

**0902813 [2009] RRTA 897 (14 October 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0902813

**DIAC REFERENCE(S):** CLF2002/25608 CLF2007/191173  
CLF2008/78119

**COUNTRY OF REFERENCE:** Ethiopia

**TRIBUNAL MEMBER:** Mary Cameron

**DATE:** 14 October 2009

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Ethiopia arrived in Australia [in] March 2002 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] December 2007. The delegate decided to refuse to grant the visa [in] February 2008 and notified the applicant of the decision and her review rights.
3. The applicant sought review of the delegate's decision and the Tribunal, differently constituted, affirmed the delegate's decision [in] September 2008. The applicant sought review of the Tribunal's decision by the Federal Magistrates Court and [in] October 2008 the Court set aside the decision and remitted the matter to the Tribunal to be determined according to law
4. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention
5. The matter is now before the Tribunal pursuant to the order of the Court.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. In support of her protection visa application the applicant provided a detailed statement of her claims. According to her statement she was born on [date deleted: s431(2)] in Dire Dawa, Ethiopia and is of Oromo Ethnicity. She arrived in Australia on or about [date deleted: s431(2)] March 2002 on a Prospective Marriage visa and married her husband [husband's name deleted: s431(2)] on or about [date deleted: s431(2)] March 2002. On or about [date deleted: s431(2)] August 2006 a delegate of the Department made a decision to refuse the applicant a permanent spouse visa and this decision was affirmed on review by the Migration Review Tribunal on 2 November 2007. The applicant then made a request for Ministerial intervention pursuant to s.351 of the Act on or about [date deleted: s431(2)] November 2007. The request was refused.
21. According to the applicant's claims she grew up with her parents and siblings in Dire Dawa and realised from an early age that Oromo people in Ethiopia are considered to be second class citizens, and she was bullied and discriminated against. When she was about sixteen or seventeen, around the beginning of 1995, her father and two of her brothers became members of the Oromo Liberation Front (OLF), and they attended OLF meetings and raised money to support the OLF. According to the applicant's claims her father and brothers were harassed and targeted by the authorities on account of their OLF membership, and the authorities would come to the family home to search it and to arrest her father or brothers, which was frightening. The applicant was not a member of the OLF but believes in the liberation of the Oromo people.
22. According to her claims, in or about 1995 when she had stopped attending school the applicant started to move between Dire Dawa and Addis Ababa looking for work and undertaking a home economics course. Her father was arrested numerous times for reasons of his OLF membership and sometimes imprisoned for a week. Once he was imprisoned for three months. Sometimes the applicant's brothers were also taken by the authorities. The family lived in fear.
23. According to the applicant's claims, after a period of harassment by the authorities her father began moving around from place to place, both to avoid arrest and to learn more about supporting the OLF. The applicant was afraid that she might be arrested or interrogated for reason of her father and her brothers' activities. From about 1996 until 1997 the applicant was working in Addis Ababa, and in about 1998 she started the process of applying for a Prospective Spouse visa to join [husband's name deleted: s431(2)] in Australia. According to her claims, and on the basis of discrimination against her as an Oromo, the applicant had to bribe an official to obtain a passport

24. According to the applicant's claims, after her arrival in Australia in 2002 she stayed in contact with her family by telephone, but has been unable to reach any member of her family since sometime in 2003. According to her claims she is distressed and anxious about her uncertainty regarding her family, and her own safety if she returns to Ethiopia. According to her claims she did not apply for protection earlier because she had expected to be able to stay in Australia on her spouse visa. She sought legal advice after her request for Ministerial intervention was rejected.
25. According to her claims the applicant fears that she will be killed or imprisoned for reason of her actual and imputed political opinion if she returns to Ethiopia. She supports the aims of the OLF and will be imputed with anti-government opinion because of her father and brothers' activities. She fears that if she is imprisoned she will be beaten or raped. She fears that, because she is a woman, she is at greater risk of rape or other harm by the security forces.
26. According to her claims the applicant fears she will be treated as a second class citizen because of her Oromo ethnicity and will be perceived to have anti-government or pro-OLF political opinion, and therefore be at risk of arrest, imprisonment and beatings or death. She has a readily identifiable Oromo name, and is opposed to the way in which the Ethiopian government treats Oromo people, and OLF supporters.
27. According to her statement, the applicant also fears returning to Ethiopia for reason of her status as a woman of Oromo ethnicity, because she is aware that women in her position are targeted for harm and rape. She fears the authorities in this regard but also fears that the authorities will not protect her against harm or rape by others who do not like Oromo people.
28. According to the applicant's claims her mother was an Orthodox Christian and her father was Catholic, and she was raised in the Orthodox Christian Church. However she became a Jehovah's Witness in about 2002. She fears that she will not be able to freely practice her Jehovah's Witness religion if she returns to Ethiopia.
29. Accompanying the applicant's statement was a copy of her Ethiopian passport and a translated letter from 'Jehovah's Witnesses, Addis Ababa' dated [in] January 2008 stating that the applicant had been a permanent attendee at that council at [suburb deleted: s431(2)] between September 2001 and 2002, and although not baptised was fulfilling all things expected of Jehovah's witnesses Also on the Departmental file, although it postdates the delegate's decision is a copy of a letter from a counsellor/advocate at [Organisation 1] stating that the applicant had disclosed that she was sexually assaulted by a police guard during an overnight imprisonment in Ethiopia in 2001 The letter states that the applicant has difficulties with anxiety and depression.
30. In support of her review application the applicant provided a further written statement, noting that she had made an error on her application by leaving off the name of one of her sisters, [sister's name and date of birth deleted: s431(2)]. According to her statement the applicant prepared her protection visa application under a great deal of pressure and found it difficult to recall and talk about details of her life in Ethiopia. However since then she has consulted with social workers at [Organisation 2] and the Red Cross and has revealed further information to these people regarding what happened to her in Ethiopia. The applicant states that she has been ill with stomach pains, headaches, sleeplessness and vomiting and has commenced various medications including anti-depressant medication and medicine to help her sleep.

