

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

**REFUGEE APPEAL NO 75851**

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**AT AUCKLAND**

<b><u>Before:</u></b>	J Baddeley (Chairperson) B Dingle (Member)
<b><u>Counsel for the Appellants:</u></b>	C Curtis
<b><u>Appearing for the INZ:</u></b>	No Appearance
<b><u>Dates of Hearing:</u></b>	19, 20, 23 & 26 June 2006 and 18 December 2006
<b><u>Date of Decision:</u></b>	2 July 2007

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**DECISION DELIVERED BY B DINGLE**

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**INTRODUCTION**

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ), declining the grant of refugee status to the appellants, citizens of the Federal Democratic Republic of Ethiopia.

[2] The appellants are a married couple in their late 20s. For the purposes of this decision, the appellant in *Refugee Appeal No 75851* will be referred to as “the wife” and the appellant in *Refugee Appeal No 75852* will be referred to as “the husband”.

[3] The husband and the wife both claim to be of Oromo ethnicity. They claim that they are at risk of arrest, detention and mistreatment at the hands of Ethiopian security forces on the basis of their political ties to the Oromo Liberation Front

(OLF). The issue to be determined in this case is whether the appellants' accounts are credible.

### **PROCEDURAL BACKGROUND**

[4] In light of the time elapsed since these appeals were first lodged with the Authority and other circumstances relating to the processing of these appeals, it is appropriate to briefly set out the procedural background to this claim.

[5] At the time these appeals were lodged with the Authority, the appellants were represented by Mr J Sutton ("the first counsel"). He also acted as counsel for them during the processing of their claim by the RSB.

[6] Subsequent to the appeal hearing dates in June 2006, the Authority received notice from Mr Sutton on 11 September 2006 that he was no longer acting for the appellants. Also on 11 September 2006, the Authority received notice that the appellants had instructed Ms Curtis ("the second counsel") to act for them. In that letter, Ms Curtis sought a stay in the consideration of the appeal until such time as she was able to take full instructions.

[7] Ms Curtis, in a series of letters to the Authority (dated 8 September, 19 September, 26 September, 12 October, 16 October, 19 October and 6 November 2006 respectively), communicated that there were further matters in relation to the appeals which should be heard by the Authority and she also provided updated information regarding the wife's medical condition.

[8] At the request of the Authority, counsel also submitted a further written statement from the husband, dated 20 November 2006, in which he outlined the events which the appellants allege occurred after the first four days of the appeal hearing and which are relevant to their claim. The Authority held a fifth day of the hearing on 18 December 2006 at which the appellants had the opportunity to present their further evidence orally and Ms Curtis was able to make submissions on their behalf.

## **THE APPELLANTS' CASE**

[9] What follows is a summary of the appellants' evidence. An assessment of its credibility will follow. At the request of the appellants in this appeal, the evidence of each of them is to be taken into account in respect of the other's appeal.

## **THE HUSBAND'S EVIDENCE**

[10] The husband was born in Addis Ababa and apart from short periods of time spent working elsewhere in Ethiopia, he has lived in Addis Ababa for his whole life. He is of Oromo ethnicity, although he cannot speak the Oromo language. For the purposes of this appeal, the husband's early life was unremarkable.

[11] In mid-1991, the husband's parents were arrested by the Ethiopian People's Revolutionary Democratic Front (EPRDF), an ethnic Tigrean-based political and military regime which had assumed authority in Ethiopia following a civil war with the previous Derge military government. The husband's father had been a bureaucrat under the previous Derge administration and because of this, he was suspected of being opposed to the EPRDF. The husband supposes that his father was also considered suspicious by the EPRDF authorities due to his Oromo ethnicity.

[12] The husband's parents were detained for approximately three years, during which time they were mistreated. Neither the husband nor his siblings were able to visit the parents in detention, but the husband's uncle did locate their whereabouts some time during their detention. The same uncle supported the husband and his siblings for the period of the parents' detention. Also during the parents' detention, the husband and his sister were taken to the police station and questioned on a number of occasions. They were interrogated about their father's activities and the husband was asked to tell the authorities any "secrets" that he knew.

[13] When they were released from detention, the husband's parents established a passenger bus business ("the business"). In 1999, the husband completed his education and began work as an assistant on the bus. Within a year or two, the husband assumed managerial responsibility for the business and made some monetary payments to his parents as part payment for the purchase

of the business. He employed a driver and a bus conductor and continued operating on long distance routes between Addis Ababa and eastern Ethiopia.

[14] As the husband travelled through the Oromo region, he gained an insight into the poor living conditions of the Oromo people and the repression they suffered under the EPRDF regime. The husband was moved by the inequality of treatment between the Oromo people and ethnic Tigreans and he felt motivated to take some action to alleviate that inequality. The plight of the Oromo people was also a subject discussed in the husband's home. Throughout his childhood, the husband had listened to his parents and other people discuss the repression of Oromo people and the work of the OLF in alleviating these problems. As the husband reached adulthood and began to understand the issues for himself, he had frequent discussions with his father about the Oromo people's situation and the OLF's struggle for political freedom for them. The husband discussed the OLF in a general way with his father but they did not discuss any specific examples of OLF actions in regard to the struggle for freedom.

