997 before being released in February 1998; the treatment which he received caused him to be paralysed and he died six months later.
9. SP's claim was that between March 1999 and March 2002 he had put up posters in the streets and on a bridge in Phuntsoling. On 9 March 2002 he had been arrested, questioned and tortured for a number of hours before being detained for five days. Thereafter he was detained in prison, for six months, before being released unconditionally. He had not been charged with any offence.
10. In 2004 SP, along with a number of Tibetans and Western tourists who had gathered for the blessing of Zhe Trantant Rinpoche, saw two Buddhist nuns being assaulted by the Chinese police. He claimed that the Western tourists had taken photographs of the incident. A protest had followed by all of the people present. The police had taken photographs of that demonstration. SP believed that he would be arrested. He did not know whether or not his photograph had been taken but, in any event, went to hide in a friend's house. Two days later he heard that the police were looking for him and he decided to flee China.
11. In September 2004 SP left China on the Tibet/Nepal route, unlawfully, and from there made his way to Britain, arriving on 2 November 2004. He claimed asylum on 9 November 2004. The decision to refuse to grant asylum was made on 5 January 2005 and two days later he was served with a decision refusing him leave to enter the United Kingdom. Removal directions were set for China.
12. The Immigration Judge accepted that SP's father had been tortured in 1997 and had died the following year. He did not accept that the appellant had been detained in 2002 or that he had thereafter been of interest to the authorities. With regard to the incident in August 2004 he stated that "allowing the appellant the benefit of the doubt, it is possible and credible that he feared arrest, detention and possible torture". However, he did not accept that SP's fear was well-founded, saying that SP could have no way of knowing that the police had taken his photograph or been aware of his participation, if any, in the demonstration to "a degree sufficient to allow them to identify him". He did not accept that the police had looked for the appellant as he had claimed. He therefore found that the core of the appellant's account of persecution was not credible and dismissed the appeal on both asylum and human rights grounds.
13. Reconsideration was ordered on 16 May 2005 on the basis that the Immigration Judge might have erred in law by giving insufficient consideration to the country material before him. The first reconsideration hearing took place on 13 October 2005. An error of law was found. Senior Immigration Judge Jordan stating that:-

"We consider the Adjudicator made a material error of law. The parties agreed that the Adjudicator made a material error of law. In paragraph 50 of his determination, the Adjudicator considered the risk on return but confined his consideration to whether the criminal punishments were unjust or disproportionate. We are satisfied that Mr Braid's submissions on the risk on return faced by Tibetans were much more far-ranging as

appeared from his skeleton argument prepared for the Adjudicator. The Adjudicator did not deal with these issues.”

WD's claim

14. WD was a farmer and construction worker, who was educated by an uncle who was a monk and never went to school. His family had never been involved in any political activities but were Buddhists and regarded the Dalai Lama as their spiritual leader.
15. On 4 November 2004, WD and two of his friends, decided to celebrate the Tibetan Buddhist festival, Lhabab Duechen. They held a prayer session in their house. Four neighbours were invited. The appellant and his two friends set up an altar in his friend's house and put a picture of the Dalai Lama on it. Later that morning the appellant went to the market to buy fruit and vegetables. On his return he was met by his sister who told him that the police had raided his friend's house, discovered the picture of the Dalai Lama and had arrested his friends. He left his village immediately and went to Lhasa where he stayed with one of his father's friends for a week. An agent was found who took him to Nepal. He arrived in Kathmandu on 17 December 2004. He had no legal documentation and therefore decided that it would not be possible or safe to stay in Nepal as he believed that the Nepalese authorities would send him back to China. He therefore made arrangements with an agent to take him out of Nepal to a safe country (the Respondent's PF1 incorrectly states that he flew from Tibet region). He arrived in Britain on 10 February 2005, claiming asylum eight days later. His application was refused on 11 April 2005 and his appeal was heard by Immigration Judge Blandy on May 2005. Shortly before the hearing he had attended a rally on 12 March 2005 organised by the 'Free Tibet' movement.
16. The Immigration Judge stated that this was not a case where the appellant had alleged a long history of oppression for his beliefs and observed that it was well-known that in the Tibet images of the Dalai Lama were frowned upon by the Chinese authorities. He therefore did not find it credible that the appellant had told anyone (other than people whom he could trust) that an image of the Dalai Lama would be displayed at the meeting at his house. He considered that the appellant described a very small meeting consisting only of himself, two friends and four neighbours and that, given that the festival of Lhabab Duechen was a large and important festival, he did not find it credible that the police would be particularly interested in this small meeting. He considered that the objective evidence indicated that difficulties were caused by display of such images in public places, not in people's homes.
17. The Immigration Judge went on to consider whether or not the appellant would be at risk simply by virtue of being a failed asylum seeker or by virtue merely of his having left China, as he accepted, unlawfully. He followed the country guidance case of DS (Persecution – Risk – Return) China CG [2002] 02340 (this case was subsequently removed from the CG list on 27 July 2005) and that the appellant would be at risk of persecution on return to China. He considered that it would be unreasonably harsh for WD to relocate to any area of China outside Tibet region and allowed the appeal on both asylum and human rights grounds.
18. The Secretary of State applied for reconsideration of the appeal. Reconsideration was ordered on 17 June 2005 and on 13 October 2005 Senior Immigration Judge

Jordan found that there was an error of law in the determination. The error of law reasons were as follows:-

“We consider the Adjudicator (sic) made a material error of law. The appellant failed to give a credible account of what happened to him in the Tibet. Nevertheless the Immigration Judge recognised the appellant as a refugee and one who is at risk of a violation of his human rights as a returnee. In paragraph 6.7 of his determination, the Adjudicator found the appellant was at risk by reason of his having visited, and then departed from, Nepal but fails to give reasons why the Chinese authorities know of this or will discover it. He will be returned to China as there are no direct flights to [Tibet region]. He will be provided with valid travel documents. The Adjudicator distinguished PW (Tibetan – Failed asylum seeker – risk) China [2005] UKIAT 00051. In doing so, it is conceded that he made an error of law in that he construed PW as merely considering the position of a Tibetan returning to China itself and thereby treated it as inapplicable.

The appellant relies upon the failure of the Secretary of State to give an undertaking not to return the appellant to Tibet as fatal to the Home Office claim. See skeleton argument. In doing so, the appellant places significant if not fundamental reliance upon the removal directions, expressed to China (Peoples Republic of China) (Tibet). Yet it is common ground that the Secretary of State has no ability to return him to [Tibet region] and that, as a simple matter of fact, he will not be returned there. Once he is returned to China, the Secretary of State has no power to direct that he returns to [Tibet region]; it is a matter for the appellant and/or the Chinese authorities to determine where he settles. The grounds state:

‘In the absence of any undertaking that removal would not be to [Tibet region] the Immigration Judge was correct to conclude as he did.’

The inference from this submission is that if the undertaking had been given, the Immigration Judge would have been wrong. We do not consider that there is a difference in substance between an undertaking not to return the appellant to [Tibet region] and the undisputed fact that the appellant cannot be returned to Tibet. As far as we are aware, the Secretary of State was not asked to give an undertaking not to return him to [Tibet region]. In particular, we do not know that the issue was canvassed and the Secretary of State made the conscious decision to refuse the undertaking”.

#### Ms TL's claim

19. TL was born in Jang Powa Sumzont, Tibet.
20. TL was the daughter of a village leader, who was very religious and was interested in politics. He had held prayers in the village every week. On 3 August 2003 during the prayer meeting her father had told the villagers that they would be holding a prayer meeting for the long life of the Dalai Lama the following day. That prayer meeting took place on 4 August. on 5 August two police officers came to the family home and arrested TL's father, charging him with carrying out anti-Chinese activity and being a supporter of the Dalai Lama. Her father was detained for thirteen months, during which he was brutally beaten and tortured. He was released on medical grounds and died a month later due to ill health.
21. On 31 December 2004 a friend of TL, who shared her views, put up posters critical of the Chinese authorities. Ten posters had been printed with the words “We want human rights”, “Tibet Independence” and “Long live His Holiness, Dalai Lama.” On 1

January 2005, around midnight, the appellant and her friend put up posters on electrical poles in the village and on the walls of the local school. The appellant and her friend were seen putting up the posters; although they ran away their faces were recognised, under the street lighting, by the school's night watchman. When the appellant went home, her family advised her to go into hiding, which she did. Her brother visited her in the jungle where she was hiding, and told the appellant that the night watchman had reported her, and her friend, to the police.