31. According to her statement the applicant was visiting her family in Dire Dawa around the beginning of 2001 when the authorities took her whole family to the police station, where she was separated from the rest of the family and raped by a guard. The following morning she was questioned about her father and two of her brothers and their activities and they slapped her face. The family was released, except for the applicant's father and two of her brothers. The applicant's mother told the applicant that she had been beaten by the police. The applicant's father and brothers were released after a week, and said that they had been interrogated and tortured.
32. According to the applicant's statement, since the incident in 2001 she has suffered increasing memory loss and finds it difficult to answer questions, and considers what happened to her to be shameful and embarrassing. She states that she is extremely scared of returning to Ethiopia where she fears being detained, interrogated, tortured and raped.
33. Accompanying the applicant's statement is a detailed submission from her representative stating that the applicant fears persecution in Ethiopia for reason of her actual and imputed political opinion in support of the OLF; her actual and imputed political opinion in support of the withdrawal of and her continuing opposition to the current Ethiopian government; her Oromo ethnicity and her female gender. The submission sets out detailed country information to support the applicant's claims.
34. The applicant also submitted a copy of a report from a Sexual Assault Counsellor at [Organisation 3] stating that the applicant has attended 18 counselling sessions and has disclosed that she was raped by a prison guard in Ethiopia in 2001. The report indicates that the applicant experiences depression/suicidality, anxiety, sleep disturbance, shame, hyper-vigilance and intrusive thoughts. Also submitted in support of the review application is a letter from a GP working pro-bono at the [Organisation 4] stating that the applicant is severely depressed and has trouble sleeping. The letter also asserts that the applicant was persecuted and raped in Ethiopia.
35. The applicant appeared before the Tribunal [in] June 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Amharic and English languages.
36. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
37. The applicant confirmed that she was born in Dire Dawa, Ethiopia on [date deleted: s431(2)]. She confirmed that she travelled to Australia [in] March 2002 on a Prospective Spouse visa, and married [in] March 2002. She confirmed that she was subsequently refused a permanent partner visa and she sought Ministerial intervention in respect to that refusal, but that the requested intervention was not exercised, and that she thereafter applied for a protection visa.
38. The Tribunal asked the applicant where she had grown up and she stated that she grew up in Dire Dawa with her five sisters and four brothers, and that she had lived with her family prior to leaving Ethiopia. She stated that she does not know where any of her siblings now are. The Tribunal asked the applicant how she had come to lose contact with her siblings. She stated that, around 2002 she had telephone contact with her family in Ethiopia, but that since 2003 she has had no contact with any member of her family. The Tribunal asked her how she had tried to contact her family, and she stated that she had tried to contact them but had not been able to. She stated that she had tried the Red Cross but that they cannot find them. She stated

that the situation is the same in respect to her parents; that she had contact with them up until 2003 but has had no contact since. The Tribunal asked the applicant whether she had been able to find out what had happened to any of her family members. She stated that she couldn't find anything.

39. The Tribunal told the applicant that it would like to ask the applicant some questions about her relationship with her husband [name deleted: s431(2)]. The Tribunal explained to the applicant that there is information which is potentially adverse to her claims before the Tribunal in the form of written submissions to the Department alleging that she is the half sibling of her husband, and that her partner visa application had been contrived for migration purposes. The Tribunal asked the applicant whether she has a sibling relationship with her husband. She stated that she has no familial relationship with him. She stated that when they were both young they had grown up together in Dire Dawa, and he brought the applicant to Australia as his fiancé. She stated that she had no idea why anyone would have made these allegations. The applicant stated that she is estranged from her husband and that it is not a good relationship. The Tribunal asked the applicant whether she had any idea why someone would make these allegations. The applicant said she did not know and that she was "just hearing it now"
40. The Tribunal asked the visa applicant why, given all the difficulties she has had, she had not agreed to provide a DNA sample to disprove the allegations. The applicant stated that she could not provide a DNA sample because she is a Jehovah's Witness. The Tribunal put to the applicant extensive research by the Tribunal which indicated that there was no obstacle in the religious doctrine of Jehovah's Witnesses to her providing a DNA sample, and which indicates that for the very reason that Jehovah's Witnesses are prohibited from giving blood, the advent of DNA testing methods involving cell swabs enables Jehovah's witnesses to provide DNA samples without compromising their religious beliefs in any way. The applicant produced a magazine article which indicated that, as a Jehovah's Witness she cannot give blood. The Tribunal acknowledged that the Jehovah's Witness' doctrine prohibits the transmission of blood and blood products, but pointed out that the provision of a DNA sample requires only a swab taken from inside the mouth. The applicant stated that "she doesn't know about that one."
41. The Tribunal repeated to the applicant and the applicant's adviser that the Tribunal was unable to find any information to indicate that a Jehovah's Witness could not provide a swab for DNA purposes, and that the procedure involved a swab taken from the inside of the cheek. The applicant stated that she would "stick with her religion that she did not have to give it." The Tribunal asked the applicant if she was saying that her religion prevented her from providing a swab for DNA purposes. She stated that this was correct. The Tribunal put to the applicant that the Tribunal had significant concern about the applicant's general credibility arising from the adverse information on the Departmental file and her refusal to undergo DNA testing in respect to her relationship with her husband. The applicant's representative suggested that the applicant had not been asked, in the course of her protection visa application, whether she would provide a sample for DNA purposes, and suggested that the Tribunal put the question to her in light of the understanding, now, that she would not have to give blood.
42. The Tribunal asked the applicant whether she would be willing to provide a swab for DNA purposes. The Tribunal explained that this would enable the credibility concerns which arose from the questions regarding her relationship with her husband to be put to rest. The Tribunal told the applicant that there is no religious prohibition to her providing such a sample. The

applicant said 'no, she can't.' The applicant's representative made submissions that the applicant had become confused by this issue and her confusion had been compounded by the conduct of site visits conducted by Departmental officers to her home which had made her fearful.

43. The Tribunal asked the applicant whether she has any family members in Australia. She stated that she has no-one. The Tribunal noted that the applicant claimed to have experienced bullying and discrimination in her childhood, and asked her to describe this further. The applicant stated that 'it was just because of our Oromo ethnic background, we were pushed around and assaulted by other kids at school and even teachers'. The Tribunal asked the applicant whether she had suffered any other discriminatory experiences while growing up. She stated that a lot of Oromo girls are raped by people with authority. She stated that this happened to her, too.
44. The Tribunal asked her when this had happened. The applicant stated that in 2001 the police came to her house and took her and the rest of her family members into custody, and after they were arrested they took the applicant to a small room separated from her family and a policeman came and took her out the back of the room and raped her there. She stated that she tried to fight with him but couldn't.
45. The Tribunal asked the applicant whether all of her family members were in police custody at this time. She stated that they were all in custody and that it was at night. The Tribunal asked her why all of her family had been taken into custody. She stated that her two brothers and her father were Oromo party supporters. She then stated that they were members of the Oromo party – the OLF. The Tribunal queried why the police would have detained not only the applicant's father and two brothers, but also the applicant and all of her siblings including the girls, and her mother. The applicant stated that the next morning before she was released two policemen took her to a separate room to interrogate her about her father and brothers' activities. She stated that they then released half of the family members. She stated that her mother had a bruise on her shoulder. She stated that her two brothers and her father were released after a week, and that the whole family lived in fear after that.
46. The Tribunal asked the applicant whether she had received any medical treatment after she was raped, or whether she had reported the incident to anyone. The applicant stated that she did not see anyone in Ethiopia and did not tell anyone, but that she has received medical treatment in Australia this year.
47. The Tribunal asked the applicant whether her mother or sisters had also been assaulted in any way. The applicant stated that no-one told her anything, but that her mother had a bruise on her and that one of her brothers showed that he had been punched in the face and his teeth were loose. The Tribunal asked the applicant whether she had discussed the incident of their arrest and detention with her other family members at any time. She stated that other than what she had told the Tribunal they did not talk about it.
48. The Tribunal asked the applicant whether the incident which she had described was the only incident in which she or her family members were arrested. The applicant stated that around 1995, because her father and brothers were OLF members, 'they' kept arresting them and releasing them, but around 1995 her father was kept for three months. The applicant stated that her family would take food for him but never saw where he was, and that after three months they released him. She stated that the next incident was the one that she had described which took place in 2001. The Tribunal asked the applicant whether her father had been



charged with any offence by the Ethiopian authorities, or knew the reasons why he had been detained for three months. She said no, they had just put him in jail, and then released him when they felt like it.

