

0808574 [2009] RRTA 786 (9 September 2009)

DECISION RECORD

CASE NUMBER:	0808574
DIAC REFERENCE(S):	CLF2008/97741
COUNTRY OF REFERENCE:	Ethiopia
TRIBUNAL MEMBER:	Louise Spieler
DATE:	9 September 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 visa.
2. The applicant applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] June 2008. The delegate decided to refuse to grant the visa [in] November 2008, and [in] December 2008 the applicant applied to the Tribunal for review of the delegate's decision.
3. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411 of the Act and the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

4. 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.
5. Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) 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 Refugees Convention as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

6. Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

7. 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) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

8. Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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

16. The Tribunal has before it the Department's file relating to the applicant's protection visa application. The file also contains the applicant's visitor visa application.

17. *Background:* The applicant arrived in Australia [in] April 2008 as the holder of a sponsored family visitor visa. In her application for the visa, which was lodged [in] October 2007, the applicant stated that she had been employed as sales person at [company name deleted in accordance with s.431(2) of the Migration Act as it may identify the applicant] for four years.

18. *The protection visa application:* In her application, the applicant stated that she was born in Ethiopia in 1967, that she was of Oromo ethnicity, that she had completed a course in hairdressing between January and September 2003 and that she was employed as the owner/operator of a hairdressing saloon (sic) from March 2004 to May 2007.

19. In a statement submitted with her application (the PV statement) the applicant confirmed that she started her hairdressing salon in March 2004. From late 2004, in preparation for the general election to be held in May 2005, she decided to support the opposition Oromo National Congress (ONC) party led by Professor Gudina by raising funds from her friends and customers. From January to April 2005 she raised more than 5,000 Ethiopian Birr. As a result she came to the attention of the Ethiopian security forces who started to visit her salon and enquire why she was collecting money for the ONC. [In] May 2005 three security forces in civilian clothing came to her home. They slapped her husband and told her not to open her business. She followed their instruction and did not resume business until June 2005. When she resumed business she was able to get only a few loyal and brave clients. However the threats did not stop, culminating in a complete closure of the business in May 2007 and her arrest [in] November 2007 for five days for unknown reasons.

20. The applicant stated that while in [name deleted: s431(2)] prison she was forced to take off her clothing and was questioned about her current activities and her husband's political activities before 1991. After her release she contacted some of the prisoners' families which angered the security forces. Consequently they stepped up their intimidation of her and she became a prisoner in her own house. After she left Ethiopia the security forces continued to monitor her family's movements and her eldest daughters went to [town deleted: s.431(2)] to live with their grandmother. Since her arrival in Australia she has participated in two rallies in May and June 2008 organised by the Australian Oromo Community Association of Victoria (AOCAV).

21. In a statutory declaration dated [in] September 2008 (the statutory declaration) the applicant expanded on her claims. She stated that her husband is Amharic and he was imprisoned for one month in 1991 due to his involvement with the Worker's Party of Ethiopia. For a few years after his release from prison they experienced no problems with the government. The applicant stated she obtained information about the ONC through people who worked in parliament and who lived near her. Her role involved largely collecting contributions at work and promoting the ONC. She encouraged customers to make financial contributions. She also began fundraising outside Addis Ababa in her mother's village. In respect of the incident that occurred [in] May 2005 the applicant said that the security forces took her to the police station and gave her a warning and let her go home. She was pregnant and lost her baby.

22. The applicant stated that after she reopened her business in June 2005 she was only able to get a few customers. Nevertheless, she continued to be harassed by security forces who came to her shop weekly or fortnightly. She went to court a few times and when at court they would say she had to go to prison. She closed her shop in May 2007 and was arrested [in] November 2007 and held for five days. While in prison she was beaten. Her husband gave 1000 Birr to the police station for her release and she was given appointments to appear before the court. She had to give 3000 Birr and her husband had to sign to be a sponsor so she would not run away. After her release from prison she contacted prisoners' families. In late 2007 her sister organised a visa so she could travel to Australia. At the airport she gave 1000 Birr to a government official to avoid problems.

23. *The Department interviews:* The applicant was interviewed by the delegate [in] October 2008 and [in] November 2008. The Tribunal has listened to the tape recordings of the interviews and the following is a summary of the applicant's evidence given at the interviews.

24. *The interview [in] October 2008:* The applicant told the delegate that she completed a hairdressing course and opened a salon in 2004. She said that the salon closed around [date deleted: s.431(2)] May 2007 but later said that she was told to close the business in November 2007.

25. The applicant said she first became involved in politics in 2004. Her husband had previously been involved in politics and was imprisoned in 1991. After that he stopped any political activity. As to her political involvement the applicant said that she is not an active member of the ONC but is a

sympathiser or supporter. She tried to encourage customers in her shop to provide financial contributions to the ONC.