22. The police had gone to the appellant's home. The appellant's brother gave her some jewellery and the appellant left, travelling to Lhasa where she lived with her husband's relatives. An agent was found to take her to Nepal and from there the appellant found, with the help of a nun, an agent who would take her to Britain. The appellant arrived in Britain on 15 March 2005 using a forged Nepalese passport. She claimed asylum on 24 March 2005 and on 20 May 2005 a decision was made to refuse to grant asylum under paragraph 336 of HC 395 and to remove her as an illegal entrant from the United Kingdom by way of directions to China. The appellant appealed and her appeal was heard by Immigration Judge MA Khan on 11 July 2005.
23. The Immigration Judge did not find the appellant to be credible and therefore dismissed her appeal on both asylum and human rights grounds. Reconsideration was ordered on 2 August 2005 and on 13 October 2005 the Tribunal found that there was an error of law in the determination. Senior Immigration Judge Jordan giving as the reasons:-

“We consider the Adjudicator made a material error of law. The Presenting Officer agreed the Immigration Judge made a material error of law in failing to consider the expert evidence.”

#### Documents before Tribunal

24. Annexed to this determination is a list of the documentary evidence provided to us, including the reports of Ms Kate Saunders, the Communications Director of the International Campaign for Tibet and that of Mr Jeffrey Bowe, a researcher who specialises in the Tibet, East Turkestan and Communist China and who had prepared separate reports for each appellant. Both had been expected to give evidence before us. However neither could attend: Ms Saunders stated that she was preparing for a visit of the Dalai Lama and Mr Bowe, by email the night before the hearing, indicated that he could not testify for personal reasons.
25. At the hearing Mr Mullins lodged a further document from “Times Online” (<http://www.timesonline.co.uk>) being an article dated August 14 2006 headed “Beijing Pledges a ‘Fight to the Death’ with Dalai Lama.” Mr Payne did not object, and we admitted it.
26. Mr Mullins also produced a letter from the appellants' solicitor, Ms Siew See Lee a non-practising barrister employed by Messrs Gillman-Smith Lee. Writing in her capacity as chairman of a Tibetan refugee group, she stated, over the last five years, she was not aware of any Tibetan being returned to China, whether to the Tibet region or elsewhere.

27. A letter dated 16 August 2006, addressed to the Treasury Solicitors' Department from a senior research officer at the Home Office, gave details of removals to China averaging 40 per quarter in 2004, 2005 and the first quarter of 2006, the total for 2005 being 330. Voluntary departures to China averaged 35 per quarter, the total for 2005 being 210. 40 people had left under the Assisted Voluntary Return Programme in 2005 and the first quarter of 2006. Mr Payne informed us that there was no breakdown of those who were removed so as to distinguish between Tibetan and those who were Han Chinese.

#### Preliminary matters

28. At the beginning of the second stage reconsideration of these appeals, Mr Mullins indicated that the appellants wished to give evidence of their attendance at demonstrations in London which showed that, independent of their claims to fear persecution because of what had happened before they left Tibet, they were refugees *sur place*, as their political activities here would be known to the Chinese authorities on return. He stated there was an item on Sky News which showed one of the appellants demonstrating but he said there was no copy of that news item before us. Mr Mullins argued that the Tribunal should be considering the situation of the appellants as of the date of hearing.
29. The Tribunal considered that application; none of the applications for reconsideration had raised any *sur place* matters and none of the first-stage reconsiderations had called into question the soundness of the immigration judge's findings of fact personal to each appellant. None of the three appellants had been found to give a credible account of their own past experiences. The only basis on which legal error had been identified related to the inferences drawn by each immigration judge as to the risk on return for persons who were failed asylum seekers of Tibetans origin. Furthermore, there had been no Rule 32(2) notice served by any of the appellants prior to the first-stage reconsideration and (in respect of the second appellant, WD) no reply under Rule 30.
30. Thus reconsideration had not been based on the issue of any activities which had taken place in the United Kingdom and we could see no proper basis for considering further evidence from the appellants as regards their recent activities in the United Kingdom: if they wished to raise such matters now, they would have to do so by way of making a fresh claim to the Secretary of State. We ruled that there would be no evidence taken on the *sur place* aspects of their claims. That approach now has the authority of *DK (Serbia) & Ors v Secretary of State for the Home Department* [2006] EWCA Civ 1747, per Latham LJ -

"30... If a party has not filed a rule 32 (2) notice, the Tribunal is entitled to assume that there is no further evidence or material it wishes to put before the Tribunal for the purposes of the reconsideration. And if he has not filed a reply, the Tribunal is entitled to assume that the party other than the one on whose application the reconsideration was ordered does not wish to rely on any arguments or material other than those upon which the original decision was based."

#### The issues

31. For the appellants, Mr Mullins referred to the risk on return to Beijing and Shanghai for Tibetan, emphasising that there were no direct routes to Tibet region. If it were the case that the appellants would not face persecution at the point of return to China

(Beijing or Shanghai) but would face persecution in the Tibet region, then internal flight was a relevant question which the Tribunal must determine. In his skeleton argument he set out criteria which he considered the Tribunal should follow when considering the issue of internal relocation from presumed safety in Beijing or Shanghai towards the risk area, Tibet region.

32. Mr Mullins asked us to consider whether or not in those circumstances, these appellants would have to become members of the 'floating population', and, if so, whether that was likely to be an infringement of their Article 3 rights.
33. For the Secretary of State, Mr Payne argued that, while he accepted that risk on arrival was an issue, the reality was that if the appellants had no well-founded fear of persecution in their home area or on arrival then they were not outside China by reason of a well-founded fear of persecution and therefore would not be refugees, nor could it be claimed that their Article 3 rights would be infringed. He argued that GH [2005] EWCA Civ 1182 was directly relevant to the situation of Tibetans who were returned to China. Difficulties in internal travel were not an issue in assessing whether or not they would qualify for asylum.
34. The documentation which would be provided to the appellants on return was then discussed. Mr Payne confirmed that formal documents, issued by People's Republic of China authorities, would be obtained from the Chinese Embassy in London and that it was on these that the appellants would travel. He stated that if the appellants' solicitors considered that it was not appropriate that the appellants should travel on those documents, that was an issue for judicial review rather than for this Tribunal
35. We put to Mr Mullins and Mr Payne that the issues with which we were concerned were
  - (i) the position of the appellants, as Tibetan, on return after a lengthy absence to mainland China (as they could not be returned to Tibet region); and
  - (ii) The relevance to that risk of the authorities' view as to whether they had left Tibet region by travelling through Nepal.

Mr. Mullins' submissions

36. Mr Mullins and Mr Payne both referred to the same documents in their submissions. Mr Mullins submitted that no Western countries appeared to have returned any Tibetan to China, either to the mainland or to Tibet region. He referred to a witness statement from Ms Siew See Lee dated 5 December 2004 (at (f)(1) of the bundle). Ms Lee stated that she had represented a Ms D at an asylum appeal. After being granted leave to appeal to the Tribunal she had written to UNHCR, Amnesty International, The Tibet Justice Centre, The Tibet Centre for Human Rights, Human Rights Watch and Immigration Agency Canada as well as to the governments of Canada, America, Japan and Australia. Only UNHCR had replied. UNHCR had stated that they had no information relating to returns.
37. Ms Lee had also written to Ms Saunders who, in a note dated 7 May 2004 had stated as far as she knew no Tibetan had been returned to China (mainland or Tibet region)



or to Nepal from Britain but that she was aware of eighteen Tibetan, returned to Tibet region via Nepal, who had been beaten and severely tortured; some of them were still in prison. She also referred to a Uighur refugee, returned from Katmandu to Xinjiang region in China in 2003, who was executed on return. She stated Xinjiang region, like Tibet region, was a “national minority” region in China with similar ethnic and political sensitivity.

