

0801387 [2008] RRTA 398 (26 September 2008)

DECISION RECORD

RRT CASE NUMBER: 0801387

COUNTRY OF REFERENCE: Ethiopia

DATE DECISION SIGNED: 26 September 2008

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Ethiopia, arrived in Australia on [date specified] and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa on [date specified]. The delegate decided to refuse to grant the visa on [date specified] and notified the applicant of the decision and her review rights by letter dated [date specified].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal on [date specified] for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's files, the Migration Review Tribunal (MRT) file and the RRT file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The visa application

20. The applicant set out her claims in a statutory declaration attached to her protection visa application.
21. The applicant stated her ethnic origin and was born on [date specified] in Town B. She arrived in Australia on [date specified] as the holder of another type of visa [Information deleted under s.431 of the *Migration Act 1958* as it may identify the applicant]. In [date specified], the Department refused to grant the applicant a permanent visa. The applicant states that she applied for review of the Department's decision to refuse to grant her the visa applied for to the MRT but the primary decision was affirmed. [Information deleted: s.431].
22. The applicant claims that she fears persecution if she were to return to Ethiopia and set out the reasons for her fears.
23. The applicant stated that belonging to her particular ethnic group, she has experienced bullying and discrimination from childhood. Her people are highly discriminated against and the women are often targeted by the authorities for assault and rape. At around the beginning of [date specified] when she was a teenager, members of her family became members of an opposition political party. She stated that she understands that they attended meetings and contributed to and collected money for the party. Her family members were harassed and targeted by the authorities because of their membership of the party. She became a supporter but she was not a member.
24. The applicant stated that from around [date specified] she worked in City C and in [date specified] she began the process of applying for a visa to travel to Australia. She had to pay bribes to obtain a passport because of the discrimination against her ethnic group.
25. The applicant stated that after she arrived in Australia in [date specified], she spoke with her family in Ethiopia by telephone, but lost contact with them in [date specified]. She does not know of her family's whereabouts.
26. The applicant stated that she fears returning to Ethiopia on account of her imputed and actual political opinion in support of the opposition political party. She had not applied for protection earlier because she expected that she would remain in Australia on the

basis of her previous visa application but since the refusal of that visa, she sought further legal advice as she knew that she feared returning to Ethiopia.

27. The applicant states that if she were to return to Ethiopia, she would be killed or imprisoned on account of actual and imputed political opinion against the government and support of the opposition political party. She supports the opposition political party and she would be imputed with anti-government political opinion on the basis of her family members' activities. She also fears, as a woman, she would be at greater risk of rape or harm by the authorities in Ethiopia. She fears discrimination and being perceived a supporter of the opposition political party and anti-government on account of her ethnicity; her people are identified by their names and appearance and she has a readily identifiable ethnic name. She also fears being targeted, harmed and raped because she is a woman from that particular ethnic group.
28. The applicant also claims that she was raised in one religion but in [date specified] she became interested in another religion, and in [date specified] she became a member. She stated that members of her religion face discrimination, do not receive protection from the government and cannot practise their religion freely.
29. The applicant provided a letter and its English translation. The original letter is headed in English as '[information deleted: s.431] City C, aba Ethiopia' and includes numbers which appear to be telephone numbers. The letter declares in the English translation that the applicant has been a participant for two years [dates specified] and had been fulfilling all that is expected even though she was not baptised.
30. The applicant also provided a letter from Organisation I indicating that she had been referred to them by Organisation II on [date specified] The counsellor/advocate that signed the letter also states that the applicant is suffering from a range of symptoms that impair her functioning to a significant degree These symptoms include intrusive thoughts, insomnia, withdrawal and suicidal ideation; as a result she is unable to work.
31. The applicant also provided a statutory declaration by her [date specified] the purpose of which is to establish that she is experiencing financial hardship.

The review

32. In support of the review, the applicant provided a submission [date specified] from her representative on her behalf. The submission indicates that the applicant continues to rely on all written evidence previously provided by, and on behalf of, the applicant and makes further submission in support of the applicant's claims for refugee status. The submission foreshadows further reports and statements to be submitted to the Tribunal.
33. The submission sets out the applicant's claims as follows:
 - a. The applicant is an Ethiopian female from a particular ethnic group with links to a political party. She has the profile of a particularly vulnerable Ethiopian female. She fears that if she were to return to Ethiopia she would suffer persecution in the form of arbitrary arrest and detention, imprisonment, physical assault, rape, unfair trial and possible execution at the hands of the Ethiopian government authorities on account of:

- Her actual and imputed political opinion in support of an opposition political party;
 - Her actual and imputed political opinion in support of the withdrawal and continuing opposition to the current Ethiopian Government;
 - Her ethnicity; and
 - Her female gender.
- b. The applicant's evidence and claims are credible and consistent with known country information. Known country information indicates that the applicant's fears of persecution for the above reasons are well-founded.
 - c. Given her claims and circumstances, relocation to another part of Ethiopia is not feasible.
 - d. There is no evidence that the applicant has a right to enter and reside in any third country.
 - e. In applying the principles of the 'real chance' test, the applicant would face harm amounting to persecution if she were to return to Ethiopia. Accordingly, the applicant is owed protection by Australia under the Refugees Convention.
34. The submission refers to and discusses country information from sources including the UK Home Office, the US Department of State, Amnesty International, Human Rights Watch and the Australian Department of Foreign Affairs and Trade (DFAT).
 35. On [date specified] the Tribunal received another submission from the applicant's representative on her behalf dated [date specified]. The submission presents new information which the applicant disclosed to a social worker on or around [date specified]. The applicant had disclosed to the social worker that she had been sexually assaulted. The submission refers to the UNHCR and the Department's guidelines on gender issues, the RRT's guidelines on credibility issues and to the Federal Magistrate's Court case of *MZXFJ v Minister for Immigration & Anor*[2006] FMCA 1465. The submission includes a statutory declaration from the applicant dated [date specified] and a document from the Organisation II [date specified]
 36. The applicant's statutory declaration states that she has made a mistake in Form 866B of the protection visa application and provides a correction. The applicant refers to her earlier statutory declaration of [date specified] and that she had to prepare her protection visa application under a great deal of pressure. After she lodged the protection visa application, she began to consult with social workers at Organisation I and Organisation II. She disclosed additional information about what had happened to her in Ethiopia and she is stressed about the upcoming Tribunal hearing. She has been taking medication to treat an illness as well as anti-depressants and other medication to help her sleep. During her discussion with a social worker she revealed that she had been imprisoned in Ethiopia and that in or about the beginning of [date specified] while visiting her family in Town B, the authorities came to the house one night and took the entire family into custody She was separated from her family and taken into a small room with other women. The guard took her out of that room and raped her. She believes she was raped on account of being a woman, on account of the fact that she is

from her particular ethnic group, and on account of the fact that she has an actual and perceived political opinion in support of an opposition political party. The following morning she was taken into a room and interviewed. They asked her what her family members had been doing at home. When she replied that she did not know, they slapped her across the face. Soon after that, she and her family were released with the exception of some of her family. Her mother told her that she had been beaten. The remaining family members were released a short time later. One of them told her that they had been interrogated about their involvement in the opposition political party.

37. The applicant stated that since the incident in [date specified], she has suffered increasingly from memory loss and finds it hard to talk about her life in any sort of detail. She did not disclose what had happened to her (earlier) because she does not want to remember or talk about it. She finds what happened to her to be shameful and embarrassing. She fears that if she were to return to Ethiopia, she would be raped again. She fears that her family is missing and she would be interrogated and tortured and raped again.
38. The applicant concluded her statement by requesting that the Tribunal take into account during the hearing that she has difficulty recalling events and that she suffers from memory loss, extreme stress and anxiety, headaches and stomach cramps.
39. The Organisation II document dated [date specified] is a referral addressed to other agencies in relation to the applicant. The referral includes the following information:

[The applicant] has family in Ethiopia. She lived with them before she arrived in Australia. Soon after arriving in Australia her family went missing. They are involved in politics etc and she believes they have been arrested. She does not know anyone else in Ethiopia so she cannot check on their whereabouts. I am going to put her in touch with the tracing services at the Organisation II.

[Information deleted: s.431].....

...

Brief Description of circumstances leading to protection application

(claim): Didn't really get into details about any of this. [The applicant] didn't really want to talk about it. I know that she was involved in politics in Ethiopia. She has been sexually assaulted. Her family is now missing. She said she is very worried about them. She is also very scared at the prospect that she might be sent home. She is sure that if she is sent home she will be killed. [Information deleted: s.431]. She has previously worked but the disabling effects of being stripped of her work rights in taking a toll on

Health and Welfare

- **Income**

Access to income:

none

Access to employment:

None (although [the applicant] worked consistently from the time she arrived in [date specified] until she lost her work rights. [Information deleted: s.431]. She is very upset about her loss of work rights)

- **Housing**

Current or potential housing issues:

Struggling to pay the rent...

- **Health**

Current GP: None that I know of, [the applicant] stated that she had not needed medical treatment in some time.

40. The Organisation II report goes on to note that the applicant has some mental health concerns but no known significant previous health issues. It notes the applicant's sexual assault and the thoughts about what might have happened, or be happening to her family.
41. The applicant appeared before the Tribunal on [date specified] to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Amharic (Ethiopian) and English languages.
42. The applicant was represented in relation to the review The representative attended the hearing