26. The applicant said that in 2004 the security officers started following her and came to her shop. They told her to stop supporting the ONC. In May 2005 police officers in uniform came to her house and they slapped her husband. They told her to close her salon until after the election. They took her to the police station where she was imprisoned for two days and released after payment of a 1000 Birr fine. After the elections she continued to talk to people about politics.

27. The applicant said that she went to court in November 2007 but they couldn't find any evidence against her. The judge asked the police to bring evidence but in the meantime she was released on 3000 Birr bail and told that she will have to come to court another time. About three months after she left Ethiopia her husband got a letter telling him that he had to bring her back to court or he would be fined 10,000 Birr. The applicant gave the delegate the letter.

28. The applicant said that following her release from prison she did not continue her political activities but contacted the families of prisoners. She asked her sister in Australia to get her a visa, but they had already begun the process when she was in prison. She paid a bribe at the airport on her departure.

29. *The interview [in] November 2008:* The delegate asked whether the applicant was working at the time she applied for her visitor visa. She said that she worked part-time as a retailer in an electronics shop on weekdays and as a hairdresser on Friday, Saturday and Sunday. She worked as a hairdresser until her shop was closed [in] November 2007 when she was arrested.

30. The delegate asked about the applicant's political allegiances. She said that she supported the ONC. She said that there was a split in the party and she supported the group led by Mr Gudina. He did not form a new group but some people left the ONC. Since she has been in Australia she has participated in two demonstrations to give the Oromo people's version of the situation in Ethiopia.

31. *Post-interview investigations:* The delegate requested the Victorian Document Examination Unit (VDEU) of the Department to examine a document purportedly issued by the Addis Ababa City Administration Police Commission [in] July 2008. The letter was issued to the applicant's spouse and noted that the applicant was released on bail to bring her on the required date and time for the trial or to put the bond of 10,000 Ethiopian Birr. As she did not appear on the appointment date and time, the applicant's spouse was requested within 48 hours of receiving the letter to bring the lady or 10,000 Birr to the Addis Ababa City Police Commission [in] July 2008 at 8.30 am.

32. In a report dated [in] October 2008 the VDEU stated that the document had a "complete lack of security features" which means it "could have been produced by anyone with access to a desktop printer." While the unit had previously seen genuine documents produced this way, of greater concern was the fact that the stamp, which would normally be a traditional wet stamp used as a means of securing the authorised signature, was also printed with a desktop printer thus taking away from the credibility of the document.

33. *The Tribunal hearing:* The applicant attended a hearing [in] March 2009 in the company of her representative. She gave evidence with the assistance of an interpreter in the Oromo language. The Tribunal also took evidence from [Person 1], the applicant's brother-in-law's sister.

34. The applicant said that she supported the ONC. She strongly believes that Oromo people should be freed from prison and that things should be more democratic and peaceful. As to why she supports the ONC in preference to any of the other Oromo parties the applicant said that she does not oppose the other parties. As to how the ONC is different from any of the other parties, the

applicant said that the ONC has agitated a lot for the people and the party has influenced her. The Tribunal asked the applicant what she thought about the Oromo Liberation Front (OLF). The applicant said she has positive views towards all Oromo parties including the OLF. She could not explain any differences between the ONC and OLF and said that she is not a member of the ONC, just a supporter, and therefore doesn't know much about the differences between the parties. She said that the ONC has split into two separate groups in the last couple of years; one holds the original name and the other joined with another group.

35. The applicant said that in 2004 she was working as a hairdresser and also in an electronics shop. She did not mention the electronics shop in her protection visa application because she owns the hairdressing salon. She did not mention the hairdressing salon in her visitor visa application because her sister filled in the form. The applicant said she collected money from her customers in the salon and also in the town of [deleted: s.431(2)] She did not collect money from the electronics shop because the owner did not allow her to. She gave the money to one of her customers who was connected to the ONC.

36. One day some people came to her salon and warned her about collecting money. Just before the elections some men came to her house and spat on her husband. They told her to stop supporting the ONC and to close her business until after the elections. Her husband supported her strongly even though he is from a different ethnic group.

37. The applicant said that she did not collect much money after June 2005, but people started following her and she had to go to the court and the police station. As to why the authorities continued to be interested in her, the applicant said they were interested in many people. They told her they had evidence she had supported the ONC.

38. The Tribunal asked the applicant when she was first taken to jail. She said that she does not remember because she is stressed. After some consideration the applicant said that she was taken for two or three days to the police station in 2004 and in November 2007 she was taken to prison. She said that she went to court four or five times between 2005 and 2007 but cannot remember the dates. The reason she was called to court was because she was accused of supporting an Oromo organisation. On each occasion the judge released her and gave her an appointment to come back in five or six months. She always returned on the requested date.

