

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

**REFUGEE APPEAL NO 76528**

**AT CHRISTCHURCH**

<b><u>Before:</u></b>	A R Mackey (Chairman)
<b><u>Counsel for the Appellant:</u></b>	J Mirkin
<b><u>Appearing for the Department of Labour:</u></b>	No appearance
<b><u>Date of Hearing:</u></b>	3 August 2010
<b><u>Date of Decision:</u></b>	27 August 2010

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**DECISION**

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[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of Ethiopia, of Tigrayan ethnicity. He was brought up in the Orthodox Christian faith.

**INTRODUCTION**

[2] The appellant was born in Z, Tigray, Ethiopia. In 1993, in order to avoid conscription into the Ethiopian army, he departed from Ethiopia with his stepmother after flying from Tigray to Addis Ababa and then travelling by truck to Nairobi, Kenya. Following an arranged marriage to a fellow Ethiopian who had been resettled into Australia, the appellant moved to Melbourne in May 1999. The marriage did not last. In 2003, he entered into a relationship with a New Zealand citizen, CC. Their daughter (AA) was born in New Zealand in February 2005. In May 2005, Immigration New Zealand ("INZ") issued the appellant with a work visa to join CC on the basis of their relationship. He arrived in Dunedin in June 2005. CC and the appellant have since separated, reunited and separated again. They had a son (BB) in July 2009. The appellant had an industrial accident in May 2009

and subsequently his work permit was revoked by INZ. It appears he took no steps to obtain residence status on the basis of his relationships either in Australia or New Zealand. In October 2009, INZ issued a letter warning him that he would be removed from the country. On 10 November 2009, the appellant lodged a Confirmation of Claim for Refugee Status in New Zealand dated 5 November 2009 with the RSB. Following an interview, that application for recognition was declined on 20 April 2010. The appellant then appealed to this Authority.

[3] The appellant predicts being persecuted on return to Ethiopia for reasons of his ethnicity (which is apparent from markings on his face), his Christian background and enforced conscription. The predicted persecution will be primarily at the hands of the Ethiopian government, which is led by the Tigrayan-dominated Ethiopian Peoples' Revolutionary Democratic Front ("EPRDF") and has been in power since 1991.

[4] The essential issues, if his credibility is established, are whether there is a real chance of him being persecuted on his return for one or more of the Refugee Convention reasons.

### **Documents**

[5] The Authority obtained from the Refugee Research and Information Branch ("RRIB") a significant amount of country information in relation to Ethiopia which was passed to Mr Mirkin at the hearing. He was allowed a period of 10 days in which to comment on the country information provided to him. He did this in further submissions dated 17 August 2010. Relevant material in the documentation provided is referred to later in the decision.

[6] On 28 July 2010, counsel provided other submissions in support of the appeal. These included references to various *Reuters'* websites which again are noted later in the decision where relevant.

### **THE APPELLANT'S CASE**

[7] The appellant was born in the tribal homeland of his family in the small town of Z which is part of the Tigray province of Ethiopia near what is now the Eritrean border in the north of Ethiopia. His father was a cattle farmer and the family moved seasonally to feed the cattle. His mother, like his father, was Tigrayan. She was his father's third wife. His father was a relatively old man at the time that

he was born. He has three half-brothers born to his father's first and second wives. They are significantly older than the appellant. His two eldest brothers left to live in the United Kingdom before he was born and he has had no contact with them. His third brother went to study in what is now Eritrea. He became a military captain. He was injured while on service in the Middle East and ultimately, with the help of a charity, relocated to Australia. The appellant has had no contact with him until at a later date when he met him in Victoria a couple of times. He has had no further contact with him. He has a full sister who also escaped from Ethiopia to Australia. He did hear of her in Australia and that she had converted to Islam. He has had no further contact with her and does not know her whereabouts. To the best of his knowledge, his natural mother may still be in Ethiopia. He last spoke to her in 1999 from Kenya but has had no contact with her and knows nothing of her situation.