The Tribunal hearing

43. The applicant gave oral evidence that she was born in Town B, Ethiopia. She stated that she does not know the whereabouts of her family. She lived with her family until [date specified] when she travelled to [City C] to find work. She worked there for around one year, returning home every couple of months or so. She left Ethiopia in [date specified]. [Information deleted: s.431].
44. The applicant stated that she arrived in Australia on [date specified] and [information deleted: s.431].
45. The applicant stated that she started work in a factory in Town E for a few months after she arrived in Australia. [Information deleted: s.431] She did not have social life. On Sundays she went to church. The Tribunal asked the denomination of the church she attends, she said any church nearby, [information deleted: s.431] The Tribunal asked which Church she attended in Ethiopia, she said her parents were Religion X; she attended the same; in [date specified] a friend introduced her to a different faith. The Tribunal asked what she did; she said they prayed and sang. Asked what she knew about the faith, she said they believe in [information deleted; s.431].
46. The Tribunal asked the applicant how long after she arrived in Australia she started to attend church, she said in the first couple of months she did not know where to go
47. The Tribunal asked the applicant if she met people from Ethiopia in City F. The applicant said she did not. [Information deleted: s.431]

48. The applicant stated that she is not working as she has no work condition on her current visa. She spends her time attending English language class, swimming classes and goes to a women's group.
49. The Tribunal asked the applicant how her health is, she said her mind is lost sometimes, she cannot remember events. Asked when this condition started; she said when she received the decision refusing her the grant of a permanent visa. The Tribunal asked if she attended a medical practitioner, she said she did not in the past attend a doctor as there was no reason. She began to see a doctor a few months ago because she began to worry and vomit; she had no appetite, experienced headaches and could not sleep. Sometimes she thinks of ending her life. Asked if she had experienced these symptoms previously; the applicant said she did not, these feelings and symptoms only began a few months ago.
50. The applicant stated that if she were to return to Ethiopia she fears imprisonment, torture and rape because of her support of the opposition political party. Asked how she supported the cause, she said she supported her family members. She carried flyers with her. She did not read them, she only delivered them to people whom she was directed to, and they were fighters. Her sibling explained to her that they are fighting for their people, they are party members. Some of her family were members of the party too. Asked how she knew that they were party members, she said her sibling told her in [date specified] that they were a party member. She was a messenger who delivered the flyers.
51. The Tribunal asked the applicant what harm she suffered. She said at around the beginning of [date specified] her whole family was taken into custody for a short time. She was held in a small room with other women. She was then taken away and raped. The following morning she was questioned her about her families' activities and others they meet, one of her captors slapped her face. The following day, she, her mother and others of her family were released but some were held for a short time. One of her siblings suffered an injury. Following that incident, the authorities searched their home and took one of her parent's away again for some months. She moved to City C immediately after.
52. The Tribunal asked the applicant what she did in City C. She said she rented a place to live and [information deleted: s.431]. She did not return to Town B but she telephoned and talked to her family. The Tribunal asked if there were any further incidents and if she encountered any further incidents in City C. The applicant said 'no'.
53. The Tribunal asked the applicant if she has been in contact with her family, she said she was until [date specified], she contacted by phone and sent letters. But then she lost contact and she does not know where they are.
54. The Tribunal asked what attempts the applicant made to locate her family. She said she tried to contact her friend in Ethiopia but she had no success. Asked if she made any other attempts, she said she had her own problems but now the Organisation II is trying to help in locating her family. The applicant said that her problem was that [information deleted: s.431]
55. She said she had hoped to start a new life in Australia but [information deleted: s.431].

56. The Tribunal asked if she had other reasons to fear returning to Ethiopia. The applicant said she also fears returning because of her religion. The Tribunal observed that in her evidence she had said that she attends any church to pray. This gives the impression that the applicant does not follow a specific church. She said that was her last religion in Ethiopia. The Tribunal asked if she encountered any harm or problems practising that religion, the applicant said she heard that the authorities take those practising it away and imprison them.
57. The applicant also added that she fears returning on account of her ethnicity and previous support of an opposition political party.
58. The Tribunal indicated to the applicant that available country information does not indicate that there are any restrictions on the practice of the religion in Ethiopia. In addition, she has not indicated that she has continued to attend in Australia. The applicant said she did attend a couple of times and stopped. She has headaches and tries to stay at home as much as possible.
59. The Tribunal indicated to the applicant that on the basis of the evidence she has given it would now appear [information deleted: s.431]; and the apparently little to no attempt she made to enquire about the whereabouts of her family may reflect adversely on the credibility of her claims in this review. The applicant said that now that she has become aware of another way to seek to locate her family (through the Organisation II), she is making the effort.
60. [Information deleted: s.431]. The representative added that the applicant's [information deleted: s.431], taken with the applicant's depression, social isolation and her fear of returning to Ethiopia is consistent with not making an effort to locate her family. She also pointed to the applicant's ethnicity and her gender.
61. Following the hearing the Tribunal invited the applicant in accordance with s.424A of the Act to comment on and/or respond to information the Tribunal considered may be the reason, or part of the reason, it may affirm the decision under review. It is useful to include the main text of the Tribunal's letter:

[Information deleted: s.431]
62. On [date specified], the Tribunal received a submission from the applicant's representative in reply to its letter. [Information deleted: s.431]. The submission concludes by reiterating the applicant's claims of fear of persecution.
63. The submission also included a statutory declaration from the applicant dated [date specified] in which the applicant presents the arguments in the representative's submission providing more detail and attachments. [Information deleted: s.431].

