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AN (ELF-RC - low level members - risk) Eritrea CG [2004] UKIAT 00300

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 6 May 2004

Date Determination notified:

9th November 2004

Before:

Mr H J E Latter (Vice President)

Dr H H Storey (Vice President)

Mr G H Getlevog

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representatives: Mr E. Waheed of Counsel, instructed by Ziades Solicitors for the appellant; Mr J Morris, Home Office Presenting Officer, for the respondent.

DETERMINATION AND REASONS

1. The appellant is a national of Eritrea. She appeals against a determination of an Adjudicator, Mr T.P. Thorne, dismissing her appeal against a decision refusing her leave to enter following a refusal to grant asylum.
2. The Adjudicator found that the appellant was a national of Eritrea and that she had been a low level member of the Eritrean Liberation Front-Revolutionary Council (ELF-RC) in Ethiopia and later in Sudan. However, he did not consider her role within this organisation had ever led to her coming to the adverse attention of the authorities in Eritrea or was likely to in the future. On the Adjudicator's reading of the background evidence, only those who had been responsible "for anything that could be interpreted as terrorism or violence" would be

likely to come to the adverse attention of the authorities. There was no reason to believe that her membership of the ELF-RC within the UK would change the position.

3. The grounds of appeal submitted that the Adjudicator erred in concluding that only those ELF-RC members involved in terrorism or violence would be of adverse interest to the authorities. Had the Adjudicator taken proper account of background evidence other than the CIPU Report, he would have recognised that “the authorities persecuted any person who voiced anti-government views, regardless of the position held by the individual or even if the activities of the individual are considered low level.”
4. In granting permission to appeal the Tribunal identified as an issue the correction by CIPU to entries relating to ELF-RC.
5. In amplifying the grounds Mr Waheed highlighted the terms of current UNHCR advice, which noted that

“Human Rights violations continue to be reported, inter alia, with regard to the treatment of opposition political groups and movements, freedom of expression, arbitrary detention and detention conditions (including reports of torture, ill-treatment and forced labour) and treatment of draft evaders and deserters”

and that:

“Against this background, it appears that the deportees from Malta to Eritrea may have faced persecution owing to an imputed political opinion, conscientious objection or other reasons. It cannot be excluded that future deportees would face similar risk.”

7. Given that the appellant's husband was also involved with the ELF-RC and had been the main subject of police attention, the Adjudicator was wrong, argued Mr Waheed, to assimilate her position to that of an ordinary low-level ELF-RC member.
8. Although not raised as such in the grounds of appeal, it is salient first of all to note that we see no error in the Adjudicator's assessment that the appellant was a national of Eritrea. The appellant continued to maintain that she does not identify as Eritrean and that she is convinced the Eritrean authorities would not accord her Eritrean

nationality. However, the appellant had an Eritrean father and was thereby entitled to Eritrean nationality upon application. The Court of Appeal in Tecle [2003] and the Tribunal in L (Ethiopia) [20032] UKIAT 00016, did not accept that there would be any real obstacle to such a person having her or his nationality confirmed upon application. The Adjudicator correctly relied upon and applied the principles set out in L (Ethiopia).

9. In this case the Secretary of State has specified Eritrea as the country of removal. The Adjudicator was also entirely correct, therefore, to confine his assessment of the appellant's asylum claim to whether she faced a real risk of serious harm upon return to Eritrea.
10. In respect of the CIPU correction of an earlier entry, dealing with the ELF-RC, neither party was able to pinpoint when it was made but were able to confirm that the April 2002 Report (which was before the Adjudicator) represented the corrected version. Both also confirmed that the latest CIPU Report for April 2004 was in broadly similar terms to the April 2003 Report. The relevant passages in the latest Report were as follows:

‘6.87 In 1987 the EPLF, uniting with an Eritrean Liberation Front (ELF) action, agreed a policy objective of creating a multi-party democratic system in a future independent state. At independence in 1991 when the victorious EPLF formed the Provisional Government of Eritrea, there was no reconciliation between the ruling EPLF and the ELF rivals. However, ELF members were allowed to return to Eritrea at intervals on condition that they renounced opposition to a government of union, prior to the official creation of opposition parties due for 1998 (interrupted by war with Ethiopia).

6.88 Some ELF members complied, such as the Eritrean Liberation Front-Unified Organisation (ELF-UO), whose leaders were given government and military posts. Others, such as the Eritrean Liberation Front-Revolutionary Council (ELF-RC), remained in opposition – many launching a new armed struggle from bases in Sudan, others engaging solely in political opposition in exile.

