

1110275 [2012] RRTA 506 (26 June 2012)

DECISION RECORD

RRT CASE NUMBER: 1110275

DIAC REFERENCE(S): CLF2010/131526

COUNTRY OF REFERENCE: Ethiopia

TRIBUNAL MEMBER: Mary Cameron

DATE: 26 June 2012

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 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, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] October 2010.
3. The delegate refused to grant the visa [in] September 2011, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) 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 Refugees Convention.
6. 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.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

18. The Tribunal has before it the Department's 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.
19. In her Application for a Protection (Class XA) visa (Form 866C) the applicant indicates that she is a [age deleted: s.431(2)] Ethiopian citizen of Eritrean background, and of Muslim religion. She states that she is seeking protection so that she does not have to return to Eritrea or Ethiopia. In response to the question why she left her country she states that she experienced discrimination, mistreatment and persecution in Eritrea and then in Ethiopia for reason of her political involvement with the Eritrean opposition in both countries. She states that she and her husband and brothers were all imprisoned in Eritrea and her brothers' whereabouts remains unknown. She and her husband escaped to Ethiopia where they experienced further arrests and imprisonment. Her husband was last captured in January 2010 and the applicant has not seen him since. The applicant obtained her Ethiopian passport and departed Ethiopia through the payment of bribes. The applicant states that she cannot return to Ethiopia or to Eritrea for fear of imprisonment or death in both countries.
20. In response to the question of who she thinks will harm her if she returns the applicant states that she fears harm in Eritrea for reason of her political opposition to the government and she fears harm from the Ethiopian government because it has accused her of being a spy and has captured and detained her husband.

21. In response to the question of why she thinks these things will happen if she returns, the applicant states that this will happen because of her political beliefs and for ethnic and racial reasons. She states that she has no passport. In response to the question of whether she thinks the authorities of her country will protect her if she goes back, the applicant states that they will not because she is opposed to the Eritrean government and the governments of both Eritrea and Ethiopia cannot be trusted, and she was only able to leave Ethiopia by paying bribes and purchasing an Ethiopian passport. She did this because she was blacklisted by the authorities.
22. In support of her visa application the applicant also provided a copy of her passport; her Eritrean Identity Card; her Eritrean National Salvation Front Membership Card; her Eritrean Liberation Front Membership Card; a letter from the Eritrean National Salvation Front, and a written statement of her claims as follows:
 1. I am making this statement in addition to the claims I have made in my protection visa application form. My DIAC file number is CLF2010/1131526.
 2. I would like to explain that I left Ethiopia because of the harassment and persecution that my family and I have experienced there. I fear for my life if I am forced to return there.
 3. I was born in [Town 1] on [date deleted: s.431(2)] when it was still a part of Ethiopia. I lived there with my family; my father, mother and siblings up until I was [age deleted: s.431(2)] years old following my marriage to my [husband] . My husband was born in [Town 1] Eritrea. I was married culturally in [1975] and was blessed by my parents.
 4. I am a mother of three children. Only [one] child [Mr A] remains in Ethiopia and [Mr A] currently lives with his father in Addis Ababa. My daughter [Ms B] lives in Australia and my daughter [Ms C] lives in [Country 2].
 5. I am an Eritrean Tigrinya and [another ethnic group]. I hold an Ethiopian passport but the government authorities and the civilian population of Ethiopia treat me as an Eritrean, which puts my life at risk. Tigrinya is my first language, Amharic is the national language of Ethiopia and I do not speak it very well. I also speak [a couple of other languages].
 6. My elementary studies were completed in Amharic, and we also studied English as a subject. I completed secondary education at [Secondary] school in [Town 1] The language of instruction was English and Amharic was one of the subjects. I also studied the English language as a night class. Most Eritrean students were not much interested in learning Amharic and so were failing the subject of Amharic language.
 7. My husband was a business man in Addis Ababa and after we married we went to live there together. We had a [shop] and jointly ran our business until 1991. In May 1991 Eritrea was liberated and we closed our business and moved to [Town 1] to run our business there. We had lived together in Ethiopia for almost 16 years and we did not experience any problems during that time.
 8. On our return to Eritrea we lived in [Town 1] and restarted our business there. In early 1993, before the Eritrean referendum for independence, men and women who supported the Eritrean freedom fighters had a demonstration against the provisional Government of Eritrea. The demonstrators were demanding equality of men and women as well as proper treatment of injured freedom fighters. At that time I also participated in that demonstration and joined calls for change. I believe my photograph was taken by the authorities and I was seen at the protest by a distant relative supportive of the Eritrean provisional government. In response to the

protests the provisional President came out on the street to talk to the people and promised to resolve all problems and urged the Eritrean people to support the referendum.