FINDINGS AND REASONS

64. In order to be a refugee under the Convention, it is necessary for the applicant to be outside her country of nationality and for her to hold a well-founded fear of persecution for reasons of at least one of the five grounds enumerated in the Convention.

65. The applicant has claimed that she is in need of protection for reasons of her actual and imputed political opinion, her ethnicity, and imputed political opinion because of her ethnicity; as a woman from that ethnic group; and because of her religious beliefs.
66. The Tribunal finds that the harm that the applicant claims she fears involves serious harm and systematic and discriminatory conduct, and that the essential and significant reason for the harm claimed to be feared is her political opinion, imputed political opinion and ethnicity, against the government in Ethiopia; her religious beliefs and practice; as a woman from a particular ethnic group, any or all of which are Convention reasons.
67. In both her Protection visa application and her review application the applicant described herself as a national of Ethiopia. The applicant arrived on a valid Ethiopian passport with a valid visa to enter Australia. On this basis the Tribunal accepts, that she is a citizen of Ethiopia and having made no claims against another country and as she is outside her country of nationality, for the purpose of the Convention the Tribunal will assess her claims against Ethiopia.
68. The Tribunal's task in the present case is to consider whether the applicant fears persecution for the reasons described above, and if so, whether that fear is well-founded. This task requires examining the claims that she has raised and the evidence that she has submitted, in addition to relevant independent country information.

Political opinion

69. The US Department of State 2008 report on human rights practices states that there were more than 80 ethnic groups living in the country, of which the applicant's ethnic group, was one of the largest. The US Department of State reported that:

[Information deleted: s.431].
70. A number of reports refer to the adverse treatment of individuals suspected of having links with opposition political parties. Human Rights Watch comments concerning harassment and abuse of members of even registered opposition parties:

[Information deleted: s.431]
71. The Tribunal has had regard to the applicant's claims of her political opinion and activity in support of the political party, her claimed detention and rape during her detention; her fear on account of imputed political opinion as a member of her family where she claims her family members were members of an opposition political party, who in turn were targeted, harassed, arrested and detained by the authorities because of their membership of that party.
72. The Tribunal has had regard to the applicant's oral evidence. The Tribunal found the applicant's oral evidence in relation to her claims of political involvement and that of her family to be very general, vague and not forthcoming. There were also some inconsistencies. During the hearing, the applicant stated that in [date specified] she moved to City C (some distance from her hometown) and worked for around one year. She said that she returned home around every couple of months during that period. Later in the hearing when she was giving evidence in relation to her claimed detention and involvement with an opposition political party, she said that she left Town B

immediately after the incident of her detention and rape, which was around the beginning of [date specified], and travelled to City C; and when asked what she did there and if she returned to Town B, she said she did not do anything, she rented a place to live; [information deleted: s.431] and she never returned home to Town B; but she contacted her family by phone.

73. The Tribunal also considered the applicant's prior dealings with the Department in connection with her previous visa application. While that application and the process it followed is not directly relevant to the claims in the applicant's protection visa application, the Tribunal's view is that it has relevance to the credibility of the applicant's claims for protection. The issue is not the delay in applying for a protection visa. Rather the applicant's conduct during the process of her visa assessment including the review of the primary decision by the MRT.
74. The information the Tribunal put in a letter for the applicant's comments referred. [Information deleted: s.431].
75. [Information deleted: s.431]. The BBC Website provides information on a number of religions <http://www.bbc.co.uk/religion> including the applicants' religion.
76. It discusses ethical issues in the faith ranging from general behaviour, food, superstition, through substance abuse, sanctity of life to medical ethics. In relation to the sanctity of life it states the following:
 - [information deleted: s.431]
77. [Information deleted: s.431]
78. [Information deleted: s.431]
79. [Information deleted: s.431]. The Tribunal on the basis of the above information has placed no weight on the documents the applicant provided and purported to be from the church.
80. [Information deleted: s.431].
81. On the basis of the above, the Tribunal has formed the conclusion that the applicant has provided misleading information from the outset in order to gain residency in Australia. The relevance to this review is that having been refused the visa ([Information deleted: s.431]). The applicant has fabricated a profile to fit a claim for protection in order to remain in Australia.
82. The Tribunal does not accept the applicant's claims in relation to her political opinion, involvement and support of an opposition political party; it does not accept that she delivered political flyers in connection with the party. The Tribunal also took into account the report from the social worker that appears to be in the form of recording the claims of the applicant as related to her by the applicant, of her family being missing and that she was detained tortured and raped. It has also had regard to the applicant's comments in reply to its letter in relation to the little to no attempts she has made since [date specified] to enquire about her family and does not accept her explanation. The Tribunal does not accept the applicant's claim that her family is missing or that their whereabouts are unknown, it does not accept that she was detained tortured and raped.

The Tribunal finds that the applicant did not suffer persecution or serious harm in the past because of political opinion, involvement with, or support of an opposition political party

83. The Tribunal further finds that the applicant does not face a real chance of persecution or serious harm in the reasonably foreseeable future for reasons of actual political opinion or support or involvement with an opposition political party if she were to return to Ethiopia

Imputed political opinion/ Particular Social Group /ethnicity/woman of a particular ethnicity

84. The Tribunal has considered whether the applicant is a member of a particular social group.
85. The meaning of the expression “for reasons of ... membership of a particular social group” was considered by the High Court in *Applicant A*'s case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...