39. The Tribunal asked about the November 2007 incident. The applicant confirmed that she was still employed in the hairdressing salon when she was called to the court. The Tribunal said that she had previously stated that the salon closed in May 2007. The applicant said that it closed in May 2007 and reopened in November 2007. The Tribunal observed that her statements do not say that. The applicant said that she can't remember because she is stressed.

40. The applicant said that she was called to attend court in November 2007. She gave a somewhat disjointed account of her experience, but after further questioning the Tribunal understood her to say that she attended court on Friday and was asked to reappear on Monday because the judge did not have her file. She was required to spend the weekend in prison where she was stripped to her underwear and interrogated and beaten. She suffered a back injury and could not walk properly. Her file was not ready on Monday but was ready on Tuesday. However it appears that nothing was decided on Tuesday and on Wednesday she was released following payment of 3,000 Birr. She was meant to come back another time and if she did not return she would have to pay 10,000 Birr. The applicant said that she does not remember when she had to return but it was usually after about six months. The Tribunal said that information from the Document Examination Unit suggested that the letter she provided to the Department from the police may not be genuine. The applicant said she 100% believes it is genuine.

41. The applicant said that following her release from prison she stayed home until her departure for Australia. Her husband paid a bribe at the airport because the police were suspicious

of her. They asked her to produce her identity card but she did not produce it because the court had made a mark on it to stop her leaving the country.

42. The applicant said that since her arrival in Australia she has participated in two rallies in support of the ONC, one in May 2008 and one in June 2008. The Tribunal asked the applicant about the purpose of the rallies. She said that the Ethiopian government sends people to Australia to speak about the government and the rally was to show opposition to these persons coming to Australia. The applicant said she has heard that government agents take photos and videos and is concerned that Ethiopian authorities could have seen her picture. The Tribunal asked whether the rally was televised or reported in the press. The applicant said that there are photos of her on the internet holding a banner. She said that if a person seeks asylum in a country and they return to Ethiopia there are big problems.

43. *The evidence of [Person 1]:* [Person 1] said that she has known the applicant for a long time. When she returned to Ethiopia in December 2007 she heard that the applicant had been in prison. When she met the applicant she asked her why she was in prison. The applicant told her that it was because of Oromo politics. She told her that she had been raising money for the Oromo cause. [Person 1] told the Tribunal that the applicant collected money from her.

44. [Person 1] said that she saw the applicant on an earlier visit to Ethiopia in December 2004. At that time the applicant was working as a hairdresser. She showed the Tribunal a photograph that she said was taken in the applicant's hairdressing shop. She does not remember whether the applicant was collecting money for any Oromo organisation in 2004.

45. *Post-hearing correspondence:* On 14 April 2009 the Tribunal received the following documents from the applicant:

- Statutory declarations by [name deleted: s.431(2)], the applicant's sister, and [name deleted: s.431(2)], the applicant's brother-in-law, in similar terms. They stated that some time in 2007 they realised the applicant was in trouble but did not know the extent of the problem. They filled out the application form for the visitor visa but did not put down the hairdressing business because it was closed. While they knew the applicant had been imprisoned they did not know the reason for her imprisonment;
- A letter dated 20 March 2009 from Dr [name deleted: s.431(2)], of [suburb deleted: s.431(2)] Community Health Centre, stating that the applicant had been a patient at the practice since [date deleted: s.431(2)] February 2009. Dr [deleted: s.431(2)] stated that the applicant initially presented for an assessment of back pain which she said was as a result of sleeping on a cold floor and being beaten while in prison. Dr [deleted: s.431(2)] noted, in addition, that she feels the applicant has significant depression; and
- A number of photographs showing the applicant at a gathering with other persons holding Oromo flags and posters in support of the Oromo people.

46. The Tribunal subsequently sought information from the Department of Foreign Affairs and Trade (DFAT) in respect of certain claims made by the applicant. In a response dated [in] May 2009 DFAT stated that:

- DFAT contacts (and contacts who frequent court hearings) have never heard of or seen the practice of courts endorsing a person's identity card;
- Kebele or other identity documents are not 'routinely' required at airport departures. Because immigration staff have electronic copies of passports they would normally cross-check the electronic copy with the hard copy. If there is doubt regarding a person's identity, then a secondary ID may be requested (not necessarily Kebele IDs) however DFAT are advised that these are very rare incidents;

- If the courts consider that a person should not leave the country, they issue a letter informing Ethiopian Immigration to that effect. The Immigration office then sends to departure control officers a list of those people who should not be permitted to leave. However, DFAT are advised that the fact that someone has a pending case does not necessarily result in the court issuing a prohibition against departure.