- 6.89 There were unconfirmed reports in 2002 that the government continued to detain numerous members of the armed opposition group ELF.
- 6.90 The organisation is still active in exile, mainly in Sudan and Ethiopia and the government's reaction to returning members of ELF or ELF-RC will depend on the position held in the organisations and the type of activity undertaken. Those who had been responsible for anything that could be interpreted as terrorism or violence may be likely to come to the attention of the authorities.
- 6.91 ELF members have been encouraged by the government to return to Eritrea and have apparently not faced repercussions for their past activities. All of those that have returned are thought to have renounced further opposition activities in favour of unity through the EPLF/PFDJ.
- 6.92 Although the ELF are quiet and are seen as largely irrelevant in Eritrea, it is believed that there may still be some active members of the ELF factions in Eritrea, especially on the Sudanese border or in the north of the country. They do not openly conduct opposition activities and a view was expressed in Eritrea to the UK fact-finding mission in November 2002 that many Eritreans feel that the various branches around the world exist only to make money for themselves.
- 6.93 ELF-RC withdrew from the Eritrean National Alliance (ENA) an opposition umbrella group, formally the AENF, in October 2002, to protest the ENA's alleged willingness to allow foreign forces to exert pressure on its operations including on matters dealing with the election of its leadership.'

11. As regards the submission that the Adjudicator wrongly assimilated the appellant's position to that of an ordinary low-level ELF-RC member, we are not persuaded that this was an error on his part. The Adjudicator noted that the appellant's evidence was that she and her

husband worked for the ELF in Ethiopia where they distributed posters, that they were arrested by the authorities in Ethiopia in May 2000, that the authorities originally came only for the appellant's husband and that the appellant was only arrested because she pleaded that she could be arrested with him. The Adjudicator also noted her evidence about her husband's adverse experiences in the Sudan. He then found:

'I accept her evidence that their role within the organisation was to distribute leaflets and posters with her husband.

I do not, however, accept that her role within the organisation ever lead (sic) her to come to the adverse attention of the authorities in Eritrea or is likely to be in the future.

I conclude that the appellant would be at no risk if she were removed to Eritrea now. The objective evidence makes it clear that persons in the position of the appellant (as on her own evidence) would not now be of any adverse interest to the authorities.'

12. It is clear from the above that in describing the appellant's role within the ELF-RC the Adjudicator was prepared to approach the appellant's case on the basis of her own evidence. He did not dispute that she and her husband had met with difficulties at the hands of the authorities in both Ethiopia and Sudan. Nevertheless, he did not consider that this history demonstrated that he was a high level or prominent activist. Given that their difficulties were limited to two experiences of arrest (one in Ethiopia, one in Sudan) we see nothing unsustainable about this assessment. The appellant and her husband's activities on behalf of the ELF-RC were largely confined to distributing posters. This may have caused the authorities in Ethiopia in May 2000 to arrest the appellant's husband and then her. His teaching work may have caused the Sudanese authorities to arrest her husband on suspicion of being an Eritrean spy. However, the Adjudicator was entitled to conclude that their activities throughout were low level. Furthermore, the essential issue was how the appellant's role in the ELF-RC (even assuming they know or come to know of it) would be perceived by the authorities in Eritrea.
13. We next turn to Mr Waheed's submission that the Adjudicator erred in concluding that low level members/supporters of the ELF-RC would not be at risk on return to Eritrea.

14. The Adjudicator stated that he took account of the appellant's bundle and the CIPU April 2003 Assessment. The two main sources he cited from were the CIPU Assessment and US State Department Report, March 2003.
15. We have already set out the text of the April 2003 Assessment.
16. The US State Department report (March 2003) contains the following:

'The Government's poor human rights record worsened, and it continued to commit serious abuses. Citizens did not have the ability to change their government, which was controlled completely by the PFDJ. There were some reports, difficult to confirm, that the police occasionally resorted to torture and physical beatings of prisoners, particularly during interrogations, and police severely mistreated army deserters and draft evaders.

The transitional Penal Code prohibits torture; however, there were some unconfirmed reports that the police at least occasionally resorted to torture and physical beating of prisoners, particularly during interrogations. During the year, the police severely mistreated and beat army deserters and draft evaders.

The police subjected deserters and draft evaders to various military disciplinary actions that included prolonged sun exposure in temperatures of up to 113 degrees Fahrenheit or the tying of the hands and feet for extended periods of time.'

17. Given that the CIPU Assessment deals more specifically than any major report with the position of ELF-RC members, we consider that the Adjudicator cannot be criticised for relying heavily on it for his conclusions that this appellant would not be at risk. She had no specific position in the ELF-RC. She had no history of being involved in violence or terrorist activities. If the authorities in Eritrea knew from their own source of her past activities in Ethiopia and Sudan, they would also know that it was largely confined to educational work, such as distributing posters.
18. Mr Waheed, however, considers that other sources paint a different picture. They indicate, he maintains, that opposition party members generally face a real risk of serious harm and do so in the context of a government which is becoming more and more repressive.