86. It is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.

Member of her family, imputed political opinion

87. The applicant's claim of imputed political opinion on account of the claim that her family members were members of an opposition political party may be considered as a claim as a member of a particular social group. The Tribunal accepts that a particular social group may consist of persons belonging to a family who holds, or is imputed to hold, an opposing political view in Ethiopia.
88. The Tribunal has found the applicant's evidence to lack credibility; her account of political involvement by family was very general and vague and the Tribunal does not accept her account. It has found that it does not accept her claims of political involvement and found that her claims were fabricated after her failed attempt to gain permanent residence in Australia.
89. The Tribunal therefore does not accept the applicant's claim that her family were involved with, or were, or are members of the stated political party. The Tribunal finds that the applicant did not in the past suffer persecution or serious harm because of imputed political opinion on account of being a member of her family. The Tribunal further finds that she does not face a real chance of persecution or serious harm in the reasonably foreseeable future on the basis of being a member of a particular social group, namely her family.

Ethnicity

90. The Tribunal has had regard to the applicant's claim on the basis of her ethnicity and as a woman of that ethnicity. On the basis of the country information, the Tribunal accepts that people of her ethnicity and women of that ethnicity may constitute a particular social group.
91. In addition to the reports referred to above relating to her ethnic group, the US Department of State also reported that:

[Information deleted: s.431]
92. In a presentation to a sub-committee of the Country H Parliament it was stated that:

[Information deleted: s.431]
93. A recent report from the Department of Foreign Affairs and trade (DFAT) related to the circumstances of an applicant of her ethnicity provided that:

[Information deleted: s.431]
94. The Tribunal accepts that persons of the applicant's ethnicity who are of interest to the authorities due to actual or suspected support or membership of an opposition political party may be subject to persecution in Ethiopia. As the Tribunal has found that it does not accept the applicant's claims of actual political opinion, involvement or imputed political opinion on the ground of being a member of her family, or that she was arrested, tortured, raped or was the subject of mistreatment by the authorities, the Tribunal does not accept that she was suspected by the authorities of sympathising with, supporting, or being a member of, an opposition political party. The Tribunal finds that the applicant did not suffer persecution, discrimination, mistreatment or treatment as second class citizen because of being a person of her ethnicity.
95. The Tribunal further finds that the applicant does face a real chance in the reasonably foreseeable future of persecution or serious harm because of her ethnicity if she were to return to Ethiopia.

Women of applicant's ethnicity/ Female gender

96. The 2007 US Department of State Report provides the following in relation to women in Ethiopia:

Women

The law criminalizes rape; however, the government did not fully enforce the law, in part due to widespread underreporting. Most women were unaware of the law, and social mores also discouraged women from reporting rape. Observers estimated that at least 1,000 rapes occurred annually in Addis Ababa, but data based on official the authorities reports counted only approximately 400 cases per year. The press continued to report regularly on rape cases, particularly when injury to minors resulted. Courts sentenced convicted rapists to 10 to 15 years' imprisonment, as prescribed by law

Domestic violence, including spousal abuse and rape, was a pervasive social problem. A 2005 World Bank study concluded that 88 percent of rural women and 69 percent of urban women believed their husbands had the right to beat them. While women had recourse to the the authorities and the courts, societal norms and limited infrastructure prevented many women from seeking legal redress, particularly in rural areas. The government prosecuted offenders on a limited scale.

...

Sexual harassment was widespread. The penal code prescribes 18 to 24 months imprisonment; however, sexual harassment-related laws were not enforced.

...

Discrimination against women was most acute in rural areas, where 85 percent of the population was located. The law contains discriminatory regulations, such as the recognition of the husband as the legal head of the family and the sole guardian of children over five years old. Authorities did not consider domestic violence a serious justification for granting a divorce. There was limited legal recognition of common law marriage. Irrespective of the number of years the marriage existed, the number of children raised, and joint property, the law entitled women to only three months' financial support if the common law relationship ended. A husband had no obligation to provide financial assistance to his family and, as a result, women and children sometimes faced abandonment. The law states that any property owned before marriage belongs to the spouse that previously owned it. Any property gained during marriage is shared equally, although a wife does not have the right to inherit her deceased husband's share. Even with stronger formal laws, most rural residents continued to apply customary law in economic and social relationships.

...

In urban areas, women had fewer employment opportunities than men, and the jobs available did not provide equal pay for equal work.

97. [Information deleted: s.431].