9. The referendum to create the separate country of Eritrea was successful. After four months around September 1993, [Mr D] a police officer of the First Police Station in [Town 1] sent police to my home which was near to the [Town 1] Municipality. The police knocked at the door in the morning hours but I did not respond. At about 6.00 am they demanded I open and they took me to the police station. I was not allowed to change my night dress or put shoes on. As I reached there [Mr D] said "you were in Ethiopia and didn't have any participation on any EPLF's activities, I know you don't support the EPLF (Eritrean People's Liberation Front) and that you are supporting ELF (Eritrean Liberation Front)". Now in the name of demonstration you tried to propagate against our government".
10. I was arrested and detained because I participated in the protests against the provisional government. I had been a supporter of the ELF since I was in high school. The ELF wanted democracy and freedom. At that time (1993) people did not talk of EPLF or ELF because Eritrea was liberated so I was surprised [Mr D] was harassing me like this. I told him that as an Eritrean I was very happy that Eritrea was independent and that is why I closed my business in Ethiopia and came to [Town 1], Eritrea to run it here. As an Eritrean I gave my voice for Independence. [Mr D] also tried to take advantage of the situation and tried to sexually abuse me but I challenged him. After that he sent me to [Town 3] where I was imprisoned.
11. During the period I was detained my three brothers and my husband went to ask to the First police station about my whereabouts. [Mr D] asked them who they were and they told him that they wanted to know what happened to me. [Mr D] accused them of being collaborators with me and sent them to be [imprisoned]. My husband was released after 10 days on condition he report to the First police station any time they asked him, while my brothers remained in prison. Since then (1993) nobody knows the whereabouts of my brothers. We believe that they may have been killed.
12. After two weeks I was released from prison and returned home. I was very scared and worried about what would happen. Within weeks [a government official] responsible for housing came to my house and investigated the property, its contents, number of bed rooms and condition of the house. The next day [the government official] wrote me letter to vacate the house and to leave all property in the house.
13. Shortly after, the authorities returned and forced us to leave our house and told us that anytime we need you we will call you to present yourself. I learnt sometime later that the house was given to a man known as [Mr E]. A few weeks later [Mr E] went to my parents' house and told them he was living in my home. He told my parents that it wasn't his wish but the government had done this and given him our house.
14. After sometime, friends of ours asked him why did you kick out Eritreans out of their house. Some years later I also heard that [Mr E] himself had been imprisoned and became lost. When someone is imprisoned usually they are lost, killed.
15. I also had a shop in [another area] of [Town 1]. My husband opened this shop when he was very young and even when we lived in Ethiopia from 1976 to 1991 we continued operating this shop. The municipality cancelled my business licence and ordered me neither to import goods from overseas nor to continue selling and trading until further notice. In September 1994, the taxation office sent me a bill for 21,000 Birr (at that time Eritrea used Ethiopian Currency) to pay within 10 days or they would sell the shop. I couldn't pay the fee and as a result the taxation office sealed the shop. Even after this they continued to ask us to pay taxes but we couldn't continue paying because we weren't permitted to run our business. After some

time the shop was given to a popular Eritrean [performer]. I learnt this when I saw a television commercial advertising his [shop]. [This performer] is a strong supporter of the Eritrean Government.

16. I believe that my home, shop and possession were taken because I participated in the protests against the Eritrean provisional government. I am sure of this because a distant relative of our family [name deleted: s.431(2)] was a fighter with the EPLF and had seen me at the protest. He later went to my father's home to warn him that I would not be able to live in peace in Eritrea. He told my father that they had arrested me, taken my home and business and that the next step was for them to kill me. My father was very worried for my safety and told me to go into hiding.
17. Because of these problems my husband returned to Ethiopia to start a business while the children and I moved to [live with my parents]. After [Mr F] was established in Addis Ababa Ethiopia, I travelled to join him there in late 1997. My children stayed behind to live with my parents and finish their high school studies.
18. In 1995 we sent my daughter [Ms B] to [Country 4] to carry on with her studies.
19. In January 1998 [Mr A] and [Ms C] joined us in Addis Ababa, Ethiopia. We restarted our life in Ethiopia and fortunately we were not new to Ethiopian business and we were able to gain our old customers easily. The business went well. Before long in May 1998 war between Eritrea and Ethiopia erupted. All people of Eritrean background were targeted by Ethiopians especially the Tigrays who lived in Addis Ababa. These Tigray people were reporting any Eritrean family or individuals to Ethiopian security elements.
20. The Tigray were used by the authorities to distinguish who is and isn't Eritrean. This is because both Tigray and Eritreans speak Tigrinya. Sometimes when the authorities mistakenly rounded up all Tigray people, the Tigrays would protest and say "we are Ethiopians". The only way to differentiate between Ethiopian Tigrays and Eritrean Tigrays by their way of speaking and the Ethiopian authorities used the Ethiopian Tigrays to identify the Eritreans in order to round them up and deport them.
21. Many Eritreans were collected to be deported including my husband. [Two men] who worked with my husband contacted me through telephone to tell me that [Mr F] was to be deported. I contacted a friend [Mr G] because he knew [Mr F] and because he was a member of the deporting committee. [Mr G] was able to arrange for [Mr F] not to be deported. [Mr G] used his authority to explain that we had left Eritrea because we had been driven out by the Eritrean authorities and that we were good people. [Mr G] advised my husband to move to Tigray province until things were settled and arranged for my husband to live with his parents.
22. Around the time of the deportations we sent [Ms C] to [Country 4] (to join [Ms B]) for further studies so that she would not be placed at risk of being deported to Eritrea and to protect her from being persecuted like us. Our son [Mr A] who was [age deleted: s.431(2)] years old at that time continued to live with us.
23. In July 1998, armed guards came to my home. I was taken by foot. along with some 50 or so other Eritreans to the Bulgarian Embassy area to be deported to Eritrea. Before they took me I left [Mr A] with our Ethiopian maid and I asked her to contact [Mr G] and tell him that I was to be taken to the deportation centre. I believe it was an Ethiopian man who we employed as a guard who informed the authorities we were Eritreans.
24. [Mr G] again cooperated with me and rescued me from deportation and told me not to return to my home. I went to [be with the Ethiopian family] looking after [Mr A] and we lived in

hiding with that family for about two months. I then arranged to rent a house [in another] Area.