38. Mr Mullins then referred us to PW, in which the Tribunal had found that the appellant, a Tibetan, did not have a well-founded fear of persecution. Nevertheless, the Secretary of State had conceded that the appellant PW should be granted leave to remain. Mr. Mullins stated, effectively, he was left in the position of trying to prove a negative – there was no evidence of persecution on return because no one was returned from Western countries.
39. Mr Mullins next took us to the report of Ms Saunders ((E) (1) of the bundle). Ms Saunders considered that there was a very real risk of detention and therefore of torture for Tibetans returning to China from exile, whether from India, Nepal or the West. She asserted that if Tibetan were returned to China (mainland or Tibet region) after claiming asylum in the West, there was a significant risk of detention and serious mistreatment, particularly for those who were known to have taken part in political activities in the Tibet region prior to their departure. The fact that they had claimed asylum in the West, even if they had not been involved in any political activity here, would be considered by the Chinese authorities to indicate that such persons were “splittist” that is, Tibetans who were seeking a return to Tibetan independence from China.
40. To illustrate the suspicion of those who had been to the West, she referred to the Tibetan Musicologist, Ngawang Choephel, a former music student at a college in Vermont, USA. Despite the fact that he had been travelling with valid travel documentation, he was imprisoned on his return to Tibet region in 1995, sentenced to 18 years in prison and released in 2002.
41. Mr Mullins argued that the emergency travel documents on which these appellants would be travelling would be an identifying badge, showing that they had sought asylum in the West. He stated there was clear Tribunal authority that they could not be expected to lie on return. They would have to say that they came from Tibet region, that they were failed asylum seekers and that they had not been believed.
42. Mr Mullins referred to the “Times Online” article which he argued showed that Chinese authorities’ attitude towards Tibetans had hardened; the appellants’ claims should be looked at within the context of what was happening in the Tibet region. He referred to his skeleton argument in which he had argued that the appellants, when they returned, would be considered “splittist”. He referred to the relevant section of Ms Saunders’ report. He emphasised that, despite the fact that Ms Saunders worked for the international campaign for a ‘Free Tibet’, she was also advised the Foreign Office and was therefore respected by them. What she said should therefore carry great weight.
43. Albeit he accepted that the Tribunal might not be prepared to consider *sur place* activities, Mr Mullins argued that attendance at pro-independence rallies in Britain

would increase the risk of the Chinese authorities regarding these appellants as “splittist”. He referred to the case of a nun who had attended a peace march from Dharamsala to Delhi in India and had been photographed by the Public Security Bureau; when returned to Tibet region, she had been detained and beaten for three months, released and then re-arrested and tortured.

44. Mr Mullins referred us next to evidence of torture in the Tibet region; on the Phayul.com website there was an account of 51 asylum seekers being prevented from leaving Tibet on 26 August 2005; the Country Information and Policy Unit report 2004 also contained references to torture.
45. Mr Mullins asked us to consider the report from Mr Jeffrey Bowe which again set out instances of Tibetans who had fled to Nepal and been returned. He claimed there was considerable evidence of poor prison conditions in the Tibet region (overcrowding, “education through labour” and torture). Mr Mullins reminded the Tribunal of the lack of evidence from the respondent to explain why the appellants would not be sent to Tibet region on return.

Mr. Payne’s submissions

46. In reply Mr Payne first stated the appellants were not being returned to Tibet region because there were no direct flights to that region. He argued that there was a lack of evidence of persecution of Tibetans. He did not accept that it was safe to conclude that no Tibetans had been returned and he referred to the British statistics which indicated that Chinese nationals had been returned to China. He asked us to accept that some of these were likely to have been Tibetan. He stated that there was nothing to show that other Member States of the European Union or America had not returned Tibetans to China. He referred to statistics which show that in 2003/2004 between 24,000 and 26,000 Chinese nationals had returned from Taiwan, having gone there unlawfully. It was likely that some of these would have been Tibetan.
47. Mr Payne then asked us to consider the evidence regarding those who returned to Tibet region from Nepal; the reality was that the Nepalese Government had links with the Dalai Lama and that it was through Nepal and to northern India that those who wished to visit the Dalai Lama would go. He was prepared to accept, therefore, that returnees via Nepal and Northern India would be perceived as being “splittist”, and therefore at risk, as the reason for their departure from Tibet region had been to visit the Dalai Lama.
48. That was very different, he argued, from the position of those who went to Britain – their position would be much more likely to be perceived in the same light as returnees from Taiwan. They would be perceived as having left the country for economic reasons. He argued that the instances of ill-treatment cited by the experts had taken place some time ago – going back to 2001. Ms Saunders’ examples related to 2003. That did not indicate a general risk in 2006. In particular, Mr Bowe’s report was speculative and proceeded on the basis that those who were returned would not be given travel documents upon which to return. That was incorrect. Travel Documents would be obtained.
49. If the appellants did not wish to return to live in the Tibet region, it would not be unduly harsh for them to live in China outside that region; that would not amount to

treatment contrary to their rights under Article 3 of the ECHR. Millions of Chinese lived outside Tibet region and it was clear that the Chinese authorities in those areas were less restrictive in their treatment of Chinese Tibetans than those within the Tibet region. He argued that China had a large 'floating population', many of whom, like the appellants, were uneducated and moved to the cities from rural areas. The 'floating population', like the appellants, would not necessarily speak a mainstream Chinese dialect; there are seven major dialects and many sub-dialects within China. China was taking steps to improve the conditions of the 'floating population' although this was hampered by a lack of resources.

50. Mr Payne contended that there was no evidence that Tibetans would be targeted; their situation within the 'floating population' should not be considered in terms of a difference between their circumstances in the United Kingdom and as part of the 'floating population' of China. What was relevant were the circumstances which they had left in their home area or, possibly, the circumstances in the country as a whole.
51. Mr Payne contended that there was no evidence of any Chinese national (Tibetan or otherwise) returned to China from Britain having being tortured. The evidence in relation to those returned from Taiwan was to the contrary; no instances of alleged ill-treatment had been detailed. There was clearly Western pressure on China to ensure that those returned were not ill-treated.
52. Mr Payne asked the Tribunal to accept that Tibetans could and did leave lawfully, and that there was no evidence of their being ill-treated when returning. The musicologist mentioned by Ms Saunders had been studying folk music, which could have been seen as antagonistic to the Chinese régime. He argued that the positive evidence regarding those actually returned to China filled the vacuum of the evidence regarding the return of Tibetans and indicated that there was no risk engaging either the 1950 or 1951 Convention evidenced among those who had been returned.
53. In relation to the report by Mr Jeffrey Bowe, that expert had last visited Tibet region in 1995 – eleven years ago. His attitude to the stories told him by the Tibetans whom he had met was to treat them as credible; in contrast, the Immigration Judges in these three cases had not believed these particular Chinese Tibetan appellants. The US Congressional report on which Mr Bowe relied was not cited correctly by Radio Free Asia – and Mr Bowe had drawn his evidence from the radio report. He argued that Mr Bowe's assertions were not balanced or objective – there was not one positive comment in the report despite the changes reflected in the Country of Origin Information and the US State Department reports. Moreover, Mr Bowe had erroneously approached the appellants' situation on the basis that they would be undocumented on return.
54. Mr. Payne asked us to note that the instances of ill-treatment on return to which our attention had been drawn related very largely to monks and nuns. Even considering only that category, the number of monks who had been detained and tortured was 35; there are 150,000 monks outside Tibet region, and 46,360 within it. This did not indicate a reasonable likelihood of persecution on return for these appellants within the context of the overall figures – of 5-6 million Tibetan, the reports indicated that only 120/150 were political prisoners. Further, he argued, the number of political prisoners recorded had declined over the years.

55. Even if there were some degree of under-reporting (which he did not accept), the risk to these appellants must be very small indeed. Looking at the individual circumstances of these appellants they had lived for approximately 30 years, on average, in the Tibet region without persecution.
56. Mr Payne then turned to the risk for the appellants outside Tibet region. He referred again to the extracts from Radio Free Asia. He repeated his contention that Mr Bowe was inconsistent regarding the objective evidence and biased regarding the 'floating population', as he had made no reference in his report to the real evidence of progress. Again, he argued that there was no evidence that Tibetans within the 'floating population' were targeted.
57. He argued that Ms Saunders' report was unsourced and was based on personal interviews without proper details of those that she had interviewed and that in no way had she set out her duty to the court. Hers was not an unbiased report. She had accepted that she had no information about any Tibetan being returned to China; as Mr Mullins had observed, there was simply no evidence at all with which to 'prove a negative'.
58. He reminded the Tribunal that the issue before us was solely that of the risk to the appellants on return to China (the removal directions of WD to Tibet were changed to removal directions to China). Mr Payne argued that following GH the proposed route of return within China to the Tibet region was irrelevant.
59. Both parties relied upon the previous Tribunal jurisprudence on this issue; In DS [2002] UKIAT 02340 the appeal of a Tibetan had been allowed. The Tribunal in that case had considered that the treatment of those returning from the West to China (Tibet region) amounted to persecution. Mr Payne argued that that was a case which should be considered solely on its own facts. In PW [2005] UKIAT 00051 it was found that imprisonment of not more than one year, on return to China for secretly crossing national boundaries did not amount to persecution – the Tribunal relied on a Canadian report which stated that their researchers had been told that the policy of imprisoning those who had crossed borders illegally was "not implemented". The case of LJ (Prison Conditions - no risk) China [2005] UKIAT 00099 is also a relevant case although it should be noted that that relates to the return of a Chinese national.