98. According to Freedom House organisation, the government has established a women's affairs ministry (announced in October 2006), the Ethiopian Women Lawyers Association has begun training on women's rights issues to the authorities force, but although organisations to assist women exist, they apparently lack public support. Most independent reports consistently refer to the routine violation of women's rights in the country:

Women have traditionally had few land or property rights, especially in rural areas, where there is little opportunity for female employment beyond agricultural labor. Violence against women and social discrimination are reportedly common. Societal norms and limited infrastructure prevent many women from seeking legal redress for their grievances. While illegal, the kidnapping of women and girls for marriage continues in parts of the country. (Freedom House, *Freedom in the World Report – Ethiopia (2007)*, <http://www.freedomhouse.org/template.cfm?page=22&year=2007&country=7175>)

[Information deleted: s.431].

99. The applicant also makes a claim on the basis of her “female gender”. Having regard to the information from a range of sources relating to the mistreatment of women in Ethiopia, the applicant’s claim will now be considered as “a woman in Ethiopia” regardless of the specific ethnic group to which she belongs.
100. The United Nations Committee on Elimination of Discrimination against Women in a press release on its 645th & 646th Meetings on 26 January 2004 made the following comments:
- Ethiopia commended for political commitment to women’s anti-discrimination
 - Country’s representative says changing attitudes in traditional, conservative society will be a long struggle

In Ethiopia, changing men’s attitudes and strengthening women’s confidence would be a long struggle, the Committee on the Elimination of Discrimination against Women was told today, as it considered the situation of Ethiopian women in two meetings.

The Committee’s 23 experts, acting in their personal capacities, monitor compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women. Ethiopia ratified the Convention in 1981, the same year in which the Convention entered into force.

Describing Ethiopian society as “traditional, ancient and conservative”, Netsanet Asfaw, Minister for State of Ethiopia’s Ministry of Information said overcoming “horrendous” traditional practices, such as female genital mutilation, abduction, marital rape and early marriages would require not only an attitudinal change on the part of men, but also on the part of women
<http://www.un.org/news/press/docs/2004/wom1431.doc.htm>

101. On the basis of the country information, the Tribunal is satisfied that the source of persecution and serious harm against women in Ethiopia is rooted in societal and traditional customs and attitudes. The Tribunal finds that the perpetrator of the persecution and serious harm against women in Ethiopia are private individuals or non-state actors. The Tribunal further finds that the motivation of any potential perpetrator to inflict serious harm is multi-faceted but the essential and significant reason is not for being members of a particular social group – women or women from a particular ethnic group in Ethiopia but would be distinctly of a personal nature.

The role of the State

102. The Tribunal observes the comments of the High Court in *MIMA v Khawar* [2002] HCA 14 (11 April 2002), where Gleeson CJ held that the concept of “protection” is also used in a broader sense in the Convention context. His Honour cited the following statement of Brennan CJ in *Applicant A & Anor v MIEA & Anor* (1997) 190 CLR 225 as an example:

The feared ‘persecution’ of which Art 1A(2) speaks exhibits certain qualities. The first of these qualities relates to the source of the persecution. A person ordinarily looks to ‘the country of his nationality’ for protection of his fundamental rights and freedoms but, if ‘a well-founded fear of being persecuted’ makes a person ‘unwilling to avail himself of the protection of [the country of his nationality]’, that fear must be a fear of persecution by the country of the putative refugee’s nationality or persecution which that country is unable or unwilling to prevent.

103. The Chief Justice also cited with approval the following statement of Lord Hope of Craighead in *Horvath v Secretary of State for the Home Department* [2000] UKHL 37, as reflecting the relationship between persecution as the inflicting of serious harm and the responsibility of a country as a protector of human rights:

... in the context of an allegation of persecution by non-state agents, the word 'persecution' implies a failure by the state to make protection available against the ill-treatment or violence which the person suffers at the hands of his persecutors. In a case where the allegation is of persecution by the state or its own agents the problem does not, of course, arise. There is a clear case for surrogate protection by the international community. But in the case of an allegation of persecution by non-state agents the failure of the state to provide the protection is nevertheless an essential element. It provides the bridge between persecution by the state and persecution by non-state agents which is necessary in the interests of the consistency of the whole scheme.

104. His Honour held that persecution may result from the combined effect of the conduct of private individuals and the state or its agents; and that a relevant form of state conduct may be tolerance or condonation of the inflicting of serious harm in circumstances where the state has a duty to provide protection against such harm. Justice Kirby took a similar approach, adopting the formula "Persecution = Serious Harm + The Failure of State Protection"
105. The Tribunal will now consider whether the State in Ethiopia plays a role in the persecution and serious harm perpetrated against women in Ethiopia; and whether the State discriminately withholds protection from women or women from the applicants particular ethnic group.
106. In relation to the role of the authorities and security apparatus the 2007 US Department of State Report states:

Role of the The authorities and Security Apparatus

The Federal The authorities Commission reports to the Ministry of Federal Affairs, which in turn is subordinate to the parliament. Local government militias also operated as local security forces largely independent of the authorities and the military. Corruption remained a problem, particularly among traffic the authoritiesmen who solicited bribes. Impunity also remained a serious problem. The government rarely publicly disclosed the results of investigations into such types of abuses. The federal the authorities acknowledged that many of its members as well as regional the authorities lacked professionalism.