[15] In the course of his bus business, the appellant met an Oromo man, DD, with whom he discussed issues relating to Oromo people. Over time, DD and the husband developed a trusting friendship and they began to discuss the activities of the OLF in more detail. After some time, DD raised the issue of whether the husband would consider working for the OLF and the husband agreed he would consider it. During these discussions DD made it clear to the husband that everything they said was confidential and the activities of the OLF were not to be discussed with anyone else.

[16] In accordance with the husband's wishes to become more involved with the OLF, DD arranged for the husband to meet MM, who co-ordinated the transportation of materials for the OLF from N city. The husband met with MM on two occasions before he was accepted to transport goods for the OLF.

[17] In the first meeting, the husband and MM simply talked about the OLF and the husband provided personal details so that a check could be made on his background. In the second meeting, MM explained specifically what he wanted the husband to do for the OLF, namely transporting materials from other cities in Ethiopia to N city. During this meeting, MM provided the husband with a piece of paper marked with a stamp and MM's signature so that the husband could identify himself to other OLF members when he met them in distant cities. The husband

carried the paper in his wallet and used it for the first few months until he was familiar with the other OLF supporters.

[18] In late 1999, the husband undertook his first transporting job for the OLF. MM had arranged with people in another city to meet the husband at the bus depot when he arrived. They were to arrange with him a time at which they could load the OLF materials onto the bus. The men who approached the husband at the bus terminal showed him a piece of paper with MM's stamp on it and he, in return, showed them his paper verification. After arranging a time to meet later that night, the OLF men gave the husband a bag containing OLF pamphlets and he returned to his hotel. Later that night, he took the bus back to the bus depot and left it there to be loaded. He was not present when the bus was loaded and so did not know what goods were loaded on. The goods were loaded into the compartments underneath the bus next to the spare wheel compartment. The following day, the husband returned to N city and unloaded the goods at a location given to him by MM.

[19] The husband began to make regular trips transporting OLF goods between eastern Ethiopia and N city. He continued to liaise with MM in regard to these trips and met approximately 20 other OLF supporters who lived in N city and knew MM.

[20] On any particular trip, the husband was not aware what sort of goods or items he transported in his bus. The husband assumed that in addition to the pamphlets he was sometimes given to carry in the cab of the bus, there were further pamphlets stored in boxes along with other goods. He was not too concerned about carrying OLF pamphlets in the cab because at checkpoints the authorities were usually looking for smuggled goods and did not search the cab.

[21] The husband's work for the OLF continued without incident from 1999 until late 2002 or early 2003.

[22] In September 2002, the husband and wife married in Addis Ababa, having met during a bus trip where the wife was a passenger on the husband's bus.

[23] In early 2003, while driving the bus with OLF goods loaded in the secret compartment, the husband was stopped at a road checkpoint. During a search of the bus, the security forces found the secret compartment and brought out boxes containing OLF items. No-one on the bus admitted to being aware of the items. The security forces warned that unless somebody claimed ownership then the

items would be confiscated, but as no-one came forward to claim them, they took no further action.

[24] When the husband arrived in N city, he told MM what had happened. MM was disappointed and suggested that they no longer use the bus for transporting items so as to avoid any further detection by the authorities. However, by this time the husband had also purchased a truck which he used to transport goods on similar routes to that taken by the bus. The husband and MM agreed that on the next trip taken with the truck, the husband would transport OLF goods. On the truck, the OLF materials were to be hidden in a compartment partitioned off from the vehicle's fuel tank.

[25] In late 2003, the husband was again stopped by the authorities while transporting goods in his truck. One afternoon while driving his truck back to Addis Ababa, the husband was asked to stop at the side of the road at a regular road checkpoint. He and his assistant, TT, waited in the truck cab for approximately 10 minutes at which time two air force officers arrived at the checkpoint. Neither the air force officers nor the EPRDF personnel at the checkpoint searched the truck or required the husband to produce documents or answer questions. Instead, the husband was asked to accompany the air force members to their base, approximately four minutes' drive from the checkpoint.

[26] Once there, the officers took the husband to a room and asked to see his driver's licence. They then began asking him about his truck load and the route he had taken on the trip. They went on to enquire about his ethnicity at which point the husband admitted he was Oromo. The officers left the room and returned a short time later with a piece of hosepipe which they used to beat the husband on the soles of his feet. As they beat him, they repeated their questions about the load on his truck and where he had unloaded it.

[27] The husband's detention at the air force base lasted for three days, during which time he was intermittently beaten and questioned about his transportation business, the OLF and his activities for them. For the duration of his detention, he was fed tea and bread and had only a chair on which to sleep. After two nights and three days in detention, the air force officers returned the husband to his truck which was still at the checkpoint under the care of TT who had waited there for him. The husband believes that he was released because the officers had no evidence supporting their claims that he was an OLF supporter and he had made no concession that that was the case.