19. We would accept that the objective evidence does indicate a worsening of the government's human rights record. So much is clear from the latest US State Department reports. These highlight persecution of prisoners; deserters and draft evaders, arbitrary arrests and detentions; detention without charge of an unknown number of persons because of political opinion; severe restriction of freedom of speech and freedom of the press and limited freedom of assembly and association; and reports of politically motivated disappearances. At page 3 of the 2004 Report it was noted:

'There were reports of numerous politically motivated detentions of those who were seen as critical of the government, many of whom remained in prison at year's end. Many were perceived to have ties to political dissidents or were believed to have spoken against government activities.

In addition to the high profile arrest in 2001, the government arrested at least eight additional individuals, many of them with known or suspected ties to political dissidents, and detained them without charge and without access to visitors at year's end. There were numerous unconfirmed reports that the number of such persons detained may be several hundred.'

20. There is no specific mention of the ELF-RC in the 2004 Report, but on page 4 it is noted:

'There were reports that the government continued to hold numerous members of the ELF, as armed opposition group that fought against Ethiopia during the struggle for independence.'

21. Before the Tribunal there was also a copy of the January 2004 Human Rights Watch report on Eritrea which stated that "Eritrea has remained a police state in which dissent is ruthlessly suppressed and non-governmental political, civic and social institutions are largely forbidden to function." This report goes on to state:

'Arbitrary arrests and prolonged imprisonment without trial have not been limited to political leaders and the press. The government detained two hundred and fifty refugees who fled Eritrea but were involuntarily repatriated from Malta in late 2002.

They were still being held in incommunicado detention at the end of 2002.'

22. The Amnesty International Report of May 2003 covered similar ground, noting inter alia that:

'Hundreds of political detainees detained in previous years remained held in secret without charge or trial.

...

Hundreds, possibly thousands, of government opponents were alleged to be still secretly detained. Some had been members of the former Ethiopian administration and surrendered in 1991 or had been abducted from Addis Ababa and handed over to the new Eritrean government. Others were captured ELF opposition fighters or suspected supporters, or government critics, including some long-serving EPLF commanders or members. Some appeared to be prisoners of conscience.'

23. Finally, there is the UNHCR June 2004 Position statement. We shall not recount this in detail since it largely draws on sources already referred to. However, its conclusion in full notes that:

'Based on various reports, it appears that the human rights situation in Eritrea has seriously deteriorated in the past two years. Human rights violations continue to be reported, inter alia, with regard to the treatment of opposition political groups and movement, freedom of expression, freedom of religion, arbitrary detention and detention conditions (including reports of torture, ill-treatment and forced labour) and treatment of draft evaders/deserters.

Against this background, it appears that deportees from Malta to Eritrea may have faced persecution, owing to an imputed political opinion, conscientious objection or other reasons. It cannot be excluded that other deportees would face a similar risk.

...

In the light of the above, UNHCR recommends that asylum claims submitted by Eritrean asylum seekers

should undergo a careful assessment to determine their need of international protection. It is also recommended that states refrain from all forced returns of rejected asylum seekers to Eritrea and grant them complementary forms of protection instead, until further notice. This position will be reviewed in the second half of 2004.'

24. The Adjudicator did not have all of these materials before him, but he did have the US State Department Report for March 2003 which highlighted a worsening of human rights abuses and active concerns about the treatment of political dissidents.
25. In undertaking an assessment of background materials of this kind, it is imperative that we bear in mind when assessing whether there is a real risk to persons in a general category (such as political oppositionists or members and supporters of ELF-RC) the principles set out by the case in Harari [2004] EWCA Civ 807. In particular we need to bear in mind the need for evidence of systemic abuses.
26. It is very true that the evidence detailed by Mr Waheed identifies a significant level of persecutory treatment by the Ethiopian authorities of political dissidents. However, it does not identify a consistent pattern of gross, flagrant or mass violations of human rights. Although it demonstrates that hundreds, possibly thousands of political dissidents have met with repression, things do not appear to have reached the stage where political opposition members per se face a real risk of serious harm. Even though government repression has not been wholly confined to prominent political oppositionists, a significant number of the incidents underlying the concerns of Amnesty International and other human rights organisations have involved prominent oppositionists. Examples are the arrest in September 2001 of eleven senior PFDH and National Assembly members, the 2002 arrests of relatives of the previously detained "G-15" group of diplomats who were recalled from their posts. In December 2002, the wife of a former Minister of Foreign Affairs and a member of the G-15, Petros Solomon, was reportedly arrested and detained without charge as she returned to the country after living abroad for several years. The examples given of arrests of journalists included the case of Akililu Solomon who had submitted articles to the Voice of America relating to reports of soldiers who died in the war with Ethiopia; Seyouin Tsehaye, former director of the state television service; Fessaye Yohannes, a reporter and playwright; and Dawit Habtemichael, an assistant editor and science teacher. Amnesty International includes among prisoners of conscience in Eritrea, Mahmoud Ahmed Sherriffo, former Vice President; Haili Woldestensae, former Foreign Minister 'detained for