The government continued its efforts to train the authorities and army recruits in human rights. During the year the government continued to seek assistance from the ICRC, JFA-PFE, and the Ethiopian Human Rights Commission (EHRC) to improve and professionalize its human rights training and curriculum by including more material on the constitution and international human rights treaties and conventions.

107. The Tribunal accepts on the basis of country information, of which the above are some examples, that the effectiveness of the authorities force in Ethiopia is less than adequate although it notes that the reports above also show that there have been some convictions by the courts in relation to crimes against women
108. The Tribunal notes also that the reports above tend to show that some positive steps and effort by the Ethiopian government is recognised by organisations such as the United Nations Committee, and that the Ethiopian government has established a women's affairs ministry.

109. Other reports which are relevant to the question of whether the State has a hand in persecuting women in Ethiopia or withholds protection from women in a discriminate manner include a summary of a report of the World Bank in its ongoing work with member governments in the Africa region including Ethiopia

Background

The National Policy on Women (Women's Policy) formulated in 1993, aimed to create appropriate structures within government offices and institutions to establish equitable and gender-sensitive public policies. The Government of Ethiopia in 1995, under its new constitution, renewed its commitment towards this policy.

The government initiated an ambitious and extensive process of regionalization, whereby new regional boundaries were demarcated and administrative powers devolved to regional governments, which were authorised to implement all development policies. This represented a departure from the earlier practice of centralized project management by ministries. This more participatory and decentralized form of governance made the implementation of the national policy a more challenging endeavour. There was correspondingly a great need to build the delivery capacity of the regional governments. While the central level of government promoted gender-sensitive policies and development interventions, very little was known about the constraints and issues at the regional levels.

Objectives of the Women in Development (WID) Report

After discussions with the Minister, the Women's Affairs Office initiated the process of preparing a report with a very regional focus. The procedure for preparation was discussed with the government and other relevant stakeholders. Issues were identified jointly through Participatory Rural Appraisals (PRA) to bring in the voices of grassroots women stakeholders, and through preparation of background reports by a number of local consultants.

The WID report examines and identifies institutional, legal, and regulatory constraints on the expeditious and effective implementation of the women's policy. The objectives of the report were clear. It would:

- assist Regional Governments improve the institutional and regulatory framework for the implementation of the Women's Policy;
- provide the basis for World Bank support to the Government of Ethiopia to implement its Women's Policy;
- support the Bank's policy dialogue with Ethiopia.

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/ETHIOPIAEXTN/0,,contentMDK:20836439~menuPK:295961~pagePK:1497618~piPK:217854~theSitePK:295930,00.html>

110. A recent press release, by the United States Ambassador to Ethiopia announcing the winner of an international women's award on 21 March 2008 stated that:

U.S. Ambassador Donald Yamamoto Presents "International Women of Courage Award for Ethiopia" to Meaza Ashenafi

Addis Ababa (U.S. Embassy) – U.S. Ambassador Donald Yamamoto presented the "International Women of Courage Award for Ethiopia" to Woizero Meaza Ashenafi,

founder and former director of the Ethiopian Women Lawyers Association, in a ceremony at the U.S. Embassy on Friday, March 21.

Amb. Yamamoto, quoting the U.S. Secretary of State, said, "women of courage are standing up for freedom and human dignity, and the United States stands with them. We must not forget that the advance of women's rights and the advance of human liberty go hand in hand."

As part of the celebration of International Women's Day and Women's History Month, American Embassies around the world nominate "women of courage" in their respective countries each year for this prestigious award. The award celebrates exceptional courage and leadership in advocating for women's rights and advancement.

In nominating Woizero Meaza, the Embassy recognizes her contributions to advancing human rights in Ethiopia through her work as a legal advisor to the Ethiopian Constitution Commission of the transitional government in 1993, and her founding and administration of the Ethiopian Women Lawyers Association since 1995.

The awarding of the Africa Leadership Prize by the Hunger Project in 2003 recognized Woizero Meaza's contribution to advancing women's rights throughout Africa. In presenting the IWOC Award for Ethiopia to Woizero Meaza, Amb. Yamamoto said, "we are very pleased to present you today with this award for your exemplary work in advocating and advancing the rights of women in Ethiopia and your efforts to build a more just society that gives all of its members equal opportunity to contribute to peace, democracy, and justice for all."
<http://ethiopia.usembassy.gov/pr0808.html>

111. An online news report from the International Labour Organisation (ILO) celebrating International Women's Day in March 2008 made the following comments:

International Women's Day 2008 – Financing for gender equality and empowerment of women: Report from Ethiopia

The ILO annually celebrates International Women's Day with a unique theme focusing on women in the world of work. This year's focus will be on promoting Decent Work and the empowerment of women, under the slogan "Investing in Decent Work for Women: Not just right, but smart". Among the global events to be held around Women's Day are a series of activities in Ethiopia.

The Amhara Women's Entrepreneurs' Association (AWEA) has come a long way since its founding less than a decade ago. At the start, 60 women entrepreneurs struggled with poor communication services, unreliable transportation and other impediments to their ability to meet.