25. As things started to settle [Mr F] came back from Tigray region and started our business again. We didn't have any other alternative but to run the business because it was our only means of income. The business continued to go well again. [Mr G] our friend told us frankly that Ethiopian security elements were against us and were trying to find an excuse to deport us to Eritrea. The merchants and competitors who did the same business as us were also making false reports against us to the security department. These Ethiopians had good contacts to the authorities and put pressure on them to investigate us. [Mr G] told us that he couldn't help us anymore because it was beyond his authority. My husband and I tried to avoid any confrontations with our neighbours and other locals but it was a dangerous time for us and other Eritreans.
26. After the war of 1998-2000 between Ethiopia and Eritrea, Eritrean opposition groups like the Eritrean Liberation Front (ELF) Revolutionary-Council opened offices in Addis Ababa. This group started organising and recruiting Eritreans who lived in Ethiopia to fight against the Eritrean Government. The ELF contacted me and I accepted to be a member. The ELF is an opposition party against Eritrean government and it wants to establish a democratic government in Eritrea. My role in the ELF was to organise women's activities and to collect money from female members. Each ELF member paid 5 birr per month membership fee and this money was used to cover expenses like preparing meals for ELF members who travelled from Sudan and other countries to attend meetings held in Addis Ababa. Our house was used for meetings but mostly for hosting members and preparing meals for them.
27. The chairperson of the ELF was Ahmed Nasser and he lived outside of Ethiopia. [The Official] was the person responsible for the Addis Ababa office.
28. Many local Ethiopians, the majority who were Tigray were concerned that too many Eritreans were gathering and meeting in our house. They knew we were Eritreans but didn't know what we were doing so they suspected us of conspiring against the Ethiopian government and of establishing an Eritrean front, they didn't understand we were an Eritrean government opposition group.
29. In Ethiopia in the area where I was living the Ethiopian Tigrays knew I was Eritrean and they were always harassing us. These Ethiopian Tigrays had been deported from Eritrea for being Ethiopian so it was a type of revenge for them to harass us and make life unbearable for us.
30. I would like to explain that life for my family and I was very difficult because we were always being identified and treated as Eritreans. Also, our political activities against the Eritrean government also drew a lot of attention to us. We had many problems with day to day life. For example we had problems dealing with local government authorities. When an Eritrean born person goes to a government office they are required to have an Ethiopian witness to declare that you are Ethiopian and don't do any activities against the government. I was unable to find Ethiopians who were willing to do this for me because they were afraid to be responsible for my actions or be associated with me.
31. For this reason I always had to pay bribes, including for the documents I provided with my visitor visa application to travel to Australia. I didn't physically go to the government offices to get these, instead I would give the mediator 500birr and once everything was ready I would give the other half. Sometimes the payment was 100birr other times 2000birr depending on the position of the person. The mediator would tell me how much I needed to pay and would arrange access to the right people to convince them to get the documents. Often these officials would then come to our home to ask for me more money and if we didn't pay they threatened to report us the higher government authorities or to make big problems for us.

32. In Ethiopia the local people know you are Eritrean if your documents list your place of birth is [Town 1]. Even an Ethiopian person born in [Town 1] will be considered and treated as an Eritrean until they clarify that their parents were born in Ethiopia rather than Eritrea. Only people who have one parent born in Ethiopia can be considered Ethiopian or access the rights of Ethiopian nationals. You must explain your roots to prove you are Ethiopian to get documents. I had to pay bribes to get an Ethiopian identification or documents for my family and I.
33. My son was born in [Town 1] and this is stated on his original Eritrean birth certificate. After we arrived in Ethiopia I got him a false Ethiopian birth certificate saying he was born in Addis Ababa. This was so that he would have fewer problems and because when he started kinder and primary he needed this document. For example the local municipality issues the national identification card and to get this my son needed an Ethiopian birth certificate. Also without an Ethiopian birth certificate he would not be able to go to school or have access to any government documents or rights.
34. My son, like my husband and I identifies as Eritrean, for example when an Egyptian national team came to play in Ethiopia my son was on the Egyptian side because he does not support Ethiopia. At home we speak the Tigrinya language and whenever he goes out and meets friends he prefers to speak Tigrinya. When he was younger if he was asked where he was from (because he was speaking Tigrinya) he would say [Town 1]. Now he has learnt that it is best to pretend he is Ethiopian. This was another reason why we were attacked and targeted around the time of the Ethiopian-Eritrean war in 1998-2000, because everyone identified us as Eritrean.
35. Throughout my son's schooling, whenever he said something about Ethiopia the teachers would try to give his words a political connotation. Especially when my son was immature he would say things that upset the teachers and students. My son heard from television and the things taught at school the negative things that were said about Eritreans. He was young and felt he should challenge the things in the classroom. Because the teachers and students would pick on him we decided to move him from that school. We had to change him from a number of schools for this reason.
36. One time while my son [Mr A] was doing year 8 (he was [age deleted: s.431(2)] years old at the time) he misbehaved in class, The [headmaster] called my husband and I to attend the school. [The headmaster] was known to us because some time ago he used to live in [Town 1]. He said to me "you are from the [family name deleted: s.431(2)] family, your Eritrean, I am surprised you are still in Ethiopia". He meant to say that he was surprised that I had not been deported.
37. I had to move [Mr A] because he was being harassed and because I worried that if he kept having trouble [the headmaster] would arrange for us to be deported. After some time the headmaster called to see why my son was not attending school. One of our workers picked the phone and told him that we were no longer living at the house.
38. Another example of the discrimination against us is if an Eritrean or other foreigner dies in Ethiopia they have to pay a big tax or the family must take the body back to Eritrea. For example there was an ill Eritrean man that the Eritrean community was trying to help up until he died. In our custom if someone dies the group of people make arrangements for the burial and funeral, they call this 'Idir'. Some Ethiopians who knew the man said that even though the deceased was Eritrean he should be buried in Ethiopia and not returned to Eritrea. It was only because the Ethiopians co-operated with us that the deceased was allowed to be buried in Ethiopia. This is very rare.

