

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 75668**

**AT AUCKLAND**

**Before:**

M A Roche (Chairperson)  
R Towle (Member)

**Counsel for the Appellant:**

J Sutton

**Appearing for the NZIS:**

No Appearance

**Date of Hearing:**

29 & 30 August 2005

**Date of Decision:**

25 May 2006

---

**DECISION**

---

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, who claims to be an Eritrean national.

**INTRODUCTION**

[2] The appellant arrived in New Zealand on 10 March 2005 and claimed refugee status at the airport. He was interviewed by a refugee status officer on 30 March, 31 March and 13 April 2005. In a decision dated 30 June 2005 his application for refugee status was declined leading to his appeal to this Authority.

[3] The appellant claims to be at risk of being persecuted in Eritrea for two reasons. The first reason is his involvement with an underground political movement. The second is his desertion from military service. The essential issue to be determined in this appeal is the veracity of the appellant's claims.

## **THE APPELLANT'S CASE**

[4] What follows is a summary of the evidence given by the appellant at the hearing. It is assessed later in this decision.

[5] The appellant is a single man aged in his early 20s. He began compulsory military service when he was aged 18. This service was initially to be for a period of one and a half years. After he had completed his one and a half years of service, his term was extended to two years. After that it was extended indefinitely. He remained in the military until his departure from Eritrea in 2005.

[6] In late 2004 the appellant was recruited into the underground G15 movement by a friend of his in the army, AA. The G15 underground movement was opposed to the Eritrean government and was associated with the widely known G15 group. (The Authority notes that the G15 was a group of 15 senior Eritrean officials who, in 2001, wrote an open letter to the Eritrean President criticising his conduct in office and calling for change. The G15 members were removed from their posts and most of them were arrested. None have been released: "Dissent Growing Against President" *Indian Ocean Newsletter* (June 16 2001)).

[7] The aim of the underground G15 movement was to work towards establishing democracy and the rule of law in Eritrea. When the appellant joined the movement, he filled out a membership form which included a declaration of support for the aims of the G15. He gave the completed form to AA who, sometime later, gave him a laminated membership card. The appellant never showed this membership card to anybody and hid it in the garden of his home on an occasion when he was on leave from the military.

[8] The appellant's role as a member of the underground G15 movement was to pass on information he obtained about the government to AA. He met weekly with AA for this purpose. The type of information he passed on was that army officers were pilfering supplies and bringing women into their headquarters. He also passed on information concerning the feelings of Eritrean people about the government. He was very careful about whom he approached for this type of information and targeted only those who had been arrested by the government or the families of arrestees.

[9] It was the appellant's understanding that the information he passed to AA would be passed on to others in the movement and, ultimately, placed on opposition websites.

[10] Towards the end of January 2005, AA disappeared. When the appellant became aware of this he immediately sought, and was granted, 10 days leave. He returned to his hometown where he stayed with a friend. After several days he called at his parents' home. His mother told him that there had been people at the house looking for him.

[11] Acting on the assumption that AA had been arrested and had disclosed that the appellant was part of the G15 movement, the appellant decided to leave the country immediately. Wearing his military uniform, he took a bus from his hometown and eventually made his way to Shelalo, near the Ethiopian border. From there he crossed the border at night on foot. This journey took approximately seven or eight hours.

[12] Sometime after he crossed the border he came across some Ethiopian soldiers and handed himself into them. They took him and they drove him for five hours into the Ethiopian interior to a type of immigration detention centre. The appellant had the telephone number of an uncle who resided in Ethiopia. He asked an officer at the detention centre to telephone his uncle for him and to tell him where he was.

[13] The appellant remained at the immigration centre for the next five days until his uncle arrived and collected him. While being held he was questioned at length by Ethiopian officials about his knowledge of the Ethiopian military. His uncle drove him back to his home in an Ethiopian city and from there, arranged for the appellant's travel out of Ethiopia.

[14] Using a photo-substituted Ethiopian passport, the appellant flew from Ethiopia to Zimbabwe and eventually, using a British passport, onto New Zealand where he claimed refugee status. Since arriving in New Zealand, the appellant has contacted his uncle twice. He does not, however, wish to obtain any further assistance from his uncle. In particular, does not wish to have his uncle fax documentation to him to confirm his identity because he is worried that his uncle, as an Eritrean Ethiopian, is in a vulnerable position and does not wish to endanger him.

[15] The appellant believes that should he return to Eritrea he will be persecuted for his desertion from the military and his involvement with the G15.

### **DOCUMENTS FILED**

[16] Counsel filed both opening and closing submissions.

[17] Country information about Eritrea was filed at the hearing including printouts of information from the websites of Eritrean opposition groups.