Today, AWEA has grown to some 3,000 paying members who rely on fully-equipped branch offices in four cities in order to coordinate the complex activities of what has become a member-driven association. In March, they will organize an Awards Night to honor women entrepreneurs for their achievements and encourage others to follow suit. ...

March is, in fact, an important month for AWEA. It will organize a National Women Business Network (NWBN) together with a big trade fair to be held in Adama city. The high-level event together with the one-week bazaar, scheduled to open on March

8 – International Women’s Day, will involve government ministers, and attract women from different regions of the country to exchange information through symposiums and discussions and present their products in order to better take advantage of the local market. The NWBN is a legal entity acknowledged by the Ethiopian government and it was initiated by AWEA in 2007, when the first national event took place.

The ILO provided technical and financial support for AWEA through its Women’s Entrepreneurship Development and Gender Equality (WEDGE) Programme. And for the Addis Ababa Women Entrepreneurs Association (AAWEA), such events prove to be productive, as the wide publicity generated can help women overcome one of their biggest hurdles, access to finance.

http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Feature_stories/lang--en/WCMS_091137/index.htm

112. The country information referred to above indicates that the State in Ethiopia is recognised by a number of international organisations for participating in programs and efforts to address entrenched problems relating to the mistreatment of women and the conditions they suffer. The work and progress in the various areas of social and political programs is coordinated by the federal government with the regional governments, cooperating with various international organisations. The Tribunal is satisfied on the basis of the available country information that the State or its agents in Ethiopia are not party to the persecution of women; and the State or its agents do not tolerate or condone the inflicting of serious harm by the non-state perpetrator in Ethiopia. The Tribunal is also satisfied that any failure by the State or its agents to provide protection from such harm which may be identified is not on the basis of discrimination against women, including women of the applicant’s ethnicity.
113. The Tribunal finds therefore for the purposes of the Convention, that the applicant did not suffer past persecution or serious harm as a member of a particular social group, namely a woman or as a woman from the applicants’ ethnicity in Ethiopia. The Tribunal further finds that the applicant does not face a real chance of persecution or serious harm in the reasonably foreseeable future for Convention related reasons as a woman or an as a women from the applicants ethnicity in Ethiopia if she were to return to Ethiopia.

Religion

114. As the Tribunal in its discussion of the applicant’s evidence above, has placed no weight on the evidence she has provided which is purported to be from a representative of her faith in Ethiopia; and having regard to the applicant’s oral evidence that she has attended any church nearby, that she attended that church a “couple of times and stopped”; and her response to a question in relation to what she knows about the faith was very minimal and vague; and only since the hearing she has submitted that she is now attending her professed faiths church; the Tribunal does not accept that the applicant was practising that faith before she left Ethiopia.

Future Harm

115. Looking into the reasonably foreseeable future, given the applicant has claimed that she is now attending that faiths church in Australia, the Tribunal has considered whether

the applicant would suffer persecution amounting to serious harm if she were to return to Ethiopia and continue to practise that faith.

116. There are no reports that followers have any restraints imposed on their ability to practise their faith in Ethiopia. The US Department of State has reported that:

Christian evangelical and Pentecostal groups continue to be the fastest growing groups and constitute an estimated 10 percent of the population. Established Protestant churches such as Mekane Yesus and the Kale Hiwot are strongest in the Southern Nations, Nationalities, and Peoples' Regional State (SNNPR); western and central Oromiya; and in urban areas. In Gambella Region, Mekane Yesus followers represent 60 percent of the population. The Evangelical Church Fellowship claims 23 denominations under its religious umbrella throughout the country.

Oriental Rite and Latin Rite Roman Catholics number more than 500,000. There are reportedly more than 7,500 Jehovah's Witnesses adherents and 105 Kingdom Halls in the country. Jews, animists, and practitioners of traditional indigenous religions make up most of the remaining population in the country. In Addis Ababa and north Gondar, in the Amhara Region, the people known as Feles Mora claim that their ancestors were forced to convert from Judaism to Ethiopian Orthodoxy many centuries ago. There are very few atheists. Although precise data is not available, active participation in religious services is generally high throughout the country. (US Department of State 2007, *International Religious Freedom Report for 2007 – Ethiopia*, September)

117. Similarly, [information deleted: s.431].

118. [Information deleted: s.431].

119. On the basis of the above, the Tribunal finds that the applicant does not face a real chance in the reasonably foreseeable future of persecution on the basis of her claimed religion if she were to return to Ethiopia and practice her faith.

120. The Tribunal has had regard to all the written and oral statements of the applicant and all the supporting evidence she has provided. It has considered the applicant's claims individually and cumulatively. The Tribunal finds that the applicant has not suffered past persecution of serious harm for Convention reasons. The Tribunal finds that the applicant does not face a real chance of persecution or serious harm in the reasonably foreseeable future for Convention reasons if she were to return to Ethiopia; she is not a refugee.

CONCLUSIONS

121. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not meet the criterion set out in s.36(2)(a) for a protection visa.

DECISION

122. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's ID: ntreva