

Belgium - Gent Court of Appeal, judgment no. 09/1147/B

The applicant was born in China and is of Tibetan origin. He fled China to Nepal, and then made his way to Belgium through India on a fake passport. His asylum applications failed, he has been detained with a view to deportation to China, but had been released due to the Chinese authorities not issuing the necessary documents. The applicant also unsuccessfully attempted to organise voluntary return through IOM, contacting authorities of China, India, and Nepal. These facts convinced the Court to recognise the applicant as stateless.

Case name (in original language) : 09/1147/B

Case status: Decided

Case number: 09/1147/B

Citation: <https://www.agii.be/rechtbank-van-eerste-aanleg-van-gent-04-03-2010>

Date of decision: 04/03/2010

State: Belgium

Court / UN Treaty Body: Gent Court of Appeal

Language(s) the decision is available in: Dutch

Applicant's country of birth: China

Applicant's country of residence: Belgium

Key aspects: Burden of proof, Deportation and removal, Detention, Discrimination, Protection, Residence permit, Stateless status and documentation, Statelessness and asylum, Statelessness determination

Facts

The applicant is of Tibetan origin, who fled China with his family when he was 3 years old. The family lived in Nepal, before arriving to Belgium through India on a false passport in 2004. In Belgium he made two attempts at applying for asylum, in 2005 and 2008, both of which were rejected. In 2008 he was detained with the aim of deportation. Since the Chinese authorities were not issuing travel documents, the applicant was released on 21 January 2009, with an order to leave Belgium

ultimately by 26 January 2009. On 3 February 2009 the applicant signed up for voluntary return with the IOM. On 20 February the IOM declared to be unable to facilitate the applicant's return to Tibet or any other third country, as he lacked any valid travel documents. On the 27th of February the applicant contacted the embassies of China, Nepal and India with the aim of acquiring travel documents, in order to be able to arrange voluntary return through IOM after all. The Chinese embassy asked him to leave upon learning about his Tibetan origin. The Indian embassy refused to issue a travel document, and refused to document the rejection. The Nepalese embassy also rejected his request, as he was not registered in Nepal, or at least does not have evidence of such registration.

Legal arguments by the applicant

The applicant argued that Tibetans who fled to Nepal before 1990 could indeed register as refugees. However, he never completed such registration as it did not appear necessary for his daily life at the time. As a result now he is unable to leave the country - after he has attempted all the available procedures to regularise his stay, as well as voluntary return through IOM. The government was unable to enforce his departure either and had to release him from immigration detention for that reason. He therefore would like to be recognised as stateless. The applicant also submitted a statement of the office of Tibet from 2005 stating that he has Tibetan nationality.

Decision & Reasoning

The Court reasoned as follows:

"The facts of the case that indicate that it is impossible for the applicant to obtain a travel document from either India, Nepal or China implies that the applicant needs to be considered stateless."

The Court refers to a Newsletter of an NGO "Vluchtelingenwerk Vlanderen" of 2009 on "Practices of Return" which indicates that Tibetans who did not arrive to Belgium straight from China, but have stayed in Nepal or India in between, do not get documented by China. They also do not get documents from Nepal or India if they have not been registered in those countries. In such situations the government recommends a statelessness procedure.

The Court concluded that this describes the situation of the applicant, and declares the applicant stateless.

Decision documents

[Gent_4Mar2010.pdf](#)

Outcome

The Court declares the applicant stateless.