REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75028

AT AUCKLAND

Before:	C M Treadwell (Member)
Counsel for the Appellant:	C Farry
Appearing for the NZIS:	No Appearance
Date of Hearing:	29 March 2004
Date of Decision:	13 May 2004

DECISION

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[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a national of Eritrea.

INTRODUCTION

[2] The appellant is a single woman aged 26 years, born in Asmara, Ethiopia (now Eritrea). She arrived in New Zealand on 20 July 2003 and sought refugee status immediately on arrival. She was interviewed by the Refugee Status Branch on 21 August 2003 and 3 September 2003. A decision declining her application was delivered on 9 January 2004. She now appeals against that decision.

[3] At the conclusion of the appeal hearing, leave was granted to the appellant to produce by 12 April 2004 further country information on the status of deportees from Ethiopia to Eritrea and the treatment of Pentecostal Christians in Eritrea. That information has now been received and, together with counsel's written and oral submissions, is taken into account.

THE APPELLANT'S CASE

[4] The account which follows is a summary of the evidence given by the appellant at the appeal hearing. It is assessed later.

[5] According to the appellant, she is the only daughter of an Ethiopian navy serviceman and an Eritrean woman. The appellant has an older brother, F – now in South Africa – and a younger brother, D, currently living with the appellant's mother in Eritrea. The appellant's father passed away some 15 years ago.

[6] The appellant's family initially lived in Asmara, in what is now Eritrea. In 1951, Eritrea had been merged into Ethiopia and it did not regain its independence until 1993.

[7] In about 1983, when the appellant was aged about five years, the family moved to Addis Ababa, when her father was transferred there. They did not have much contact with the appellant's father's family, who had been displeased at his marriage to an Eritrean woman. The appellant's father died of natural causes in about 1989, which further distanced the appellant's mother from his family.

[8] In 1996, while the appellant was still at school, her younger brother D introduced the family to the Pentecostal Church. They attended the E Church in Addis Ababa without incident, renouncing their Orthodox Christianity.

[9] In 1997, the appellant completed her schooling and began to help her mother to run the family shop at a nearby market.

[10] By this point, Eritrea had ceded from Ethiopia. Initially, relations between the two countries were relaxed but they deteriorated within a few years. Eritreans in Ethiopia began to experience difficulties with the authorities and the populace at large and the first wave of forcible deportations of Eritreans began.

[11] The appellant and her family did not experience any harassment initially. Their shop was not in immediate public view, being located within another shop at the market, and they kept to themselves as much as they could.

[12] In 1999, the appellant's brother F left the country in order to look for work in Kenya. He established a trading business between that country and South Africa.

[13] In mid 2000, the family first encountered difficulties with the Ethiopian authorities. The appellant's mother was summoned to the office of the local council. When she attended, she was told she had to produce a full Ethiopian who would act as a guarantor for her, if she and the children were to avoid deportation. She was also questioned extensively.

[14] The appellant's mother was unable to produce an Ethiopian who would stand as guarantor. She approached her late husband's family but they refused to assist her and the deteriorating attitude towards Eritreans generally meant that she could not find anyone to help.

[15] One Sunday night in late 2000, the appellant's mother and her younger brother D were seized from the family home and forcibly deported to Eritrea. The appellant, by chance, had stayed the night at a friend's house after a church function and so was not picked up.

[16] The first that the appellant knew that her mother and brother had been taken was when she returned home the following day. As she approached the house, neighbours stopped her and told her the news. They cautioned her not to go to the house because it was under surveillance.

[17] Not knowing what to do, the appellant returned to the house of her friend where she hid while she decided what to do. Realising that she could not remain on her own in Ethiopia, the appellant decided to try to find her brother F in Kenya. She went to the shop and told the landlord what had transpired. She sold to him the entire contents of the shop for the sum of US$2000 and set off by bus to the border town of Moyale. There, she was forced to stop because she had no travel or identity papers.

[18] In the Ethiopian half of Moyale, the appellant met an Ethiopian man with whom she began a relationship. They lived together for about a year, while he tried to arrange for her to cross the border (within the town) into Kenyan Moyale. Eventually, he was able to do so and the appellant slipped through. In Kenya,

she got a lift in a truck to Nairobi, where she stayed in a cheap hotel in the suburb of East Leigh.

[19] In Nairobi, the appellant fell ill with fever, which lasted for three months. She was so enfeebled that she remained in East Leigh for 10 months, being cared for by Pentecostal Christians she met there. They also assisted her to trace her brother F, who was at that time living in South Africa. He began sending money to support the appellant.