[8] While he was a child there was a long civil war in Ethiopia which particularly affected people in the Tigray province as it was near the border with Eritrea. Accordingly, many family members were affected by bombings and the war. Several of his family, including his father, cousins and an uncle were killed in various attacks on the Tigray tribe.

[9] When he was a child he was given the markings or scarring to identify him as a Tigrayan. Additionally, a Christian cross has been marked by scarring onto his forehead. These markings are still evident on him.

[10] The appellant received some primary schooling which was paid for by an uncle who was in the army. Unfortunately he was killed and therefore the appellant had to leave school. He received no further education after the age of 12.

[11] When he was about 13 the Ethiopian Army, which was dominated by Tigrayans, came to conscript him into the military. His mother managed to divert them by saying he was not available. She was fined as a result of this. The appellant's family members agreed that in the ultimate he would be left with no option but to join the army. They were all frightened that the appellant would be killed in the same way as his relatives. He managed to avoid detection by the military officials for several years by hiding from them during the several attempts that were made to recruit him over the period from 1988 to 1993 approximately. Ultimately, arrangements were made for him to leave Ethiopia illegally. Initially however an arranged marriage, to a fellow Tigrayan who had been able to move to

Australia, took place. The appellant left his home district with his stepmother. They flew from Tigray to Addis Ababa and then travelled by truck, in a trip lasting several days, to reach the Kenyan border. A passport had been obtained for him and was given to the truck driver. It was checked by the police at the border and then thrown away. Eventually the truck driver was able to bribe the police to allow the appellant, and the several other people on the truck, safe passage into Kenya. The passport had been obtained by Tigrayan friends as the appellant wished to have no contact with the officials because he had been conscripted for military service.

[12] Once he and his stepmother arrived in Nairobi they found accommodation in an old home and were able to find work dressmaking and working in a restaurant. The appellant was able to obtain a replacement passport whilst he was in Nairobi and learnt some Swahili.

[13] His stepmother left him when she was able to move to Australia with the help of other Tigrayan people already in Australia. He never saw her again after her departure.

[14] The appellant himself did try to register as a refugee with the UNHCR in Nairobi however he found the queues were so long that he was never able to reach the office and eventually gave up on the idea of obtaining some form of refugee status. He did however make contact with the Australian immigration authorities in an attempt to enter Australia on the sponsorship of his arranged marriage to the young Tigrayan woman who was already living in Australia. After some time the sponsorship was approved and he was able to fly to Zimbabwe, and then on to South Africa and ultimately to Melbourne where he joined his wife and her parents. They were formally married in a Christian service.

[15] He lived with his wife for a period of less than two years as the relationship simply did not work out. He was working as a fruit-picker and tractor-driver. When the relationship broke down he and his wife divorced. He continued to live and work in Shepparton, Victoria. It was there that he entered into a relationship with CC, a New Zealand citizen, and was then able to follow her to New Zealand in June 2005. The couple married when he arrived in New Zealand and the appellant was able to obtain employment as a labourer and then a toolmaker from 2005 to 2009. In May 2009, the appellant resigned his job as a result of sustaining a back injury. He was paid a small amount of compensation for that injury but has been unable to continue to work since. His work permit was revoked by INZ on 10

September 2009. He appealed that decision but that was also declined. He was then advised by INZ that he was to be removed and shortly thereafter lodged his confirmation of claim for refugee status.

[16] The appellant states that he never took steps to establish permanent residence on the basis of his relationship with CC after obtaining the initial work visa and subsequently the work permit on his arrival.

[17] During this time in Australia he never obtained permanent residence but remained there on the basis of a "bridging visa" which permitted him to stay on certain conditions. He has never returned to Australia since he came to New Zealand nor has he made any attempts to ascertain whether he could do so although he states that when he left he was told that he could not return for a period of three years.

[18] He confirmed that he had never applied for refugee status in Kenya at the Nairobi office of the UNHCR so never obtained any documentation from them.