49. The Tribunal asked the applicant what type of political activities her father and brothers had involved themselves in. She stated that they used to have political meetings and contributed financially for the freedom of the Oromo people. The Tribunal asked the applicant whether her husband had had any involvement with the OLF. She said no. The Tribunal asked the applicant whether she had been a member of the OLF. She said she had not been a member but had been a supporter.
50. The Tribunal asked the applicant what she had done in support of the OLF. The applicant stated that when her brothers or father asked her to 'take papers or pamphlets around' she would do that. She stated that she supported the Oromo people because they are persecuted in her country. The Tribunal queried whether it was only two of the applicant's nine siblings who were OLF members. She stated that this was correct. It was her two older brothers who were members.
51. The Tribunal asked the applicant to clarify that her father's period of three months detention had been in 1995, but that he and the applicant's brothers had been repeatedly arrested and released prior to that. The applicant said yes. The applicant then stated that they first became OLF members in 1995 and after that the police came and searched the house and took her father and brothers who they repeatedly detained and then released between 1995 and 1996. The Tribunal put to the applicant that she had previously stated that her brothers and father were repeatedly arrested and released, and that then her father was detained for three months in 1995. The applicant repeated that the detentions and releases all happened in 1995 and into 1996.
52. The Tribunal asked the applicant whether anything had happened to her father and brothers after 1996. The applicant stated that they continued their involvement in Oromo organisation but were not detained again after this period. The Tribunal noted that the applicant had described a further detention in 2001. The applicant said 'yes, with the whole family.'
53. The Tribunal asked the applicant if she had any view as to why the authorities would have repeatedly arrested her father and brothers between 1995 and 1996, and then ignored them for some five years despite their continuing political activities. The applicant stated her father moved from place to place to avoid detention, but that they were all in fear. The Tribunal asked the applicant whether her brothers had moved around too. She said that they had.
54. The Tribunal noted that the applicant had earlier stated that she lived with all of her family members before leaving Ethiopia. The applicant stated that from 1996 until 1997 she moved to Addis Ababa and was working there, and in 1998 she started the process of coming to Australia. She stated that she was therefore in Addis Ababa most of the time doing courses and dealing with paper work. She stated that she travelled to and from Dire Dawa from time to time
55. The Tribunal asked the applicant why her father and brothers had decided to join the OLF in 1995. She stated that they wanted to support the cause. The Tribunal asked her why they had joined at that particular time, and not sooner. The applicant indicated that she did not understand the question. The applicant then stated that she thought it was because of harassment and abuse because of their ethnicity, but that she didn't really know because she

had only been a girl of about sixteen or seventeen. The Tribunal asked the applicant why she had not, herself, joined the OLF. She stated that she had just been a supporter and because of her religion she was not allowed to be involved in politics. The Tribunal pointed out that she had stated that she had, in fact, been involved in politics, undertaking activities such as distributing printed materials for her brothers. The applicant stated that this had been before she became a Jehovah's Witness halfway through 2001, when she converted to that religion and ceased all political involvement.

56. The Tribunal asked the applicant whether she is the only Jehovah's Witness in her family. She responded that this is correct. The Tribunal asked her why she had joined this church. She stated that she had joined because of her friend's testimony. The Tribunal asked the applicant what had attracted her to the Jehovah's Witness church. The applicant stated that they believe in one God. The Tribunal pointed out that the Christian church in general believes in one God, and queried why the applicant chose to practice in the Jehovah's Witness church in particular. The applicant stated that other churches believe in the Holy Trinity but the Jehovah's Witnesses believe that there is only one God called Jehovah.
57. The Tribunal asked the applicant whether there are other distinctions between the Jehovah's Witness teachings and those of other Christian churches. The applicant stated that the Jehovah's Witnesses have no involvement in politics; they respect human rights; they are not involved in wars and they are discriminated against in Ethiopia. The Tribunal asked the applicant in what ways Jehovah's Witnesses are discriminated against in Ethiopia. She stated that the majority in Ethiopia are Orthodox or Catholic, and that 'they' don't want anyone to convert to Jehovah's Witnesses and the government doesn't accept them, and public worship is not officially allowed.
58. The Tribunal asked the applicant whether she fears persecution in Ethiopia because she is a Jehovah's Witness. She said yes. The Tribunal asked her what persecution she fears for reason of her religion. The applicant stated that one can be isolated or lonely and be unable to practice her beliefs.
59. The Tribunal asked the applicant whether she attends a Jehovah's Witness church in Australia. She stated that she did not know where to go but now goes to her local church in Caulfield. She stated that, because of the language barrier, they give her articles which she mostly reads at home. The Tribunal asked the applicant how often she attends church. The applicant stated that they used to come and pick her up and take her every Sunday, but lately because she is stressed and unwell she hasn't gone to church, and they just give her books and articles to read. The applicant stated that she has depression, and if she goes to church she does not listen.
60. The Tribunal asked the applicant whether she was saying that she does not mix with any other Jehovah's Witnesses. The applicant stated that they used to send two people to teach her at home but now she is busy with her appointments at the [Organisation 4 and Organisation 1], so they just put material in the mail for her.
61. The Tribunal put to the applicant that independent country information before the Tribunal does not indicate that there is any restriction on Jehovah's Witnesses practicing their religion in that country. The applicant stated that there are a lot of problems and that maybe no-one talks about it.

62. The Tribunal asked the applicant whether she had any trouble in departing Ethiopia. The applicant stated that she paid a bribe to get a passport. The Tribunal asked her why she had to pay a bribe, and she responded “because of my ethnicity and Oromo background”
63. The Tribunal noted that the Oromo people comprise the largest ethnic group in Ethiopia, and that there are millions of Oromo people living in that country. The Tribunal indicated that it did not seem probable that a person would have the difficulties that the applicant claims for reason solely of ethnicity. The applicant stated that “they all have the same problem”.
64. The Tribunal asked the applicant who she had paid the bribe to. She said “one of the officers.” The Tribunal asked her which officer in particular she had paid the bribe to. She then said “the immigration people.” The Tribunal asked her how much she had paid as a bribe to obtain a passport. The applicant stated that she can’t remember, as it has been a long time.
65. The Tribunal asked the applicant whether she experienced any difficulty in obtaining a visa. The applicant stated that it was a problem as a visa was very difficult to get. The Tribunal asked her why it was difficult, and she repeated that it was very difficult to get a visa.
66. The Tribunal noted that the applicant was a client of [Organisation 1], and that she had told her counsellor there in 2008 that she had been raped in Ethiopia, after she had disclosed this information to her legal adviser and to a Red Cross worker. The Tribunal asked the applicant why she had not told anyone before this, noting that in 2008 she had been in Australia for some six years. The applicant stated that she had told her husband. She stated that it was very shameful to talk about this, and that it was her mentioning this that caused the conflict between her and her husband. She stated that it was mentally and emotionally difficult for her, as it was a shameful matter in her culture.
67. The Tribunal asked the applicant why she had decided to tell her lawyer that she had been raped. The applicant stated that this was because of the counselling at [Organisation 1]. The Tribunal noted that records from [Organisation 1] indicated that the applicant first told her lawyer about the incident, prior to telling her counsellor at [Organisation 1]. The applicant said ‘yes’.
68. The Tribunal asked the applicant whether she was saying that her disclosure of her rape caused the problems with her marriage. The applicant stated that this was one of the problems. She stated that “he also gambled” and they had a lot of problems.
69. The Tribunal asked the applicant when she had told her husband that she had been raped in Ethiopia. She stated that she forgot. She then said “can’t remember.”
70. The Tribunal asked the applicant why she fears returning to Ethiopia. The applicant stated that because she is an Oromo woman and they will kill her, rape her and detain her because she is an Oromo member. The Tribunal asked the applicant if her fear of persecution in Ethiopia is because she is an Oromo. She said ‘yes’, and that it is also because she is a woman. She repeated that they will kill her, assault her and arrest her. The Tribunal asked the applicant why the authorities would arrest her. She stated that it was because of her father and her brothers and because she is an Oromo. She then stated that she would commit suicide in Australia rather than return to Ethiopia. She stated that she ‘will commit suicide here.’