[18] The following documents were filed in support of the appellant's claim to be an Eritrean national:

- (a) A letter dated 9 September 2005, from the General–Secretary of the Eritrean Community of New Zealand, certifying that the appellant is an Eritrean national and a member of the Eritrean Community of New Zealand;
- (b) A photograph of the appellant dressed in military uniform with a fellow soldier and;
- (c) An envelope, sent from Eritrea, addressed to the appellant (which had contained the photograph).

[19] In response to country information forwarded to counsel for comment on 1 February 2006, counsel filed further items of country information and a letter to the Authority from the appellant, dated 7 February 2006, providing further details of events that had occurred after he crossed the Ethiopian border.

### **THE ISSUES**

[20] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[21] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANT'S CASE**

### **CREDIBILITY**

[22] Before the framed issues can be determined an assessment must be made of the appellant's credibility.

[23] The Authority has had reservations concerning aspects of the appellant's claim. We reject his claims to have been involved with an underground branch of the G15.

[24] The appellant's evidence about his involvement in the G15 was unreal and implausible. He would have us believe that he was required to fill in a membership form that included a declaration of opposition to the Eritrean government, he had no idea what then happened to this document, and that he was provided with a numbered, membership card which served no purpose and which he hid in a garden.

[25] As country information later in this decision shows, even the suspicion of disloyalty to the regime places Eritreans in grave danger. We do not accept that incriminating documents that had no real purpose would have been created for and by the appellant in the manner he described.

[26] His evidence about his G15 activities was vague and unreal. He claimed that he had the function of reporting on the mood of the community and its views about the regime, but also that he restricted his enquiries to arrestees and their families. Their views about the regime would be obvious.

[27] The other information he claimed to have gathered and passed to AA (that officers were pilfering food supplies and bringing women into their headquarters) would also have been widely known and did not amount to "intelligence" of any

value to an opposition movement. Although the appellant claimed his information was used on opposition websites, no information of the type the appellant claimed to have gathered appeared on the Eritrean opposition web pages viewed by the Authority.

[28] Finally, we note that there is no country information corroborating the existence of an underground G15 movement.

[29] In rejecting the appellant's G15 involvement, we are also rejecting his claimed catalyst for his desertion from the army.

[30] This has caused us to consider, seriously, whether the appellant's entire claim should be rejected. In addition to our rejection of his G15 evidence, we have some concerns relating to his identity and nationality and concerning his evidence of his passage across the Ethiopian border. This evidence was vague and inconsistent in some respects (for example his claim to the RSB of familiarity with the Shelalo area which enabled him to make the crossing and the acknowledgement in his evidence to us that he had never been closer than a three-hour drive away, before his escape).

[31] The appellant has not provided corroborating information about his identity or nationality from either his family in Eritrea or from his uncle in Addis Ababa. He claims that he is prevented from doing so by his concern for their safety and his fear that contact from him may place them at risk. Having regard to country information about Eritrea (see later in this decision) and Ethiopia (see for example, the United States Department of State *Country Report on Human Rights Practices 2004: Ethiopia* (28 February 2005) at section c, which provides some corroboration of the sensitive position of Ethiopian residents of Eritrean origin) we determine that it would be inappropriate to take a negative inference from his failure to obtain corroborative material from his family. The country information indicates that his fears have some basis in fact.

[32] The appellant is accepted by the Eritrean community in New Zealand as an Eritrean national. He has provided a photograph of himself in military uniform, sent from Eritrea. He is of an age when he could realistically be expected to still be performing military service, notwithstanding the fact that he commenced this service some years ago. Country information states that persons performing military service in Eritrea have since 1998, had their service obligations extended on an indefinite basis: Amnesty International *Eritrea: Fear of*

*torture/Incommunicado detention/Arbitrary killings* Public AI Index: AFR 64/008/2004 (9 November 2004) (the fear of torture report); see also Freedom House 2005, *Countries at the Crossroads: Eritrea* 29 June 2005 (the Freedom House report).

[33] By a narrow margin, we have determined to grant the appellant the benefit of the doubt concerning his claim to have deserted from the Eritrean military to Ethiopia. There is evidence indicating that this may be the case (the photograph, his age and his acceptance by the Eritrean community here).

## **COUNTRY INFORMATION**

### Eritrea – an Introduction

[34] Eritrea is a one party state where power is concentrated in the hands of President Isias Afwerki. Its political culture is authoritarian, predicated on secrecy and the arbitrary exercise of absolute power. The state controls the country's few media and in doing so both fences off the population from the outside world and fosters a xenophobic hostility to foreigners. There is a persistent denial of basic rights and liberties. Civil Society is completely suppressed: the Freedom House report [32] supra.