47. [In] May 2009 the Tribunal sent the applicant a letter under s.424A of the Act inviting her to comment, by [date deleted: s.431(2)] June 2009, on information that the Tribunal considered would be the reason or a part of the reason for affirming the decision under review. The Tribunal noted that the applicant had very limited knowledge of Oromo politics thus raising doubts that she was a fundraiser for the ONC. The Tribunal noted the applicant had provided inconsistent information on a number of matters in her evidence to the Department and the Tribunal, including information submitted in her visitor visa application, which may raise doubts that she had come to the adverse attention of the Ethiopian security forces because of her fundraising activities. The Tribunal noted that information obtained from DFAT suggested that the applicant's evidence regarding her claim that she experienced difficulties at the airport was not truthful, and information provided by the VDEU may cause the Tribunal to find that she had submitted a false document.

48. [In] May 2009 the applicant's representative requested an extension of time to provide a response to the Tribunal's letter. In support of her request, she submitted a letter from Dr [deleted: s.431(2)] stating that the applicant had reported suffering from increased depressive symptoms following the hearing and feels she has been unable to appropriately prepare to respond to the Tribunal. [In] May 2009 the Tribunal granted an extension of time until [date deleted:s.431(2)] June 2009 to respond.

49. In a response dated [in] June 2009 (the 424A response) the applicant, through her representative, stated that she was imprisoned for two days in May 2005 as she had stated in her PV statement, her statutory declaration of [date deleted: s.431(2)] September 2008 and at her DIAC interview. In relation to her knowledge of Oromo politics she has never claimed to be a member of the ONC but merely a supporter; as she is computer illiterate she has not kept up to date with recent developments in the parties. The applicant confirmed that the hairdressing salon was closed in May 2007 and she was arrested in November 2007 from her home because the security forces wanted to be sure she did not contribute to Oromo supporting activities in the lead up to the local elections scheduled for February 2008. At the time of completing her visitor visa application her hairdressing business was closed and she used the word 'retailer' in her medical examination form because she had worked in both the retail business and the hairdressing salon for several years. Her problems in Ethiopia did not commence with her detention in November 2007 but pre-existed her detention therefore explaining why her visitor application was signed before her detention.

50. In her response, the applicant confirmed that the information she had provided in respect of her departure from Ethiopia was correct and to her knowledge the letter sent from her husband is genuine. She is not certain why she did not declare her back pain in her medical examination conducted [in] July 2008 but believes she may have had intermittent relief from the pain but has since had a reoccurrence of back pain. The applicant stated that she stayed at her mother's place for approximately one month prior to her departure from Australia. She provided a number of photographs taken from the [deleted: s.431(2)] website [web address deleted: s.431(2)] which she conceded were not particularly clear pictures of her.

51. Also submitted was country information on Ethiopia together with a letter from [Person 1] stating that her evidence at the hearing had been misunderstood. What she said was that during her 2004 visit the applicant collected money from her and in 2007 she gave the applicant some money for her own personal use but it was not a political donation.

COUNTRY INFORMATION

52. There are more than 80 ethnic groups in Ethiopia of which the Oromo, at 40 percent of the population, was the largest. Although many groups influenced political and cultural life, Amharas and Tigrayans from the northern highlands played a dominant role. The federal system drew boundaries roughly along major ethnic group lines, and regional states had much greater control over their affairs than previously. Most political parties remained primarily ethnically based. (*The US State Department Country Report on Human Rights Practices 2008, Ethiopia* (USSD 2008), released on 25 February 2009).

53. The government has tended to favor Tigrayan ethnic interests in economic and political matters. Politics within the EPRDF (The Ethiopian People's Revolutionary Democratic Front) have been dominated by the Tigrayan People's Democratic Front. Discrimination against and repression of other groups, especially the Oromo, have been widespread (Freedom House: *Freedom in the world Ethiopia 2009*).

Oromo politics

54. The Oromo National Congress (ONC) was founded in 1996 by Dr Merera Gudina and is a member of the opposition United Ethiopian Democratic Forces (UEDF) coalition. In the May 2005 elections the ONC won 105 seats in the Regional Council and 42 seats in the Federal Parliament. In November 2007 the ONC changed its name to the Oromo People's Congress (OPC) and in January 2009 formed a coalition with the Oromo Federalist Democratic Movement (OFDM) to be known as the Oromo Federalist Congress (OFC) (information accessed from the OPC website at www.oromopeoplescongress.org/history).