71. The Tribunal noted that the applicant has been in Australia for approximately eight years, and has stated that she has had no contact with her father or brothers for approximately six years, and has no political involvement, and questioned why in light of these circumstances, she thought she would be a target for persecution because of her father and brothers. The applicant stated that she is an Oromo and a woman and is exposed to be arrested, killed, raped and assaulted and does not know where her family is. She stated that “this is another depression for me.” She then stated that “there are still a lot of problems,” and repeated that she does not know where her family is, or whether they are arrested or are still alive.
72. The Tribunal told the applicant that the Tribunal accepts that living as a person of Oromo ethnicity in Ethiopia might give rise to certain difficulties, but that the Tribunal wished to understand why she considered herself, in particular, to be at risk of persecution from the Ethiopian authorities. The applicant stated that her father and brothers are actively involved in an Oromo organisation.
73. The Tribunal again noted that the applicant had given evidence that she has had no contact with her father or brothers since 2003, and queried how, therefore, she could know that they remain actively involved in an Oromo organisation. The applicant stated “but still because I’m Oromo.” The applicant then stated that she was not feeling good, and had a pain in her head. She stated that her head is not right when she talks about “rape and stuff.” The Tribunal acknowledged that it is a very difficult thing for a person to discuss a rape. The Tribunal noted that it takes seriously the applicant’s assertions that she will commit suicide in Australia, and requested that the applicant’s representative make contact with the applicant’s counsellor at the [Organisation 4] or at [Organisation 1] in respect to the assertions made in the hearing. The representative agreed that she would follow the matter up, and noted that counselling staff at [Organisation 1] were aware of the applicant’s suicidal impulses. The applicant’s representative stated that she would make the necessary phone calls, and the Tribunal thanked her for agreeing to do so.
74. The Tribunal invited submissions from the applicant’s representative. The representative stated that country information supported the applicant’s claims to fear being arrested for reason of her actual or imputed political views as an Oromo, and that her claims in this respect are not far fetched. She stated that the applicant could, as an Oromo woman, also have imputed political opinion for reason of the political activities of her male relatives. The representative stated that the fact that the applicant cannot find her family, who may be in hiding, indicates that the applicant might be at risk herself. The representative stated that the applicant had feared returning to Ethiopia for a long time, and she could not say whether or not the applicant had stayed in a miserable marriage for a long time because of fear of returning to Ethiopia, and that this may be an indicator of her fear. The adviser asked the Tribunal to take into account that the applicant has an impaired capacity to answer questions clearly. The representative foreshadowed that she might provide a written post-hearing submission.
75. The Tribunal asked the representative why, given the applicant’s evidence that she had told her husband about her experiences in Ethiopia, the applicant had not considered asking her husband to provide evidence in support of her application. The applicant stated that she has been separated from her husband for a year and that her husband wants to divorce, and that they are in the process of divorcing. The Tribunal asked the applicant why her husband wants to divorce and she stated that she doesn’t know why.

## **Post hearing submission**

76. By letter dated [in] July 2009 the Tribunal received a post hearing submission from the applicant's representative. The submission states that with reference to the applicant's claims that her family were targeted in or about 1995 and to the Tribunal's questions in relation to why her family were not then targeted again until about 2001, the applicant had explained that her father and brothers were moving around a lot and also that she herself had relocated to Addis Ababa and may not have known about problems that her family was facing. According to the submission, country information is consistent with the applicant's claims that her family members were targeted in 1995 or 1996 and again in 2001, in part because of election periods in Ethiopia. According to the submission, recent country information indicates that the Ethiopian government is becoming increasingly repressive in the lead up to elections in 2010, and is likely to target opposition supporters or those they perceive to support an opposition party or the OLF, or people who have family members who are political dissidents.

77. By letter dated [in] September 2009 and pursuant to s.424A of the Act the Tribunal wrote to the applicant inviting her to comment on or response to information which the Tribunal considered would, subject to her comments or responses be the reason, or part of the reason, for affirming the decision that is under review. The particulars of the information were set out as follows;

- "In your Statement of claims dated [date] December 2007 you stated that *"since 2003, when I have contacted my family by phone or letter there has been no response. I am not sure but my family could have been fearful that the Government had tapped the telephone and were listening into our phone calls, and they did not want to talk about their problems over the telephone. Since this time I have not known where my family are. This makes me extremely worried. I cannot contact any member of my family."*
- In your evidence before the Tribunal at the Tribunal hearing on [date] June 2009 you stated that you grew up in Dire Dawa with your five sisters and four brothers and that you lived with your family before you left Ethiopia, and that you no longer know where any of your siblings or your parents are as you lost contact with your family in Ethiopia in 2003 and were unable to make contact with any member of your family.
- In contrast with this evidence you provided details of your family composition in your Application for Migration to Australia by a partner (Subclass 300 visa application) lodged on [date] April 2002. In that application you stated that four of your siblings; [names], were resident in Kenya.

This information is relevant to the review because the differences in your accounts regarding the whereabouts of your family members and the circumstances of your loss of contact with them may raise doubts as to the veracity of your claims regarding your loss of contact, and your inability to make contact, with anyone in your family.

You are invited to give comments on or respond to the above information in writing."

78. By letter dated [in] September 2009 the applicant's representative wrote to the Tribunal enclosing a Statutory Declaration of the applicant, also dated [in] September 2009 in response to the Tribunal's letter. The applicant's Statutory Declaration states;

*".....I first started the process of applying to come to Australia in 1998. In my Statutory Declaration made on [date] December 2007 at paragraph 11 I noted that it was in 1998 that I started this process. I have also attached a copy of my original prospective (spouse) visa application form dated [date] February 1998. At that time my brothers [names] were forced to flee Dire Dawa on account of being targeted because of their activities in support of Oromo independence. My brothers had to take my sisters [names] with them. My*

*brothers also took my sisters because my father was also always moving around on account of his own political activities and my mother was not well. She suffered diabetes and other health problems such as high blood pressure. They took my younger sisters with them to protect them and keep them out of harm's way. I think my brothers were on the border of Kenya and Ethiopia around this time and this is why it states they and my sisters were in Kenya on that form signed 1998.*

*I couldn't take my younger sisters at the time because I was also moving between Addis Ababa and I had applied for a visa to come to Australia and I thought I could be leaving Ethiopia soon. On that 1998 form it also confirms that [names] were of unknown whereabouts so they could not care for my younger sisters either. My other sisters [names] and my brother [name] were old enough to look after themselves so they stayed at home with my mother.*