#### Expert evidence

##### Mr Jeffrey Bowe

60. We were able to place only limited weight on Mr Bowe's evidence. He had prepared separate reports for each appellant, in virtually identical terms. However, for personal reasons he did not attend the hearing and therefore it was not possible for his account to be tested in cross-examination by Mr Payne or any difficulties in it to be resolved. It is not always clear when the instances of ill treatment, to which Mr Bowe refers, took place. Mr Payne highlighted Mr Bowe's use of emotive language – for example, his reference to the Chinese authorities in China as acting "like the Gestapo" – and the fact that he claimed that he had never met a Tibetan whose story of ill-treatment he did not believe. We do not know what would be Mr Bowe's view of the risk to a Tibetan whom he did not believe, which is a difficulty, since, (in almost all respects) the stories of these three appellants of what had happened to them in the

Tibet region were disbelieved by the Immigration Judges who had heard their evidence. Further, much of Mr Bowe's report is premised on the appellants being returned undocumented, which, as Mr Payne assured the Tribunal, would not be the case for these appellants.

61. With these reservations, we considered his evidence; In his section on the consequences of the appellants returning to Tibet region Mr Bowe cited reports of arbitrary detention of persons, particularly monks, returning to China from Nepal as set out in the US State Department Report of February 2005 (dealing with the events in 2004):

“Detention generally lasted for several months, although in most cases no formal charges were brought. In January and again in September, there were reports that the Nepalese Government co-operated with Chinese authorities to repatriate Tibetans who crossed the border. NGOs reported that some individuals were detained and mistreated upon their return to China”.

The Report then stated:

“Tibetans were repatriated to China from Nepal in May 2003 and were forced to perform heavy physical labour. Their family members also were pressurised for a bribe to secure their release. Prisoners were subjected routinely to ‘political investigation’ sessions and were punished if deemed to be insufficiently loyal to the State.”

62. Mr. Bowe then referred to the ill-treatment of three monks who had been arrested in the South of Tibet region and imprisoned in the detention centre in Shigatse in the Tibet region in 2005. They had claimed to have been ill-treated, deprived of food and detained in the Public Security Bureau detention centre, being interrogated for sixteen days, three times a day, during which time they were beaten, and one claimed that he was electrocuted until he became unconscious. He cited another instance of a group of seven Tibetan and a guide who had been detained and tortured, money being taken from them. The guide was detained for longer than the other seven.
63. He cited the Tibetan Centre for Human Rights and Democracy December 2001 report stating that Tibetans returned from India were invariably seen as “splittist” and “politically suspect” and that such persons were threatened with punitive measures including sanctions and expulsion from jobs. Again he says that those returned often faced heavy fines. He cited the case of four nuns who were imprisoned after their return from India in 2004.
64. Mr. Bowe finally referred to a report on Radio Free Asia about four young Tibetans, one of whom was 15, who were sent to the Shigatse detention centre where they had remained detained.
65. In the section headed “Prison Conditions and Torture” Mr Bowe referred to a visit by Canadian officials to the “Number Two detention centre of Public Security” of Fuzhou in Mawei. He noted the Canadian team had been impressed by the detention centre but stated that this was likely to be because it was show centre, likening the visit to the visits of Westerners who had gone to Soviet Russia in the Stalin era and looked at the prisons there.

66. He then referred again to the US State Department report on China where it was stated prolonged use of electric shocks and use of “rack-like disciplinary beds” were reported in Inner Mongolia’s Chifeng prison where a cultural activist had been tortured. That report also stated Chinese prison management relied on the labour of prisoners both as an element of punishment and to fund prison operations and stated sexual and physical abuse and extortion were reported in some detention centres and that re-education through labour was also common. Mr Bowe asked us to consider the “‘Strike Hard’ campaign”, mentioned in the 2004 Report of the Tibetan Centre for Human Rights and Democracy:

“Refugees who are caught coming back from India or Nepal are reportedly treated much more harshly and receive longer sentence than those who are caught trying to leave Tibet.”

67. Finally Mr Bowe referred to the February 2005 US State Department report which stated:

“Overall the level of repression in the Tibetan areas remained high and the government’s record of respect for religious freedom remained poor during the year.....the government maintained tight controls on religious practices and places of worship in the Tibetan areas. Although the authorities permitted many traditional practices and public manifestations of belief, they promptly and forcibly suppressed activities they viewed as vehicles for political dissent or advocacy of Tibetans independence, such as religious activities venerating the Dalai Lama”.

68. Mr Bowe stated that much of the statement evidence of Tibetans related to protests which were not always well-arranged and this was in part due to the extensive Chinese intelligence networks and lack of freedom of communication. Without State-authorized documentation, he considered it would be extremely difficult for the appellants to operate within China in terms of employment, housing registration, education and health care. In his report for SP he stated he is convinced that:

“On the basis of available documentation on individual Communist Chinese sources SP would be arrested and charged with political activity against the State and would therefore be a victim of an unfair judicial system and imprisoned under conditions in which systematic torture and abuse was commonly documented for political prisoners.”

69. He reached the same conclusion for the other appellants. In his supplementary report Mr Bowe details the demography of Tibet region stating that the population was between 4.59 and 6 million. He indicated that there was a clear attempt to “swamp” the Tibetan population with migrants from China. He also cited the US Congressional - Executive Commission on China stating that the “Sichuan region authorities detained more than three times as many Tibetan for political reasons than either the Tibet or Qinghai region”. He stated there was no reasonable basis to conclude that the regions which were not encompassed in the Tibet Region were less oppressive or that Tibetans there enjoyed greater freedoms and less political and State interference.

Ms Kate Saunders

70. Ms Saunders, who is the Communications Director of the International Campaign for Tibet describes herself as a writer and independent Tibetan specialist. She considered that there was a very real risk of detention or torture for Tibetans returning to China from exile. This applied whether Tibetan were returning from India, Nepal or the West to Tibet region or being sent back to anywhere else in China. She stated there was a sophisticated and comprehensive security network in place throughout China which meant that citizens of China could be monitored virtually wherever they are in China. She claimed there was also the capacity for monitoring Tibetans in the West by Chinese security personnel overseas. Those who demonstrated outside Chinese Embassies or who participated in political activism in the West were of particular interest to the authorities. Ms Saunders knew of at least one case in which viewed footage of Tibetans in exile demonstrating outside a Chinese Embassy in a European capital was available to security forces inside Tibet region.
71. Ms Saunders' evidence was that the risk of detention, arrest and torture in China was not always instantaneous or directly following the political action which caused it. The Chinese authorities could spend many years building up files against an individual, these files being known as "Danwei". Her evidence was that in general, prisoners were detained first in a Public Security Bureau detention centre for questioning and interrogation before either being released or sentenced. Prisoners could be sentenced to up to three years' re-education through labour: sentences were likely to be administrative punishment, with no judicial process involved.
72. There was a clear programme to undermine the loyalty of Tibetans to the Dalai Lama which was inextricably linked with the Tibetan sense of identity as a distinct nation, and this was reflected in the Chinese authorities' determination to undermine religious practice in the Tibet region.
73. Ms Saunders' opinion was that official travel papers would not serve as protection for Tibetans who were returned to Tibet region; since 2003, the Chinese People's Armed Police had tightened border security and access to remote mountain routes. Ms Saunders described the treatment of the Tibetan musicologist, Ngawang Chouphel. Chouphel was carrying out research into Tibetan folk music as part of his studies for a Fulbright scholarship at a college in Vermont USA when he was arrested in 1995 and sentenced to eighteen years in prison for "espionage" despite the fact that he had travelled with valid travel documentation.
74. Tibetans caught attempting to escape to, or return from Nepal or India, could be sent to the new "Snowland" reception centre, a special prison opened outside Shigatse in 2003. Those caught returning to Tibet region was commonly held either there or in the Nyari prison in Shigatse.