39. Sometimes if there is a marriage celebration of Ethiopians we may be invited, but generally we do not attend. For example at one such event I met two Ethiopian women. One said to me "why are you still here"? The other woman said maybe I was still in Ethiopia because I was half Ethiopian (one parent born in Ethiopia). This is common, when someone meets you and they know you are Eritrean they stop you and ask, "are you really still here? I didn't know there were any Eritreans left here, you should leave Ethiopia".
40. I speak in Amharic because it is the national language. I can't speak Amharic very well because I studied in Eritrea and we did not consider it our language. If I go to a shopping place and collect the things I want to buy I regularly have problems. When they see my face they don't see me as Ethiopian and will ask me if I am from Harare (because people there look a little bit like me). Ethiopians cannot guess I am Eritrean just from looking at me but any Amharic speaker and especially fellow Tigrinya speakers can identify Eritreans when they hear us speaking in Tigray or Amharic because we speak in a different way. If Ethiopians suspect I am from Eritrea they often verbally abuse me but I can't say anything to them. They often call me 'Shabia', which is the governing party in Eritrea, as a way of saying we know you are Eritrean. I cannot say anything against them because if I say anything against them, they can take physical action, hit me or beat me. No one will stand by my side. If the authorities became involved I will be blamed and punished because I am Eritrean.
41. Other times Eritreans are identified as Oromo ethnicity because they and Eritreans are the two groups that cannot speak Amharic properly. Oromos are also harassed and persecuted in Ethiopia because the Oromos want to secede from Ethiopia and they have their own political problem and are hated by the Ethiopian people and government. It is dangerous for us to be confused with Oromos.
42. In Addis Ababa I believe there is an Eritrean community of perhaps 2000 people. Generally we only get together for events like marriages, deaths or for political meetings but in much smaller groups. It is too dangerous to gather in large groups. We all experience this type of harassment I have described, especially those who are politically active like me.
43. I am afraid that if I return to Ethiopia I will again be detained and imprisoned. Whenever I or other Eritreans have been imprisoned in Ethiopia the first question they ask is if you gave your voice for Eritrean independence. If you say no then they might interrogate you some more. The first time I was imprisoned I answered yes and they kicked and beat me. I told them that the question in the referendum was very simple because the question was whether as Eritreans we wanted independence or slavery, not if I like Ethiopia or Eritrea. The political slogan said that a vote against independence was a vote for slavery.
44. The authorities and government of Ethiopia cannot protect me or my family from the discrimination and persecution we have experienced and that I am afraid to return to. There is no group in Ethiopia who speaks for the rights of Eritreans. The Ethiopian government will make life worse for me if I go to them to complain about the treatment I receive at the hands of the local people or authorities. They will tell me that "you are Eritrean, if you don't like it here we will send you back to Eritrea". This terrifies me because my life will be at risk if I am forced to return to Eritrea.
45. For example, in 2008 we lived in a house in the [Suburb 5] area. Because our house was used by the ELF for hosting some members, it was burned down. The Ethiopian authorities did nothing to help us and it was very clear that we could not rely on them to protect us from the persecution we experience.
46. In Eritrea the political situation is bad and if I was deported there I believe I would be targeted by the authorities because they would be suspicious why after so many years living in Ethiopia I was returning there. I believe that they know that in Ethiopia I have participated

with opposition groups like the ELF. If forced to return to Eritrea the government will torture and kill me. They have enough proof that I am against their undemocratic government.