*In 2001 my family and I were arrested, as I have outlined in my statutory declaration made on [date] May 2008. We were arrested on account of my father's and my brothers' [names] political activities.*

*When I arrived in Australia, my husband completed my spouse form lodged on [date] April 2002. He obviously just copied over the information on the 1998 form without thinking. In truth, I cannot even remember filling in the 2002 form or didn't even remember it existed. I suffer from severe memory loss and I have found it hard to even recount these details to put in my Statutory Declaration. My adviser had to explain the process to me again and why this form existed. I obviously must have signed this form but I cannot remember it. As outlined in my Statutory Declaration made on [date] December 2007, my husband had a mental illness, and was addicted to gambling, and perhaps did not pay proper attention to information about my family, either in relation to what I had told him about my family or where they were, or simply when he was filling in the form he did not realise or think about filling it in properly.*

*My family were not in Kenya in 2002, they were in Ethiopia. I hope the Tribunal can accept my explanation in this regard. At the moment I am facing more difficulties as I have been asked by my husband to leave my house. He owns the house and now I have nowhere to go."*

79. Attached to the applicant's statutory declaration is a copy of the "family details" of the applicant written down at question 67 on a visa application form completed, according to the applicant, in 1998.

## **FINDINGS AND REASONS**

80. The applicant travelled to Australia on a valid Ethiopian passport and states that she is a national of Ethiopia. She has provided evidence of her background in Ethiopia. The Tribunal finds that she is a national of Ethiopia and therefore for the purposes of the Convention the Tribunal has assessed her claims against Ethiopia as her country of nationality.
81. In determining whether an applicant is entitled to protection in Australia, the Tribunal must first make findings on the claims the applicant has made. This may involve an assessment of the applicant's credibility. In assessing credibility, it is important to be sensitive to the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims. That said, the Tribunal is not required to accept uncritically any or all allegations made by the applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can

find that a particular factual assertion by an applicant has not been made out. Moreover the Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J: *Selvaduri v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547. If the Tribunal makes an adverse finding with confidence in relation to a material claim made by an applicant, but is unable to make a finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true.

82. The Tribunal has considered the applicant's claims to fear persecution for reason of her political opinion in support of the OLF; her imputed political opinion for reason that her father and two of her brothers were politically active OLF members; her Oromo ethnicity; her membership of a particular social group of Oromo women; and in respect to her religion as a Jehovah's Witness.
83. Before going on to deal with the applicant's specific claims of persecution, the Tribunal observes that during the course of the review application a number of significant discrepancies in the evidence emerged that detracted from both the plausibility of the applicant's claims and her overall credibility. These included a number of instances where the claims made by the applicant in her protection visa application conflicted with the oral evidence provided at the Tribunal hearing. Although the applicant provided a range of explanations for the inconsistencies in the evidence, for the reasons set out below, the Tribunal has serious concerns about key aspects of the applicant's evidence.
84. The Tribunal has had regard to the applicant's oral evidence. As indicated to the applicant in the course of the hearing, the Tribunal has concerns about aspects of her evidence which the Tribunal found to be extremely vague and lacking in detail. The applicant did not always respond to the Tribunal's questions, and when she did answer the Tribunal's questions her answers were brief and provided little additional detail or explanation in support of her claims. At several instances in the hearing the applicant responded to the Tribunal's questions by stating that she was getting a pain in her head, or that she could not remember. At one point in the hearing she responded to the Tribunal's questions by asserting an intention to commit suicide in Australia rather than return to Ethiopia.
85. While the Tribunal accepts that the applicant may experience some memory difficulties, her answers at the hearing were generally clear, albeit brief, and she did not, for the most part, express any difficulty in recalling particular incidents or events. The Tribunal is satisfied that the applicant had a fair hearing in which she was given every opportunity to provide evidence in support of her claims. Where her evidence was significantly inconsistent with that previously provided, or where the applicant did not answer the Tribunal's questions at all, the Tribunal does not accept that this was necessarily due to deficiencies in her memory.
86. The Tribunal has taken into account the submissions from [Organisation 1] and from a doctor working at the [Organisation 4]. The Tribunal accepts that the applicant experiences depression and anxiety together with other symptoms of those conditions as described. However on the evidence before it, and for the reasons given below, the Tribunal does not accept that these conditions arise as a consequence of persecution of the applicant in Ethiopia.
87. There is credible evidence before the Tribunal in the form of detailed allegations made to the Department of Immigration and Citizenship that the applicant married a member of her

family in a marriage which was contrived for immigration purposes. Although the applicant's application for a spouse visa is not directly relevant to the protection visa application which is the subject of review, the Tribunal nevertheless considers that the earlier visa application process has significant relevance to the credibility of the applicant's claims for protection.

88. At the Tribunal hearing the Tribunal discussed with the applicant that there is evidence before the Tribunal, in the form of allegations made to the Department in respect to the applicant's spouse visa application that she entered into a marriage with her brother or half-brother in a contrived marriage for the purposes of immigration. The applicant stated that she was unaware of these allegations and was "just hearing about this now." However this information was comprehensively discussed with the applicant by the Tribunal, differently constituted at an earlier hearing, and was also put to her in writing under the provisions of s424A of the Act, and to which the applicant responded in writing [in] July 2008.
89. In *SZEPZ v MIMA* [2006] FCAFC 107, a Full Court of the Federal Court found that where a Tribunal decision has been set aside by a court and the matter remitted for reconsideration owing to a jurisdictional error, it does not follow that all the steps and procedures taken in arriving at that invalid decision are themselves invalid. The Tribunal still has before it the material that was obtained when the decision that had been set aside was made and is obliged to continue and complete the particular review, not commence a new review. The Court held that insofar as s.424A(1)(a) refers to a state of mind or mental process of determining if the information is information that is the reason or part of the reason for affirming the delegate's decision, it must be taken to refer to the state of mind or mental process of the particular Member. However, the Tribunal must give the information. In that case, the previous Member had sent a s.424A letter. The relevance of the information remained the same for the Member who completed the review, and accordingly, there was no failure to comply with s.424A in relation to the making of the second decision. It follows from this view that any information given to the Tribunal for the purposes of the review prior to the reconstitution is still before the Tribunal following the reconstitution.
90. The Tribunal noted that the applicant had refused to undergo DNA testing to resolve the issue of her relationship with her husband, citing claims to be a Jehovah's Witness and who cannot, for religious reasons, give a blood sample for DNA purposes.
91. The Tribunal explained to the applicant that a blood sample is not necessary for DNA testing, and that detailed independent research indicates without ambiguity that there is no obstacle in the Jehovah's Witness doctrine to the provision of DNA by means other than a blood sample.
92. Sources consulted by the Tribunal included;
  - the Jehovah's Witnesses Official Web Site <http://watchtower.org/e/jt/article> accessed 11 June 2009
  - a research paper submitted to the Michigan State University College of Law which considers the differences of belief among Jehovah's Witnesses regarding the acceptability of "giving blood" and concluding that by the submission of DNA through buccal swabs an individuals religious beliefs will not be burdened: 'The Shattering of a Solid Rock: Would the DNA Act as currently enforced by the Federal Government Survive a Strict Scrutiny Challenge under the Religious Freedom Restoration Act? Fall, Michigan State University website <http://www.law.msu.edu> accessed 11 June 2009