## Other documentary evidence

### The Tibetan Centre for Human Rights Report 2000

75. This report referred to political repression in the Tibet region and detailed the ill-treatment of prisoners there. It mentioned the focus being placed by the Chinese Government on purifying “unpatriotic” elements among Tibetan cadre contingents through various coercive methods and that Tibetans with a history of visiting India were treated with suspicion. References were made to the detention of those returning from exile. The section on prison abuses detailed the prevalence of torture and stated that “extortion of confessions is a common malpractice although Chinese Criminal Law prohibits this method of interrogation”. Reports of deaths in detention were stated to be indicative of the severity of torture methods.
76. The TCHR report for 2001 referred to a former inmate of the Trisan “for education through labour” camp, ten kilometres west of Lhasa as stating that when he was first imprisoned in 1999 there had been approximately 300 prisoners in the facility but the number had doubled by 2001. Prison conditions there were said to be horrific, prisoners being half starved and falling sick due to contaminated water and unclean food.

### Amnesty International of July 2002

77. Amnesty International’s press release of 23 July 2002 stated that since 8 July that year 50 people had been sentenced to death and 25 executed in an anti-crime campaign in China.

### Tibetan Justice Centre, December 2002 Report

78. The Tibetan Justice Centre detailed the difficulties of Tibet region’s stateless nationals who are refugees in Nepal.

### The US State Department report for 2002

79. In the section of this report dealing with Tibet region it is stated that the human rights record of the authorities in the Tibet region remained poor although in that year some Chinese Tibetan political prisoners had been released early, before serving their full sentences. There were reports of mistreatment of prisoners and it was stated that:

“There were numerous reports of arbitrary detention of persons, particularly monks, returning to China (Tibet region) travelling from Nepal. Detention generally lasted for several months although in most cases no charges were brought formally”.

The Report indicated that forced labour had been used in some prisons with ‘re-education through labour’ facilities and at work sites where prisoners were used as workers. A reference in the report stated that:

“The number of Tibetans who entered Nepal seeking refugee status to escape conditions in the Tibet decreased from approximately 3,000 in 2000 to 1,268 during the year according to the UNHCR. It is difficult for Tibetans to travel to India for religious purposes. Nevertheless, many Tibetans, including monks and nuns visited India via third countries and returned to Tibet after temporary stays. In May TIN reported that the Chinese Government appeared to be making greater efforts to encourage exiles to return to Tibet. While some exiled Tibetans have returned, the approval process remains cumbersome.”



Human Rights Watch – News – Asia: “Tibetans Lost in Chinese Legal System”

80. This article, dated 15 July 2003, referred to a Human Rights Watch statement which called for the Chinese authorities to stop secret trials of Tibetans. It stated that:

“Human Rights Watch said that China’s failure to acknowledge long prison sentences against Tibetans demonstrates yet again the government’s determination to prevent the international community from learning the full extent of its ongoing crackdown against Tibetan activists.”

81. Brad Adams, the Executive Director of the Asia division of Human Rights Watch, is cited as saying,

“Tibetans continue to fall into the black hole of the Chinese legal system ... secret trials and secret sentences make a mockery of Chinese pretence that its legal system acts according to the rule of law.”

82. He claimed that for Tibetans in detention little is known about the charges against them, where they were held, the lengths of their sentences, the conditions of their confinement or their health. Thereafter the report sets out reports of a number of Tibetans cases which had not been acknowledged including one who was believed to be in custody and others who had been released, as well as those whose whereabouts were unknown.

Phayul.com - Feb. 2004

83. This is a campaigning website (<http://phayul.com>), focusing on the rights of Tibetans. Its report dated 24 February 2004 referred to the detention of a number of Tibetans returned by the Nepalese authorities including those who were caught attempting to flee as well as Tibetans who were returning to Tibet region after going to school or visiting family in Nepal and India. It stated that they spent eleven days in a prison near the Tibet/Nepal border before being transferred to the new reception centre in Shigatse in June 2003. They had been badly beaten and tortured with electric batons. The report also stated that approximately 2,500 Tibetan refugees escape into exile annually travelling through Nepal en route to India. It then states:

“Human rights organisations and the United Nations High Commission for Refugees often only learn of arrests by Chinese border patrols, or of deportations of Tibetans refugees by Nepalese officials, when refugees make a successful re-attempt at escape. Refugees who are caught coming back from India or Nepal are reportedly treated much more severely and receive longer sentences than those who are caught trying to leave Tibet, according to former inmates.”

84. It then stated that Tibetans who have served sentences in the Tibet region’s new reception centre, or at Nyari prison in Shigatse;

“Report that most individuals caught at the borders serve between three – five months prison sentence, receive beatings and torture regularly (most commonly being hit with an electric baton) and must perform hard labour, usually road building in and around Shigatse. Tibetans detained for trying to flee Tibet without papers are rarely provided with any judicial hearing or proceeding.”

85. A second report from Phayul.com referred to other groups of deportees being taken to a prison in Shigatse after spending eleven days in a prison in Nyalam at the Border between Chinese Tibet and Nepal. The report goes on to detail the torture suffered by deportees.

Phayul.com - Oct. 2005

86. A further report from phayul.com dated 19 October 2005 reports on Chinese forces firing on fifty one Tibetan asylum seekers who attempted to flee into Nepal.

Country Information and Policy Unit Report 2004

87. The Country Information Policy Unit report states, with regard to Chinese Tibetan returnees, that a new punishment block (Detention Area 9) was constructed at Jtipchi prison late in the summer of 2000 and is used to house political prisoners who refuse to cooperate during questioning. At paragraph 6.180, it records that on 31 May 2003 Nepal deported eighteen Chinese Tibetan refugees back to China and that:

“This is the first such deportation in recent years. The move had been criticised by Amnesty International. A report from the Australian Tibetan Council stated that these detainees had been released after others had paid a fine but it alleged that they had been badly beaten and tortured with electric batons and sewing needles”.

Operational Guidance Note issued on 22 June 2006

88. The respondent’s most recent OGN states:-

“The Government’s human rights record in the Tibetan areas of China remained poor during 2005, and the level of repression of religious freedom remained high. The Government continued to view the Dalai Lama with suspicion and tended to associate Tibetan Buddhist religious activity with separatist sympathies. Authorities continued to commit serious human rights abuses, including torture, arbitrary arrest and detention, house arrest and other non-judicial surveillance of dissidents, detention without public trial, repression of religious freedom and arbitrary restrictions on free movement.”

At paragraph 3.7.10 the Note concluded:-

“It is clear that the Chinese authorities may take serious action against Tibetans expressing political or religious views and that this treatment will amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities a grant of asylum will be appropriate. However a grant of asylum will not be appropriate solely on the basis of being an ethnic Tibetan.”

At paragraph 3.7.8 the Note reads:-

“Internal Relocation. As this category of claimants’ fear is of ill-treatment/persecution by the State authorities, relocation to a different area of the country to escape this threat is not feasible.”

When considering relocation within China the Note reads at 3.12.12:

“Internal Relocation. *Hukous* (residence permits) are issued for all Chinese citizens and are inscribed to identify the carrier as a rural or urban resident. Each urban administrative entity (towns, cities, etc) issues its own *Hukou*, which entitles only

registered inhabitants of that entity full access to social services, like education. However not all citizens were officially registered and there remained a 'floating population' of between 100 and 150 million economic migrants who lacked official residence status in cities."

At paragraph 6.295 the note referred to the USSD report of 2005 which stated as follows:

"The Government's human rights record in the Tibetan areas of China remained poor, and the level of repression and religious freedom remained high. The Government continued to view the Dalai Lama with suspicion and tended to associate Tibetan Buddhist religious activity with separatist sympathies. Authorities continued to commit serious human rights abuses, including torture, arbitrary arrest and detention, house arrest and other non-judicial surveillance of dissidents, detention without public trial, repression of religious freedom, and arbitrary restrictions on free movement. Positive developments in the Tibetan areas included a fourth round of dialogue between the Government and envoys of the Dalai Lama."

At paragraph 6.297 the USSD report was cited as saying:

"Human rights situation in the Tibet did not improve in 2004. There was no let-up on many unpopular measures of control that went to describe the anxious nature of the political atmosphere. The resumption of the 'Strike Hard' campaign, the renewed emphasis on the Patriotic Re-education campaign and the establishment of a Re-education Through Labour camp in Ngari County in the Tibet Autonomous Region to check the refugee flow, are clear indications of continued suppression of the Tibetan people."