[20] In mid 2002, F came back to Kenya to visit the appellant. He told her that he was involved in people smuggling and that he could arrange for her to join him in South Africa. He returned there and, after some months, the appellant was able to travel by air to Mozambique, from where she crossed by land through Swaziland into South Africa.

[21] F arranged for the appellant to stay with a female friend in Hillbrow, a run-down neighbourhood in central Johannesburg, populated chiefly by illegal immigrants. She moved shortly afterwards to the suburb of King William but she had already decided that it was too dangerous for her to remain in South Africa as a single young woman. For that reason, she did not apply for refugee status there.

[22] In South Africa, the appellant was able to speak with her mother for the first time since 2000. F was able to reach their mother in Eritrea by telephone and the appellant spoke to her on two or three occasions. Her mother would not discuss her own situation with the appellant, but the appellant learned from F that she and their brother D were having problems with the Eritrean authorities. D, in particular, had not had his nationality confirmed and the appellant's mother was having to find witnesses to establish his Eritrean descent. They were also being harassed by the authorities because of their Pentecostal Christian faith and were having to worship in private.

[23] With F's assistance, the appellant found an 'agent' in Johannesburg who arranged false papers for her and flew with her to Zurich, where he saw her onto a flight to New Zealand in July 2003. On arrival, the appellant was detained in custody at the Mangere Refugee Reception Centre, because she did not have any identification but has since been released on bail to a hostel.

[24] The appellant has not spoken to her mother since her arrival in New Zealand but receives calls from time to time from F in South Africa. F, in turn, speaks with their mother occasionally and, in this fashion, the appellant has learned that her mother's situation remains uncertain and has not improved. Although her mother inherited a house in Eritrea many years ago, she does not live there because it is in the remote countryside. The appellant's mother and D live, instead, in Asmara, where they are able to receive communications from F.

[25] The appellant does not consider that she can return to Ethiopia. She has no Ethiopian identity papers, nor proof that she had an Ethiopian father. Given the deportation of her mother and brother to Eritrea, she believes that she would be treated in similar fashion if she were to try to live again in Ethiopia.

[26] As to Eritrea, the appellant fears going there because of the mistreatment of Ethiopians (including part-Ethiopians) and the mistreatment of Pentecostal Christians. In her last telephone conversation with F, after her Refugee Status Branch interview, F would not talk to the appellant about their mother's situation. The appellant took it that he was trying to protect her (the appellant) from becoming upset at her mother's plight. The most F would say was to encourage the appellant by stating that he was trying to make arrangements to get their mother and brother out of Eritrea and into Sudan, from where he hoped to secure their travel to South Africa.

[27] The appellant has continued to worship as a Pentecostal Christian in New Zealand. She belongs to the Ethiopian Christian Fellowship and attends the Mt Albert Baptist Church. In support of her claim, she produces a letter dated 1 October 2003 from the pastor of the Ethiopian Christian Fellowship. He confirms that he has known the appellant since her arrival at the Mangere Refugee Reception Centre and that he has personal knowledge of both her membership of the Fellowship and her church attendance in New Zealand. He describes her as "an honest and dedicated Christian".

THE ISSUES

[28] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

> "... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

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

(a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

(b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

[30] The appellant's account is accepted.

[31] Before turning to the issues raised by the Convention, however, it is necessary to address the question of which country, or countries, the appellant is a national or in respect of which she has the right of residence and, thus, against which countries (if any) her claim is to be assessed.

[32] This issue assumes some importance because the Refugee Status Branch determined that, in fact, the appellant is stateless. It concluded, therefore, that there is no country against which the appellant's claimed fear of being persecuted can be assessed. Her application was declined for that reason.

Eritrea

[33] Eritrean nationality has its origins in the 1933 census by the then-governing Italian regime, at which time all persons in Eritrea were declared to be legal residents. The second significant date is 1951, when the country was incorporated into Ethiopia. Those two years, 1933 and 1951, provide the starting point for Eritrea's current nationality laws.