[28] On returning to the truck, TT asked the husband where he had been for three days but the husband did not reveal his detention. The husband had never revealed to TT that they transported OLF goods on their trips and he did not wish TT to know the true nature of his problems on this occasion. The husband told TT that there had been an issue relating to the truck and TT did not enquire into the husband's absence any further. Despite his feet being severely bruised and very sore, the husband managed to drive the truck back to a city without incident.

[29] Neither TT nor his wife noticed the husband's foot injuries. The husband did not tell his wife about the detention or his injuries and he hid his feet from her so that she would not notice. He also treated his feet with hot water and salt and within a few days, they began to heal.

[30] The morning after he arrived back in Addis Ababa, the husband rang MM and relayed news of his detention and mistreatment. MM was disappointed and suggested that the husband stop transporting goods for an undetermined period.

[31] In late 2003, approximately two months after the husband's detention, he resumed transporting OLF materials. He did so on the basis of his observations of security on his travel routes and after discussing the situation with MM.

[32] In early 2004, the wife was arrested and detained for 10 days on suspicion of involvement with the OLF. The husband was not present at the time of her arrest and heard about the incident from the landlord's son when he returned home from a trip. The landlord's son reported that the wife and another woman who was at their home were arrested at different times on the same day about six days before the husband returned.

[33] The husband assumed the wife would be at the nearest police station and so went there to enquire as to her whereabouts. The police confirmed that she was there and asked the husband to sign a bond guarantee of 10,000 *birr*. Four days later the wife was released and returned home. She had bruises around her eyes and suffered from headaches which have continued until the current time. She told the husband that she had been hit and pushed against walls and that treatment had exacerbated her existing kidney condition. As a result of her injuries, the husband took the wife to the hospital for medical treatment.

[34] After she was released from detention, the wife told the husband about HH, her friend who belonged to the OLF and who had encouraged the wife to collect

money for the OLF in the previous months. The husband then made enquiries at the police station as to where HH was but he was told that it was none of his business and not to ask about her again. The wife did not suffer any further unwanted attention from the police.

[35] In late 2004, the husband was again stopped at a checkpoint while travelling in his truck. The husband was one of many drivers who had been asked to stop at the checkpoint and was in a queue of vehicles waiting to be checked. A number of EPRDF personnel were on duty at the checkpoint, some in military uniform and others in civilian dress. After a wait, the husband was asked to produce his loading permit so that it could be checked against the actual load he was carrying. During a search of his vehicle, EPRDF personnel located the compartment in which the OLF goods were stowed. The husband was watching the search from the side of the road.

[36] Before they opened the compartment and found the OLF materials, the husband crossed the road and quickly hitched a ride with a truck going in the opposite direction. He did this because he was fearful of the consequences should the OLF materials be found. After a three-hour drive, the husband was dropped off in a town where he took a hotel room. From there, he telephoned his wife and explained his predicament to her in brief terms. He asked the wife to withdraw money from the bank and meet him at the hotel. The husband did not ring MM this time as he was extremely worried and could only think of what to do to save himself. He remained in the hotel for three days until his wife arrived.

[37] After the wife arrived, the appellants left almost immediately for another town where the wife had relatives. They hitched a ride from outside the hotel and were taken directly to their intended destination. Once there they went to the house of the wife's aunt and explained their situation. The aunt arranged for another relative to take them to a remote village where they could hide with other relatives. They walked to the village that night, a journey of approximately four hours.

[38] At the village, the appellants stayed with an elderly couple for approximately nine months. During that time they did not leave the house except to use the toilet which was located a few metres from the house. To their knowledge, the appellants were not observed by anyone as being in the house. They were visited there on a number of occasions by the wife's brother, NN, who brought them news from home, food, clothing and other everyday necessities. NN also brought a



letter issued by the Federal Police Commission of Ethiopia, dated 7 December 2004, which was addressed to all police stations in Addis Ababa and stated that the husband was wanted in connection with transporting guns and that he had escaped together with the wife. NN had received the letter through a friend who worked in the Commission office and had recognised the wife's name and passed the letter on to NN.

[39] The appellants remained in hiding for so long because they were hoping that the general elections in May 2005 would result in change to the anti-Oromo political regime. They were hopeful, along with most of the Oromo population, that the EPRDF would be removed from power and that the more moderate and inclusive Kinjit Party would be voted in. The appellants assumed that if there was a change of power, they would no longer be at risk from the EPRDF security forces.

[40] However, that was not to be the case and the incumbent EPRDF regime returned to power. In approximately July 2005, when the appellants heard the final election result, they resolved to leave Ethiopia and began devising a plan to do so, with NN's help.