55. The Oromo Liberation Front (OLF) is a banned political organisation that seeks self determination for the Oromo people. Since 1992, it has formed an armed opposition against the Ethiopian government carrying out low level guerrilla operations and advocating boycotts of all elections. It has also clashed with rival Oromo rebel groups. The OLF has been outlawed by the Ethiopian government however armed elements still continue to operate within Ethiopia and have clashed with government forces on numerous occasions resulting in the death of an unknown number of civilians and government security forces...In Oromia, Ethiopia's most populous state, government authorities used the longstanding insurgency by the OLF to imprison, harass and physically abuse critics. Individuals were reported to have been informally accused of supporting the OLF. Supporters of the ONC and the OFDM were also reported to have suffered similar treatment (*UK Border Agency Operational Guidance Note for Ethiopia* (March 2009)(UKOPG2009).

56. Human Rights Watch reported that in the vast majority of constituencies for the local-level elections held in April 2008 there were no opposition candidates at all. Where opposition candidates did contest they faced abuse and improper procedural obstacles to registration. Candidates in Ethiopia's Oromia region were detained, threatened with violence by local officials, and accused of affiliation to the rebel OLF (*Human Rights Watch World Report 2009, Ethiopia*).

Arrest and Detention

57. Authorities regularly detained persons without warrants and denied access to counsel and family members, particularly in outlying regions. Although the law requires detainees to be brought to court and charged within 48 hours, this generally was not respected in practice. While there was a functioning bail system, it was not available in murder, treason, and corruption cases. In most cases authorities set bail between 500 and 10,000 birr (\$494-975), which was too costly for most citizens. Police officials did not always respect court orders to release suspects on bail. With court approval, persons suspected of serious offenses can be detained for 14 days and for additional 14-day periods if an investigation continues.

Prison and Detention Centre Conditions

58. The country has three federal prisons, 117 regional prisons, and many unofficial prisons. Prison and pretrial detention center conditions remained harsh and life threatening. Severe overcrowding was a problem. ... In detention centers, police often physically abused detainees. Authorities generally permitted visitors but sometimes arbitrarily denied them access to detainees. In some cases, family visits to political prisoners were restricted to a few per year (*UK Border Agency Country of Origin Information Report on Ethiopia* issued on 18 January 2008 (UKCOI 2008)).

Women

59. The constitution (Article 35) provides women the same rights and protections as men. Harmful Traditional Practices (HTPs) such as female genital cutting, abduction, and rape have been explicitly criminalized. Enforcement of these laws lags... Women and girls experience gender-based violence daily, but it is underreported due to shame, fear, or a victim's ignorance of legal protections... Domestic violence, including spousal abuse, was a pervasive social problem... The government prosecuted offenders on a limited scale... Sexual harassment was widespread. The penal code prescribes 18 to 24 months' imprisonment; however, harassment-related laws were not enforced.

60. Discrimination against women was most acute in rural areas, where 85 percent of the population was located... In urban areas, women had fewer employment opportunities than men, and the jobs available did not provide equal pay for equal work. Women's access to gainful employment, credit, and owning and/or managing a business was limited by their low level of education and training, traditional attitudes, and limited access to information (USSD 2008).

FINDINGS AND REASONS

61. Based on the information before it, including a copy of her Ethiopian passport, the Tribunal finds that the applicant is a national of Ethiopia of Oromo ethnicity.

62. The applicant claims to be at risk of persecution in Ethiopia on the grounds of her actual and/or imputed political opinion, her ethnicity and her membership of particular social groups comprised of "women" and "failed asylum seekers" However, the mere fact that a person claims fear of persecution for a particular reason does not establish the genuineness of the claim or that it is "well founded" or that it is for the reason claimed. The Tribunal is not required to accept uncritically the assertions made by the applicant (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596) and it remains for the applicant to satisfy the Tribunal that the statutory elements are made out.

63. In assessing the applicant's claims and, in particular, her credibility, the Tribunal has had regard to evidence which indicates that she suffers from depression. The Department file contains a letter dated [in] August 2008 from a Foundation House Counsellor/Advocate (prepared in relation to the applicant's eligibility for benefits from the Asylum Seekers Assistance Scheme) stating that she suffers from agitation, fatigue, poor concentration, attention and memory. In letters received by the Tribunal after the hearing, Dr [deleted: s.431(2)] confirmed that the applicant suffers from depression with anxiety symptoms and that she reported suffering increased stress following the hearing. There was, however, no suggestion in her letters that the applicant was not competent to give oral evidence at the hearing.

64. While the Tribunal accepts that the applicant may experience some memory problems, her answers at the hearing were generally clear, responsive and on point and she did not, for the most part, express any difficulty in recalling particular incidents or events While her evidence in respect of one matter was disjointed and not entirely clear, the Tribunal was able to clarify the sequence of events through careful questioning. The Tribunal is satisfied that the applicant had a fair

opportunity to present her case and was able to participate meaningfully in the hearing. Where her evidence was inconsistent with that previously provided, and for reasons discussed further below, the Tribunal is not persuaded that this was necessarily due to deficiencies in her memory.

