



India – Researched and compiled by the Refugee Documentation Centre of Ireland on 1 December 2015

Any information as to whether a Nepalese citizen could live and work in India indefinitely.

Article 7 of the Treaty of Peace and Friendship states:

“The Governments of India and Nepal agree to grant, on reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.” (Government of India: Ministry of External Affairs (31 July 1950) *Treaty of Peace and Friendship*)

An Immigration and Refugee Board of Canada (IRB) response to a request for information states:

“In correspondence with the Research Directorate, an associate fellow at the Institute for Defence Studies and Analyses in India, who specializes in South Asian politics, indicated that the Treaty of Peace and Friendship of 1950 between India and Nepal ‘is in operation’” (Immigration and Refugee Board of Canada (23 October 2014) ZZZ104990.E – *Nepal and India: Status of the Treaty of Peace and Friendship (No. 1302), including implementation (2012-October 2014)*)

This response also states:

“Sources indicate that the Treaty of Peace and Friendship of 1950 allows citizens of both countries to cross the India-Nepal border without official documents. According to a working paper on Nepali migration to India, written by Sanjay Sharma and Deepak Thapa, ‘there often are occasional interrogations from the security personnel, custom officers, or individuals working to combat trafficking in persons. However, these are not in any way meant to restrict, check or document the cross-border movement of individuals’. The working paper also notes that Nepalese labour migrants going to India lack the necessary legal frameworks to protect their rights. The paper states that ‘the one document that is considered the bedrock of inter-state relations between the two countries,’ the Treaty of Peace and Friendship, ‘does not even explicitly mention the issue of labour migration although it does recognise the fact of cross-border human mobility’. However, the Associate Fellow indicated that ‘since the Nepalese citizens are offered ‘national treatment’ and ‘same privilege’ at par with Indian citizens and also as per the 1950 Treaty, they (Nepalese) can approach Indian Judiciary in case of violation of the Treaty provisions’” (ibid)

A 2008 response from the IRB states:

“According to a representative of the South Asia Human Rights Documentation Centre (SAHRDC), citizens of Nepal may reside, work, attend school and access health services in India, due to ‘a long standing bilateral agreement between the governments of India and Nepal’. The SAHRDC Representative also stated that because of this agreement between India and Nepal, citizens of Nepal residing in India are not considered ‘illegal’ residents.” (Immigration and Refugee Board of Canada (18 December 2008) *Nepal/India: Nepali citizens living in India; whether they are legally entitled to reside, work, attend school, and access health care services; whether there are any repercussions for “illegal” residence, or whether illegal status is tolerated or ignored by Indian authorities*)

A working paper published by the Centre for the Study of Labour and Mobility, in a section headed “The Context”, states:

“Human mobility between Nepal and India is a historical as well as contemporary reality, wherein individuals from one country have worked and lived in the other without let or hindrance. But, despite the continuous high levels of movement back and forth, this cross-border travel has generally received scant attention at the state level. There are exceptions when either side tightens state boundaries to suit their respective purposes, but in general the unregulated two-way flow of people across the border continues unabated.” (Centre for the Study of Labour and Mobility (2013) *Taken For Granted: Nepali Migration to India*, p.1)

In a section headed “A Statistical Overview” (section 2.2) this paper states:

“It is difficult to ascertain the number of Nepalis living in India for a number of reasons but, as outlined earlier, it has mainly to do with the porous nature of the Nepal-India border; cross-border marriages; seasonal migration across the international boundary; and the long history of Nepalis settling permanently in India. Largely unknown is the whereabouts of many Nepalis in India, the sectors they work in, and the conditions they work under. In fact, apart from statistical data in the form of ‘absentee population’ in various surveys, including the census, the Nepali state has largely ignored its migrant population in India. There is no official figure of how many Nepalis cross the border between India and Nepal, or of how many Nepalis work in India and where.” (ibid, p.5)

See also section of this paper headed “Where Nepalis Work” (section 2.7) which states:

“Nepalis may have begun to migrate to India to serve in the British Indian army, but there were also those who settled in various parts of India, particularly the Northeast, where they worked at dairy farming, timber felling and mining.³⁸ Today, many Nepalis work in the formal sector such as the Indian army or the public and private sectors, and significantly more are engaged in the informal sector. Most of the latter belong to the lowest socio-economic background and, hence, cannot afford to migrate to new frontiers like the Gulf countries and Malaysia.³⁹ Given this long and close association, Nepalis are known for a number of professions in India: as soldiers in the Indian army (Gorkha), as security guards (bahadur/chaukidaar), as restaurant and domestic workers (bahadur/kanchha), and as porters (coolies). Many Nepali women and girls can be found in Indian brothels, while both children

and adults, and sometimes entire families, work in coal mines, tea estates, timber felling, oil extracting, cattle rearing and dairy farming, primarily in the Northeast.⁴⁰ However, in the absence of a wider and systematic study, even coming up with an educated guess about the number of Nepalis working in these sectors is near impossible.” (ibid, p.10)

An article from the Nepali Times states:

“Abhishek and Asif do not fit the stereotype of Nepali workers in India, who are usually gatekeepers, waiters or farmhands. Different studies estimate the number of Nepalis in India to be between 1 and 1.6 million. It is even more difficult to calculate the amount of money they send home every year. The figure of Nepal's annual remittance earnings of Â \$2 billion totals money Nepali workers wire home from the Gulf, Malaysia, Japan, and Korea, but does not include India. Usually domestic labour market conditions determine migration trends, but in Nepal's case, simple push and pull theory may not sufficiently explain such a huge flux of labour. Rising unemployment at home, geographical accessibility, affinity with the local language, culture and laws, and the open border, have certainly driven millions of Nepalis to India but the nature of the workforce they enter into is different. Although seasonal unskilled labourers make up a sizable number of Nepalis working in India, there are semi-skilled permanent job holders in various government and private institutions.” (Nepali Times (8 March 2012) *They don't count, and are uncounted*)

This response was prepared after researching publicly accessible information currently available to the Research and Information Unit within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

References:

Centre for the Study of Labour and Mobility (2013) *Taken For Granted: Nepali Migration to India*

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Immigration and Refugee Board of Canada

Lexis Nexis

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