[41] In September 2005, the appellants departed the village and travelled south through Ethiopia in NN's truck. NN drove them to Ethiopian Moyale, where they crossed the border with Kenya on foot. He also introduced them to an agent who had organised for their overland trip to South Africa. The appellants believe that they were able to travel through Ethiopia without any attention because they travelled on Ethiopian New Year's day and they had also taken the precaution of disguising their appearance with scarves and a hat. They carried with them a number of bags which contained their clothes and other documents including the police letter (referred to in [38] above), their marriage certificate and other documents NN had collected for them from Addis Ababa.

[42] They crossed the border into Kenya illegally and then boarded another vehicle in which they continued their journey southwards. After approximately five days' driving overland, the appellants reached South Africa. They stayed in Johannesburg where they contacted an agent, HH, to assist them. They were introduced to HH by some Ethiopian people they met by chance when they arrived in Johannesburg.

[43] HH obtained false South African passports for the appellants and arranged tickets for their flights to Switzerland. He recommended they travel to New Zealand through Switzerland because he said that people who travelled directly from South Africa to New Zealand were more likely to be stopped in New Zealand on suspicion of carrying drugs. HH took them to the airport on the day of their departure at which time he gave them their tickets and passports. He also assisted them through customs and border control and then left them to board the plane alone.

[44] On arrival at Zurich, Switzerland, the appellants were processed through customs and border control and then were met by an agent who had been arranged by HH. The appellants cannot recall the name of the agent but they recognised him because he was wearing a red hat. The agent took them to an apartment and took their first false passports from them. They stayed at the apartment for three days and then were transported by the agent back to the airport. There he gave them new South African passports and their tickets for travel to New Zealand.

[45] The agent in Zurich assisted them through customs and border control at the airport and the appellants did not check in any of their baggage, but carried it onto the plane with them. As advised by the agent, when they were nearing New Zealand, they destroyed and disposed of their passports. The appellants did not have any problems departing Switzerland and they were in transit through Kuala Lumpur before continuing on to New Zealand.

[46] The appellants arrived in New Zealand on 15 October 2005 and claimed refugee status at the airport. During her initial airport interview on arrival, the wife denied travelling via Switzerland. The next day she admitted to having been in Zurich for three days before travelling to New Zealand.

[47] Following their initial interviews with Border Operations Branch of INZ, the husband was detained in Auckland Central Remand Prison and the wife was detained and transferred to the Mangare Accommodation Centre (MAC).

#### **THE WIFE'S EVIDENCE**

[48] The wife is an ethnic Oromo and was born in the eastern region of what is now Ethiopia. She has six siblings, one of whom is recently deceased. She also

has a son who has been raised by her parents and, as far as she knows, continues to live with her family.

[49] Prior to 1991, the wife's father worked as a regional administrator for the Derge government. When the EPRDF took control of Ethiopia in 1991, the wife's father, mother and older sister were detained for four or five days on the grounds that the father and mother were suspected Derge sympathisers.

[50] During the post-takeover period, the EPRDF worked in co-operation with the OLF. The wife's family began to openly support the OLF and, between 1991 and 1993, they did not suffer any further politically motivated difficulties.

[51] In 1993, relations between the EPRDF and OLF soured. The EPRDF were perceived by many Oromo as having unjustifiably seized all governmental control, including over the appellant's home region of Oromia. The OLF leader withdrew from the Ethiopian parliament in protest. In the wake of this development, Oromo people in Oromia organised a protest demonstration at which the EPRDF fired at demonstrators causing deaths and injuries. The appellant and her family attended the demonstration and the appellant was hit by one of the EPRDF soldiers as she tried to escape the violence.

[52] At around the same time, the appellant's brother, NN, was arrested and detained on suspicion of passing information from the EPRDF to the OLF. The EPRDF also arrested and detained the appellant's parents after finding items belonging to the OLF in their house. Although she is unable to recall the details, the appellant remembers that her parents, and sometimes her older sister, were periodically detained by the EPRDF during 1993.

[53] In 1998, the appellant began training as a nurse in another town but she returned home within the year having fallen pregnant as a result of rape. Her child was born in December 1998.

[54] In 1999 or 2000, the appellant's parent's closed their family business due to ongoing harassment by EPRDF soldiers and local authorities.

[55] In June 2000, the appellant moved to AA and completed several training courses while living with her sister there. Her child remained with the family.

[56] The wife and husband married in September 2002 after which the wife opened a small food store near their rented house.

[57] As a result of her father's delicate mental state, the EPRDF moved their attention to harassing the wife's brother, NN, who still lived in Oromia. During 2002 NN was detained for a month and had his car confiscated.

[58] The wife was aware of continuing problems for Oromo people in Ethiopia and was angered by the treatment of Oromo people by the EPRDF. In late 2003, she became friendly with an OLF member who collected money for the organisation. The wife agreed to help collect money and was given a list of names and companies to visit for that purpose. She made several collections and gave the money she collected to her friend. Through her husband's OLF contact, MM, she also heard about OLF meetings in her area which she attended approximately six times.