Whether the applicant faces a real chance of persecution for reason of actual and/or imputed political opinion

65. The applicant claims to have suffered serious harm in Ethiopia because she is a supporter of the ONC and has collected funds for the party.

66. *The applicant's political knowledge:* The Tribunal notes, firstly, that the applicant has very limited knowledge of Oromo politics and was unable to explain the difference between the ONC and other Oromo political parties including the OLF. In particular, she did not appear to be aware that the OLF is a banned political organisation that engages in armed opposition against the Ethiopian government. In addition, she was not aware that the ONC changed its name to the Oromo People's Congress (OPC) in November 2007 and that there is no longer a party called the ONC.

67. While the applicant said that she does not have recent knowledge of the ONC because she does not have access to the internet, the Tribunal notes that she did not depart Ethiopia until April 2008 which was well after the party's name change. While the Tribunal accepts that the applicant was not a member of the ONC, and does not expect her to have a detailed knowledge of the Oromo political landscape, the Tribunal has assessed her knowledge in the context of her claim that she was not simply a supporter of the ONC, but was a fundraiser and promoter. The Tribunal considers that this role would require more detailed knowledge of Oromo politics than the applicant was able to demonstrate.

68. *The applicant's occupation:* The applicant claims that she came to the adverse attention of the authorities while collecting funds for the ONC at her hairdressing salon. While the applicant stated that she also collected funds in her village outside Addis Ababa, the overall import of her evidence was that she collected "largely" from her customers at the salon and it was there that the security forces visited her on a regular basis.

69. In her visitor visa application signed [in] October 2007 the applicant stated that she had been employed as a sales person by [company name deleted: s.431(2)] Electronics for four years. She did not mention her hairdressing business. In her protection visa application the applicant stated that she operated a hairdressing salon from March 2004 until May 2007 but did not mention her employment at [company name deleted: s.431(2)]. In response to question 7 of her medical examination form completed on 25 July 2008 asking about "previous occupations" in the last five years the applicant wrote "retailer". At the Department interview [in] November 2008 and at the Tribunal hearing the applicant said that at the time she applied for a visitor visa she was working two jobs; as a salesperson and hairdresser. However she was not allowed to collect funds for the ONC at the electronics shop.

70. The Tribunal did not find the applicant's evidence on this matter to be satisfactory and does not accept that she was simultaneously employed in two positions over a period of four or more years. The complete absence of any reference to an alternative occupation in both applications raises serious doubts in the Tribunal's mind as to the plausibility of the applicant's explanation. While it has been submitted that the applicant has given consistent evidence as to her hairdressing business in her protection visa application and subsequent statements and interviews, this is not in fact the case as in her medical examination form completed in July 2008 the applicant wrote that she had been employed as a "retailer" in the last five years rather than a hairdresser.

71. *The 2005 visit by the security forces:* The applicant claims that from late 2004 to early 2005 she was visited at her salon by members of the security forces who warned her against collecting money for the ONC. In her PV statement the applicant claimed that security forces visited her home

in May 2005 and told her to close her business until after the elections. She claimed that she followed their instructions. In her statutory declaration she stated that the security forces took her to the police station, gave her a warning and let her go home. At the first Department interview the applicant said that the security forces took her to the police station where she was imprisoned for two days and released after payment of a fine. At the Tribunal hearing the applicant said that she was imprisoned at the police station for two or three days in 2004.

72. While the Tribunal does not attach any significance to the discrepancy between the years 2004 and 2005, the applicant's claim has progressively evolved from one involving a simple warning by the security forces to one involving two days imprisonment and payment of a fine. The applicant has not provided a reasonable explanation for her failure to mention her detention and fine in her written evidence to the Department, and the Tribunal finds, on balance, that she was not detained at the police station as claimed

73. *Events leading to the closure of her business:* There is little information on the applicant's circumstances between 2005 and 2007. She stated that she had few customers at her salon and did not collect much money. Nevertheless she continued to be harassed by security forces on a weekly or fortnightly basis. She was called to court a few times but could not remember the details.

74. In her PV statement the applicant stated that there was a "complete closure" of her business in May 2007. In her statutory declaration [in] September 2008 she stated that she closed her shop in May 2007 due to stress. At the Department interview [in] October 2008 she said that she closed her shop around [date deleted: s.431(2)] May 2007 but later said she was told to close her business in November 2007. At the Department interview [in] November 2008 she said that the shop was closed [in] November 2007 when she was arrested. At the Tribunal hearing she said that she was still employed in the hairdressing salon in November 2007 when she was called to the court. When asked why she had previously stated that the shop closed in May 2007 the applicant said that it closed in May and reopened in November 2007. In her s.424A response the applicant stated that the hairdressing salon closed in May 2007 and she was arrested from her home in November 2007.

