Asylum and Immigration Tribunal

WA (Draft related risks updated – Muslim Women) Eritrea CG [2006] UKIAT 00079

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 14 August 2006	
Prepared	……30 October 2006……

Before

Senior Immigration Judge King, TD
Senior Immigration Judge Eshun
Mr R Baines JP

Between

WA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Norton-Taylor, Counsel instructed by YVA Solicitors
For the Respondent: Mr J Wright, Home Office Presenting Officer

On the basis of the evidence now available, Muslim women should not be excluded from being within the draft related at risk category.The evidence indicates that Muslim women, per se are not exempt from military service. In some areas, however, local protests prevent their call up and in others the draft is not so strictly implemented. With this addition (amending para 113 of the determination), the draft related risk categories in KA (Draft – related risk categories updated) Eritrea CG [2005] 00165 are reaffirmed. In particular it remains the case that in general someone who has lived in Eritrea for a significant period without being called up would not fall within the category of a draft evader. The evidence indicates that the administration of National service is devolved to six regional commands and the degree to which recruitment is carried out varies from region to region. In considering risk on return a decision maker should pay regard to any credible evidence relating to the particular region from whence an appellant comes and the degree to which recruitment is enforced within that particular area. NB: This decision should be read with AH (Failed asylum seekers – involuntary returns) Eritrea CG [2006] UKAIT 00078

DETERMINATION AND REASONS

1. The appellant is a citizen of Eritrea born on 13 June 1970. She arrived in the United Kingdom on 28 September 2003 and applied for asylum shortly thereafter. On 26 November 2003 a decision was made to refuse to grant asylum and to give directions for her removal from the United Kingdom. The refusal letter is dated 21 November 2003.

2. The appellant sought to appeal against that decision, the hearing of which appeal came before an Adjudicator, Miss S Jhirad, on 3 February 2004. The appeal in respect of asylum was dismissed as was also the appeal in respect of human rights.

3. The appellant sought to appeal against that decision. Permission to do so being granted by the Immigration Appeal Tribunal on 13 May 2004.

4. Following the commencement of the appeals provisions of the 2004 Act, the grant of permission now takes effect as an order for reconsideration by this Tribunal of the appellant's appeal.

5. The matter came before the Tribunal for hearing on 15 April 2005. It was argued on behalf of the appellant that she would be regarded as a draft evader upon return to Eritrea. It was submitted that the Adjudicator had failed to deal with the issue of her military service in sufficient detail or at all. The Tribunal found that there had been an error of law in the determination of the Adjudicator in that military service was the key issue in the appellant's claim but that had not been dealt with adequately in the determination. The full text of that decision is set out in Annex A herewith.

6. It was directed that there would be a reconsideration of that decision. All issues would be at large once again including that of credibility.

7. The matter was listed for a full reconsideration of all relevant issues and evidence. Thus it is that the matter comes before us for reconsideration.

8. The appellant is represented by Mr H Norton-Taylor of Counsel instructed by YVA Solicitors. The respondent is represented by Mr J Wright, a Home Office Presenting Officer.

9. A number of documents are presented for our attention, contained essentially in bundles A and B. In addition there were various other reports and documents which were presented to us for our attention.

10. Essentially three issues were highlighted for our attention. The first being to identify the procedure for call up to military service in Eritrea. The second being to consider the position of Muslim women and if necessary, to revisit the findings in KA (Draft – related risk categories updated) Eritrea CG [2005] 00165 in the light of more recent objective evidence. Thirdly, to consider the risk on return for this appellant.

11. The appellant was called to give evidence. She adopted her statements of the 27 January 2004 and 16 February 2006; also, her SEF statement at interview conducted with the Home Office.

12. The basis of her claim can be summarised as follows. She was born in Argodat. She married in 1991 and her daughter was born in 1993. She divorced her husband in December 1998 and her child lives with him in Eritrea. She has one sister and three brothers. The sister and a brother have been granted indefinite leave to remain in the United Kingdom and the whereabouts of her father and the other two brothers is not known.

13. Between 1972 and 1975 she lived in Saudi Arabia, returning to Eritrea in 1975 where she stayed for three years. She returned to Saudi Arabia in 1978 where she remained until 2000. In June 2000, when her Saudi Residence Permit expired, she returned to Agordat accompanied by an aunt and the aunt's family. She worked as a domestic servant until the end of January 2003, joining also an ELF secret cell. In that capacity she attended monthly meetings and made donations.

14. She was instructed to report for military service but did not. Whilst following instructions to distribute ELF leaflets to a Mr Osman in the town of Parantu, the appellant travelled towards that location but was stopped at a military checkpoint. The ELF leaflets were discovered. She was arrested and detained for five months, interrogated and beaten. She was admitted to hospital in mid-July 2003 and escaped with the assistance of a hospital guard in mid-August 2003, travelling to Sudan and then on to the United Kingdom.

15. She fears return to Eritrea, both on account of her failure to attend military service and also by reason of her political profile both in Eritrea and in the United Kingdom.

16. The appellant gave oral evidence in support of her claim and was the subject of considerable cross-examination at the hearing.

17. She gave birth to her daughter in Eritrea at the home of the family of her husband. When she divorced her husband in 1998 he was in Saudi Arabia but is now back at Agordat, having returned there in 2000. When she left Saudi Arabia in June 2000 neither her sister nor her brothers remained there. Her father and two brothers had disappeared in Ethiopia having travelled there from Saudi Arabia in 1999. They left to renew their passports but nothing has been heard of them since.

18. In June 2000 her Ethiopian passport had expired and she returned to Eritrea via Sudan. She entered without any travel documents, returning the same way as many other returnees had done. She was returned under the auspices of the UNHCR. She did not register within Eritrea until a year after arriving.