47. In June 2009, Ethiopian security arrested my husband and I and [imprisoned] us. In my application for a protection visa I incorrectly recorded the date of this imprisonment as June 2008. First they took my husband, and when I went to prison to ask about him one of the guards showed me where he was. While I walked to the place one guard behind me passed the bullet into the chamber of his gun and pretended to shoot and kill me. The second guard warned him not to shoot. Instead of shooting, the guard walked towards me and kicked me on my legs with his boot and slapped my face. The scar from the guard's kick to my leg is still visible. I was then detained and beaten. Once again, the reason for detaining us was because our home always had many Eritreans gathering there. We tried our best to keep the meetings secret but our neighbours complained and the authorities took action against us.
48. The men and the female prisoners were held separately. I was in a very small cell with about 5 other people. It was so small that it was not possible for us to lie down and even to sit it was difficult. There was no toilet, only a bucket. Because of the smell it was very difficult to eat the food they brought to us. I believed that maybe this time I would be killed.
49. In December 2009 my husband and I were able to escape from prison by bribing the guards in [prison]. We told the guard that if we were able to escape I would pay him. After our escape I paid the guard and went to live with [friends] because I could not live in my home as I was worried the guard would keep asking me for money. I went to see our business and the shop had been looted and there were burned pieces of [merchandise] on the floor of the shop.
50. In January 2010 my husband was imprisoned again. I was very worried and contacted my daughter [Ms C] to send me money for food and so that I could make arrangements to leave Ethiopia. I had an Ethiopian passport from the time Eritrea and Ethiopia were one country and I had regularly updated it by paying bribes. Even after I got Eritrean citizenship I didn't return my passport to the Ethiopian authorities.
51. Because my husband had been detained again, I asked my daughter to bring me to Australia. I renewed my passport and collected other official documents by paying bribes. [In] July, 2010 I also paid another bribe to security men at the airport to take me out of the country without the notice of the Ethiopian authorities who might question why an Eritrean like me still holds an Ethiopian passport.
52. After I left Ethiopia, people who knew me started asking around where I was and why and how I left the country. They knew that as an Eritrean usually it is very difficult to leave the country and wanted to know how I could exit from Ethiopia. A lady who used to work with me told me this when I spoke to her over the phone after I arrived in Australia. She told me that she believes members of the Ethiopian Tigray community have reported my absence to the Ethiopian authorities who suspect I am a spy for the Eritrean government.
53. I am very worried about my husband and my son because they are still in Ethiopia facing the daily abuse from the civilian population. In November 2010 my husband was released from prison but the Ethiopian authorities could detain him again at any time because of his activities with the ELF. My husband and son are living somewhere in Addis Ababa. At any time they could be imprisoned by the Ethiopian authorities or deported to Eritrea.
54. I am afraid to go back to Ethiopia because I will be arrested and they will torture me to find out who cooperated with me to allow me to renew my passport and to travel from Ethiopia to Australia. If this happens, the people who cooperated and helped me to leave the country will be endangered.

55. Also, as I have explained I cannot return to Eritrea because I am a member of the ELF opposition party and for this reason alone the government authorities would imprison and kill me.
56. For the reasons I have explained in this statement I am requesting that the Australian government grant me protection.
23. The delegate refused the visa application [in] September 2011.
24. In support of the review application the applicant provided a submission from her representative which summarises the applicant's claims and which addresses the concerns expressed by the delegate in the delegate's decision record. The applicant also provided a medical report from [a Dr] in respect of the applicant and a [separate psychiatric report from another doctor] stating that she is treating the applicant for post-traumatic stress disorder and major depression and describing the applicant's symptoms and medication.
25. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr H]. Tribunal hearing was conducted with the assistance of an interpreter in the Tigrinya and English languages.
26. The applicant was represented in relation to the review by her registered migration agent.
27. The applicant confirmed that she was born in [date deleted: s.431(2)] in [Town 1], Eritrea. She completed 12 years of schooling and married in 1975 soon after finishing school. Her parents are alive and reside in [Town 1]. She has one sister in Australia, [three siblings in other countries] and three other brothers who disappeared in Eritrea. She also has some half siblings on her father's side. She has three children, including a daughter in Australia, a daughter in [Country 2] and a son in Addis Ababa.
28. The Tribunal asked the applicant when she first became politically active. She stated that it was when she was about sixteen and was still at school in Eritrea. Like many students she was involved in opposition politics and supported the Eritrean Liberation Front (ELF). She stated that she first came to the adverse attention of the Eritrean authorities around the time of independence. She stated that there was a referendum in 1993 and after the referendum bad things happened. The applicant told the Tribunal that at that time she and others were interested in independence and their objective was just the independence of Eritrea. She stated that after the referendum she faced problems and was evicted from her home and arrested and she lost her shop, after which she had no choice but to flee to Ethiopia. The Tribunal asked the applicant to describe her arrest in 1993. She stated that it took place in September when the police came to her home and took her away in her night clothes. They took her to the police station and accused her of being an ELF supporter and participating in demonstrations. One police officer tried to force himself on the applicant sexually, but she resisted. She was the sent to [Town 3], where many other demonstrators were detained.
29. The applicant told the Tribunal that her husband came looking for her at the police station and was taken away to [prison] along with three of her brothers. She stated that she still does not know what happened to these brothers.
30. The applicant told the Tribunal that she was held at [Town 3] for two weeks and was treated harshly and hurt, and was released based on the condition that the authorities could contact her at any time.