- DNA Paternity Testing Information Site explaining DNA sample collection <http://www.paternitytests.info/index.php/2008/03/14> accessed 15 June 2009
  - A testing laboratory in Australia, DNA Solutions which advises on the common use of buccal (mouth) swabs or hair samples for DNA testing <http://www.dnatesting.com.au/faq.html> accessed 15 June 2009
  - A BBC Website providing information on religions including Jehovah's Witnesses <http://www.bbc.co.uk/religion>
93. The applicant's adviser stated that the applicant had never been directly asked whether she would provide a DNA sample by means other than the transmission of blood, and suggested that the Tribunal ask the applicant whether she would do so given the lack of any religious prohibition on other means of DNA sampling. The Tribunal asked the applicant whether she was willing to provide a DNA sample by a means other than a blood sample, and the applicant responded that she would not do so and that she refused to undergo DNA testing by any means. She was unable to provide a reason why she would not do so. The Tribunal told the applicant that her refusal to undergo DNA testing to allay any concerns in respect to her relationship with her husband raised significant credibility concerns for the Tribunal.
94. Given the lack of extrinsic sources to indicate any religious constraint on the applicant providing a DNA sample, combined with the seriousness of the harm she claims to face if she returns to Ethiopia including arrest, torture, rape and death, the Tribunal considers the applicant's refusal to consider providing a DNA sample to allay the Tribunal's credibility concerns raises significant doubts about the veracity of her claims. The Tribunal gives significant weight to the applicant's insistence that she would not, by any means, be willing to provide DNA evidence in respect to her relationship with her estranged husband [husband's name deleted: s431(2)].

### **Political Opinion and Imputed Political Opinion**

95. The Tribunal has found the applicant not to be credible in key aspects of her evidence. Her claims in respect to her father and brothers' political involvement with the OLF and her own support of the OLF were very vague and lacking coherence, and the Tribunal does not accept her claims.
96. The applicant has given evidence that her father and two of her brothers joined the OLF in 1995 and were arrested and released several times in 1995 and 1996. She has consistently given evidence that they had no further problems until the applicant's whole family was arrested in 2001. This evidence has been supported by the submissions of the applicant's representative which state that country information is consistent with the applicant's evidence that her family members were targeted in 1995 or 1996 and not again until 2001. This evidence however is inconsistent with evidence provided by the applicant in response to the Tribunal's post-hearing letter dated [in] September 2009 and sent under the provisions of s.424A of the Act.
97. The Tribunal wrote to the applicant querying the whereabouts of her various family members at the time she claims that an arrest of the entire family took place in 2001. The applicant responded in her statutory declaration dated [in] September 2009 stating that her two older brothers were forced to flee the Ethiopian authorities in Dire Dawa in or about 1998 because they were being targeted for political reasons. This is not consistent with the applicant's

claims that her brothers experienced no problems with the authorities in Ethiopia between 1996 and 2001.

98. In her statutory declaration [in] September 2009 to the Tribunal the applicant states that her brothers fled, she thinks, to the border of Kenya and Ethiopia with her younger sisters [sisters' names deleted: s431(2)] to protect them and keep them out of harm's way. The Tribunal does not consider it plausible that two men who were fleeing the Ethiopian authorities would take their younger sisters who were approximately five and six years of age with them for "safekeeping". The Tribunal does not accept the applicant's submissions in this regard.
99. The applicant claims to have nine siblings who were born between 1962 and 1993. She has given evidence that her father and brothers moved around a lot to avoid the attention of the Ethiopian authorities. She has also given evidence that she was living in Addis Ababa from 1998 but traveling to Dire Dawa on occasion. As was put to the applicant in the Tribunal's letter [in] September 2009 pursuant to s.424A of the Act, the applicant's application form in respect to her spouse visa application states that four of her siblings were living in Kenya at the time of the application in 2002. However she has also given evidence that she was arrested with all of her family members in 2001 at their family home in Dire Dawa and that they were all detained overnight, and that she was raped by a prison officer.
100. On the evidence before it, the Tribunal does not accept that the applicant was living in the same place as her parents and all nine of her siblings in 2001. Therefore the Tribunal does not accept that the applicant was arrested along with all of her siblings and her parents, simultaneously, at their home on the same day in 2001.
101. The Tribunal has taken into account the applicant's submissions that her estranged husband filled out the 2002 application form by transcribing an earlier form. However she has also submitted that she cannot remember filling in the 2002 form or indeed the existence of that form because of memory loss. The Tribunal does not accept the applicant's submissions in respect to her memory loss. The Tribunal does not find it plausible that her memory remains intact in respect to key aspects of her evidence in support of her claims but fails significantly when she is asked to respond to information that is potentially adverse to those claims. The Tribunal does not accept that the inconsistencies in the applicant's evidence can be attributed solely to memory loss.
102. On the evidence before it and taking into account the significant inconsistencies in the applicant's evidence, the Tribunal does not accept that the Ethiopian authorities continually arrested and released the applicant's father and two brothers during 1995 and 1996 or that her father was detained for a three month period at this time. The Tribunal also does not accept that the applicant and her parents and siblings were arrested and detained in 2001. Because the Tribunal does not accept that the applicant was arrested or detained in 2001, it follows that the Tribunal does not accept that the applicant was raped while in the custody of the Ethiopian authorities, nor that she was slapped by an officer. The Tribunal further does not accept that the applicant's family members were harmed, as she claims, in detention in 2001.
103. The Tribunal does not accept the applicant's claims in relation to her political opinion. The Tribunal does not accept that she was involved with or supported the OLF, or that she delivered papers or pamphlets in support of the OLF. The Tribunal further does not accept that the applicant's family is missing and that she has been unable to contact any of her family members since 2003. Although the applicant has indicated in her submissions an

intention to try to contact her family members through the Red Cross, there is no evidence before the Tribunal to indicate that she has attempted to do so, or has made any other attempt to contact any of her family members. On the evidence available to it the Tribunal does not accept that the applicants' family members are missing or of unknown whereabouts.

104. The Tribunal does not accept the applicant's claim that her father and two of her brothers were members or supporters of the OLF, or that they attended meetings or raised money for the OLF, or that they were targeted as a result by the Ethiopian authorities. The Tribunal does not accept that the applicant is a credible witness in respect to key aspects of her claims, and finds her evidence in respect to her father and brothers' political involvement to be vague and lacking in any meaningful detail. Her evidence also contains inconsistencies in the circumstances and timing of her family's targeting by the Ethiopian authorities. The Tribunal does not accept the applicant's claims to fear persecution for reason of actual or imputed political opinion in support of the withdrawal of the current Ethiopian government, or her continuing opposition to the current Ethiopian government, now or in the reasonably foreseeable future should she return to Ethiopia.

### **Oromo Ethnicity**

105. The applicant has claimed that she fears persecution in Ethiopia because she is of Oromo ethnicity and has an identifiable Oromo name. The Tribunal has had regard to independent country information in respect to Oromo people in Ethiopia which it also discussed with the applicant at hearing.