19. She spoke of her activities with the ELF. She was involved in collecting financial contributions and distributing leaflets. She would collect funds from female sympathisers and hold meetings. The meetings would be weekly with about twenty or twenty five females present. Our attention was invited to her reply to Question 22 of the interview, in which she claimed to have written articles. She said that she did write things at meetings as well as preparing leaflets.

20. She indicated that she received the call-up papers at the home of her aunt on 15 February 2003. She did not read the papers but rather tore them up as she was not willing to undertake military service. Pressed upon the issue as to why she had not even taken the step of seeing what the papers said, she indicated that the aunt's son had read it so there was no need for her to do so. She was required to report to the authorities in a week's time. She remained at the aunt's house.

21. In the light of her evidence the appellant was invited to consider the interview which had been conducted with her on 7 November 2003, in particular Question 31 and her answer thereto. She was asked expressly "have you been called up?", her answer was "no". The appellant sought to say that her understanding of the question was whether she was willing to do military service not whether she had in fact been called up.

22. She spoke of her arrest at the checkpoint on 25 February 2003. She spoke of her ill-treatment and said she had scars remaining on her back. She was in hospital for some twenty three days receiving treatment by way of injections and tablets. She continued with that treatment until she escaped. Travelling from Eritrea to Sudan took five days during which she received no medication. She received no medication or treatment in Sudan.

23. The appellant repeated that she had entered Eritrea illegally but obtained identity documents when she had registered. She had not moved around very much during the year before she registered and nothing untoward had happened. She left her aunt in Eritrea and has since had no news about her aunt nor has she made any enquiries concerning her. She had last seen her daughter in 2002 when her husband brought her to see her. Since then she has had no news of him or of her daughter. The appellant was unsure whether the husband had undertaken military duty or not.

24. Finally, the appellant was asked about her domestic situation in Saudi Arabia. She said that with her family she would speak Tigre and Arabic. Her brothers and sister also spoke those two languages. When it was indicated to her that her brother had indicated in his interview to the Home Office that he did not speak Tigrean she said that he understood it but found Arabic more convenient.

25. The parties made their submissions to us. Mr Wright, on behalf of the respondent, invited us to make adverse findings as to the appellant's credibility. He submitted that the only reason for the appellant coming to the United Kingdom was to join her siblings. We were urged to find that there was no realistic family political profile within Eritrea, otherwise why would the appellant have returned in 1993 to give birth and to return subsequently in 2000.

26. In her first account of her entry into Eritrea with her aunt in 2000 no reference was made to it being an illegal entry. Clearly if it had been with the UNHCR it would not have been illegal but that again was a matter very recently mentioned. If the appellant had entered illegally and spent a year in Eritrea on that basis why was it that she chose to register her presence.

27. It was submitted that the appellant's activities with the ELF were minimal. The appellant indicated that she distributed leaflets to those who attended the meetings. In those circumstances why were the leaflets not distributed at the meetings rather than carried elsewhere.

28. We were invited to find that the evidence as to the receipt of call-up papers and the appellant's response lacked credibility particularly as nothing was mentioned in the interview concerning any particular call-up, indeed the appellant had specifically rejected that suggestion. It was improbable, given the claimed interest in the appellant by the authorities, that she would go through checkpoints at all let alone carrying ELF documents. In interview, in answer to Question 34, the appellant indicated she had been stopped four times at checkpoints. Why was it therefore that she had not been picked out for military service?

29. The appellant claims to have escaped hospital having undergone considerable medical treatment for her injuries and condition. It is not credible that she would be able to have survived the arduous journey which she has sought to describe.

30. We were addressed at length as to the objective evidence relating to the situation of call-up, those submissions perhaps are best dealt with when we come to deal with certain of the issues which we find now arise in this particular case.

31. Mr Norton-Taylor, on behalf of the appellant, invited us to find that her account was a credible one. It is clear from her family profile and particularly from the statements of her siblings that there was a considerable political profile to the family. We were asked to find that the appellant was indeed called up as she has indicated, indeed it was surprising that she had not been before.

32. It was submitted, however, that notwithstanding our findings as to credibility the fact remained that the appellant would be perceived as a draft evader and someone who had been available for military service and had failed to do it. It was argued that as a Muslim woman she would not have been exempt from that military service. Once again various arguments were addressed to us which perhaps are more convenient to be addressed under the particular issue which we have to consider.

33. We were addressed at length in respect of certain of the Tribunal decisions and of the objective material relating thereto. The expert report of Dr David Pool was very much relied upon by the appellant's representative. We do not set out in detail that objective evidence but will highlight the main areas of relevance under the particular issues which we have identified.

34. We remind ourselves as to the definition of refugee as set out in Article 1A of the 1951 Geneva Convention. The burden and standard of proof is to the lower standard, namely a "reasonable likelihood" or "a serious possibility". We remind ourselves that the similar low standard is to be applied to determine whether or not there has been any breach of the protected rights under the ECHR. In determining the issue of real risk we bear in mind the approach taken to such matters by the decisions of *Kacaj* and *Ullah*. In considering matters effecting particularly Article 8, we bear in mind the approach of *Razgar*.

35. In matters of credibility we remind ourselves that it is important to consider the case as presented on behalf of the appellant as a whole, both in regard to the evidence given by the appellant and to the objective evidence. It is necessary to put matters within their proper context taking a holistic approach to that evidence, seeking to place each element of it within the context as a whole, giving such evidence such weight as is appropriate.