[59] In early 2004, four police or army officials came to the appellants' house at about 10am when the wife and her OLF friend were there. They arrested her friend immediately and returned later in the afternoon to arrest the wife. After she was taken to the local police station, she was accused of harbouring an OLF member and was questioned about her OLF involvement and the names of other OLF members. During the interrogation, the wife was kicked, punched and pushed against the wall and similar treatment was repeated for the 10 day duration of her detention. The wife was released after her husband heard about the arrest and signed bail documents and paid a bond. Although the husband and wife attempted to locate the OLF friend also arrested, they were not successful in doing so.

[60] Approximately 10 months later, in late 2004, the wife received a telephone call from her husband during which he alluded to problems he had with OLF items being found in his truck and requested her to meet him in a distant town with money. The wife immediately packed a small bag and withdrew all their money from the bank to before going to a cousin's house. The wife decided to stay with her cousin for two days because she felt stressed and was fearful of being picked up by police if she left immediately. She felt certain the authorities would search her home and so she did not want to return there.

[61] The wife's evidence as to their travel and arrival in the village is similar to that of her husband and their joint evidence is summarised above at paragraphs [37]-[39] above. Her account of the subsequent period including travel to South Africa and on to New Zealand was also similar and need not be repeated here although it is considered in more detail in the credibility section below.

## **RECENT EVENTS IN ETHIOPIA**

[62] Following the appellants' arrival in New Zealand, the wife's family have experienced further difficulties with the Ethiopian authorities. In approximately July 2006, the wife's older brother, a teacher in a town some 700 kilometers from her home town, was shot and wounded while taking part in a protest by OLF supporters. He died some weeks later.

[63] In the period following his death, EPRDF officers visited the wife's mother on several occasions asking after the wife, NN and another sister. The mother simply denied any knowledge of their whereabouts. The mother has also informed the appellants that NN had been imprisoned and tortured at some time after their departure from Ethiopia but no further details were given except that after his release he "disappeared". Both the appellants' surmise that he may have left Ethiopia.

[64] Towards the end of 2006, the appellants became unable to contact the wife's mother or family by telephone. Having contacted a friend of one of the wife's sisters, the appellants learned that the wife's mother and family have all left their home. Neither the circumstances of their departure, nor their whereabouts are known.

## **MATERIALS SUBMITTED IN SUPPORT OF THE APPEAL**

[65] The first counsel lodged opening submissions in advance of the first hearing dates in June 2006 and closing submissions on 10 July 2006, after the fourth day of the hearing. Prior to and during the hearing, various documents were tendered on behalf of the appellants, including:

- (a) Personal documents of the appellants including their marriage certificate, their respective ID cards and the husband's driver's licence;
- (b) A document allegedly issued by the Federal Police Commission of Ethiopia to all police stations in Addis Ababa, dated 7 December 2004, stating that the husband was wanted in connection with transporting guns and that he had escaped together with the wife; and
- (c) An arrest warrant for the husband, issued by the Harari Regional Government, dated September 2005;

- (d) Various medical reports pertaining to the wife including a patient medical history and summary records of the medical clinic at the Mangere Accomodation Centre (MAC) and a report written by Sara Weeks, a psychiatrist at the Mensana Clinic in Ellerslie, dated 24 May 2006.

[66] Prior to the fifth and final day of hearing on 18 December 2006, Ms Curtis submitted a statement from each of the appellants outlining further information regarding the wife's family that they assert is relevant to their claim. Various medical documents relating to the wife were also provided by counsel prior to the final day of hearing. At the conclusion of the hearing, counsel sought and was granted leave to lodge final submissions by 19 January 2007. Submissions were duly filed on 25 January 2007. Further country information was also received under cover of a letter dated 1 May 2007.

[67] All of this material has been considered and is referred to, where appropriate, below.

## **THE ISSUES**

[68] 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."

[69] 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 APPELLANTS' CASE**

[70] The Authority rejects the appellants' account in its entirety. Their evidence was marked by inconsistencies (both with their prior evidence and with each other) and implausibilities.

[71] In making the findings below, the Authority notes that it has considered both first and second counsel's submissions that because the wife heard news regarding her brother (that he was ill and in hospital) the night before her first appearance at the Authority, she was in a disconnected and preoccupied state which had a negative affect on her ability to give accurate and consistent evidence. No specific instances of evidence affected in this way were identified by either counsel, nor were any apparent to the Authority during the hearing. Therefore, the Authority is limited in the weight it can give these submissions.

[72] The Authority also acknowledges the medical reports submitted by both counsel. The medical evidence records that the wife "admits to intrusive distressing memories of past events" and has had ongoing issues with depression and head pain: (Mensana Clinic letter dated 24 May 2006). In the same report, the wife was recorded as presenting with "a history of probable post traumatic stress disorder with symptoms of major depression". No specific information as to the nature of the distressing memories or effect of the depression was provided. This is particularly unfortunate in a case where the wife claims to have been the victim of a rape which may have had a significant effect on her mental health but which, nonetheless, is of no direct relevance in her refugee claim.