31. The Tribunal asked the applicant what happened to her husband. She stated that he was released after about ten days, but her brothers were not released and she and husband cannot explain why this was. After the applicant and her husband were released from detention they were told to vacate their house, and then forced to vacate it. They went to the applicant's family home. They also had difficulty with their business which they had run for a long time. The authorities came and told the applicant that she owed the government 21,000 birr and that she had ten days to pay it. As she could not pay this sum, and because it was not a genuine debt, she lost the shop and it was given to someone else.
32. After the closure of her shop the applicant went to Addis Ababa. Her father was worried and wanting the applicant to go to Ethiopia. Her husband went first, leaving in 1997 and the applicant joined him in 1998. She left her children in Eritrea with her family and her daughter [Ms B] subsequently went to [Country 4] to study. Then war broke out. The applicant's husband was detained about three months after the applicant's arrival in Ethiopia in 1998. The intention of the Ethiopian authorities was to deport him back to Eritrea but a friend intervened. Similarly guards came to take the applicant to the Bulgarian Embassy from where Eritrean nationals were being deported from Ethiopia, but the family friend intervened and she was released. The friend '[Mr G]' told the applicant not to go back to her house so she went to stay in other parts of Addis Ababa.
33. According to her evidence the applicant and her husband continued to run their business in their shop and they continued to support the ELF. The Tribunal queried whether it had been wise for the applicant to re-join the ELF after the problems she had experienced. She stated that she did so for her nation and her people. She stated that her ELF activities were mainly just reaching out to people and preparing food and arranging gatherings of women and discussing how they could help their country. She stated that she sometimes hosted women's gatherings in her home.
34. The Tribunal asked the applicant about her house in the [Suburb 5] area. The applicant told the Tribunal that that house had been burnt down. She told the Tribunal that their suspicion is that it was because of their neighbours who were Tigrinya from [Town 1] and who may have witnessed meetings taking place at the applicant's house.
35. The applicant told the Tribunal that her neighbours were deportees from Eritrea, and had queried why the applicant had not been deported back to Eritrea, and treated them with suspicion. The Tribunal put to the applicant that she has citizenship of Ethiopia, as this is indicated on her passport. The applicant stated that this is not the case. She stated that she had kept her old passport which had been made before independence in 1991, although she was supposed to hand it in, and then paid bribes to have it updated including in 2010, although she has no right to Ethiopian citizenship as she is an Eritrean national. Unprompted the applicant handed up copies of the passports of her parents, her sister and her daughter which all indicate that they are or were Eritrean citizens.
36. The Tribunal asked the applicant when she was arrested again. The applicant stated that first her husband was arrested in 2009 without reason, and then when the applicant went to see him a guard took her and pretended he was going to shoot her and slapped her and kicked her. She was also then detained in [prison].
37. The Tribunal asked the applicant what happened to her there. She stated that she was held in a very small room with five people, and that they were unable to move properly. What she mostly remembers is being very scared that she would be killed 'this time' and of being

abused, including verbal abuse that she was from Eritrea. She told the Tribunal that she was held for two weeks. The Tribunal asked the applicant about her husband's experience in detention at this time, and the applicant responded that he had told her very little. The Tribunal noted that, according to her written statement, the applicant had been arrested in June 2009 and not released until December 2009. The applicant stated that this was the period for which her husband was detained and that it was a mistake in respect of her own period of detention. She noted that when her written statement indicated that she had escaped, what was meant was that she had bribed a soldier to get out. She stated that her husband was held for six months.

38. The applicant told the Tribunal that her husband was arrested again a month after his release and was again detained. She stated that it was while he was in prison that she left and came to Australia. She stated that after she came here her husband was released after about four months.
39. The Tribunal questioned the applicant about her passport noting that according to her application form she obtained it on the 'black market' but her written submission indicates that she paid a bribe to have her passport renewed. The applicant stated that a person who has an agency arranged the passport renewal, and the process involved her passport passing through the hands of several people, and she does not know their names. The Tribunal noted that the applicant provided a Certificate of Good Conduct from the Federal Police in support of her visitor visa application. The applicant told the Tribunal that she obtained this herself and that she got it because she has no criminal convictions.
40. The Tribunal asked the applicant whether she had any difficulty departing Ethiopia to come to Australia. She said that she did not, but that she boarded the plane only about ten minutes before departure with the assistance of an official who she had bribed. The Tribunal indicated to the applicant that these arrangements were implausible. The applicant stated that it may seem so but that she had entered into an arrangement which included the renewal of her Ethiopian passport, through to departure and that she paid an initial sum of US\$2,000, and a further sum to exit the country. She stated that the agreement was that when she arrived in Australia the agent she had liaised with would pay the final sum.
41. The Tribunal questioned the applicant about events since she has departed Ethiopia. The applicant stated that the authorities have asked questions about her, and she believes that they know that she is here in Australia. She heard this from a woman who was assisting her.
42. The Tribunal heard evidence from the witness [Mr H]. The witness told the Tribunal that, [the Official] with the Eritrean National Salvation Front living in Ethiopia, had told the applicant to contact him and had told the witness to assist her. The witness told the Tribunal that in Ethiopia the applicant had been active with the ELF.
43. The witness told the Tribunal that he himself has been in Australia since arriving in Australia as a refugee in 1998. He gave evidence about the deportations between Eritrea and Ethiopia after the war, and told the Tribunal that the applicant's account of these matters reflected the truth of what happened at that time. The witness told the Tribunal that deportations are still continuing and that people are taken and dropped at the borderline. He stated that this has happened quite recently and described an incident in which a person disappeared after being dumped at the border of Eritrea and Ethiopia.