36. One issue is that of credibility, whether the appellant has a political profile, either individually or through her family, such as to create a risk to her upon return, or whether she is indeed a draft evader in the circumstances of her claim as produced. The second issue arises independently to the issue of credibility, namely whether the fact that the appellant had not been called up for an appreciable period of time while she lived in Eritrea removes her from a category of risk. The Tribunal in the country guidance case of KA indicated, particularly in their conclusions at paragraph 113(f)(i), that the fact of a returnee being of draft age is not determinative, if we considered that those falling into the "left illegally" sub-category often include persons who are considered to have already done their national service, persons who have got an exemption and persons who have been eligible for call-up over a significant period but have not been called up. The burden of the submissions made to us today by Mr Norton-Taylor is that the current objective evidence indicates that such is an over optimistic statement to make, particularly given the clarification of the procedures for call-up which are adopted.

37. The third matter relates to whether the appellant as a Muslim woman would be liable for call-up in any event. The Tribunal in *KA* in its conclusions at paragraph 113(e) excluded Muslim women from the categories of females who would be most potentially at risk of serious harm. Mr Norton-Taylor argues that once again in light of the more recent objective evidence that is not a position that is tenable at present.

38. In considering the question of credibility we find generally that the appellant is not credible. We find that she has sought to exaggerate her political activities and has fabricated her claim to be the subject of a call-up notice.

39. The current evidence as presented on behalf of the appellant is that she was detained at the checkpoint because of the leaflets and was interrogated for many months, both as to her ELF activities and to the failure to attend for military service. Given the fact that many students and young people eligible for the draft are rounded up by the authorities and taken to training camps, it is not credible, as we so find, that if the authorities regarded the appellant as a draft evader or eligible for military service they would not have sent her to the camp for training. We bear in mind the evidence which she gave that the notice received at her home was requiring her to report to the military establishment the following week.

40. It is not credible, if the appellant had received such call-up papers and was the subject of questioning about her military service, that such would not have been within her mind at the time when she was questioned about such matters in the interview. The appellant was asked specifically whether she had done military service or had been called up. We can understand no reason at all why the appellant should not have given some details of the matters which she now claims to have experienced in answer to those questions. The appellant indicated at the interview

that she had been detained for five months. She was asked why she had been detained too long and in answer to Question 42 she said, "They were interrogating me from time to time about the ELF activities and as I did not confess to their interrogations they kept me in detention". No mention is made in that reply of any questioning concerning military service.

41. It cannot be overlooked that military service was certainly a matter very much in the mind of the appellant when she gave the answers which she did in interview. In answer to question 29 she spoke of the fact that the military police stopped the bus in order to find the youths who had escaped from national military service. In answer to Question 32 the appellant said that the military police asked who had completed or had done their military service and those who had not. She was one of those who had not done national service, she was taken to the police station and asked to show her identity card. It was on that occasion that the leaflets were discovered.

42. The appellant in her statement of 27 January 2004 expressed herself in a slightly different way concerning the bus and the stopping by the military police. She said at paragraph 14 as follows:-

> "The military police were looking for draft evaders. As I was eligible for conscription and had not done my military service the military police were particularly interested in me. I believe that this was the reason that they took me to the police station."

Thereafter she gives no evidence that she was further questioned about that matter. Indeed there is perhaps a distinction to be made as to a person eligible for conscription and one actually called up. The fact that the appellant at no stage mentions at interview or in her statement that she was called up is a very relevant factor in assessing her overall credibility.

43. Although the appellant claims that she received call-up papers to report a week later, she remained at the aunt's house prepared to undertake the routine identity checks at checkpoints. This would not seem to be the actions of someone seeking to evade military service. The objective evidence clearly shows that checks at checkpoints by military police was one of the means by which the authorities could locate those eligible or required for military service. The nature of her evidence was for the effect that she was not arrested because she was an evader but rather that, because she was of military age, she was taken to the local police station so that enquiries could be made. No doubt had the call-up notice been delivered as she claims enquiries would have revealed her obligation to report. Nothing, however, is said in the interview or in the statement about that matter nor indeed in the SEF at Annex A7 of the appeal bundle.

44. The appellant seeks to present a political profile, both for her family and for herself. We noted, however, that essentially for much of her life the appellant lived outside Eritrea. Although born in Agordat in Eritrea, much of her life until 2000 was spent in Saudi Arabia. On her own account, however, she had returned to Eritrea to give birth to her daughter and spent a number of years in Eritrea in the mid-1990s. There is no indication that she experienced any difficulties on account of her family profile or of her activities. According to her account, her father, sister and two brothers went to

Addis Ababa to renew their passports in 1990. Her sister Abeer and her brother Sakhr leaving Addis Ababa for the United Kingdom and claiming asylum. Seemingly it was in Ethiopia that her father and uncles disappeared. The appellant herself displayed no seemingly reluctance to return to Eritrea. Her precise status in Eritrea is perhaps less clearly defined in her evidence than might otherwise be the case. There is no indication in her SEF, interview or earlier statements that she entered Eritrea illegally. She said that she had an Ethiopian passport which expired in 2000. Such was the reason for her having to leave Saudi Arabia. At one stage in the evidence before us, she indicated that she entered illegally through the routes taken by persons seeking entry into Eritrea, later she said that that entry was facilitated by the UNHCR. There was no documentary evidence confirming that particular fact. It was her evidence that she managed to remain a year in Eritrea, seemingly without having registered with the authorities. Given the number of checkpoints and the frequency of checking we do not find that to be a credible assertion. The appellant claims to have registered and claims also to have had valid identity cards, which she showed at some four or five checkpoints prior to the checkpoint that she had referred to as being the one leading to her detention. We fail to understand how a person with no valid passport for Eritrea would be able to register herself in such ways. There is a degree of lack of clarity as to her domestic situation. According to the appellant she went to Eritrea to give birth to her daughter and yet she divorces her husband when a few years later he is living in Saudi Arabia as well. According to her evidence he is now living with the daughter in Agordat.