[34] Current Eritrean nationality is governed by Eritrean Nationality Proclamation No 21/1992, as published in the Gazette of Eritrean Laws Vol 2/1992. A proposed revision of that law in 1999 appears to remain in limbo. Proclamation No 21/1992 defines that following relevant categories of persons entitled to Eritrean nationality:

> "**Article 2: Nationality by birth**
>
> 1. Any person born to a father or mother of Eritrean origin in Eritrea or abroad is an Eritrean National by birth.
>
> 2. A person who has "Eritrean origin" is any person who was resident in Eritrea in 1933.
>
> 3. A person born in Eritrea of unknown parents shall be considered an Eritrean national by birth until proven otherwise.
>
> 4. Any person who is an Eritrean by origin or by birth shall, upon application, be given a certificate of nationality by the Department of Internal Affairs.
>
> 5. Any person who is Eritrean by birth, resides abroad and possesses foreign nationality shall apply to the Department of Internal Affairs if he wishes to officially renounce his foreign nationality and acquire Eritrean nationality or wishes, after providing adequate justification, to have his Eritrean nationality accepted while maintaining his foreign nationality.
>
> **Article 3: Nationality by Naturalization (1934-1951)**
>
> 1. Eritrean nationality is hereby granted to any person who is not of Eritrean origin and who entered, and resided in, Eritrea between the beginning of 1934 and the end of 1951, provided he has not committed anti-people acts during the liberation struggle of the Eritrean people. He shall, upon application, be given a certificate of nationality by the Department of Internal Affairs, provided that he has not rejected Eritrean nationality. The provisions of Article 2(5) of the Proclamation shall apply when such a person possesses the nationality of another country.
>
> 2. Any person born to a person mentioned in sub-article 1 of the article is Eritrean by birth. The Department of Internal Affairs shall, upon his application issue him a certificate of identity."

[35] The appellant has no evidence with her as to the year of her mother's birth but she gives her mother's age as 55 years. That is consistent with the appellant's declaration in her refugee application form in July 2003 that her mother was then aged 54 years. It can be assumed that her mother was born in about 1949. Even allowing a margin of error of two years, on the balance of probabilities the appellant's mother fulfils the Article 3.1 requirement of residing in Eritrea prior to the end of 1951. By descent, the appellant is thus Eritrean by birth, pursuant to Article 3.2.

[36] While the jurisdiction of the Authority is to hear appeals *de novo*, it may be helpful to record briefly why this conclusion differs to that reached by the Refugee Status Branch.

[37] The Refugee Status Branch reviewed Proclamation No 21/1992, but took into account a comment made by the United Kingdom Home Office Country Information and Policy Unit in its April 2002 report on Eritrea, at para 5.54 that:

> "People may be deprived of Eritrean nationality if they voluntarily acquire a foreign nationality."

[38] The Refugee Status Branch considered that the appellant had acquired Ethiopian nationality by virtue of having lived in Ethiopia. However, the Home Office was clearly referring to para 2.5 of the Proclamation and was not intending to imply that *all* foreign nationals are automatically deprived of Eritrean nationality - merely that, in some circumstances, some individuals may do so.

[39] Further, simply because she lived in Ethiopia does not, of itself, mean that the appellant acquired Ethiopian nationality (and the deportation of her family strongly suggests the Ethiopian authorities do not think so). This is also reinforced by the recognition as Eritrean nationals of the tens of thousands of Eritreans and part-Eritreans who have been deported from Ethiopia since 1999. As the Home Office noted in its October 2002 report at para 5.76:

> "About 75,000 persons have been deported to Eritrea from Ethiopia during the past three years. After initial uncertainty about their nationalities, most have apparently been accepted in Eritrea as citizens."

[40] Also taken into account by the Refugee Status Branch was a comment by the United States Department of Justice's Immigration and Naturalisation Service ("the INS"), in its Response to Information Request No ERT99002.ZHN *Eritrea: Information on whether Eritrean nationality law has changed in light of deportations from Ethiopia (*13 July 1999) (incorrectly cited as Response to Information Request No ERT01001.ZSF *Eritrea: Information on expulsion from Eritrea of individuals of mixed Ethiopian-Eritrean heritage* (4 October 2000)), which stated:

> "Additionally, many deportees do not speak any of the Eritrean languages, thus disqualifying them from nationality under Article four of the 1992 Proclamation."

[41] Two points must be made. First, the INS was expressly referring only to Article 4 of the Proclamation, "Nationality by Naturalization (1952 and after)",

which relates only to those persons who entered Eritrea from 1952 onwards – circumstances not relevant to the appellant. While that category requires that an applicant "understands and speaks one of the languages of Eritrea", no similar prerequisite exists for those eligible under Articles 2 and 3.