[19] It has always been his intention to return to Ethiopia and he was always checking to see whether the situation there had improved and if Ethiopia had become peaceful. However he considered that the situation was actually deteriorating and even though the dominant government party is the EPRDF it is not democratic and he would be at constant risk of being killed if he returned. Additionally, as he now speaks English his understanding of his own language has diminished over the past 10 years so it would be difficult for him to integrate back into Ethiopia. He considers he will be forced to enter the Ethiopian military, which is dominated by the EPRDF and Tigray Peoples' Liberation Front ("TPLF"), and then he would be at further risk of being killed. He does not consider that the EPRDF will remain in power in Ethiopia for much longer and Ethiopia will split up into separate areas, such as Oromo, Tigray, Amhara and other ethnic groupings. The recent election in May 2010 returned the TPLF to its dominant position in Ethiopian governance. He considered the election was a sham and with the tensions between the various tribal groups in Ethiopia continuing there was a constant danger of a backlash against all Tigrayans. Thus there was a specific risk to him as somebody who is readily identifiable as such. Beyond this he has no family to assist him and he would have difficulty speaking the local dialect in Tigray, to the extent that he would feel like a tourist. He also fears Muslim extremists because of the markings on his head which show a cross.

[20] The Tigrayan governing authorities could not give him any form of meaningful state protection as they were preoccupied with other issues to the extent that they ignored their own people.

## **THE ISSUES**

[21] 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."

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

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

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

### **CREDIBILITY**

[23] The Authority found the appellant to be open and frank in all his evidence. He provided as much information as he could in respect of Ethiopia recognising that it was many years since he had lived there. His evidence was consistent with that which he gave to the RSB. Accordingly his credibility is accepted in its entirety.

### **Profile**

[24] The appellant is therefore found to be of Tigrayan ethnic origin from Tigray, in Ethiopia. It is accepted that the markings, whilst not immediately apparent, on the appellant's face, do make him recognisable as a Tigrayan in Ethiopia. He is of the Orthodox Christian faith although not a serious devotee to his religion at this time. He is a 35 year-old man now separated from his wife and two children who

are all New Zealand citizens. It is against that profile, considered in the round, that his predicament on return must now be considered.

### **Interpretation of well-founded fear**

[25] The Authority has for many years interpreted the term “being persecuted” in the “inclusion clause” (Article 1A(2) of the Refugee Convention) as the sustained or systemic violation of basic human rights demonstrative of a failure of state protection. In other words, core norms of international human rights law are relied upon to define the forms of serious harm which fall into the scope of “being persecuted”. This is often referred to as the human rights understanding of being persecuted and is fully explained in *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90].

[26] As noted in the issues set out above, an assessment of the “well-founded fear” element of the refugee definition has, as its core reference point, not the facts subjectively perceived by the claimant, but the objective facts as found by the decision-maker. (See *Refugee Appeal No 70074/96* [1998] NZAR 252, 260; *Refugee Appeal No 71404/99* (29 October 1999); *Refugee Appeal No 72668* [2002] NZAR 649 at [132]-[140] and in some detail, in *Refugee Appeal No 75692 and 75693* (3 March 2006) where between [86] and [89] the Authority addresses the legal issues relating to well-founded fear and how these closely align with the “Michigan Guidelines on well-founded fear” (2004). More recently in *Refugee Appeal No 76044* (11 September 2008) at [57] the Authority summarised its position as:

#### **THE RISK ISSUE**

#### **“A WELL-FOUNDED FEAR”**

##### **The legal test**

[57] In the Authority’s jurisprudence the well-founded standard has been understood as mandating the establishment of a real chance of being persecuted. See for example *Refugee Appeal No. 72668/01* [2002] NZAR 649 at paras [111] to [154]. The standard is an entirely objective one. The trepidation of the refugee claimant, no matter how genuine or intense, does not alter or affect the legal standard and is irrelevant to the well-foundedness issue. Any subjective fear of harm, while relevant to the question whether the claimant is unable or unwilling to avail him or herself of the protection of the country of nationality, is of no relevance to whether the anticipation of being persecuted is well-founded. See *Refugee Appeal No. 75692* [2007] NZAR 307 at paras [76] to [90] and the *Michigan Guidelines on Well-Founded Fear* (2005) 26 Mich. J. Int’l L. 491.