45. If Agardat is the family home of her husband where her daughter resides and also the place where she and her aunt lived for a number of years, it would be reasonable to expect some communication between herself; her husband or aunt. It is in that context we regard her evidence that she does not know whether or not he has done military service to lack credibility. We are not persuaded, looking at the matter as a whole, that the appellant is divorced from her husband or indeed was living a life apart from him at any material time.

46. Although the picture is painted by the appellant of a family with a high political profile, it is clear that she experienced no difficulties in residing in Eritrea for many years. The evidence in the SEF was that she joined a secret ELF cell which consisted of ten members including herself. She attended meetings at various places and gave donations. She also claimed that she distributed leaflets on behalf of the ELF. Asked to whom she delivered the leaflets she said to the people who attended the meetings. As Mr Wright has commented in his submissions to us, if that were the case then there would be little need for any overt distribution of leaflets other than within the very small confines of the group.

47. The appellant claims that she was given a bundle of ELF leaflets on 24 February 2003 to deliver to person a living in Parantu. It was the leaflets found upon her person which are said to be the cause of her detention. We do not find that to be credible in all the circumstances. The appellant would ask us to believe that having been notified by the authorities that they were interested in her for military service and being aware of the dangers which must be apparent to those seeking to avoid military service when going through checkpoints, nevertheless she carried such incriminating material with her. We do not find that is credible that she would have done so in the way in which she seeks to describe. Given also the reality of the

checkpoints and the frequency of them, we do not believe someone would carry such documents with them thereby exposing themselves to such danger.

48. The account of the appellant is of repeated ill-treatment at the hands of the authorities and repeated questioning. She was detained for five months and in the latter part of the fifth month the appellant became very ill such that she required hospital treatment and medication. As a matter of commonsense such treatment would have left somebody very ill indeed, particularly as the treatment at the hospital also was prolonged. Notwithstanding such a weakened condition the appellant would have us believe that she was able to make the arduous journey away from the hospital, escaping on 15 August 2003 making a journey of some five days crossing into Sudan. It was reasonable to believe that, if there was any truth in that matter, she would have been very weak and very tired and as a result of those journeys, yet seemingly she is out and about in Khartoum on 27 August near to a demonstration which was taking place which incidentally leads to her arrest. Once again she was detained for some twenty three days and then released which would, we think, not have assisted her weakened condition, yet she then manages to leave Khartoum Airport on 28 September 2003 and come to the United Kingdom. There has been no medical evidence produced as to the scarring of her body or as to the state of her health. In the circumstances we do not find her account of her escape to be credible.

49. We bear in mind the general nature of the profile which is claimed. There are details of the appellant's brother and sister and of the claims which they presented in the United Kingdom as to their political profile. We have heard no evidence from them but we have been asked to consider the evidence which relates to them.Our attention has been drawn to the determination of an Adjudicator having heard their appeal on 2 May 2002. In June 1999 the two siblings flew to Addis Ababa with their father, two brothers and two uncles. All bar the two siblings went to renew their passports but did not return. The brother and sister remained in the same house in Addis Ababa for two months following the disappearance of their father and brothers and then came to the United Kingdom. It was their case as advanced before the Adjudicator that their father had been a prominent member of the ELF in Jeddah and that they also had been members and became somewhat politically involved. They too had carried out activities before they left for the United Kingdom and believed they had been recorded on video cameras in the course of demonstrations. Significantly neither applicant would seem to have been in Eritrea for many years. Abeer was born in 1979 and was therefore twenty three years of age at the time of the hearing before the Adjudicator. Sakhr was some twenty five years of age at the time of the hearing.

50. Clearly their experiences must be distinguished from those of the appellant who has very much closer connections with Eritrea and indeed married an Eritrean citizen and visited Eritrea from time to time in the course of the 1990s. There was no suggestion whatsoever that any interest has been shown in the appellant on account of her family connections in any way or at all.

51. In all the circumstances and for the reasons set out above we do not find that the appellant was the subject of call-up or that she was arrested in the circumstances which she described or at all.

52. We remind ourselves that the task for us is to make findings upon the evidence that has been adduced or to indicate in respect of certain areas of evidence where findings are not possible to be made. In the latter category stands the precise domestic situation of the appellant as it existed in Eritrea. The appellant has failed to satisfy us, even applying the lower standard of burden of proof as we do, that she was living with her aunt and not with her husband and child. We are not persuaded that divorce ever took place between the two.

53. We turn, however, to consider the second proposition which was advanced to us by Mr Norton-Taylor on behalf of the appellant, namely that, notwithstanding any findings which we may make as to credibility, the appellant remains at risk of being considered a draft evader. He seeks to argue in particular that the length of time that an individual resides in Eritrea without call-up is not in itself determinative of that issue.

54. Our attention was drawn to the decision of *KA (Draft – related risk categories updated) Eritrea CG UKAIT 00165*, notified in November 2005. The Tribunal has sought to clarify the risks which are entailed by those of draft age returning to Eritrea. The summary of conclusions is set out in paragraph 113 of *KA*.

55. Mr Norton-Taylor invited our attention particular to 113(i) which reads as follows:-

> "They can be considered to have left Eritrea legally. Regarding this sub-category, it must be borne in mind that an appellant's assertion that he left illegally will raise an issue that will need to be established to the required standard. A person who generally lacks credibility will not be assumed to have left illegally. We think those falling into the "left legally" sub-category will often include persons who are considered to have already done national service, persons who have got an exemption and persons who have been eligible for call-up over a significant period but have not been called up. Lastly those falling outside the sub-category and often at risk will include persons who left Eritrea when they were approaching draft age (eighteen) or had recently passed that age."

56. In the case of the appellant she had been living in Eritrea since June 2000 until September 2003. She left Eritrea when she was aged thirty three. At first sight, therefore, she would seem to be a person who had been eligible for call-up over a significant period but had not been called up. We are urged, however, to view that finding in *KA* with considerable circumspection bearing in mind the more recent evidence now available as to how the mechanism of call-up is put in place and the increasing importance attached to call-up by the government.