## **MILITARY SERVICE EVASION AND DESERTION**

[35] Serious consequences attach to military service desertion and evasion in Eritrea.

[36] The Amnesty International "fear of torture report" states:

"Many young people have tried to evade military service and thousands have fled the country or deserted after being conscripted. The usual punishment for evading or escaping from military service is torture, by beatings and being tied in painful contorted positions for days, and indefinite detention without charge or trial. Hundreds of Eritreans who fled the country were forcibly returned by Malta in 2002 and by Libya in July 2004. They were arrested on arrival back in Eritrea, reportedly tortured and sent to a secret prison on the main Dahlak island, where most are still detained incommunicado."

[37] In (Draft evaders, evidence of risk) Eritrea CG [2005] UKIAT 00106 (24 May 2005) the United Kingdom and Asylum Tribunal summarised current country material concerning the situation of military service evaders and deserters as follows:

“29 There is a general consensus in the evidence that those identified as deserters or draft evaders are at risk of severe ill-treatment in **Eritrea**. This is referred to in the US State Department Report 2004 at A121-2 which records that the government continued to authorise the use of deadly force against anyone resisting or attempting to flee during military searches for deserters and draft evaders and that there were substantially but unconfirmed reports that hundreds of draft evaders and national service escapees were being held in makeshift prisons around the country. It confirms the continued detention of some of the Maltese deportees being held at secret locations without contact with their families and without formal charges and refers to reports that some who tried to escape were killed by security forces. The UNHCR report of January 2004 refers to the punishments used against deserters, conscript evaders and army offenders reportedly including measures such as tying of the hands and feet for extended periods of time and prolonged sun exposure at high temperature. The CIPU Report April 2004 at paragraphs 5.63-5.72 draws on these sources, confirming the risk of severe ill-treatment for army deserters and draft evaders.”

[38] Similar reports and decisions abound. See for example *Nuru v Gonzales*, 404 F.3d 1207, 1218 (9<sup>th</sup> Cir. 2005) in which the United States Court of Appeal for the Ninth Circuit recognised the eligibility of the petitioner (who was an Eritrean military service deserter) for protection under both the Refugee Convention and the Convention Against Torture. See also, War Resisters International, *Eritrea: conscientious objection and desertion* (2005); “Eritreans working for UNMEE rounded up over military service” *The Daily Monitor, in Africa News Service* (16 November 2004); and, Amnesty International 2004, *Eritrea: thousands of people held at Adi Abeto army prison* AFR 64/008/2004 (9 November 2004).

[39] Finally, we note the opinion expressed in various human rights reports, that the mere act of applying for asylum could be regarded as evidence of disloyalty and sufficient reason to detain and torture a person on return to Eritrea after rejection of asylum: Amnesty International *Eritrea, You Have No Right to Ask-Government Resists Scrutiny on Human Rights* Amnesty (19 May 2004). Although we make no finding on this point, the fact that it has been made by Amnesty International and other human rights monitors indicates the grave human rights situation in Eritrea.

[40] Persecution has been defined in refugee law as the sustained or systemic denial of basic or core human rights demonstrative of a failure of state protection: *Refugee Appeal No 2039* (12 February 1996). The treatment meted out to military service evaders and deserters in Eritrea clearly meets this standard. It is accepted therefore that the appellant’s fear of being persecuted is well-founded.

[41] There is a real chance that the appellant will be persecuted if returned to Eritrea. The answer for the first issue framed for consideration is yes.



[42] Turning to the second issue, of Convention ground, we concur with the comments made in (Draft evaders, evidence of risk) Eritrea CG [2005] UKIAT 00106 (24 May 2005), that although a state is entitled to impose proportionate punishment for failure to carry out military service, the approach of the Eritrean authorities to the enforcement of its system of compulsory military service goes significantly beyond that of a conventional state and has acquired persecutory elements (*ibid* para [37]).

[43] Persons who refuse or desert their military service in Eritrea are regarded as disloyal and treasonous to the state. They are punished severely not as a legitimate response by the state to protect its sovereign borders, but for their perceived disloyalty. In short, they are attributed with political opinions which are contrary to those tolerated by the state and are persecuted, at least in part, for that reason (*ibid* para [43]). It is also relevant to note the politicisation of the military in Eritrea. See for example, the Freedom House report at page 246 where it is noted that the military is under the personal control of the President and that secret military tribunals hear cases about corruption and other abuses by government officials and party members.

[44] The Authority finds therefore that the appellant's political opinions or those imparted to him by the State, are a contributing factor to his risk of being persecuted.

[45] The Convention ground of political opinion applies. The answer to the second issue framed for consideration is yes.

## **CONCLUSION**

[46] For the above reasons, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

.....  
M A Roche  
Member