Finally, the note referred to the USSD Religious Freedom report 2005 as stating:

"In 2003 Tibetans forcibly returned to China from Nepal reportedly suffered severe torture, and their family members pressurised by officials for bribes to secure their release. Nevertheless, many Tibetans, including monks and nuns, visited India via third countries and returned to China after temporary stays. Some returnees reported the authorities pressured them not to discuss sensitive political issues."

#### The US State Department report for 2004

89. This referred to the security apparatus employing torture and degrading treatment including electric shocks, periods in solitary confinement, incommunicado detention, beatings and other forms of abuse.

#### The United States Congressional - Executive Commission on China Annual Report 2005

90. This stated that there was no improvement overall in human rights in China over the past year (2004) and set out the problems of enforcement of the *Hukou* (the internal registration) system. The Dalai Lama had stated he did not seek independence for Tibet now; he was aiming for Tibetan autonomy within China but this was not recognised as a benefit by Chinese leaders. Chinese laws on regional ethnic autonomy containing provisions that could benefit Tibetan and their culture but there was poor government implementation of those laws. The report emphasises that economic developments in the Tibet region largely benefit Han Chinese who continue

to migrate westwards and that this migration will be assisted by the Qinghai-Tibet railway.

91. The report referred to a number of instances of detention of Tibetans for political and religious reasons but does say:

“The CECC Political Prisoner Database (PPD) lists approximately 120 current cases of Tibetans political imprisonment in June 2005 less than one fifth of the number in late 1995. The number of Tibetans political prisoners continues to decline as Tibetans imprisoned for protests during late 1980s to mid-1990s complete their sentences and are released”.

UN Commission for Human Rights Mission to China - Report by UN Special Rapporteur on Torture, Manfred Nowak.

92. The long-awaited report of Manfred Nowak, UN Special Rapporteur on Torture and a leading international human rights expert, based on a mission carried out during 2005, was published on 10 March 2006. After visiting detention centre in Beijing, Urumqi in Xinjiang and Lhasa in the Tibet Nowak concluded “that the practice of torture, though on the decline - particularly in urban areas – remains widespread in China” His report then stated that while he noted:

“Areas of improvement in the Chinese legal system”

there remained:

“significant and serious concerns as to the actual implementation of the rule of law, the use of the death penalty for wide-ranging and vaguely defined offences, and the continued targeting and mistreatment of Tibetans”.

He stated that he and his predecessors had received “serious allegations” of a:

“Consistent and systematic pattern of torture related to ethnic minorities particularly Tibetans and Uighurs”.

Discussion

Risk on return to Tibetan failed asylum seekers

93. In what follows we use the expression “risk on return” as a shorthand for describing well-founded fear of persecution, real risk of serious harm within the meaning of paragraph 339C of the Immigration Rules (as amended by Cm. 6918) and treatment contrary to Article 3 ECHR. In reaching our conclusions we have considered the evidence in the round, including taking into account the background materials listed above and in our Appendix. We first consider those who use, and return by, the Tibet/Nepal route out of China, and then the risk to those who return via Shanghai or Beijing and relocate internally, either as a member of the ‘floating population’ or by returning to Tibet region by internal relocation.
94. Although we lacked clear evidence on the matter, it would seem that very few Tibetans who have made their way to Western countries have left China via another route than through Nepal. That in our view is an important consideration since the

evidence strongly indicates that the Chinese authorities perceive as supporters of the Dalai Lama any Tibetans who have left Tibet region via Nepal – particularly those who have left without authority. This too is a matter we shall return to below.

95. Mr Payne sought to argue that in deciding whether Tibetans would be at risk on return to China we should attach significant weight to the evidence regarding the large numbers of Chinese who are returned to China from Taiwan and the fact that there is no evidence that they have faced detention on return. However, we do not consider that any inferences can safely be drawn from the experiences of returnees from Taiwan. We have no evidence before us to suggest that any of them were Tibetan and what evidence we do have about Tibetans is that they are an ethnic minority against whom the Chinese in mainland China discriminate.
96. Mr Payne also referred to the statistics relating to those who are returned from Britain to China. As we have seen these statistics do not show how many, if any, were Tibetan, as the figures are not broken down by ethnicity. Nevertheless, he argued, we should regard it as implicit in the figures of returnees that they would include Tibetans. We do not consider that we can make that assumption. It is only relatively recently that the United Kingdom has adopted a policy of involuntary returns to China. Yet not only do we have no evidence that the United Kingdom return figures (including of involuntary returnees) include Tibetans, but there are no statistics relating to other Western countries returning Tibetans to China. Given this lack of official figures, we do not think we can ignore Ms Lee's statement, based on the results of her approaches to a number of bodies that she did not know of any Tibetans who had been returned from the United Kingdom.

#### The Tibet/Nepal route out of China

97. We have considered whether there is a risk on return to Tibetans who leave China from Tibet region via Nepal, without authority, and are returned from the West by the same route. Our task is made extremely difficult by the lack of any direct and specific evidence as to what happens to Tibetan failed asylum seekers returned to China from the United Kingdom or from other Western countries: we shall return to this point below.
98. We first considered the weight to be placed on the reports of Mr Bowe and Ms Saunders. There is force in Mr Payne's submission that Mr Bowe's report does not show clear detachment from the issues. He considers all the appellants to be credible when they have been found not to be credible by the Immigration Judges who heard their appeals. His use of language is from time to time emotive. However, much of each report focuses on the situation of Tibetans returnees irrespective of whether or not they are genuine or failed asylum seekers. Additionally, there is nothing to suggest that the views which he expresses are not genuinely held or to suggest that his report suppresses or fails to mention evidence that does not support his main conclusions on the situation of Tibetans returnees. We note too that Mr Bowe cited extensively from independent sources, including the US State Department Report, and that his assessment is based heavily on those sources.
99. Similarly, while Ms Saunders is clearly not independent, as she works closely with the Dalai Lama and is a campaigner for an autonomous Tibet, there is nothing to suggest that she was in any way untruthful in her report, or that she sets out the facts other

than as she believed them to be, or that she failed to identify any evidence leading to a contrary viewpoint. Whilst we have concerns about some aspects of their reports, we do not think that these undermine the force of their reasoning on risk to Tibetan returnees from the United Kingdom and accordingly we are prepared to attach considerable weight to what they have to say in this regard.

100. We have also noted the reports from the Tibetan Centre for Human Rights and Phayul.Com. Whilst both are, of course, not disinterested in the plight of returnees to the Tibet region, we consider that what they say broadly corresponds with the preponderance of other background country sources which touch on the situation of Tibetans in China. Thus these two sources reflect the background evidence as a whole in making it clear that those Tibetans detained in detention centres or prisons within the Tibet region are likely to suffer torture in that they will receive beatings, often with electric prods, and that torture is a means of forcing confessions. It appears that there is no judicial remedy or trial for those Tibetans who are detained. Periods of detention may vary and it appears that payments can be made by the detainees' families, often after bribes have been given to prison officials, to persuade them to accept payment for the release of the detainees. It is clear, however, that the time spent in detention can be life-threatening: detainees are likely to suffer ill-treatment, lack of sufficient food, clean water and the likelihood of being of used for forced labour in the "re-education through work programme". The treatment of detainees is sufficiently harsh as to amount to persecution.

101. We place particular weight on the report of Manfred Nowak, UN Special Rapporteur on Torture based on his visits in 2005 to some Chinese detention centres including one in Lhasa, Tibet and in particular on his express conclusion that "... the practice of torture, though on the decline - particularly in urban areas – remains widespread in China" and his references to :

"significant and serious concerns as to the actual implementation of the rule of law, the use of the death penalty for wide-ranging and vaguely defined offences, and *the continued targeting and mistreatment of Tibetans*" (emphasis added)

And to a:

"Consistent and systematic pattern of torture related to ethnic minorities *particularly Tibetans and Uighurs*" (emphasis added).

102. We also note the terms of the Respondent's OGN and the CIPU report.

103. Mr Mullins has urged us to attach particular weight to the body of evidence relating to Tibetans who left China by travelling from Tibet region into Nepal and the evidence about Tibetan seeking to return, or being forced to return, to China via the Nepal/Tibet route. We think he is right in arguing that this body of evidence is pertinent to the issues we have to decide, since, as already noted, there is much to suggest that those Tibetans who have reached the West have left China on the Tibet/Nepal route and virtually none to suggest that any have left via mainland China.