[42] Further, the appellant does in fact speak the principal Eritrean language, Tigrigna, as she declared in her refugee application form. It is her mother's language and the appellant says that she can understand it and has a working knowledge of it. She is recorded as telling the Refugee Status Branch that she spoke Amharic (her first language) but it does not appear from the interview notes that she was asked if that was the only language she spoke or whether she also spoke Tigrigna.

[43] Finally, the Refugee Status Branch noted the observations of J C Hathaway in *The Law of Refugee Status* (Butterworths, Toronto, 1991) 59, as to the need to interpret "nationality" as meaning effective, rather then merely formal, nationality. Relying on this, the Refugee Status Branch took the view that, because the "nationality issue regarding Ethiopians in Eritrea… remains unclear and unresolved" it would be extremely difficult, if not impossible, for the appellant to obtain "effective Eritrean nationality".

[44] Two observations must be made. First, the views of Professor Hathaway are in relation to those with dual or multiple nationality, not those potentially stateless. He underscores the dangers in allowing a claimant's nominal nationality in one country to circumvent the duty to explore the risk of being persecuted in another. As an example, he highlights the charade of a second country of nationality which would, in fact, simply return the claimant to the country of persecution. It is against such a backdrop that he urges decision-makers to look to the effectiveness of nationality. Where the issue is one of statelessness the concern is the opposite – to guard against a simplistic *rejection* of any finding of nationality as a means by which to dispense with an enquiry into the risk of being persecuted.

[45] Second, undue weight was given to the finding that Eritrean nationality is "unclear and unresolved". In fact, Proclamation No 21/1992 is a law of general application and, as stated in Article 2 of the Hague Convention of 1930:

> "Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State."

[46] There is no reason, on the evidence, to suggest that the appellant is not able to establish her Eritrean nationality by descent. When, in August 2002, the Home Office sought to clarify the requirements for establishing nationality, it approached the Eritrean Embassy in London and was advised that a right to Eritrean nationality by descent can be established by the testimony of three Eritrean witnesses, negating the need even for documentary proof. See www.ind.homeoffice.gov.uk/default.asp?PageId=3878. The appellant's mother was born and raised in Eritrea and the appellant herself lived there until she was about five years old. The Authority is satisfied on the balance of probabilities that the appellant and/or her mother can produce such evidence. In this regard, the October 2003 report from the Home Office notes:

> **"5.15** There are over three million people in Eritrea, as well as hundreds of thousands in the Diaspora (Eritreans abroad). Even if they came from Ethiopia or Sudan they could be expected to know many other Eritreans. It is a matter of history that those in Ethiopia kept close contact with family in Eritrea, even those that stayed in Ethiopia after independence. Most formed *"clubs"* to celebrate and remember their culture. Those in the Sudan lived in *"Eritrean communities and camps"*. Many tens of thousands of those returned from Ethiopia and Sudan had their stay regulated and now have Eritrean passports. Not only will the authorities allow witnesses from all over the globe but they will follow up claims. So for example if someone claims to be from a certain village, the authorities will send word to that community so that they can get the witnesses to come forward."

[47] Indeed, the appellant gave evidence that her mother is currently undertaking the "three witnesses" procedure for herself and the appellant's brother D.

[48] This finding is reinforced by a like decision in similar circumstances by the United Kingdom's Immigration Appeals Tribunal. See Appeal No. [2003] UKIAT 00016 L (Ethiopia), cited by counsel in support of the submission that the appellant is an Eritrean national.

Ethiopia

[49] As to Ethiopia, the appellant may in fact have had Ethiopian nationality when she lived there. Since then, however, the campaign of the Ethiopian authorities to strip such persons of their nationality and deport them to Eritrea leaves us in a position that it must be assumed that the appellant no longer has Ethiopian nationality. Country information does not indicate that Ethiopia has

allowed any of those deported in the late 1990's to return. The deportation of the appellant's mother and brother strongly reinforce the view that the Ethiopian authorities will not re-admit the appellant to Ethiopia either.

[50] It follows that the appellant's claimed fear of persecution is to be assessed against Eritrea only.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Eritrea?

[51] The appellant claims to fear being persecuted in Eritrea on account of her part-Ethiopian ethnicity, her Pentecostal Christianity and the cumulative effect of the two.