[73] Relevantly, none of the medical reports or notes submitted to the Authority directly addresses the wife's ability to give oral evidence about past events in Ethiopia or any specific effects on memory that her mental state and/or medication may have had. Neither do the reports state whether these symptoms were self-reported or whether they have been objectively tested by a psychological or psychiatric specialist. The Authority is also left to guess as to the degree of intrusive thoughts of the wife, the efficacy of the medication she was prescribed and the degree to which her memory is claimed to be affected.

[74] Weighed against these submissions is the Authority's observation of the wife over the three days of hearing her evidence. During that time, the wife seemed engaged with the hearing and able to comprehend and answer questions with an accuracy and detail which indicated she was not unduly affected by memory difficulties or intrusive thoughts. Having said that, the Authority has carefully considered the medical information in evaluating the wife's evidence and

her demeanour at the hearing. The Authority does not expect an appellant to have perfect recall of past events and makes allowance for the way the passage of time and, in particular, her probable post traumatic stress disorder and depression may have disturbed or distorted the recollection and presentation of her evidence. Having made these allowances, the Authority is satisfied that it can place sufficient reliance on the wife's evidence at hearing to reliably assess its credibility.

[75] The decision now turns to discuss specific credibility issues.

### **HUSBAND'S KNOWLEDGE OF OLF**

[76] The husband's lack of knowledge of the OLF organisation was inconsistent with his claim to have been involved with the OLF for approximately five years. To the RSB, the husband was unable to recall any specific information about the leadership or structure of the OLF. When the Authority asked him why he had no knowledge of the OLF at that time, he asserted that he had named the OLF leader who is in exile. However, the RSB interview report records that this is not the case and that the husband in fact named the leader of an opposition OLF party set up by the Ethiopian authorities and not the leader of his own organisation. The Authority gives no credence to the fact that the husband was able to name the leader at the appeal hearing because it could so easily have been learned in anticipation of the hearing.

[77] Further strengthening the Authority's view, the husband's evidence at the Authority hearing was marked by vagueness in relation to OLF activities. For example, he was unable to tell the Authority whether or not the OLF lobbied the government on behalf of Oromo people, whether or not they held political protests or undertook any other sorts of political campaigns. The Authority finds it implausible that, had the husband been genuinely involved in the OLF for five years and had he discussed the OLF in some depth with other supporters as claimed, he would not have had at least an elementary knowledge of the activities of the OLF organisation as a whole.

[78] The husband also gave mobile evidence about whether or not the OLF had a fighting force of armed soldiers. On arrival in New Zealand, he stated to the INZ officer that he had been involved in the transportation of firearms for the OLF thereby impliedly asserting that the OLF did use firearms in their activities. At the RSB, he changed his evidence and said that he did not transport arms and the OLF do not have any soldiers and have never undertaken armed struggle against



the Ethiopian government. This evidence was confirmed in his response to the RSB interview report. At the Authority hearing, the husband's evidence changed again. Initially, he said that he did not know whether or not the OLF had soldiers because he had never seen them. He appeared to the Authority to be very reluctant to admit the OLF had soldiers, however, after being questioned closely on the point, he then admitted that they did have armed soldiers and did undertake an armed struggle. The husband gave similarly vague and mobile evidence to the Authority about whether or not the OLF undertook political protests and demonstrations. He was unable to give any sensible explanation for his vague and mobile evidence.

### **LOCATION OF SECRET COMPARTMENT IN TRUCK**

[79] The husband told the RSB that the secret compartment of his truck in which OLF items were stored was located at the left rear of the truck underneath the chassis. In other words, the compartment was located underneath the body of the truck in the left rear corner. His evidence to the Authority was that the compartment was located on the right-hand side of the truck on the visible body of the truck between the front and rear wheels. When asked to explain the inconsistency, the husband denied that he had told the RSB it was on the left-hand side of the truck and asserted that there was no difference between his evidence at the RSB and to the Authority. This explanation is rejected. The interview transcript from the RSB interview clearly records the husband's evidence being that the compartment was on the left-hand side of the truck under the chassis. Furthermore, his explanation does not account for the remaining inconsistency as to whether the compartment was located out of sight under the body of the truck or was a visible flap on the side of the body of the truck.

### **OLF VERIFICATION LETTER**

[80] The husband also gave inconsistent evidence about the verification document MM gave him to confirm to other OLF members that he was authorised to collect items for transportation. To the RSB, the husband stated that on his second meeting with MM he was shown a piece of paper with a stamp and MM's signature on it which he was required to memorise so that he could recognise it when a copy of the same paper was shown to him by other OLF members. When asked by the RSB whether or not he kept the paper, he said "No – I didn't carry it – just had to recognise [it]...". In contrast, the husband told the Authority that he

was given the paper by MM and always carried it in his wallet with him. He told the Authority that he showed the paper to other OLF members for the first few months of operations, after which time he recognised the people involved and they no longer needed to verify each other's authority. The appellant could give no sensible explanation for the discrepancy in his evidence.

