

## **The trail of a Thai son fighting for legal status**

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It is difficult to estimate the number of stateless and nationality-less persons in Thailand. In 2005, the National Security Council estimated the figure to be at two million, which is still being used as a reference today. During the past 5-10 years, there have been various groups of stateless and nationality-less persons concentrated along the Thai border to various neighboring countries as well as in remote areas of Thailand. Today, they can also be found in major cities in labor-intensive industrial provinces such as Samutsakorn, Samutsongram and Ranong, where laborers are required for fishing industries or in major tourist attraction areas such as Bangkok, Phuket, Pattaya, Chiang Mai. They can even be found in quiet rural areas as indigenous Thais who were not recorded or recognized in the civil registration database.

There are many obstacles and denials of basic human rights faced by stateless and nationality-less persons. They may encounter barriers in attending schools, seeking medical treatment or working. Stateless or nationality-less spouses face rejection when they want to register their marriage or access any legal/bureaucratic process. They are often arrested when travelling out of designated areas, or because they cannot produce identification documents. They live in fear of deportation, arrest and/or detention. Even children and individuals awaiting nationality verification may face deportation.

While the Thai government has been attempting to find solutions to the statelessness problem, there is still a long way to go, as documented in the struggle of one individual to attain Thai nationality.

### **Noi Bahai**

The case of Prasit Champakhao (or Noi Bahai, as he is familiarly called) may be well known to some of those working on the issue of statelessness in the country, but ordinary Thais will be unaware of Noi's existence, his struggles and the laws involved in his case. Thailand's stateless persons are also voiceless, and there are few initiatives by the government or civil society to empower them or spread awareness regarding their plight.

Noi was born of a Thai father and a Lao mother at Ban Khonkaen, Kwaeng Champasak, Laos. The only Thai legal document that proves his identity is Tor Ror 38/1, a special form of civil registration giving aliens permission to stay temporarily in Thailand, which Noi registered for in 2004. In other words, Noi is a *Lao citizen* and treated as an illegal migrant according to the cabinet resolution on migrant worker management. According to the policy at that time, Noi could apply for a work permit and reside in Thailand for one year. After 2005, Noi did not renew his work permit and has been living in risk of arrest and perhaps deportation.

During February, March and June 2009, the Thai government allowed migrant workers of three nationalities--Burmese, Lao and Cambodian--to register and extend their work permits, in accordance with a cabinet resolution dated 18 December 2007. An additional resolution of May 2009 allowed workers with expired work permits, or those who had never had permits to also register for the permits during July. They all stand to have the right to work and stay in Thailand until 28 February 2010.

Learning of this policy, Noi was confused whether to register or not. By failing to register, he continues to be vulnerable to arrest on charges of illegal entry. But if he does register, his "Laotian worker" status will remain, despite his being born of a Thai father. It was at this stage that the Stateless Watch for Research and Development Institute of Thailand (SWIT) and the Bangkok Clinic Project for Giving Counseling on Personal Status and Personal Rights went to meet Noi at his village and discuss his situation.

## Thai-Lao citizens, stateless persons and nationality-less persons<sup>1</sup> along the Mekong River

For many Thai and Lao people living along the Mekong River, the water has never been a territorial boundary. Exchange between the two peoples has been occurring for a long time, and many people of both nationalities have relatives on either side of the river. Crossing from one side to another to visit relatives and friends, or to live with them, has been more common than exception. Noi's father, Sawai, crossed over to live in Laos several decades ago with his first wife and their son and daughter, Boonyoung and Somjai. After his first wife passed away, he married his second wife, Saisamorn, a Lao citizen, and had two children with her--Noi and his older sister Wichuda. Like many Thai and Lao families along Mekong, the Champakhao family lived off the river.

In far flung villages, residents are not concerned with having their new born children registered with the government. As a result, all of Sawai's children have become undocumented or stateless persons. It is possible however, that Boonyoung and Somjai may inherit Thai nationality from their father's lineage, under section 7 of Thailand's Nationality Act B.E. 2508 (1965, revised 2008). Moreover, if it can be ascertained that Sawai's first wife was a Thai citizen, Boonyoung and Somjai would stand to gain Thai nationality from their mother as well. Meanwhile, Wichuda and Noi should inherit Lao nationality from their mother, in accordance with section 11 of Lao's Nationality Act.