[52] The treatment of those deported from Ethiopia to Eritrea has been monitored by a number of noted human rights bodies, including Human Rights Watch, which published an extensive report entitled *The Horn of Africa war: Mass expulsions and the nationality issue* on 30 January 2003. In summary, the initial waves of deportees and voluntary returnees from Ethiopia following the outbreak of hostilities in 1999 were welcomed. Initial enthusiasm has been dimmed somewhat by the logistical problems inherent in housing, feeding and resettling some 75,000. Nevertheless, there has been little, if any, antipathy towards returnees. They necessarily include large numbers of persons who, like the appellant, are of mixed origin.

[53] In considering the plight of deportees from Ethiopia, the Home Office in its October 2003 report noted:

> "6.154 … After initial uncertainty about their nationalities, most have apparently been accepted in Eritrea as citizens.... Most of the deportees had lived virtually their entire lives in Ethiopia and considered themselves to be Ethiopian citizens of Eritrean heritage. About one-fourth of the deportees, however, seemed to regard themselves as Eritrean citizens or possessed unclear documentation…

[54] They were received in humanitarian spirit, however:

> 6.156 The Eritrean government and aid workers have combined to offer considerable assistance for the new arrivals. They received Eritrean identity documents, grants equivalent to $200 (Europa report an estimated annual income of $100 per head in Eritrea), up to six months of food aid, blankets, and kitchen utensils.

> 6.157 Authorities resettled about 39,000 new arrivals in urban areas in expectation that they would rapidly become economically self-reliant. Some 28,000 deportees with agricultural backgrounds settled into rural areas…

[55] And as to the recognition of nationality:

> 6.159 The deportees, if they wished, were placed in villages with friends or family. Those who no longer had connections in Eritrea were placed temporarily in camps with IDP's before being settled among the general population. To facilitate the deportees' integration into society, the Government provided them with documentation that was valid for 6 months and identified them as deportees. If, during that time, the deportees could find three Eritrean witnesses willing to testify to their Eritrean ties, the Government issued them documentation of Eritrean nationality and considered them to be permanent citizens. For the small minority of deportees who could not demonstrate Eritrean ties, the Government granted them identity documents that specified that they were Ethiopian but permitted them to stay in the country. At times, these deportees were subjected to harassment and detention by military authorities checking for deserters and draft dodgers."

[56] It is clear that those deported from Ethiopia (and the appellant can be said to fall within that group, given her family history) are not being persecuted in Eritrea. It is accepted that there have been deportations of Ethiopians from Eritrea but those affected are Ethiopians who were already living in Eritrea at the outbreak of hostilities, not those who have been treated in like kind by the Ethiopians.

[57] The appellant also claims to fear returning to Eritrea because she is a Pentecostal Christian.

[58] According to the October 2003 Home Office report at para 6.46 *et seq*, Eritrea is approximately 50 percent Sunni Muslim and 40 percent Orthodox Christian, with a small number of Eastern Rite and Roman Catholics (five percent), Protestants (including the Pentecostal churches, two percent), smaller numbers of Seventh-Day Adventists, and fewer than 1,500 Jehovah's Witnesses.

[59] The Home Office summarises the position of the Pentecostal churches as follows:

> "**6.53** In 2001 the Government began closing "Pente" facilities ("Pentes" include Born Again Christians, Pentecostals, Full Gospel, and other smaller Protestant groups). Following a May 2002 government decree that all religious groups must register or cease all religious activities, all religious facilities not belonging to the Orthodox Christian, Muslim, Catholic, or Evangelical Christian faiths were closed. The Authorities also informed "Pente" groups that a standing law would be used to stop political or other gatherings of more than five persons in private homes.
>
> **6.54**The "Pente" groups that were ordered to close were suspected of being externally funded, mainly from the USA and Western Europe, a view supported by

> the amount of money that they seemed to have at their disposal. Large meetings were held at top hotels including the Intercontinental, the most expensive in the country. No local or regional group could afford to do this.

[60] An *Amnesty International* press release, AFR 64/002/2004 (9 March 2004), records the arrest on 12 February 2004 of a Pentecostal Pastor and 55 members of his congregation in Asmara, who were held without charge and ill-treated in order to persuade them to abandon their faith. Amnesty International notes:

> "Persecution on the grounds of religion has intensified in Eritrea since the closure of "minority" Christian churches in May 2002. There have been arrests in the past year of hundreds of "home worshippers" or military conscripts found with bibles.