## **SECOND CHECKPOINT INCIDENT, DETENTION AND INJURIES**

[81] The husband's evidence in relation to his detention at the air force base in 2003 was implausible in two respects.

[82] Firstly, the husband claims that his truck assistant, TT, witnessed the husband being arrested and then waited at the checkpoint with the truck for three days and yet was not aware that the appellant had been detained. The husband said he explained being taken away by officers and being absent for three days by giving TT a "reason related to the truck". The husband could not articulate to the Authority what reason relating to the truck might have explained his absence or satisfied TT's curiosity. The husband also stated that on return to the truck, TT did not notice his injured feet, despite his evidence at the RSB interview that his feet were so sore he could hardly drive and found it difficult to walk. The husband was unable to explain how such serious injuries could escape the notice of TT. The Authority finds these aspects of the husband's evidence to be implausible.

[83] Secondly, the husband's evidence that his wife did not notice his injured feet when he returned home was implausible and inconsistent with the wife's evidence. He stated that he hid his injuries from her and treated them by himself using hot water and salt. However, given the extent of the injuries were such that the husband found it difficult to walk, the Authority finds it implausible that his wife would not have noticed the injuries. The evidence in this respect is further undermined by the wife's evidence that she did notice his sore feet but thought they were sore from long hours driving the truck. She stated that she massaged his feet and that the husband complained to her of them being sore. When the Authority pointed out that her husband's evidence was that she did not know about his injuries, she maintained her own evidence.

## **OLF ITEMS TRANSPORTED**

[84] The husband gave inconsistent evidence about what he was carrying in the final incident when he was stopped at a checkpoint in 2004. When the husband

was answering questions in the course of filling out his confirmation of claim form on arrival in New Zealand, he stated that he carried clothes and firearms for the OLF. In contrast, his statement records that he was transporting medicines on this final trip. To the RSB and the Authority, he stated that he did not know what items he was carrying because he escaped from the checkpoint as soon as he saw the authorities opening the truck compartment.

[85] When asked by the Authority to explain why he had told the INZ officer that he had been transporting firearms, the appellant suggested that it was because that was what the letter from the Police Commission had stated. When the Authority reminded him that on his own evidence many assertions in that letter were untrue and asked why he did not explain that to the INZ officer, the husband stated that he was convinced by the letter that he may have been transporting guns and that was why he provided his statement. When pressed further, he admitted that although he knew parts of the letter were untrue, he became genuinely suspicious that he had been transporting firearms. When asked to explain the evidence in his written statement that he had been carrying medicines, the appellant simply said that he assumed that that was what he had been carrying.

[86] The Authority does not accept these attempts to reconcile the inconsistencies in evidence. The husband's suggestion that he believed he had been transporting firearms on the basis of a letter which he knew to have been fabricated by the Ethiopian authorities is a facile attempt to explain his early statement to the INZ officer. The subsequent mobility in his evidence simply indicates that the husband is prepared to spontaneously create evidence that he thinks will best mend the flaws in his evidence.

### **PERIOD IN HIDING**

[87] The appellants' evidence about the layout of the two-roomed hut they allegedly lived in for nine months of their period in hiding was inconsistent.

[88] To the RSB, the husband said that the door from the two-roomed hut to go outside was in the appellants' room. That was inconsistent with the wife's recollection to the RSB which was that the door leading to the outside was in the other room. When this inconsistency was put to the appellants in the RSB interview report, the husband changed his evidence to align with the wife's.

[89] The inconsistencies between the husband's and the wife's evidence at the RSB interview was further underscored by the inconsistencies between the husband's evidence at the RSB and his evidence to the Authority. At both the RSB interview and the Authority hearing, the husband was asked to draw a diagram indicating the layout of the two-roomed hut in which they stayed, including the placement of furniture and internal and external doors. There were significant differences between the two diagrams for which the husband could give no sensible explanation. While the Authority can appreciate that small details about the hut may have become forgotten with the passage of time, it is implausible that, having lived in the hut for 24 hours a day for nine months, the husband and wife would not both be able to recall such details as the placement of the one door leading outside and where the kitchen was located in relation to the other rooms.

#### **THE POLICE COMMISSION LETTER**

[90] The appellants' evidence concerning the letter issued by the Police Commission in late 2004 is unsatisfactory in a number of respects. The appellants were both vague about the provenance of the letter. Their evidence was that a friend of the wife's saw her name on the letter and took it from the police commissioner's office. Neither appellant could explain how the friend had managed to retrieve an original copy of the letter.

[91] Also implausible was the appellants' reaction to the letter. On the one hand, they claimed to be so frightened by the contents and potential consequences of the letter that they felt in even greater danger. On the other hand, they claim to have only glanced once at the letter until they arrived in New Zealand, a period of approximately ten months.