Around 1993, Sawai decided to move his family back to Thailand and settle down at Ban Bahai, Tambon Huayyang, Khong Chiam district, Ubon Ratchathani to live with his younger brother, Mr Chalong Champakhao. As Sawai's family began their new lives in their fatherland, Sawai made many attempts to convince the Khon Chiam district office to grant Thai nationality to Noi. He wanted his son's name, Prasit Champakhao, added to his house registration book (Tor Ror 14). His requests went unheard however, and Noi lived on as a stateless person, a person without nationality.

In 1995, Sawai and Saisamorn had another child, Somkid, who was issued with a birth certificate (Tor Ror 2) to prove his Thai nationality. His ID number begins with '2', and his name was added into the Champakhao house registration book (Tor Ror 14).

[photo1: Noi narrating his experience through the house registration book, as Chalong and Somkid look on]

In 2004, the Thai government allowed workers of Burmese, Lao and Cambodian nationalities to register and apply for work permits. The procedure required all workers to be screened and have their personal information recorded in the civil registration database, after which they would be given temporary documentation (Tor Ror 38/1) allowing them to stay in Thailand for one year without being vulnerable to arrest.

Accordingly, local government officials told villagers in Ban Bahai of the scheme and suggested that applicable persons register for the Tor Ror 38/1 cards, also known to villagers as '*Bai Tong Kung Cards*'. When Noi learnt of this, and perhaps sick of the constant fear of arrest, he decided to register. In other words, he chose to become an alien person granted special permission to live in Thailand. His decision was not uncommon, with many persons facing similar predicaments

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<sup>1</sup> According to the Thai legal system, a **nationality-less person** is an individual who does not belong to any state, whereas a **stateless person** is an undocumented person awaiting verification. When the Thai state has included the personal information of a stateless person in the civil registration database, and issued them with a 13-digit ID number, the person is no longer stateless; from a stateless person, they become a person without nationality. At this point the individual has documents to prove their identity and access to basic rights.

choosing this as a solution; according to the National Security Council, about two million stateless persons or those having problems with their personal status were accounted for during 2004.

Even though Noi became a 'Bai Tong Kung' card holder, Sawai still persisted with his attempts to get him Thai nationality. Unlike the Thai blood that passed from him to his son however, even up to his death in 2006 he was unable to transfer the Thai nationality to Noi.

### **Younger brother born with Thai nationality while older brother is nationality-less**

It is particularly hard for Noi to accept his stateless status given that his younger brother--born from the same parents--was granted Thai nationality. The only difference between them is that Noi was born in Laos, while Somkid was born in Thailand.

According to section 7 of the Nationality Act B.E.2508 (1965), a child may acquire Thai nationality based on the hereditary principle. To prevent human traffickers from claiming to be the fathers of children they exploit, the provision is interpreted as requiring the child to be born of a 'de jure' father. In other words, the parents must have their marriage registered, or if the parents are not legally married, the father must register himself as the child's father. Few people are aware of this legal provision though, and certainly not ordinary village folk. Sawai was one of the many persons who had no marriage license and had not registered as Noi's father.

On 23 November 2008, Noi's story was published in the national newspaper *Matichon Daily*. Some three months later, the Provincial Authority of Ubon Ratchathani instructed the district of Khong Chiam to investigate Noi's case. Noi was then asked to apply for a Thai ID card and to have his name added to the house registration book (Tor Ror 14). At the same time, the provincial authority also asked Khonkaen University's Department of Forensic Medicine to verify that Noi and his younger brother share the same DNA.

Khonkaen University submitted the matching DNA results to Khong Chiam district on 1 April 2009, stating the chance that Noi and Somkid are born of the same parents is 95.11 per cent; therefore, it "could be construed that Mr Prasit Champakhao and Mr Somkid Champakhao are born of the same parents". Khon Chiam officials have failed to take any further action regarding Noi's status despite this verification.

### **Acquiring witnesses**

Before embarking on the journey to Ban Bahai, SWIT met with DNA specialist, Associate Professor Kosum Chansiri from Srinakharinwirot University, Prasanmitra. After viewing the DNA test results, Professor Kosum confirmed that Noi and Somkid are born of the same parents, and was inclined to trust the credibility of the tests conducted by Khonkaen University.