[27] As noted the Authority had before it a considerable amount of country information, supplied partially by the appellant and predominantly by the RRIB, relating to the human rights situation in Ethiopia, especially for Tigrayans.

## General comments in country information on Ethiopia

[28] A general summary is usefully found in an article by Peter Heinlein “Tigray, a ‘Battleground State’ in Ethiopian Elections”, *Voice of America* (4 May 2010). The article was sourced from [www.voanews.com](http://www.voanews.com). This article sets out:

Ethiopia’s sparsely-populated Tigray region is shaping up as the focal point for the May 23rd elections for parliament. Tigray contributes only 6 percent of Ethiopia’s 80 million people. But, it could hold the key to the country’s political future.

Tigray might well be called Ethiopia’s battleground state, in more ways than one.

A homegrown rebel group, the Tigray People’s Liberation Front, or TPLF, waged a guerrilla war in the 1970s and 80s that toppled the country’s Soviet-backed military regime. During the war, Tigray was the epicentre of a famine that killed as many as a million people. It was also the front-line state in a war against Eritrea from 1998-2000, which claimed another 70,000 lives.

Today, the TPLF’s leaders are Ethiopia’s leaders. They comprise the core of the ruling Ethiopian People’s Revolutionary Democratic Front (EPRDF), starting with Prime Minister Meles Zenawi.

The article goes on to note:

The ruling party has pledged to keep the peace, and authorities have invested in riot gear they hope will quell any threat to public order.

Nevertheless, a drive across Tigray revealed clear evidence of rising tensions. Virtually every opposition campaign poster had been torn or defaced, even in areas considered opposition strongholds.

A few scattered incidents of violence have been reported, one of them fatal. But police say they are prepared to prevent the kinds of protests the (*sic*) ended in violence following the last national election in 2005.

Tigray is again a battleground, but as in the past, the TPLF is expected to emerge victorious. Given its near total control of the government, experts say the region’s ruling party could sweep the boards.

[29] The election in May 2010 was, as predicted, won by the EPRDF under Prime Minister Meles Zenawi. It was returned to power obtaining 477 of 547 seats.

## Tigrayan ethnicity

[30] Here the article published in the *International Journal of Minority and Group Rights* 15 (2008): “Human Rights Violations in Federal Ethiopia: When Ethnic Identity is a Political Stigma”, Kjetil Tronvoll, Associate Professor, University of Oslo, Norwegian Centre for Human Rights, is relevant. This article views human rights violations in Federal Ethiopia over the period 1995 to 2005 primarily basing its data on information from the authoritative human rights assessments by Human Rights Watch and the United States State Department.



[31] At [4.1] of the article, an analysis of cumulated reported human rights violations in Ethiopia as per regional state is set out. This notes that two regional states of Tigray and Benishangul-Gumuz had no reported cases of human rights violations over the whole period. This contrasted with urban autonomous areas with mixed ethnic populations such as Addis Ababa. The article notes (at p66) that while inhabitants of Tigray (and other regions) are “*reportedly*” not likely to be exposed to human rights violations, this requires closer explanation. The article goes on to state that the reality that there is no human rights violations reported from Tigray exemplifies the unique status of Tigray in the Ethiopian Federation. As Tigray is the home ethnic constituency of the TPLF, the leading party within the EPRDF government, many political prerogatives are attributed to Tigray which other regional states are wishing to achieve. The article notes that:

The downside of Tigray’s special status, however, is that no other regional state in the federation is more closely scrutinised and controlled by security and intelligence forces than Tigray, restricting human rights monitoring capacities and capabilities.