75. As can be seen, the applicant has given varying evidence as to the date of closure of her hairdressing business, most recently stating that it closed in May 2007. No reasonable explanation has been provided for her inconsistent evidence. But in any case, the Tribunal does not accept that the applicant would have been of close and ongoing interest to the security forces for a period of two years if, as claimed, she had few customers and her fundraising activities were limited. Nor does the Tribunal accept that she was called to court on a number of occasions in respect of these activities

76. *The imprisonment of the applicant:* The applicant claims that she was detained for five days in November 2007 and was mistreated. While her evidence on this matter has been consistent, the Tribunal has considered this claim in the context of her evidence as to the events leading up to her imprisonment, the reasons for her imprisonment and the circumstances of her imprisonment, much of which is contradictory and inconsistent. In support of her claim the applicant submitted a document from the Addis Ababa Police Commission dated [in] July 2008 addressed to her husband. The document demanded payment of a 10,000 Birr fine because the applicant did not appear for her trial on the appointed date and time. Verification in respect of the authenticity of this document was inconclusive, but the Tribunal notes that it is entirely lacking in security features and could have been readily produced on a desktop printer. In addition, the absence of any reference to a specific trial date raises further doubts in the Tribunal's mind as to the authenticity of the document. For these reasons, the Tribunal gives very little weight to the document as reliable evidence of the applicant's detention and release on bail.

77. The applicant told the Tribunal she suffered a back injury while she was detained such that she could not walk properly. While she reported her back problems to Dr [name deleted: s.431(2)]

[in] February 2009, in her medical examination form completed [in] July 2008 the applicant did not declare any history of back pain. The Tribunal does not accept that the applicant, even if relatively pain free at the time of examination, would have forgotten to mention her previous injury and for these reasons does not accept that it was sustained while she was in prison.

78. *The applicant's activities following her release from prison:* There is inconsistent evidence as to the applicant's activities in the months following her release from prison and leading up to her departure from Australia. In her statutory declaration the applicant said that in the lead up to the local elections in April 2008 she became a prisoner in her home and went to her mother's place to hide. At the Tribunal hearing she said that she and her husband remained in their home until her departure for Australia. While the applicant claims that she ceased all political activity and fundraising after her arrest in November 2007, [Person 1] told the Tribunal that she met the applicant in Addis Ababa in December 2007 and that she collected money from her for the Oromo cause. While [Person 1] claims that the Tribunal misunderstood her evidence, both in respect of her 2004 and 2007 meetings with the applicant, the Tribunal has listened to a recording of the hearing and is satisfied that the summary of [Person 1's] evidence provided above is accurate.

79. *The applicant's departure from Ethiopia:* The applicant told the Tribunal that her identity card was marked or endorsed by the court to show that she had outstanding court business and would not be allowed to leave the country. The applicant has not submitted her card to the Tribunal, and having regard to information from DFAT stating that they have never seen or heard of such a practice, the Tribunal does not accept the applicant's evidence on this matter. Consequently, the Tribunal does not accept that the applicant came under suspicion at the airport and was forced to bribe an official so that she would not have to show her identity card.

Summary

80. In considering the evidence before it, the Tribunal is prepared to accept that the applicant worked as a hairdresser from time to time while in Ethiopia. On this matter, the Tribunal has had regard to the evidence of [Person 1] that she went to the applicant's hairdressing salon in December 2004 and has viewed a photograph which, according to [Person 1], was taken in her salon at that time. While the applicant claims to have worked as a hairdresser on a regular and ongoing basis between 2004 and 2007 she has given no reasonable explanation as to why she did not declare this employment in her visitor visa application. The Tribunal finds, on balance, that she was employed in a retail store and did not work as a hairdresser on other than an intermittent and irregular basis.

81. Having found that the applicant's primary employment since 2004 was in a retail store, the Tribunal is not satisfied that she came to the adverse attention of the Ethiopian authorities due to fundraising activities carried out in her hairdressing salon or in any other location. For reasons discussed above, the Tribunal does not accept that the applicant was warned against these activities in March 2005 or that she was detained for two days at the police station or that the security forces visited her salon on a weekly or fortnightly basis between 2005 and 2007 to continue their warnings. The Tribunal does not accept that the applicant was called to court on a number of occasions in association with these activities or that she was imprisoned for five days in November 2007 while her case was being sorted out. The Tribunal does not accept that the applicant had any difficulties leaving Ethiopia and is not satisfied that she would be of adverse interest to the Ethiopian authorities on her return to Ethiopia.