104. The Nepal connection has a further important implication for assessing risk on return. Despite the fact that there are age old travel routes between Tibet region, Nepal and

India, the evidence does not suggest that it is at all easy to travel, legally, from Tibet region into Nepal. Yet it is in respect of those who left China illegally from Tibet region that the evidence indicating that Tibetan returnees face ill treatment is strongest.

105. Nepal is, of course, a staging post on the journey of Tibetans to the home of the Dalai Lama in northern India. Those who are seen to be travelling out of China on the Tibet/Nepal route, and on to India, are therefore reasonably likely to be considered to be travelling for religious reasons and, of course, this is reflected in the emphasis on the groups of nuns and monks who are detained on return. It is clear from the reports of Ms Saunders, Mr Bowe, and the Tibetan Human Rights Centre, that the worship of the Dalai Lama is inextricably linked, in the minds of the Chinese authorities, with Tibetan nationalism. Those who travel along that route, therefore, are not only considered opponents of the Chinese authorities for religious reasons but also to supporters of a separate Tibet – they are seen to be “splittist”.
106. Mr. Payne argued that the majority of those detained were monks and nuns and/or activists, and/or that the numbers detained were not large. However, on a closer examination of the documentary evidence, we consider it contains a significant number of references to Tibetans, not specified to be nuns or monks, who appear to have been merely trying to flee the country and who are detained when they are either leaving China via the Tibet/Nepal route or when they are returned by the same route. We refer to the reports from the US State Department, Human Rights Watch, Playul.com and Amnesty International from which we have cited above. The Radio Free Asia broadcast of May 2005 referred to the Chinese border forces opening fire in a bid to halt the flight of 51 Tibetan asylum seekers into Nepal. Our conclusions are reinforced by a reading of the respondent’s own OGN and CIPU reports. There is also a significant number of references to a risk of being shot at or captured by border patrols for those who try to leave China on the Tibet/Nepal route and also, of a real risk of detention and ill-treatment if they are forcibly returned by the same route.
107. Ms Saunders’ report sets out the extensive system of surveillance within the Tibet region; we conclude that those who leave China unlawfully on the Tibet/Nepal route and are not picked up immediately on return to Tibet region are nevertheless likely to be picked up eventually. It is also clear from passages in the Respondent’s CIPU report and OGN, the US State Department Report and the Human Rights Watch report which are cited above that Tibetans detained in those circumstances suffer ill-treatment which amounts to persecution. The report of the UN Special Rapporteur on Torture, Manfred Nowak, is particularly persuasive.
108. There is evidence that the Chinese authorities’ attitude to Tibetans is deteriorating. The “Times Online” report which Mr. Mullins lodged at the hearing referred to the campaign to crush loyalty to the Dalai Lama and to extinguish beliefs amongst Government officials and Zhang Qingli. The Communist Party Secretary of Tibet region is cited as referring to “a fight to the death against the Dalai Lama”. That must impact on the official Chinese attitude to all Tibetans who are involuntarily returned from abroad by the Tibet/Nepal route.
109. With the exception of Ngawang Choephel, the musicologist to whom Ms Saunders referred who is likely to have entered mainland China legally and then returned to

Tibet region internally, the evidence of ill-treatment which is before us all relates to the ill-treatment of Tibetans who have travelled out of, or returned to, China using the Tibet/Nepal route. The evidence is clearly that those who cross the Tibet/Nepal border without authority and are caught returning by that route are likely to face ill-treatment which amounts to torture.

#### Return via Beijing/Shanghai

110. It was common ground in these cases that all Tibetans facing removal from the United Kingdom would be returned to either Beijing or Shanghai. We are given to understand that removal directions in respect of nationals of China are not made to Nepal, even in respect of those who may have left China from Tibet region, travelling via Nepal. How then are we to assess the likely treatment of those Tibetans who are returned from the United Kingdom to Beijing or Shanghai? The first matter to be considered here is whether or not the authorities at the airports would be aware that they were Tibetans who were being returned and not Han Chinese.
111. We consider it reasonably likely that a Tibetan who has a valid Chinese passport will not attract any specific or adverse interest, on return. That is because possession of such a passport is a strong indication that the person concerned has been cleared for foreign travel. However, we take a different view in the case of Tibetans who do not hold a valid Chinese passport. In their case it is reasonably likely, when the individuals concerned (or the respondent on their behalf) approach the Chinese Embassy here to obtain travel documents for them, that information about their ethnicity –and possibly the fact that they had sought asylum - would be recorded. We also think it reasonably likely that this information would be passed to the Chinese authorities in China, even if the travel documents they carry did not themselves indicate that the bearers of the documents are Tibetan. As bearers of travel documents, they would be questioned at the airport. Since they cannot be expected to lie about their history, we think it reasonably likely they will have to inform the authorities of how they had left Tibet and on what basis they had been staying or seeking to stay in the United Kingdom. If as a result of these inquiries, the authorities consider that they had left Tibet illegally through Nepal that would suffice to place them at real risk of being detained and ill-treated.
112. In her report Ms Saunders pointed out that Tibetans who violated border regulations by “secretly crossing the national boundary” are breaking Article 322 of the Chinese criminal law and would therefore be liable to imprisonment. Having considered the clear evidence of the repressive nature of the Chinese regime against Tibetans whom they consider do not support the incorporation of Tibet into China, we consider that, on return to China (and, if it were possible, on return to Tibet region itself), Tibetans who have left illegally through Nepal would be detained and would be subjected to treatment far worse than that faced by the coastal Han Chinese who, for example, are returned from Taiwan.
113. In relation to Tibetans detained in a prison in China, there is sufficient evidence to indicate that the prison conditions they would face there, at least for those who are thought to have political opinions inimical to the Chinese authorities, would be sufficiently harsh as to amount to persecution. This is clear from the CIPU report. As Tibetans who had left China illegally on the Tibet/Nepal route, they would not be considered to be mere economic migrants but would be considered to have left China



because they were opposed to the incorporation of Tibet into China. We find that they would face persecution because of their imputed political beliefs on return.

114. Our conclusions are based on the evidence from not only the Respondent's CIPU report and OGN, but also that in the State Department Report, and Human Rights Watch and Report of the UN Special Rapporteur on Torture. We consider that they would fall into the "black hole" of the Chinese legal system to which Brad Adams, the Executive Director of the Asia Division of Human Rights Watch, refers.

Legal exit from China

115. We do not consider, however, that unsuccessful Tibetan asylum seekers who have left Tibet *legally* would be likely to face ill-treatment on return. Their position will be analogous to that of other failed Chinese asylum seekers.

Internal travel for returnees within China

116. Mr Payne sought to argue that on the authority of GH, we should not consider the issue of internal travel for Tibetan returnees within China. In the light of further clarification from the Court of Appeal in AG [2006] EWCA Civ 1342, we must accept that Mr Payne's argument on this point is correct. However, we note that in AG Hooper LJ then stated at paragraph 123 that even so:

"...it seems to me that in a Country Guidance case, it may well be helpful for all concerned to know the dangers inherent in a method of return that is likely to be used, if known. Those dangers can then inform the SSHD when (or if) removal directions are made".

117. Given our finding that Tibetan returnees, who are considered to have left China illegally via the Tibet/Nepal route, face a real risk on return at the airport in Beijing or Shanghai, no further issue about the method of return arises. Nevertheless, for the sake of completeness, we would add our view that

(a) in the unlikely event of Tibetans without valid passports returned to China not being apprehended at the airport and making their way back to Tibet region, they would be likely to be picked up there. We note the system of "*Danwei*" to which Ms Saunders referred in her report: we consider that their unlawful departure from China on the Tibet/Nepal route and their return via Beijing or Shanghai (and thence to Tibet region) would be noted and that they would be picked up, detained and ill-treated.

(b) Were such persons to attempt relocation, this would involve them joining the 'floating population' of China. We would re-emphasise here that the respondent's own OGN states that relocation is not an option as persons fearing persecution by the State. We see no reason, on the basis of the evidence before us in these reconsiderations, to take a different view.

118. We do not consider it necessary to address any issue relating to the fact that removal directions made against Chinese nationals who are of Tibetans origin appear to sometimes specify "China" per se and sometimes to specify "China (Tibet)", since (following GH) in either case the removal directions are lawfully a matter for the Secretary of State. In any event, it is common ground that all such removals are to

Beijing and Shanghai, with no United Kingdom involvement in what happens from that point onwards.