57. In that connection our attention was drawn to the report of Dr David Pool dated 12 February 2006 to be found at pages 17 to 25 of Bundle A. Dr Pool sets out his qualifications at the beginning of the report. He is well known to the Tribunal and indeed part of his evidence was cited by the Tribunal in *KA*.

58. In his report he makes clear that the administration of national service is devolved to the regions/provinces of Eritrea and involves a dual role for the local offices of the Ministry of Regional Administration (MAR) and the Ministry of Defence. According to

the NSP, the MRA used directives based on the Ministry of Defence instructions. Eritrea is divided into six regions/provinces following the reorganisation of the provinces in 1996, with each region divided into sub-regional administrative zones. The lowest level is the village administration in the rural areas and the quarters in the urban areas. In parallel with the MRA, the Eritrean Army has six regional commands at the apex of which are six senior generals all of whom are former EPLF Commanders. The severity with which recruitment is conducted is partly a function of the character of the Regional General.

59. There is an additional civilian component layered into the draft process, presumably to ensure the draft of those eligible but less easily identifiable because they are not school students and because of the weakness of the registration process. At the crucial local level (village and town quarter) the local administrative unit responsible for the draft is constituted of a committee of six. Three of them represent the state institutions, the MRA, and three are from the local community. The civilian committee members are generally "community elders" associated with the PFDJ, state parties. These committees stretch down to village level in the countryside and the quarters in the towns. As there is no door-to-door postal services in Eritrea the names of suitable candidates for the draft are gathered by the committees from the families in the locality.

60. The members of the committee are said to have the responsibility of surveying the village residents in their homes; of investigating children's ages, of determining whether the child is away from the village; whether the child is abroad, whether the child is undertaking military service or whether the child is a student. Information therefore as to who is eligible for the draft is based on a combination of local knowledge of family members and investigation by the committee. The final step in the process is the delivery of notice of draft to the household by hand from the local committee.

61. Dr Pool comments that given the political economy and the nature of the society in rural and urban Eritrea, it is not always easy to implement the draft process. There is a large amount of geographical mobility, not all of which can be monitored by roadblocks. In rural Eritrea for example most peasants have cattle and oxen. Young men can be absent from the villages for months while they take family herds to distant pastures. Rural people also move temporarily to towns for casual wage labour. As urbanisation began as recently as the 1930s many Eritrean families still have their roots in villages and shares in village land. Urban residents frequently go and reside in villages to help out members of their extended family clan in times of need.

62. Registration of national service is based on the identification of those eligible in the village or the urban quarter by officials of the MRA and the civilian committee members.

63. The Giffa (round-up) are organised in villages and town quarters entirely of those who appear to be of eligible age. The authorities search houses, workplaces and streets and detain suspected evaders to check their identity documents and at military roadblocks on main roads. It is quite usual for buses and other forms of transport to be stopped for the identity cards of all passengers to be checked.

64. Dr Pool focused upon the issue of whether someone would be considered a draft evader if they have not been called up for a significant period in time. It was his view as expressed in paragraph 4 of the report, that somebody within that category could still be considered as a draft evader. He refers particularly to Article 37(3) and (4) of the National Service Proclamation of 1995. It seems that the onus to undertake military services would seem to be on the person eligible for the draft to undertake it. The vague phrasing in paragraph 37(3) is "knowing he has the duty of serving" and "avoids the performance of his duty". Article 37(5) provides "anyone that attempted to avoid national service by various devices or delayed his registration by unjustified motives or created obstacles…". In the nature of Eritrean society and the political economy an individual could be absent from the normal place of residence for a period of time. Strong links between extended families and clans between rural and urban areas provide considerable opportunities for Eritreans to find protection and places to hide out for significant periods of time. Dr Pool makes reference to the fact of the reports and rumours of massive imprisonment and of prisons unable to cope with the numbers of draft evaders being held in schools, military encampments and indeed in metal containers.

65. Thus, Mr Norton-Taylor submits on the basis of Dr Pool's report, that the local community, having identified suitable candidates for the draft may well consider such candidates to have evaded that draft if they are absent from their home or area unreasonably for an unduly extended period. Thus the fact that a person may not have been called up does not indicate that they are not the subject of interest by the committee. Their departure would be seen by that committee as seeking to evade military service.

66. The efforts of the committee are seen also to be complementary to the general obligations upon citizens to make themselves available for national service. The proclamation itself proclaims the matter as a matter of national pride and civic responsibility to undertake services. An individual who has not done so will be viewed critically by the authorities. Mr Norton-Taylor submits to us that the longer that somebody remains in Eritrea without performing military service, the more likely it is that the finger will be pointed at them upon return. It is difficult to understand, submits Mr Norton-Taylor, how the appellant could benefit from any exempted category. She is not married but rather is divorced from her husband. She is not taking care of children because her child is being taken care of by her husband's family. Thus there would be no good reason for her not to have undertaken national service.

67. Thus he submits that although it is to be recognised that the vigour of enforcement of national service may vary between the regions, it could not be said that the lack of application in enforcement is necessarily an indication as to a lack of interest.

68. Mr Wright submits in relation to such matters, that the appellant was not moving around the country but on her evidence was resident with her aunt for a number of years in the town. According to her account she had registered with the authorities in 2001 and she had an identity card which had been checked on a number of occasions at checkpoints, indeed having been checked on four occasions given the answer to Question 34 of the interview. On none of those occasions was she

detained for military service. He submits that there is nothing to indicate that the appellant was of any interest to the authorities for national service before she left.