82. While country information suggests that involvement with, or suspected involvement with the OLF may place an individual at risk of persecution by the government authorities, there is no suggestion that the applicant was involved with the OLF or was perceived by the authorities to be so involved. While there is also country information which suggests that supporters of the ONC may be "informally accused" of supporting the OLF, the Tribunal is not satisfied that the applicant has in the past suffered serious harm for reason of her actual or perceived support of the ONC or

any other Oromo political party. Consequently, the Tribunal does not accept that the applicant would be imputed with a pro-OLF political profile on her return to Ethiopia. On the information before it, the Tribunal is not satisfied that there is a real chance the applicant will suffer serious harm for reason of her political opinion were she to return to Ethiopia.

Whether the applicant faces a real chance of persecution for any other Convention reason

83. The applicant claims that she faces a real chance of persecution for reason of her ethnicity and her membership of particular social groups comprised of “Ethiopian women” and possibly “Ethiopian women of Oromo ethnicity”. While the Tribunal accepts that Oromos suffer discrimination and repression, and that women in Ethiopia suffer gender based violence and discrimination, 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. As already discussed, the Tribunal does not accept that the applicant was imprisoned for five days while awaiting her court case and does not therefore accept that she suffered abuse while in prison. The Tribunal is not satisfied that there is a real chance the applicant will suffer serious harm as a result of her ethnicity and/or gender if she were to return to Ethiopia.

84. The Tribunal has also considered the applicant’s claim that she faces a real chance of persecution for reason of her membership of a particular social group comprised of “failed asylum seekers”. In determining whether this group falls within the definition of a particular social group for the purposes of the Convention, the Tribunal is not satisfied that there is a characteristic or attribute common to failed asylum seekers such as to set them apart from other members of Ethiopian society (see *Applicant S v MIMA* (2004) 217 CLR 387 at [36] per Gleeson CJ, Gummow and Kirby JJ). The Tribunal notes that applications for asylum in Australia are confidential and there may be many reasons why a person would remain abroad, apart from the purpose of seeking asylum. For these reasons the Tribunal does not accept that failed asylum seekers constitute a particular social group for the purpose of the Convention.

85. But even if this is not correct, the Tribunal can find very little country information to suggest that the applicant would face serious harm in Ethiopia for reasons of having sought asylum in Australia. While it was noted in the USSD 2008 that there were “anecdotal reports that deported Ethiopian asylum seekers from Yemen were detained upon return”, there is otherwise no information before the Tribunal to suggest that the applicant would be of interest to the authorities on her return from Australia. For these reasons, the Tribunal is not satisfied that there is a real chance the applicant will suffer serious harm on her return to Ethiopia as a result of having remained in Australia and applied for asylum.

Section 91R(3)

86. It is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of conduct engaged in his or her country of residence. However, this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee.

87. The applicant claims that she attended two political rallies in Melbourne, [in] May 2008 and [in] June 2008 respectively, to express her support for the Oromo cause. She has submitted photographs of her participating in a rally; the photographs appear to be taken in Federation Square, the location of the June rally.

88. The applicant claims that there are also photographs of her on the [deleted: s.431(2)] website at [web address deleted: s.431(2)] The Tribunal has viewed the website which shows photographs

taken at both rallies, but is unable to clearly recognise the applicant in any of the photographs. Nevertheless the Tribunal accepts, on the basis of the applicant's personal photographs, that she attended at least one of the rallies.

89. In making its findings in relation to the applicant's motivation, the Tribunal notes that both rallies occurred shortly before the applicant lodged her protection visa application, the last some three days before the application was lodged. While the timing of the rallies was clearly outside the applicant's control, there is no information to suggest that the applicant has participated in any other activities in support of the Oromo cause since her application was lodged some 15 months ago. The Tribunal does not accept that the applicant's participation in the rallies was otherwise than for the purpose of bolstering her refugee claims and is not satisfied that the photographs of the applicant submitted to the Tribunal were taken other than for the purpose of corroborating her claims by way of documenting her attendance at the rally

90. In all the circumstances, the Tribunal is not satisfied that the applicant has engaged in conduct in Australia, including attendance at two rallies in support of the Oromo cause, otherwise than for the purpose of strengthening her claims to be a refugee. The Tribunal finds, therefore, that it must disregard this conduct in determining whether the applicant has a well-founded fear of suffering Convention-related persecution in Ethiopia.

CONCLUSION

91. The Tribunal recognises that various acts, which may not in themselves constitute serious harm, can amount to persecution on cumulative grounds. On the basis of the evidence before it, and having considered the cumulative effects of the applicant's claims, the Tribunal is not satisfied that the applicant faces a real chance of serious harm for Convention related reasons were she to return 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.

92. Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore she does not satisfy the criterion set out in s.36(2) for a protection visa.

DECISION

93. 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