[92] Moreover, the appellants' claim that they were so frightened about travelling through Ethiopia to Kenya that they disguised themselves and travelled at Ethiopian New Year in the hope that no-one would bother to search them at the checkpoints. Despite their apprehension about being identified, they carried this letter and other identity documents with them which would have immediately identified them as being criminal fugitives to any authorities. No sensible explanation was given to explain their contradictory actions.

#### **POST-ETHIOPIAN TRAVEL**

[93] The appellants' evidence as to their travel through Switzerland to New Zealand causes the Authority concern. Despite having the first South African passports in their possession for almost the entire duration of their journey from South Africa to Zurich, the appellants claim not to have opened the passports or looked at them in any detail. They claimed not to even know the identities of the individuals in whose names they travelled. Neither appellant could give a sensible explanation for their lack of knowledge. When asked, they suggested that they did not look at the passports because they were scared and because they did not want to arouse the suspicions of the airline stewards. When pressed further on the point, neither of the appellants could explain why either of those two circumstances would motivate them to stay in ignorance of the identities on which they travelled. The Authority finds it inherently unlikely that persons in circumstances such as the appellants' would not take the precaution of at least learning the identities of the persons in whose names they were travelling so that they could answer basic questions about them, if necessary. It is also relevant to note that on arrival in New Zealand the wife initially made a dishonest claim not to have travelled through Switzerland and this has not been satisfactorily explained.

[94] Moreover, the appellant's refused to sign a privacy waiver to enable INZ to approach the Swiss authorities to ascertain whether or not the appellants had sought refugee status in Switzerland. When asked by the Authority to explain this refusal, the appellants suggested that they did not do so because they feared that the process would take too long. Notwithstanding the refusal, INZ did approach the Swiss authorities pursuant to ss 129L(d) and (e) of the Immigration Act 1987. The Swiss authorities had no information about the appellants under either their own names or those in which the second false South African passports were issued. Although this lack of information is not inconsistent with the appellant's having used the first South African passports to enter Switzerland three days prior to their departure, the appellants' assertion that they cannot recall any aspect of the first false identities combined with their refusal to sign the privacy waivers and the wife's initial denial of ever being in Switzerland leads the Authority to question the duration and purpose of their stay in Switzerland.

## **RECENT EVENTS IN ETHIOPIA**

[95] The evidence presented by the appellants at the reconvened hearing in December 2006 is rejected because it was wholly undermined by an inconsistency between the husband and wife's oral evidence.

[96] The husband told the Authority that the wife did not know that NN had been in prison and tortured since their departure from Ethiopia. He further stated that her mother had told him but had specifically demanded that he not tell the wife so as not to upset her because she had been unwell. He stated that her mother had not told the wife about NN and that they (the appellants) had never discussed the imprisonment together. In contrast, the wife told us that her mother did tell her about NN and that so did her husband. She was even aware that her husband had been asked by her mother not to tell but she stated that he nevertheless did. Furthermore, she recalled at least one occasion when she had discussed NN's fate with her husband approximately four to five months prior to the hearing.

[97] When the wife was asked to explain the inconsistency between her own and her husband's evidence, she initially tried to suggest that her husband would have been explaining her mother's demand not to tell her. However, she did not deny discussing it with her husband. When re-examined by counsel on the point, the wife changed her evidence and stated that she had not talked about it with her husband and that he did not know that she knew about NN's imprisonment. At that point, she also referred to memory problems due to her state of health. This explanation by the wife is rejected because her earlier evidence was clear and unequivocal and because it is implausible that the wife would not have discussed NN's imprisonment and torture with her husband had she heard about it from her mother some months before the hearing.

### **THE WIFE'S ARREST**

[98] As to the wife's involvement in the OLF and her arrest, the Authority finds that, in light of the credibility concerns outlined above, it cannot rely on her evidence in any respect. Her claim to have been arrested and detained as a result of her association with the OLF is therefore rejected.

[99] For the sake of completeness, the Authority notes that even if the wife's evidence as to her arrest and detention in early 2004 were true, that would not support a finding that she has well-founded fear of being persecuted in Ethiopia should she now return there. The wife remained living at the same address from which she claims to have been arrested and continued to run her nearby shop for nine months following the arrest. She experienced no further attention from the Ethiopian authorities during that period. In any event, the Authority prefers the view that her evidence about this incident is yet a further element in a wholly

fabricated account and the issue of well-foundedness does not arise for consideration.

### **CONCLUSION ON CREDIBILITY**

[100] Considered cumulatively, the foregoing concerns cause the Authority to conclude that the appellants' claims to refugee status are not truthful in any material respect. The entire account of both appellants is rejected.

[101] That being the case, the answer to the first question framed for determination is no and it is unnecessary to consider the second issue of Convention ground.

### **CONCLUSION**

[102] For the above reasons, the Authority finds that the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

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B Dingle  
Member