44. The Tribunal asked the witness why he thought the applicant would have problems if she went back to Ethiopia. The witness stated that she can't go back because she left there illegally, and is likely to be deported to Eritrea where she is known and will be killed as a known opposition supporter. He stated that [the Official] has assured him that the applicant and her husband are long term activists with the ELF and are at risk. He stated that there are still hostilities between Ethiopia and Eritrea and that significant human rights abuses take place against Eritreans in Ethiopia.
45. The witness agreed with the Tribunal that the mere fact that a person is Eritrean would not be enough to impute a political opinion to them, but the suspicion that a person had a political affiliation in opposition to the Eritrean government especially since the war would do so.

FINDINGS AND REASONS

46. The applicant travelled to Australia on an Ethiopian passport but has claimed that she is a citizen of Eritrea and does not have status as an Ethiopian citizen. This matter was considered by the delegate who found, based on the applicant's Ethiopian passport that the applicant was a citizen of Ethiopia.
47. The Tribunal has also considered this matter carefully, including the documentary evidence before it which includes the applicant's birth and marriage records and her Ethiopian passport. The Tribunal has taken into account the country information set out below.
48. According to 2003 advice to the Immigration and Refugee Board of Canada (IRB) from a consular official at the Embassy of Ethiopia in Ottawa, a passport is sufficient as proof of identity for an Ethiopian re-entering Ethiopia. (Immigration and Refugee Board of Canada 2003, *Ethiopia: Whether a passport will suffice as proof of identity for an Ethiopian citizen to re-enter Ethiopia or whether additional identity documents are required by immigration officials at the Addis Ababa airport*, ETH42082.E, 3 October <http://www.unhcr.org/refworld/country,,IRBC,,ETH,,403dd1f24,0.html> Accessed 19 June 2012) The official qualified the statement by adding that if Ethiopian officials have doubts about the identity of the passport holder, they may ask for additional identification. The IRB was not able to locate additional information to corroborate this advice.
49. The website of the Ethiopian embassy in Washington DC provides information on obtaining a new passport to replace an expired passport. An applicant must provide the expired passport and passport photos. The procedure is the same for replacing a lost passport. (Embassy of Ethiopia Washington DC n.d., *Passport Services*, <http://www.ethiopianembassy.org/ConsularServices/ConsularService.php> Accessed 19 June 2012) In the case of first time passport applications, the applicant must provide copies of their parent's (The website is unclear if one or both parent's passports are needed.) passport and/or a birth certificate authenticated by the Ethiopian Ministry of Foreign Affairs and/or an ID card. (Embassy of Ethiopia Washington DC n.d., *Passport Services*, <http://www.ethiopianembassy.org/ConsularServices/ConsularService.php> Accessed 19 June 2012)
50. The website of the Ethiopian embassy in the United Kingdom indicates that an applicant for a new or renewed passport must also provide documents that "certify their citizenship" and a letter stating they are not citizens of another country. (Embassy of the Federal Democratic Republic of Ethiopia (UK) n.d., *The New or Replacement Passport Application Form*, http://www.ethioembassy.org.uk/consular_services/new_replacement_passport.htm Accessed

19 June 2012) Examples of accepted documents to prove Ethiopian citizenship are given as “ID Cards, Birth Certificates, Driving Licence, etc.”

51. Neither of these websites specifically detail the rights afforded by an Ethiopian passport in terms of residing in Ethiopia. No information could be located outlining procedures for passport applications in Ethiopia itself. Passports remain valid for five years. (Embassy of Ethiopia Washington DC n.d., *Passport Services*, <http://www.ethiopianembassy.org/ConsularServices/ConsularService.php> Accessed 19 June 2012)

Acquiring Ethiopian Nationality

52. Rules concerning the eligibility and process for acquiring Ethiopian citizenship are set out in the *Proclamation on Ethiopian Nationality* (in force from 22 December 2003) which states:

3. Acquisition by Descent

1/ Any person shall be an Ethiopian national by descent where both or either of his parent is Ethiopian. (Proclamation on Ethiopian Nationality, No. 378 of 2003 (Ethiopia), published 23 December <http://www.unhcr.org/refworld/country,,LEGISLATION,ETH,,409100414,0.html> Accessed 14 June 2012)

The meaning of the term “Ethiopian” is not defined in the legislation, particularly where the persons involved were born prior to the declaration of independence of Eritrea (1991). Section 5 sets out the requirements for “foreigners” (The word “foreigner” is defined in the legislation as someone who is not Ethiopian.) to obtain Ethiopian nationality.