leading the post-war calls for democratisation and human rights reforms'; Idriss Aba'ere, a severely disabled liberation war veteran, writer and Minister of Labour department leader; Miriam Hages, director of cinemas; Tesfaye Gebreab, a director in the Ministry of Foreign Affairs; Ali Muhammed Saleh, a former diplomat working in the Ministry of Foreign Affairs and Ibrahim Siraj, a former director of a maternity clinic.

27. Given the lack of evidence showing that members of opposition political groups are systematically targeted, we consider that the Adjudicator was quite entitled to take as his criteria the CIPU approach to the risk facing ELF or ELF-RC members of seeing it as dependent on the position held in the organisation and the type of activity undertaken. The CIPU assessment that those ELF or ELF-RC members or supporters likely to come to the attention of the authorities were confined to those who had been responsible for "anything that could be interpreted as terrorism or violence" also dovetailed with mention made in the 2004 US State Department Report on p. 4 that:

"An unknown number of persons suspected of association with the Ethiopian Mengistu regime, Islamic elements considered radical, or suspected terrorist organisations continue to remain in detention without charge, some of who have been detained for more than nine years.'

28. Mr Waheed's further submission was that even if the objective evidence dealing specifically with the treatment of political oppositionists was not sufficiently compelling to cover the case of a low-level ELF-RC member or supporter, there was an added risk factor attaching simply to the mere fact of being a returnee. The crux of this submission was the June 2004 UNHCR report of the late 2002 forced deportations from Malta of approximately two hundred and twenty individuals who (in UNHCR's words) "may have faced persecution owing to an imputed political opinion, conscientious objection or there reasons."
29. However, in the first place we would observe that UNHCR does not consider the case of these returnees from Malta establishes a real risk for all returnees. The way it is put in the report is that such persons "may" have faced persecution and that "[i]t cannot be excluded that further deportees would faced a similar risk" (emphasis added). Secondly, although UNHCR recommends that states refrain from all forced returns of rejected asylum seekers to Eritrea .. "until further notice", it falls short of stating that all returnees face a real risk of serious harm. Indeed it calls for a careful assessment of individual

cases. Thirdly, it is now nearly two years since the deportations in question occurred and subsequent reports have not noted any similar targeting of returnees either from Malta or any other country. Further, the Amnesty International Report dated 26 May 2004 noted that amongst the Maltese returnees women, children and the elderly had been released shortly after arrival.

30. Albeit the Adjudicator did not address UNHCR concerns about the 2002 Maltese deportations, the materials before him had highlighted them. Even were we persuaded he failed to take them into account, we do not consider that these significantly add to the risks that would face a person in the position of the appellant.

31. We are conscious of the fact that the Maltese deportations were seen to add to the risk factors facing a female national of Eritrea who was a draft evader in a case chaired by the President MA (Female Draft Evader) Eritrea CG [2004] UKIAT 00098 paragraphs 24 and 236. However, the instant case does not concern someone who is a draft evader or deserter. Furthermore, that case was heard in April 2004 before new country reports for 2004 had been made available. As explained above, we consider that the lack of any evidence from any other country has become more significant as time has moved on.

32. Mr Waheed also sought to rely on the August 13, 2003 letter from the Vice Chairman of the Eritrean Democratic Youth Union (EDYU) affiliated to the ELF-RC which stated that :

‘ELF-RC members are still the targets of the dictatorial regime in Eritrea regardless of their rank or degree of contribution to our struggle. More so after the regime has become increasingly to voice of opposition and is cracking down on the dissidents within its ranks.’

33. However the Adjudicator considered this same letter – see paragraphs 31 and 100 – and we see no reason to depart from his own assessment that mere membership of this organisation in the UK would not cause adverse interest from the Eritrean authorities on return. Insofar as the letter argues that mere membership of ELF-RC causes targeting by the authorities on return, we consider that the Adjudicator was right to base his assessment on the more widely sourced and independent background reports.

34. For the above reasons this appeal is dismissed.

**H.H. STOREY
VICE PRESIDENT**