[32] The legacy of the TPLF revolution, the article states, in combination with active government restrictions, has rendered it very difficult to express “any public opposition to the ruling TPLF party let alone organise any home-grown opposition party in the region. It notes that whatever opposition surfaces in Tigray is quickly and ruthlessly silenced before it can coalesce into an organised framework. A good example of that was when some TPLF members protested against the TPLF leadership in 1992 and again in 2001, there was an internal clampdown on rank and file members clandestinely, and it hardly attracted the attention of outsiders, let alone international human rights agencies. The article therefore concludes:

Consequently, publicly Tigray has been spared the conflict and “human rights violations” producing contexts of other regional states, where political opposition parties and other civil society *actors* are encouraging the people to actively pursue their civil and political rights.

[33] This same article, at p70, notes that human rights violations reported from Addis Ababa and Dire Dawa during this period have been rather stable, and relate to political civilian protests in connection with the electoral process or the persecution of Oromos claimed to be sympathisers of the Oromo National Liberation Front (“ONLF”).

[34] In the Human Rights Watch article “*Ethiopia: Open Impartial Inquiry Into Candidate’s Killing*” (5 March 2010) there is a report of a candidate for an opposition “Arena-Tigray” party for the 23 May 2010 elections being stabbed to death by five men in northern Tigray on the evening of 1 March. The report into

this incident sets out an opposition view that the attack was politically motivated following months of intimidation of opposition candidates whereas the government sources state that the killing was a personal dispute not a political one.

[35] The same article goes on to state that since 2005, Ethiopia's human rights situation has worsened, marked by a harsh intolerance for independent civil society activity, criticism of government actions, or opposition political activity.

[36] An International Crisis Group article "Ethiopia: Ethnic Federalism and its Discontents" (Africa Report No 153 – 4 September 2009) notes that the key internal mechanism of the TPLF is the Leninist principle of democratic centralism; executive and central committee party members are in charge of all major policy decisions. These are transmitted to party officials and the TPLF central committee considers itself not only to be the vanguard of the party but also the Tigrayan people. Accordingly, the TPLF has become a disciplined and effective group which is small but highly centralised and secretive in its leadership. This article also notes that when faced with internal dissent in 2001 and 2005 TPLF leaders reverted to authoritarian populism that echoed the party's Leninist origins.

[37] The same article goes on to note (p11) that in recent years an increasing number of Tigrayans inside and outside the movement have distanced themselves from Meles's (the Prime Minister) progressively more personalised rule. It also notes that despite the federal government's multi-ethnic composition, TPLF officers occupy the highest levels of all ministries and their dominance is particularly evident in the armed forces and the National Intelligence and Security Office. Most senior military commanders were former TPLF fighters. At the local level, the EPRDF uses a local coercion known as the *kebelle* structure which effectively allows the party to monitor and control local communities. These *kebelles* are headed by councils which control agricultural programmes, food aid and the monitoring of model farmers ("cadres"). Those who refuse to attend or make contributions to government developments run by the officials and cadres are branded as "anti-development".

[38] The Historical Dictionary of Ethiopia (David H Shinn, Thomas P Ofcansky) The Scarecrow Press, Inc (2000) at p379, notes that in the fourth century, the Tigrayans, a Semitic people, adopted Christianity and today almost all belong to the Ethiopian Orthodox Church and most of them live in the Tigray Region and are involved in agriculture.

## **Conscription**

[39] The UK Country of Origin Research and Information report (CORI) *Country Report: January 2010* quotes a Human Rights Watch report that states that in 2007, the Ethiopian authorities began a systematic campaign to force local civilians into pro-government militia. They were sent into battle without any military training and often lightly armed (having been told to find their own weapons). At p66 it reports that these forced recruits were often simply told to go and find and fight the ONLF and as a result often suffered disproportionate casualties against the more experienced and trained ONLF fighters. The same Human Rights Watch article “War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia’s Somali Regional State” (11 June 2008) also refers to forced conscription, and an incident where the army threatened in June/July 2007 to burn down a village if they did not provide weapons or soldiers. The report, however, appears to relate to the conflict that took place in the Ogaden region in 2007/2008 rather than anything in Tigray itself.