69. Although Dr Pool's evidence has been presented to us in an attempt to persuade us that the findings of the Tribunal in *KA* are not sustainable, we find that the report, to the contrary, merely reinforces the position which has been expressed by the Tribunal, that generally somebody living for a significant period in Eritrea without being called up would not fall within the risk category of draft evader.

70. We focus very much of course upon the appellant's situation and of her evidence that when she came into that area of Eritrea she was housed and remained living with her aunt for three years thereafter. Argodat is the capital town of Barka Province. She was living in an urban area not in a village. She registered with the authorities in 2001 and had an identity card which presumably provided all relevant details as to her identity. It was an identity card, which had been checked on her own account at least four times at a checkpoint during the period that she resided in Akcordat. Thus she was a person who was settled and a person whose identity was known to the local authorities.

71. Dr Pool's report stresses the important function which the local committee has in selecting those who are eligible for national service. Contrary to what might otherwise be supposed, those chosen for national service are not seemingly chosen at random or by unlucky selection, but rather in a combination of enquiry and local knowledge. Those selected for national service are therefore chosen at a local level by the specific concern of the appointed committee.

72. It seemed to us as a matter of commonsense, therefore, that the longer that somebody is in an area without being called up for national service the less likely it is that they are of interest to the local committee. We readily understand that there may be those in the fairly mobile society in Eritrea who leave their homes for a long time before returning. That is not the case of this appellant.

73. Given the emphasis which is clearly placed by the government on national service and the obligation of those citizens to partake, it is reasonable to assume that there would be some motivation upon the committee to recruit those who become eligible as soon as possible. it is clear from the objective evidence that students in particular are very much at the forefront of the call-up procedure and face the requirement as part of their continuing education to undergo military training at the Sawa Training Camps.

74. Clearly the appellant was not of that age when she resided in Eritrea. Though the committee had ample opportunity to call her up, the fact she was not called up is indicative, as we so find, that she was not of any particular interest to the committee.

75. The comments of Dr Pool also can be seen in a wider context. If a considerable degree of flexibility is allowed as between the regions as to the enforcing of the draft, it is difficult to argue that there is a uniformity of approach and severity across the country. Thus an individual who may move from a region which was fairly lax and liberal as to the call-up, into a region where the call-up was more rigorous, may not by reason of that fact alone, be considered to have avoided the draft. Certain

communities were more rigorous in seeking to impose or restrict draft than in others. There is good reason to suppose, therefore, that anybody returning to Eritrea would be considered as to their response for military service, in the light of the practice or approach which was adopted in their region at the material time.

76. We turn to consider the third matter which was raised by Mr Norton-Taylor and that was a challenge once again to the conclusions of the Tribunal in *KA,* particularly as to the risks to females of eligible draft age as set out in paragraphs 75 to 77 of that decision. In particular, issue is taken by Mr Norton-Taylor in the statement made by the Tribunal that the government was reported in 2003/2004 to have stopped the forcible recruitment of young Muslims from Muslim communities, especially among the Afar of Dankalia on the Red Sea coast. Comment was made based upon the US State Department Report for February 2005 that hundreds of women were demobilised from national service due to age, infirmity, motherhood, marriage or the needs of their families. He submits, that the conclusions of the Tribunal in paragraph 113(e) that the category of risk is not extended to Muslim women or to women who are married or are mothers or carers, is a simplification in the current circumstances and situation in Eritrea.

77. Mr Norton-Taylor opens his submissions to us by inviting our attention to the letter which was written by his solicitors to the British Embassy in Asmara dated 15 May 2006 and the reply which has been received on 31 July 2006 from Mr Nick Astbury, HM Ambassador.

78. The Ambassador when asked to confirm whether Muslim women in Eritrea were exempt from national service and if so whether that exemption was confined to a specific region in Eritrea. The reply which was received was as follows:-

> "I was finally able to get an answer to your question this morning. Mr Amanwe, the Secretary at the Department of Religious Affairs told me that, under Proclamation 82/1995, the only exemptions from national service was for those below eighteen, those over forty, those with a physical disability or mothers. I asked explicitly about Muslim women and was told there was no exemption for them."

79. Our attention was invited to the report of Dr Pool dated 12 February 2006 to be found in Bundle A. At paragraph 5 of that report he makes comment upon the recruitment of Muslim women in these terms:-

> "The recruitment of Muslim women is a difficult topic on which to provide any definitive conclusion. The Eritrean Government takes some pride in its treatment of women and of its own non-discriminatory practices between Eritrean nationalities and regions, a legacy of the equality between genders was in the ranks of the EPLF when women provided some thirty per cent front line fighters. There had been reports that in some areas, like the Muslim Afar region of the Red Sea coast and Barka in Western Eritrea, the implementation of the NSP for women has not been rigorous. According to my sources in recent years there has been a lighter handed approach towards the recruitment of women for national service, in part because of the refusal of families to deliver women for national service. However, if a student wants to complete high

school (and rates of enrolment of women in Muslim areas at all educational levels is especially low) and continue into higher education, training, national service in Sawa is necessary, regardless of religious faith. Although it has been easier over the last few years for women to gain exemption from national service or to be released early there has been no official change in the universal eligibility for national service as laid out in the NSP. It would also seem that the induction of women into national service is uneven and can vary with the more or less rigorous policy pursued by the Regional General. General Gebrezgher Andemariam (better known as Nom-te-Guerre "Wuchu") of the Central Military Region covering Asmara and its surroundings and General Tekli Haile Sellassie of the Soluther Military Region have fearsome reputations as being particularly hardline."