106. According to the official OLF website; the Oromo comprise the largest ethnic group in Ethiopia comprising up to 40% of Ethiopia's population and Oromia is the largest of Ethiopia's 9 states. Oromo leaders and activists argue that the repression of the Oromo population constitutes a form of state terrorism such that;

They do not have personal and public safety in their homes and communities. They are exposed to massive political violence, human right violations and absolute poverty. Because of the magnitude of the Oromo problem, it is impossible to provide a numerical face to the devastating effects of violence, poverty, hunger, suffering, malnutrition, disease, ignorance, alienation, and hopelessness. Since the Meles regime is weak and lacks legitimacy, accountability, and professionalism, it could not and cannot solve these massive and complex problems...State terrorism is a systematic governmental policy in which massive violence is practiced on a given population group with the goal of eliminating any behaviour which promotes political struggle or resistance by members of that group.

107. The same writer also makes the claim that the wider OLF has become almost synonymous with the Oromo people, with the regime's actions consistent with the destruction of both;

With the increasing intensity of the Oromo national movement, the Tigrayan authoritarian-terrorist regime is determined to increase the level of mass killings and terrorism. The regime is concerned with the existence of the OLF and the support and sympathy this organization enjoys from the majority of the Oromo people...What bothers the regime is that the more it terrorizes the Oromo people by killing or imprisoning thousands of them by claiming that they are the supporters of the OLF, the more the Oromo are determined to embrace Oromo nationalism and the OLF. As a result, the Oromo and the OLF have almost become synonymous. Therefore, it is

impossible to destroy the OLF without destroying the Oromo people. (Jalata, A, “The impacts of Ethiopian state terrorism and globalization of the Oromo national movement” 2005, Oromo Liberation Front website, <http://www.romoliberationfront.org/Publications/Publications.htm> - Accessed 8 May 2008

108. Human Rights Watch reported prior to the recent elections that;

A dominant theme in the EPRDF's political discourse on Oromia is the need to combat the activities of the outlawed Oromo Liberation Front (OLF), which has been fighting a low-level insurrection against the government for years with Eritrean backing. Across much of Oromia, local officials have routinely and for many years used unproven allegations of links to the OLF as a pretext to subject law-abiding government critics to arbitrary detention, torture, extrajudicial killing, and other forms of human rights abuse.

Local officials in Oromia have also made extensive use of the kebele system, along with smaller cells called gott and garee, to keep residents under constant surveillance for signs of government criticism. The overwhelming majority of local and regional authorities in Oromia belong to the Oromo People's Democratic Organization (OPDO), which is the regional arm of the EPRDF.

Ethiopia's last elections were parliamentary polls in 2005. The run-up to the elections saw signs of openness in some areas, though in most constituencies the same patterns of repression documented above prevailed. Following the elections, opposition efforts to contest the results sparked a heavy-handed government crackdown that saw several hundred people gunned down in the streets of Addis Ababa, mass arrests of perceived opposition supporters, and several prominent opposition leaders jailed on charges of treason that were ultimately dropped. (“Repression sets stage for non-competitive elections” 2008, Human Rights Watch, 10 April, <http://allafrica.com/stories/200804110930.html?viewall=1> – Accessed 6 May 2008

109. A 2008 report of the Department of Foreign Affairs and Trade in respect to an Oromo applicant states that;

There have also been reports of Oromo Liberation Front (OLF) members (as well as Oromos who are generally accused of being OLF sympathisers) being seriously harassed by the authorities. While not prepared to comment on the specifics of this case, they noted that in general it is clear that serious human rights violations are committed against those perceived to be a real threat to the government (such as the OLF).

Ultimately, it is very difficult to assess what threat the individual in question might face. The key question would be whether or not Ethiopian authorities saw him as a real threat. If so, then he could face serious problems, but if not then he might be able to return without incident (DFAT Report 768, 2008)

110. On the basis of the country information available to it the Tribunal accepts that Oromo people experience discrimination in Ethiopia. The Tribunal accepts that the applicant suffered some discrimination and bullying by other kids and teachers when she was a schoolgirl in Ethiopia prior to 1995 when she finished school, as she has asserted in her statement of claims. However on the limited evidence before it the Tribunal finds that this discrimination and bullying did not amount to serious harm within the meaning of the Convention.

111. The country information before the Tribunal indicates that the Ethiopian authorities target those Oromo people who are thought to support or have sympathy for the OLF, or who are seen by the authorities as a threat. The Tribunal accepts that people of Oromo ethnicity who are of interest to the Ethiopian authorities for reason of their actual or imputed support for, or membership of the OLF may be targeted for persecution by the Ethiopian authorities. However because the Tribunal does not accept the applicant's claims that she was a supporter of the OLF or that her father and brothers were members or supporters of the OLF, and does not accept her claims that she or her family members were arrested, detained or harmed in the past by the Ethiopian authorities, it does not accept on the evidence before it that the applicant is of any adverse interest to the Ethiopian authorities. The Tribunal does not accept that the applicant was detained or raped or otherwise harmed in 2001 on account of her ethnicity and her imputed political opinion. For these reasons the Tribunal does not accept that the applicant was, in the past, targeted by the Ethiopian authorities for serious harm for reason of her ethnicity.
112. As was discussed with the applicant at the hearing, country information before the Tribunal indicates that people of Oromo ethnicity make up the single largest ethnic group in Ethiopia, and therefore a person's Oromo ethnicity is not of itself sufficient reason to attract the adverse interest of the Ethiopian authorities. As was raised with the applicant at hearing there are several million Oromo people in Ethiopia and therefore Oromo ethnicity is unlikely, of itself, to impute anti-government opinion to the applicant, or suggest that she is opposed to the way in which the government treats Oromo people. The Tribunal does not accept that the applicant's Oromo ethnicity has created a perception on the part of the Ethiopian authorities that the applicant is 'anti-government'. In the light of the country information in regarding the Oromo population in Ethiopia, and given that the Tribunal does not accept the applicant's claims in respect to her actual or imputed political opinion in support of the OLF, the Tribunal does not accept that the applicant faces a real chance of persecution in the reasonably foreseeable future for reason of her ethnicity.
113. Because the Tribunal does not accept that the applicant was of interest to the Ethiopian authorities for reason of her actual or imputed membership or support of the OLF or her Oromo ethnicity, it follows that the Tribunal does not accept, on the evidence before it, that the applicant had to bribe an official in order to obtain a passport. The Tribunal does not accept this claim.
114. Accordingly the Tribunal finds that the applicant does not face a real chance of persecution or serious harm for reason of her Oromo ethnicity now or in the reasonably foreseeable future if she returns to Ethiopia.

### **Membership of a particular social group**

115. It has been submitted explicitly or impliedly that the applicant is a member of the particular social groups comprised of women ("female gender") and of women of Oromo ethnicity.
116. The leading recent Australian authority on the particular social group question is *Applicant S v Minister for Immigration and Multicultural Affairs* (2004) 217 CLR 387 ("*Applicant S*"). In their majority joint judgment, Gleeson CJ, Gummow and Kirby JJ. set out at paragraph [36] the correct approach to the question of whether a group falls within the scope of the term *particular social group* for the purposes of the Convention:

Therefore, the determination of whether a group falls within the definition of "particular social group" in Art 1A(2) of the Convention can be summarised as follows.

First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a “social group” and not a “particular social group”. As this Court has repeatedly emphasised, identifying accurately the “particular social group” alleged is vital for the accurate application of the applicable law to the case in hand.

117. In the same case Justice McHugh summarized the issue similarly;

To qualify as a particular social group, it is enough that objectively there is an identifiable group of persons with a social presence in a country, set apart from other members of that society, and united by a common characteristic, attribute, activity, belief, interest, goal, aim or principle.