Scientifically, there is just black or white. In DNA testing to verify connections between a parent and a child, the chance is either 100 per cent or 0 per cent, black or white. For Noi's case, the chance is 93 per cent (according to the test results), so it is credible that they are father and son [Interview with Professor Kosum Chansiri 15 July 2009].

At Ban Bahai, the village headman and Noi's neighbors all stated that they knew Sawai well; even after he moved his family to Laos, he always crossed back and forth between the two sides during celebrations. They also confirmed that Noi was born of Sawai and Saisamorn.

Chalong also told SWIT that whenever his brother Sawai came to visit him, he spoke of his family in Laos, including his son Noi. Although Chalong had never seen Noi and Wichuda until they moved back to Ban Bahai, he has no reason to think they are not his brother's children.

Not far from Noi's home is the Ban Bahai school where he used to study. His teachers also confirmed that he is Sawai's son. Overall, the villagers believe Noi is Sawai's son, not only because that is what Sawai told them, but also from the way he raised Noi when he was still alive.

### **Noi and a small space for a Thai father's son, born without Thai nationality**

I want to know why I am still a stateless person, though my father was a Thai citizen. The DNA test confirmed my hereditary connection to my younger brother (who has been given Thai nationality). And in fact the DNA test was conducted at the instruction of the district office. And the results confirm we are siblings of the same parents. But why does the district office still not give me Thai nationality? [Interview with Prasit Champakhao (Noi) on 23 July 2009].

SWIT learnt that in order to go for the DNA tests, Noi had to borrow 8000 baht from his neighbors to pay for his trip from Ubon Ratchathani to Khonkaen. As of yet, he has not been able to pay back the money.

Noi's house looks dilapidated and leans slightly. It is situated close to Chalong's house and that of other neighbors, who give them some food and clothes to help them survive. Noi helps to turn on and off water pumps at the temple close to his house; he makes himself available for any kind of work around the village. However, he and his younger brother earn just a few hundred baht a month.

Noi aspires to better pay and wants to work in a big city or in Bangkok. He cannot leave Ban Bahai without fear of arrest and deportation though, as his temporary right to stay in Thailand (according to his expired Tor Ror 38/1 card) was terminated several years ago. For most people, Thai ID cards and house registration books (Tor Ror 14) are important when they enroll in schools, apply for jobs, or conduct some legal transactions. For a nationality-less person such as Noi, those documents could mean new windows of opportunity and a better life.

### **Efforts to enforce the law**

A child is so fragile and he deserves to be treated as a human being and a child. In this case, it is unknown if he is a son born of a Thai father or not, pending the proof. But a test has been conducted to verify their father and son relationship, and now the process should be just the wait for the examination result paper. And once all the proof is there, he deserves to be treated as a "person with Thai nationality"[Associate Professor Panthip Kanchanachitra Saisoonthorn, Faculty of Law, Thammasat University, SWIT's advisor, MSN message, 7 August 2009 ].

According to inside information, although the DNA test result verifies that Noi and Somkid are siblings of the same parents, it carries no legal effect. According to the 2008 revised Nationality Act, a child may acquire Thai nationality even if the father is not a 'de jure father', should there be ways to ascertain the hereditary relationship between them. For this provision to become effective however, it has to be supported by a Ministerial Regulation. One year and six months after the law's revision, there is still no Ministerial Regulation.

In the meantime, letters have been submitted to the Ubon Ratchathani governor, public prosecutor, Khong Chiam Police Station, Khong Chiam Immigration Office, and other concerned organizations explaining the nature of Noi's case. The letters also demand that Noi's basic rights pending nationality verification be upheld, as he is his father's son according to the revised Nationality Act. A person in such a status shall not be subject to arrest, prosecution for illegal entry, or to deportation.

All external efforts in Noi's case are humbled by the patience required of this stateless son, despite being born of a Thai father. Such a child lives through long days, the time imbued with doubts, hopelessness and the harsh struggle for survival.

It is hoped that the authorities will grant Noi the necessary papers proving his Thai nationality, allowing him to live with dignity and equal rights, and that his case can be a useful lesson when assisting others in similar situations.

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