80. Building on that report by Dr Pool, our attention was drawn to a report by Gaim Kibreab a Reader in Psychology and Director of MSC Refugee Studies at the London Southbank University. Unhelpfully the report seems not to be dated but clearly was prepared after 2002 bearing in mind the footnotes to the report as specified. In his report he highlights that initially there were nine categories of people who were exempted from national service. They were people engaged in industrial, agricultural and pastoral production, licensed self-employed traders, except those who work in liquor houses, bars, hotels and nightclubs, women who are in gainful employment, self-employment or who make a living by employing others are exempt from the obligation, married women and single mothers, sole breadwinners in families, and couples in honeymoon until the honeymoon ends. (Articles 2-9 of the NSP).

81. He speaks of the fact that national service was introduced in 1994 during the immediate post-Algiers Peace Agreement (December 2000) The Eritrean Government established a National Commission for Demobilisation and Reintegration Programme (NCDRP) and a phased demobilisation programme of some four hundred thousand combatants was formulated. Some seventy thousand combatants were expected to be demobilised by the end of January 2003. These were going to be mostly women, people with skills, family needs and sicknesses. In the second phase six thousand combatants were expected to be demobilised by the end of July 2003.

82. Instead of demobilising, however, the government extended the obligation to perform national service indefinitely under the Warsaid-Yekaalo Campaign (WYC) in May 2002. Where the national service proclamation limits the requirement of service to eighteen months, the WYC compels those who complete the eighteen months requirement to stay in arms indefinitely and to work for the state without remuneration. In 2004 the government "demobilised" some people with scarce skills and some women, they were required to remain in their respective assignments for an additional two years without remuneration.

83. The report goes on to speak about the participation of women in the national service. It speaks of the differences in intensity of the level of resistance of the different ethno-linguistic groups in the country. The programme was deeply resented by all communities and a degree of popular resistance to women's participation has been intensifying, as a result of their negative experience as regards protection against alleged sexual harassment. For example, when the army rounded up thousands of

people on the streets of Asmara in July 2002, including pregnant women, a spontaneous gathering of parents took place to protest against that action. It said that the pressure was such that on 27 December 2002 the Commissioner for Demobilisation promised that women serving in the army would be demobilised. Although it was said that it was not followed in practice.

84. The participation of Muslim women in national service was resented by most Muslim families. The government's policy is based on the fact that all Eritreans are equal before the law. However, the government was forced seemingly to implement the law flexibly in two areas of the country, namely rural Dankalia and parts of Barka. When the government came to rural Dankalia and rural Barka to recruit women the Afar of rural Dankalia and the Beni Amer of rural Barka threatened to defend their women by the use of force. The government turned a blind eye to recruitment of women in those particular areas. Such was not to be construed however that the exemption applied to all women throughout the country.

85. According to Gaim Kibreab in all cities and towns no exemptions are made to recruitment of Muslim women. He said that many Muslim families have withdrawn their children from school or had arranged marriages. He concludes that Eritrean Muslim women who live in all the cities and towns as well as outside the rural areas of Dankalia and parts of Barka are effected by national service.

86. Further comment is made upon that matter by Rachel Wikin of the Individuals at Risk Programme of Amnesty International in a letter dated 13 July 2006. She comments that the statement in the 2004 Amnesty Report that the government appears to have subsequently stopped forcible conscription of young Muslim women in these areas, was at the time sourced from the reports of confrontation between the Afar community in the Dankalia region on the Red Coast as well as information from confidential sources.

87. Rachel Wikin comments as follows in the last paragraph of that letter:-

> "From our general knowledge of the behaviour of the Eritrean authorities, we do not believe that an Afar woman who was returned to Eritrea as a failed asylum applicant would be safe from forcible conscription. She would not have access to any protection that may be afforded by the Afar community in the region. Any exemption operating within the Dankalia region would not extend to Afar or non-Afar Muslim women outside of that area. Exemptions from conscription in Eritrea appear to be arbitrary rather than bureaucratically controlled".

88. Thus Mr Norton-Taylor submits that the lack of conscription of Muslim women is simply a de facto decision, applicable only to certain regions in Eritrea and arises simply because the communities in those regions have stood firm against the government's recruitment policy. Although the appellant is in the Barka province she is in the main town. As such she would not have the protection of a local community to recruitment. Hence the general optimism, which was expressed in *KA* as to the reduction in the recruitment of women, is ill-founded in the light of the reports which have been presented for our attention.

89. He developed that argument further by inviting our attention to the EHDR-UK letter of 13 July 2006 set out at page 90 of Bundle B. This is the letter written by the Executive Director of Eritreans for Human and Democratic Rights. The letter confirms that Muslim women are not exempt at all. However, there are areas where the villagers refuse to send their daughters to military service or hide them and the government or local military administration does nothing further in respect of that refusal.

90. Mr Norton-Taylor submits that the position of the government in terms of recruitment for national service has hardened in recent years, rather than having been modified. Our attention was drawn to the general situation as outlined by the US Department of State Report of March 2006 to be found at pages 80 to 90 of Bundle B. In particular, at page 18 it is said that the law requires that women aged eighteen to twenty seven participate in national service. During the year the government continued efforts to detain women draft evaders and deserters. Reference was made to an article headed "Eritrea said recalling Demobilised Soldiers", an article from Awat.com./BBC Monitoring dated 2006 to be found at page 58 of Bundle B. This is an article dealing with the round-up of high school students for military services. In a number of regions, high school students aged seventeen and above are taken to military service. It was noticed that those called for military service including athletes and other youngsters active in various sports who had previously been given a permit to pursue their sporting activities. Demobilised soldiers and national service corps, who had been discharged for medical reasons, were also ordered to re-register. It is submitted that the government would continue to take a serious view of those who failed to attend for military service.

91. We recognise, in light of that evidence, that it may be that the comments by the Tribunal in *KA* as to Muslim women and their exemption from the draft may well have to be modified. Clearly, greater consideration will now have to be given to the individual circumstances of the claimant and in particular the region in which she lives.

