

Federal Court



Cour fédérale

**Date: 20211215**

**Docket: IMM-2701-17**

**Citation: 2021 FC 1421**

**St. John's, Newfoundland and Labrador, December 15, 2021**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**NGAWANG LODOE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

[1] Mr. Ngawang LODOE (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”) dated May 23, 2017. In its decision, the RPD determined that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”)

[2] The Applicant was born in India in 1968 to Tibetan (Chinese) parents. He has lived in India all his life.

[3] In 2013, the Applicant left India and travelled to the United States of America. After a sojourn of nine months, he entered Canada and made a claim for Convention refugee protection, pursuant to section 159.5 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[4] The Applicant sought protection in Canada on the basis of his religious beliefs and political activities; he is an adherent of His Holiness the Dalai Lama.

[5] The RPD determined that the Applicant had failed to show that he had taken reasonable steps to exercise rights of citizenship in India that are available to Tibetan nationals, pursuant to *Tretsetsang v. Canada (Minister of Citizenship and Immigration)*, 398 D.L.R. (4th) 685.

[6] In *Tretsetsang, supra*, the Federal Court adopted the “control test” from paragraph 429 of *Williams v. Canada (Minister of Citizenship and Immigration)*, [2005] 3 F.C.R. 429:

If it is within the control of the applicant to acquire the citizenship of a country with respect to which he has no well-founded fear of persecution, the claim for refugee status will be denied.

[7] The Applicant acknowledges that the *Citizenship Act* of India provides that Tibetans born in India within the period of January 1950 and July 1987 have a right to citizenship by birth, but argues that the exercise of that right is not within his control.

[8] The Minister of Citizenship and Immigration (the “Respondent”) submits that the RPD made no reviewable error.

[9] The decision of the RPD is reviewable on the standard of reasonableness.

[10] According to the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.) at paragraph 99, that standard requires the Court to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision”.

[11] The RPD referred to the limited efforts made by the Applicant to exercise his right to Indian citizenship. It acknowledged that he looked up instructions about applying for citizenship and four days before the RPD hearing, he asked a friend in India to consult a lawyer how he could obtain an Indian birth certificate.

[12] The decision of the RPD, in light of the decision in *Tretsetsang, supra* is reasonable. In that decision, the Federal Court said the following:

...

c) If there is entitlement to citizenship on the face of the law, but there is evidence which establishes on a balance of probabilities that the state or its officials are — notwithstanding the law — exercising an administrative discretion to thwart recognition of that legal entitlement to citizenship (*Dolma, Tashi, Sangmo*), then citizenship is outside of the claimant's control. This includes scenarios where the claimant may need to litigate in order to bring the executive's conduct in line with the law. The burden will be on

the claimant to establish that a presumptive legal right to citizenship is being denied through administrative practices.

d) In consequence, a claimant will, as a general proposition, be required to take reasonable steps to establish his right of citizenship. It is open to the Board to draw reasonable inferences from the failure to take reasonable steps. Where the claimant claims that he faces administrative barriers, the failure to test the strength of that assertion is material and relevant evidence on the question of control.

[13] Relying on the decision in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 F.C. 53, the Applicant argues that the RPD erred by failing to address contradictory documentary evidence about whether the Indian authorities recognize citizenship rights of Tibetans born in India. In my opinion, the treatment of contradictory documentary evidence is not the key issue raised in this application for judicial review.

[14] The critical issue is whether the Applicant took reasonable steps to exercise his right to Indian citizenship, in accordance with *Tretsetsang, supra*.

[15] On the basis of the evidence in the Certified Tribunal Record and the written and oral submissions of the parties, I am satisfied that the decision of the RPD is reasonable and the application for judicial review will be dismissed, there is no question for certification arising.

**JUDGMENT in IMM-2701-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed,  
there is no question for certification arising.

“E. Heneghan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2701-17

**STYLE OF CAUSE:** NGAWANG LODOE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE  
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,  
NEWFOUNDLAND AND LABRADOR

**DATE OF HEARING:** DECEMBER 7, 2021

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** DECEMBER 15, 2021

**APPEARANCES:**

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Stephen Jarvis FOR THE RESPONDENT

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