118. The applicant claims that she may be persecuted in Ethiopia for reason of her status as a woman of Oromo ethnicity. According to her claims she is aware that women in her position are targeted for harm and rape. She fears the authorities in this regard but also fears that the authorities will not protect her against harm or rape by others “who do not like Oromo people.” The Tribunal accepts that women in Ethiopia, and Oromo women in Ethiopia constitute particular social groups of which the applicant is a member.

119. There is very little evidence before the Tribunal to suggest that the applicant has in the past suffered discrimination or other serious harm because of her ethnicity or gender or a combination of both. It is established law that an applicant does not have to show past persecution in order to demonstrate a well-founded fear of being persecuted (*Abebe v The Commonwealth (1999) 197 CLR 611*). However the applicant’s claims to fear harm from unidentified people who do not like Oromos are extremely vague and lacking in any coherent detail as to the identity or perceived motivation of the likely perpetrators, or the reasons for which the applicant has this fear of harm. Given the lack of information before the Tribunal in respect to this integer of the applicant’s claims, and for the reason that the Tribunal finds the applicant not to be a credible witness the Tribunal does not accept that the applicant has a well-founded fear of being raped or harmed in Ethiopia by non-State actors who do not like Oromos.

120. Because the Tribunal does not accept that the applicant has a well founded fear of persecution in Ethiopia from non-State actors, it is unnecessary for the Tribunal to address the question of the adequacy or otherwise of State protection of women and women of Oromo ethnicity in Ethiopia.

121. The applicant also claims to fear harm from the Ethiopian authorities for reason of her membership of the particular social group of Oromo women. The Tribunal does not accept, for the reasons set out above, that the applicant was raped or has experienced other serious harm at the hands of the Ethiopian authorities in the past for reason that she is an Oromo woman. These findings, together with the country information put to the applicant at hearing in respect to the large Oromo population in Ethiopia, and for reason that the Tribunal finds the applicant not to be credible in key aspects of her evidence, lead the Tribunal to conclude that the applicant does not have a well founded fear of harm from the Ethiopian authorities for reason that she is an Oromo woman now or in the reasonably foreseeable future should she return to Ethiopia.

122. For the reasons given the Tribunal does not accept that there is a real chance the applicant will suffer serious harm as a result of her Oromo ethnicity and/or her female gender if she were to return to Ethiopia now or in the reasonably foreseeable future.

## **Religion**

123. The applicant claims to fear persecution for reason of her religion as a Jehovah's Witness. The Tribunal accepts that the applicant became interested in the Jehovah's Witness church under the influence of a friend in Ethiopia and became a convert to that church, as she claims, in 2002. The Tribunal accepts that she was a member of that church in Ethiopia albeit only for a few weeks prior to her departure from Ethiopia to Australia in March 2002.
124. The Tribunal is satisfied that the applicant has attended the Jehovah's Witness church in Australia as claimed. On the evidence before it the Tribunal accepts that the applicant is a Jehovah's Witness and is further satisfied that, in attending church gatherings in Australia she was engaging in conduct otherwise than for the purposes of strengthening her claim to be a refugee for the purposes of 91R(3)(b). Accordingly, the Tribunal has taken the applicant's conduct into account
125. The Tribunal does not accept that the applicant faces a real chance of persecution in Ethiopia for reason of her religion. The applicant was unable to articulate her reasons for fearing persecution for reason of her religion in Ethiopia other than to state that the majority of people in Ethiopia are Orthodox or Catholic, and that 'they' don't want anyone to convert to Jehovah's Witnesses and the government doesn't accept them, and public worship is not officially allowed. When the Tribunal questioned the applicant at hearing regarding this aspect of her claims, the applicant stated that "one can be isolated or lonely or be unable to practice their beliefs."
126. The applicant's evidence is not consistent with independent country information before the Tribunal and discussed with the applicant at the hearing which indicates that Jehovah's Witnesses have no significant restraints imposed on their ability to practice their faith. The US Department of State's 2007 report on religious freedom in Ethiopia has reported that

.The Constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion. The law at all levels protects this right in full against abuse, either by governmental or private actors.

...The Government generally respected religious freedom in practice; however, on occasion local authorities infringed on this right. There was no change in the status of respect for religious freedom by the Government during the period covered by this report Some Protestant and Muslim groups continued to complain that local officials discriminated against them when they sought land for churches, mosques, and cemeteries, but there was no infringement on religious practice.

127. The report also states that:

Christian evangelical and Pentecostal groups continue to be the fastest growing groups and constitute an estimated 10 percent of the population. Established Protestant churches such as Mekane Yesus and the Kale Hiwot are strongest in the Southern Nations, Nationalities, and Peoples' Regional State (SNNPR); western and central Oromiya; and in urban areas. In

Gambella Region, Mekane Yesus followers represent 60 percent of the population. The Evangelical Church Fellowship claims 23 denominations under its religious umbrella throughout the country.

Oriental Rite and Latin Rite Roman Catholics number more than 500,000. There are reportedly more than 7,500 Jehovah's Witnesses adherents and 105 Kingdom Halls in the country. Jews, animists, and practitioners of traditional indigenous religions make up most of the remaining population in the country. In Addis Ababa and north Gondar, in the Amhara Region, the people known as Feles Mora claim that their ancestors were forced to convert from Judaism to Ethiopian Orthodoxy many centuries ago. There are very few atheists. Although precise data is not available, active participation in religious services is generally high throughout the country. (US Department of State 2007, *International Religious Freedom Report for 2007 – Ethiopia*, September.

128. Similarly,

Members of the Jehovah's Witnesses continued to lease their own plots of land in the capital and throughout the country, due to lack of suitable properties available from the Government. However, in Oromia some plots were provided free of charge to some religious groups to build places of worship. (US Department of State 2006, *International Religious Freedom Report for 2006 – Ethiopia*, September.

129. According to the figures on the Watchtower web site there was a 2007 peak of 8,058 Jehovah's Witnesses, and 157 congregations in Ethiopia ('Statistics: 2007: Report of Jehovah's Witnesses Worldwide' 2007, *Watchtower web site* <http://www.watchtower.org/e/statistics/wholereport.htm> - Accessed 5 May 2008

130. On the limited evidence of the applicant and in light of independent country information indicating that there are few if any constraints on the religious freedom of Jehovah's Witnesses in Ethiopia, the Tribunal does not accept that the applicant faces a real chance of persecution for reason of her religion now or in the reasonable foreseeable future should she return to Ethiopia.

131. On the basis of the evidence before it, and having considered the applicant's claims individually and cumulatively, the Tribunal is not satisfied that the applicant faces a real chance of serious harm for any Convention reason if she returns to Ethiopia now or in the reasonably foreseeable future. The Tribunal is therefore not satisfied that the applicant has a well-founded fear of persecution within the meaning of the Convention. The Tribunal does not accept that the applicant experienced past harm in Ethiopia as she claims or that she has a well founded fear of persecution now or in the reasonably foreseeable future if she returns to Ethiopia.

## **CONCLUSIONS**

132. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

## **DECISION**

133. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.



I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's I.D. prrt44

**KEYWORDS:**

CASA House	= Organisation 1
Foundation House	= Organisation 2
South East Centre Against Sexual Assault	= Organisation 3
Asylum Seekers Resource Centre	= Organisation 4