92. There remains, however, the distinction between being eligible for military service and being perceived as being a draft evader. We find that the appellant came from a region which was generally lax about the recruitment of Muslim women, or women generally, for national service. Given that finding it is difficult to conclude, thereby, that by her non-performance of military service she was a draft evader. It is of some significance that the Barka Province seemed to be less prone to enforced conscription for women generally than other regions. Mr Norton-Taylor invites us to find that as the appellant lived in Agordat, which was the capital, she stood to lose the advantage, which might otherwise accrue to her were she to come from the rural community. For our part we cannot see such a sharp distinction being focused in the reports which have been presented to us. Given that the town is within the general region which exercises a degree of latitude, it is difficult to understand why such latitude would not extend also to the urban area under control of the same regional General.

93. it is seemingly consistent with the evidence, which we have heard, that the appellant was not called up precisely because of the less rigorous approach adopted to the call-up of women in the Barka region. Equally of course it may well be that she was

not called up because she was a mother living with her daughter. We have nothing other than the testimony of the appellant to indicate she was either divorced from her husband or that her daughter was living with her husband. As we have remarked before, it is somewhat curious, if her husband's family lived in Agordat or nearby, that the appellant saw her daughter infrequently. Her evidence was that her husband had brought her daughter to see her the last time about a year before she departed for the United Kingdom. We remind ourselves that corroboration is not required but equally we are entitled to place such weight upon the evidence of the appellant as appears from the overall context of that evidence and to the general credibility relating thereto.

94. In considering the objective evidence and the submissions relating thereto, we consider that it would be wise and appropriate to update the conclusions of the Tribunal as expressed in paragraph 113 of *KA*. We consider, however, that the only amendment which needs to be made in the summary of conclusions therein is simply to delete the reference in 113(e), the category of Muslim women. In all other respects the summary would seem to us to be an accurate statement of the situation.

95. Dealing thus first of all with the asylum claim of the appellant, we indicate that we do not find it credible as to her having been called up or detained. We do not find that she is at risk of being regarded as a draft evader upon return. We do no find that the appellant had any political profile of her own such as to attract the attention of the authorities nor do we consider that her family profile was such as to cause any interest in her by the authorities at the time she was in Eritrea or upon any return. It follows, therefore, that we do not find there is a well-founded fear of persecution for a Convention reason in the case of the appellant.

96. We were not addressed at length upon the human rights situation as faced by the appellant. Our findings in relation to Article 3 of the ECHR stand or fall on the findings which we have made. We note that the appellant was able to leave Eritrea without incident. She has a child in Eritrea and an ex-husband or husband. She also has an aunt and other relatives.

97. We note the various statements which have been made by the appellant. These do not deal in any great detail with her situation and circumstances in the United Kingdom nor were we addressed in detail upon such matters. We note the written submissions, which were filed on behalf of the appellant and which are contained in pages 1-16 of Bundle A. Once again, such matters do not deal with her domestic situation in the United Kingdom. We understand that the appellant's brother and sister were granted asylum status in August 2002. Our attention was drawn to documents relating to them in Bundle B. The brother, Sakhr was born in 1977 and the sister, Aber, born in January 1979. We have regard to the determination which is set out at pages 21 to 26 of Bundle B. There seemed to be little adjudication in the determination as to the merits of the claim as presented for the brother and sister. Significantly they said that they did not speak Tigrean or Amharic but only Arabic, where as of course the appellant in the case before us confirmed that they spoke both. The issue which concerned the Adjudicator, as he then was, was whether or not the brother and sister would be able to gain entry into Eritrea on the documents which they had. He found that they would not, they were therefore stateless. It was

on that limited finding that their asylum appeals were allowed. The findings of the Adjudicator dealt little with the aspect of political profile.

98. Nothing has been presented before us to show that there is any undue dependency as between the appellant or siblings. We bear in mind the decision of the Court of Appeal in *Razgar* and that in *Huang*. We bear in mind the structured approach to the issue of Article 8 which is urged upon us by such decisions. Clearly the appellant enjoys an element of private life and that to return her to Eritrea would be an interference with that enjoyment. However, we find no feature such as would render such an interference a breach of her protected rights. The appellant has secured entry into the United Kingdom upon what we have found to be a false claim for asylum. We see no reason at all why the course of immigration control should not be properly exercised against her. There is nothing exceptional in her case to render the act of removal one that is disproportionate in all the circumstances.

99. In the circumstances the appellant's human rights appeal is dismissed.

100. Thus, upon a reconsideration of the decision of the Adjudicator, Miss Jhirad, we find the original decision should stand, namely that the appeal on asylum grounds is dismissed. The appeal on human rights grounds is also dismissed.

Signed Date 24/10/2006

Senior Immigration Judge King TD

SE(Deportation-Malta-2002-GeneralRisk) Eritrea CG [2004] 00295

NM(Draft evaders-evidence of risk) Eritrea [2005] UKIAT 00073

KA (draft related risk categories updated) Eritrea CG [2005] UKIAT 00165

Proclamation No 82/1995 – National Service Proclamation (Eritrea)

Excerpt “Eritrea said recalling demobilized soldiers”-Awate. Com/ BBC monitoring- February 2006.

Operational Guidance Note- Eritrea – 5 May 2006

USSDR International Religious Freedom Report 2005 – Eritrea.

USSDR on Eritrea – 8 March 2006.

Dr David Poole Expert Report – 12th January 2006.

Amnesty International Letter – Rachel Witkin – 13 July 2006.

Dr Gaim Kibreab – Expert report [undated]

EHDR – UK letter – 13 July 2006.

Amnesty International Report – “Eritrea Religious Persecution “– 7.12.2005.

Middle East Times Article – 23 February 2006.

Letter from Solicitors to British Embassy in Asmara – 15 May 2006.

Letter from Nr Nick Astbury, HM Ambassador Eritrea – 31.July 2006.