[40] The Child Soldiers Global Report 2004 in respect of Ethiopia states under “National recruitment legislation” that military service is not compulsory in Ethiopia although the defence force may in accordance with criteria issued from time to time recruit persons fit and willing for military purposes. There is a minimum recruitment age of 18 years and the failure to respond is punishable by simple imprisonment, and in times of emergency, general mobilization or war, by up to 10 years’ “rigorous” imprisonment.

## **Risks to Christians**

[41] As noted above, the predominant religion in Tigray region is Orthodox Christianity. In all the information provided and assessed by the Authority, there appears to be no references to the specific targeting of Orthodox Christians in Tigray. Any other references to problems between Somali Jihadists fighters and Christians are extremely random.

## **Generalised risks**

[42] In his submissions to the Authority Mr Mirkin referred to New Zealand government travellers’ information in respect of Ethiopia which listed the country as being one of “extreme risk”. He submitted that the appellant would be in no different a position to a traveller. The Authority considers that such travel

guidance material can only be considered as having little relevance to the predicament of a returning Ethiopian national who, as has been submitted, would be clearly recognised as such. This appellant is not the average New Zealand tourist and would not be seen as such.

### **Well-founded fear**

[43] Having considered the totality of the appellant's predicament and the objective country information, specifically the relevant parts which are set out above, the Authority has reached the conclusion that this appellant does not have a real chance of being persecuted on return to his home district in Ethiopia. Beyond this, any risks to him if he has to pass through Addis Ababa on his return are also not found to be at the level of a real chance of serious harm.

[44] The country information reveals that Tigrayans in the region of Tigray hold a special position in the Ethiopian Federal Administration. They are given superior treatment and allowances above other ethnic groups within Ethiopia, by the governing EPRDF. Set against this is the closely monitored rule of the EPRDF and the TPLF and the "Leninist" control of Tigrayans both in the urban and rural environment. However, there is nothing in this information that indicates a real chance of an ethnic Tigrayan with the profile and in the predicament of this appellant being subjected to serious maltreatment rising to the level of being persecuted. This is not to say that there is no risk. Assessed on the totality of the evidence any risk to him must be seen as remote or highly speculative. Objectively assessed he does not have a well-founded fear of being persecuted.

[45] There is some evidence in the past of conscription being enforced on young men. However, the only reference brought to the attention of the Authority from the material available appears to be in relation to incidents in the Ogaden region rather than in Tigray itself. Objectively assessed therefore, any serious maltreatment to this appellant in respect of possible conscription must also be seen as highly speculative and remote. At this time there is no evidence to suggest he would be forcibly conscripted.

[46] It has been submitted that the appellant has not been speaking his own native tongue for many years and therefore has lost his fluency and that this may put him at risk. In this regard the Authority notes that the appellant was approximately 18 years of age when he left Ethiopia. He then spent some years living with his stepmother in Kenya and with his Tigrayan wife in Australia. On an

objective assessment of his background, therefore, his mother-tongue is clearly a dialect of Tigrayan. It must be seen as extremely unlikely that he would be unable to re-establish quickly his fluency in his mother-tongue. This is the language he used until approximately the age of 23. The Authority does not consider this would cause any problems for him should he be returned to his home district.

[47] Assessed in the round therefore, the Authority is satisfied the appellant does not have a well-founded fear of being persecuted on return to Ethiopia. The first issue is answered in the negative. The second issue therefore does not fall for consideration in this case.

### **CONCLUSION**

[48] For the reasons mentioned above, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"A R Mackey"  
A R Mackey  
Chairman