[61] Two earlier reports from other commentators have expanded on the same theme. A *Human Rights Watch* article, dated 17 September 2003, "Eritrea: Release Political Prisoners", noted the deteriorating human rights record of the Eritrean government generally, and in particular:

> "Members of Pentecostal Christian churches and Jehovah's Witnesses are frequently arrested for practicing [sic] their faiths. There have been so many arrests that some prisoners are being incarcerated in empty cargo containers. International human rights organisations and the International Committee for the Red Cross have been denied access to prisons."

[62] An article dated 22 August 2003 entitled "Eritrea: Christian Youths Tortured and Imprisoned" by the *World Evangelical Alliance*, reports the arrest and mistreatment of 35 students caught with bibles at a compulsory military training camp, who:

> "… bring to 213 the known total of evangelical Christians in Eritrea currently jailed for their faith.
>
> Among them are 79 Eritrean soldiers, 16 of them women, all jailed under harsh treatment in a military prison in Assab for refusing to deny their Pentecostal beliefs and return to the dominant Orthodox church. Most were imprisoned in March last year, when they were warned to expect beatings, threats and ongoing abuse until they recanted….
>
> The country's independent Pentecostal and charismatic churches now have some 20,000 adherents, most of them emerging from a mushrooming renewal movement begun five years ago within the Orthodox church. But an apparent alliance between the state and the Orthodox church has inflamed harsh resistance against the independent Protestants, who have been told it is illegal for as few as three [sic] of them to meet together in a private home."

[63] The United States Department of State in its *Country Reports on Human Rights Practices: Eritrea* (April 2004) records that, as at the end of 2003:

> "The 74 [sic] military and national service personnel arrested in February 2002 remained imprisoned near Assab at year's end. Reports suggest that they were being detained until they repudiate their faith."

[64] This is also supported by *International Christian Concern*, in its "Africa: Eritrea Country Report" of May 2003, which noted that the 74 soldiers referred to above had been detained on 17 February 2002, released after one night and then re-arrested two weeks later and imprisoned at the Zone 4 Military Prison in Assab in solitary confinement, where they have been repeatedly beaten for refusing to return to the Orthodox church.

[65] The Pentecostal population in Eritrea is comparatively small. Against the overall population of 3.5 million, even the claim of 20,000 Pentecostal adherents represents less than one half of one per cent. In reality, the figure is probably much fewer than 20,000. Quite apart from the subjective nature of the reporting, any such figure can be presumed to include children and casual adherents and probably includes former church attendees whose names still appear in church rolls. The real number of practising, adult Pentecostal Christians in Eritrea is likely to be significantly less than the figure given.

[66] It must also be borne in mind that the estimate of 213 current detainees clearly does not take account of those detained and released, nor of those whose detentions are unreported, nor of those who have been mistreated in ways other than detention.

[67] The duty on the Authority to determine whether there is a real chance of the appellant being persecuted if she returns to Eritrea is not a theoretical exercise but is one that calls for an assessment of the appellant's own circumstances, viewed against the foregoing country information.

[68] As to the appellant's own circumstances, it is accepted that she has been a Pentecostal Christian since her conversion from the Orthodox church in Ethiopia in 1996. She declared her religion to be "protestant" on arrival in New Zealand and her Pastor confirms her membership of the Ethiopian Christian Fellowship and her regular attendance at the Mt Albert Baptist Church.

[69] Even if she is not detained in the course of a raid of one of the Pentecostal church gatherings in Eritrea, the appellant will be required to perform military service. As noted by the Home Office:

> "**5.51** All citizens (men and women) between the ages of 18 and 40 are required to participate in the National Service Program, which includes military training as well as civic action programs…. The Government does not excuse those individuals

> that object to military service for reasons of religion or conscience, nor does the Government allow alternative service."

[70] Many of the Pentecostal Christians who have been detained and mistreated by the authorities have been military conscripts. See [62] – [65] above. The close confines of military service clearly facilitate the identification of such persons and the Authority is satisfied that the appellant faces a real chance of being identified as a Pentecostal Christian at that point, if not as a member of the general public. Once identified, the mistreatment of other Pentecostal Christians in the last three years makes it likely that she will be detained and physically mistreated in an effort to force her to reconvert to the Orthodox church. Such conduct by the authorities would constitute both serious harm and an absence of state protection.

[71] The appellant's fear is accordingly well-founded.

Is there a Convention reason for that persecution?

[72] Clearly, any persecution suffered by the appellant will be for reasons of her religion.

CONCLUSION

[73] For the foregoing reasons, the appellant is a refugee within the meaning of Article 1A(2) of the Convention. Refugee status is granted. The appeal is allowed.

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C M Treadwell
Member