#### Existing and Previous Reported Cases

119. We note that since the removal of DS from the AIT's Country Guidance list on 27 July 2005 there is no existing country guidance case on Tibetan. Nevertheless on the basis of the fuller and more up-to-date body of evidence before us, we think that the conclusions reached in DS were broadly correct, whereas the conclusions set out in the reported determination of PW are wrong.

#### Summary of Conclusions

119. We summarise our conclusions as follows:

- (a) There are no figures for Tibetans who are returned from the West to the only two points of removal to the People's Republic of China – Beijing and Shanghai -and we do not consider it safe to infer that the figures we have for those returned to China in recent years include any Tibetans.
- (b) The Chinese authorities are concerned with any activity by Tibetans which they consider to be “splittist”- that is, any activity which indicates that a Tibetan might wish Tibet region to break away from China. Any support for the Dalai Lama is seen as “splittist” and as furthering the cause of Tibetans nationalism, which the Chinese authorities continue to want to crush. Those Tibetans who leave China unlawfully on the Tibet/Nepal route are seen as being supporters of the Dalai Lama.
- (c) Tibetans who having left China unlawfully on the Tibet/Nepal route now face removal by the United Kingdom, are reasonably likely to be considered as “splittists”.
- (d) Accordingly, Tibetans who have made their way to the West having left China unlawfully on the Tibet/Nepal route face a real risk on return of detention and ill-treatment which amounts to persecution.
- (e) Tibetans who left China legally, and who did not leave because they had a well founded fear of persecution, would not be likely to face persecution on return at the airports in Beijing or Shanghai or subsequently upon re-entry to Tibet region.
- (f) The Chinese regime in the Tibet region is repressive and the individual facts of each case must be considered carefully as it is a society where there is a considerable amount of surveillance. A Tibetan who is able to show he faces a real risk on return arising out of past adverse experiences in the Tibet region, should be able to succeed in his or asylum claim, irrespective of what the position is as regards failed asylum seekers generally.
- (g) Unless the Secretary of State can show that their exit from China was lawful, and not on the Tibet/Nepal route, Tibetan returned to Beijing or Shanghai are reasonably likely to face persecution on return and therefore the issue of an internal relocation alternative does not arise.

(h) However, even if the issue of internal relocation did arise, given the terms of the Respondent's OGN and CIPU reports and the evidence pointing to likely state persecution of Tibetans who have left Tibet illegally via Nepal, there would not be any viable internal relocation alternative.

120. In the unusual circumstances of these three appellants, whose accounts are generally incredible, we are prepared to accept that nevertheless they should be treated as having left China unlawfully on the Tibet/Nepal route. We do this because, as noted earlier, the evidence before us is that virtually all Tibetans do leave China by that route and unlawfully. However, there may be cases where a Tibetan who has left Tibet lawfully by some other route (e.g. as a businessman) subsequently destroys evidence of this fact and then claims asylum on the basis of risk on return via Nepal.

121. Hence in future cases, it will be very important that the respondent states his position upon, and that clear findings are made regarding, the following issues in particular:

(a) Whether or not an appellant had a well founded fear of persecution before leaving China,

(b) Whether or not he or she left China legally or without authority; and

(c) The route by which they should be considered to have left China (that is, from the mainland or on the Tibet/Nepal route).

#### The Appeals of WD, SP and TL

122. We now turn to the appeals of these three appellants. The Immigration Judge accepted that WD left Tibet unlawfully. SP and TL were not found to be credible but no separate findings were made by the Immigration Judges who heard their appeals that they had left lawfully. However, we note that it is not the case of the respondent that they left China lawfully and Mr Payne, possibly because of the state of the evidence concerning the appellants' use of false documentation, did not seek to argue that they should be seen as persons who had left lawfully. In these unusual circumstances we are prepared to accept that all three left China unlawfully on the Tibet/Nepal route. The background evidence in our view indicates that the majority of Tibetans who have come to the West have come via Nepal and that virtually all who did so left China illegally by this route.

123. These appellants would, however, not be returned to Nepal but to the airports in Beijing or Shanghai. For the reasons set out in our conclusions on risk on return to Tibetan failed asylum seekers above, we consider that, as Tibetans who have left illegally through Nepal and who would be travelling on travel documents, they would be at real risk of being detained at the airport and of suffering abusive detention amounting to persecution.

124. It is our view that the persecution they would face would be for a Convention reason, that of imputed political opinion. Merely by having left China unlawfully on the Tibet/Nepal route, they would be considered to be "splittist". Even if we are wrong about that and the fact of having left China unlawfully on the Tibet/Nepal route did not suffice for them to be perceived as "splittist", we note that it is reasonably likely that

the Chinese authorities would come to learn that they had sought asylum in the United Kingdom. Although we consider that the Chinese authorities are normally well-aware that Chinese nationals may claim asylum for non-asylum reasons (e.g. economic betterment), we consider that their current concerns about Tibetan outside China seeking to promote the cause of the Dalai Lama may outweigh such normal considerations.

125. For the same reasons, we find that they would face a real risk of serious harm within the meaning of paragraph 339C of the Immigration Rules. However, because a person cannot be eligible for subsidiary protection if he is a refugee, none of these appellants is entitled to subsidiary protection.
126. For the same reasons as we have found they face a real risk of persecution, we find that their rights under Article 3 of the ECHR would be infringed by their removal.
127. Accordingly we substitute for the decision to dismiss the appeals made by the Immigration Judges in the cases of the SP and TL our decision that those appeals should be allowed on both asylum and human rights grounds. The decision we substitute for that of the Immigration Judge in WD is to allow the appeal. (As we have found that the appellants are entitled to asylum here, none is entitled to humanitarian protection).

#### Decisions

128. The appeals of SP, TL and WD are allowed on both asylum and human rights grounds. They are not entitled to humanitarian protection.

Signed

Date

Senior Immigration Judge McGeachy

Annex Documents considered and referred to in the determination.

- 1) June 2000 Report from Tibetan Justice Centre – Tibet’s stateless Nationals.
- 2) December 2000 Tibetan Centre for Human Rights and Democracy Annual Report.
- 3) October 2001 Tibetan Centre for Human Rights and Democracy Newsletter.
- 4) December 2001 Tibetan Centre for Human Rights and Democracy Annual Report.
- 5) March 2002 US State Department Report on Tibet for 2001.
- 6) March 2002 Tibetan Centre for Human Rights and Democracy Newsletter.
- 7) July 2002 Amnesty International report: China “Strike Hard” anti crime report.
- 8) 2002 Various Tibetan Centre for Human Rights and Democracy articles.
- 9) December 2002 Tibetan Centre for Human Rights and Democracy Annual Report.
- 10) March 2003 US State Department Report on Tibet 2002.
- 11) May 2003 Human Rights Watch Report.
- 12) June 2003 Amnesty International – Nepal: forcible returns of Tibetans.
- 13) July 2003 Human Rights Watch: Tibetans lost in Chinese legal system.
- 14) December 2003 Tibetan Centre for Human Rights and Democracy Annual Report.
- 15) March 2004 US State Department Report on Tibet 2003.
- 16) May 2004 Expert Report from Ms Kate Saunders.
- 17) April 2004 Country Information and Policy Unit Report – China.
- 18) December 2004 Tibetan Centre for Human Rights and Democracy Annual Report.
- 19) March 2005 US State Department Report on Tibet 2004.

- 20) September/  
October 2005 US Congressional Executive Commission on China Reports on registration (Hukuo) system.
- 21) November 2005 Expert reports from Mr Jeffrey Bowe on each appellant.
- 22) December 2005 Tibetan Centre for Human Rights and Democracy Annual Report.
- 23) December 2005 Campaign on Tibet: UN Special Rapporteur on Torture.
- 24) January 2006 Campaign for Tibet report.
- 25) January 2006 Email from Mr Jeffrey Bowe.
- 26) February 2006 US State Department Report on Tibet.
- 27) April 2006 Reports from Ms Kate Saunders for each appellant.
- 28) June 2006 Home Office Operation Guidance Note.
- 29) 16 August 2006 Letter to Treasury Solicitor Department from Home Office Researcher.
- 30) August 2006 Article from "Times Online" headed "Beijing pledges a fight to the death".
- 31) Playul.com - various articles.