5. Conditions to be fulfilled.

A foreigner who applies to acquire Ethiopian nationality by law shall:

- 1/ have attained the age of majority and be legally capable under the Ethiopian law;
- 2/ have established his domicile in Ethiopia and have lived in Ethiopia for a total of at least four years preceding the submission of his application;
- 3/ be able to communicate in any one of the languages of the nation/nationalities of the country;
- 4/ have sufficient and lawful source of income to maintain himself and his family;
- 5/ be a person of good character;
- 6/ have no record of criminal convictions;
- 7/ be able to show that he has been released from his previous nationality or the possibility of obtaining such a release upon the acquisition of Ethiopian nationality or that he is a stateless person; and

8/ be required to take the oath of allegiance stated under Article 12 of this Proclamation. (Proclamation on Ethiopian Nationality, No. 378 of 2003 (Ethiopia), published 23 December <http://www.unhcr.org/refworld/country,,LEGISLATION,ETH,,409100414,0.html> Accessed 14 June 2012)

53. The situation whereby former Ethiopian citizens who acquired Eritrean nationality appears to be covered in Article 22 of the proclamation which sets out the process for regaining Ethiopian citizenship for former nationals who have gained the citizenship of another country:

Re-admission to Ethiopian Nationality

1. A person who was an Ethiopian national and who has acquired foreign nationality by law shall be re-admitted to Ethiopian nationality if he:

- a) returns to domicile in Ethiopia;
- b) renounces his foreign nationality; and
- c) applies to the authority for re-admission.

2. The provisions of Sub-Article (1) of this Article shall also apply to a person who has lost his Ethiopian nationality pursuant to Article 20(2) of this Proclamation. (Proclamation on Ethiopian Nationality, No. 378 of 2003 (Ethiopia), published 23 December <http://www.unhcr.org/refworld/country,,LEGISLATION,ETH,,409100414,0.html> Accessed 14 June 2012)

Article 20 of the Proclamation refers to the loss of Ethiopian citizenship upon the acquisition of another nationality:

20. Loss of Ethiopian Nationality upon Acquisition of Other Nationality

1/ Without prejudice the provisions of Article 19(4) of this Proclamation, any Ethiopian who voluntarily acquires another nationality shall be deemed to have voluntarily renounced his Ethiopian nationality

...

An Ethiopian who acquires, in the absence of his own initiative, another nationality... shall be deemed to have voluntarily renounced his Ethiopian nationality, if he:

- 1. starts exercising the rights conferred to such acquired nationality or
- 2. fails to declare his option to the authority to retain his Ethiopian nationality by renouncing his other nationality within a period of one year. (Proclamation on Ethiopian Nationality, No. 378 of 2003 (Ethiopia), published 23 December <http://www.unhcr.org/refworld/country,,LEGISLATION,ETH,,409100414,0.html> Accessed 14 June 2012)

54. Although the Proclamation repealed the previous *Ethiopian Nationality Law of 1930*, Article 22 of the 2003 legislation contained a provision stating that:

[a]ny person who has retained, until the coming into force of this Proclamation, his Ethiopian nationality pursuant to the former Nationality Law shall continue to be an Ethiopian national. (Proclamation on Ethiopian Nationality, No. 378 of 2003 (Ethiopia), published 23 December
<http://www.unhcr.org/refworld/country,,LEGISLATION,ETH,,409100414,0.html>
Accessed 14 June 2012)

Ethiopian passports for Eritreans

55. In June 2004, the Immigration and Refugee Board of Canada (IRB) conducted a phone interview with a visa officer at the Embassy of Ethiopia in Ottawa. The officer told the IRB that, in general, Ethiopia does not issue passports to Eritreans, however, new regulations allowed Ethiopians of Eritrean descent to be issued Ethiopian passports if:

[T]hey have lived for some time in Ethiopia, but outside Eritrea (i.e. that they have not lived all their life in Eritrea), and if they have never held citizenship in any other country. (Immigration and Refugee Board of Canada 2004, *Ethiopia: Whether the Ethiopian Embassy issues passports to Ethiopians of Eritrean descent, including those who were deported from Ethiopia to Eritrea, and to those who have no identification documents; whether applicants are denied identification documents because of their Eritrean descent*, ETH42741.E, 2 June
<http://www.unhcr.org/refworld/country,,IRBC,,ETH,,41501c072a,0.html> Accessed 14 June 2012)

56. To prove that they were Ethiopian, a passport applicant required “acceptable identification” (including birth and school certificates); an applicant lacking acceptable identification could provide the embassy with details that included “the complete addresses and contact information of relatives in Ethiopia who would be able to verify the identity of the applicant.” (Immigration and Refugee Board of Canada 2004, *Ethiopia: Whether the Ethiopian Embassy issues passports to Ethiopians of Eritrean descent, including those who were deported from Ethiopia to Eritrea, and to those who have no identification documents; whether applicants are denied identification documents because of their Eritrean descent*, ETH42741.E, 2 June
<http://www.unhcr.org/refworld/country,,IRBC,,ETH,,41501c072a,0.html> Accessed 14 June 2012) A different officer interviewed by the IRB on the same date advised that at least two witnesses were needed to verify a passport applicant’s identification and to confirm that they were Ethiopian.
57. A 2008 article from *Refugees International* quotes claims from unnamed sources that “many, perhaps most, Eritreans living in Ethiopia reacquired citizenship under a nationality proclamation enacted in 2003.” (Refugees International 2008, *Ethiopia-Eritrea: Stalemate Takes Toll on Eritreans and Ethiopians of Eritrean Origin*, 30May
<http://www.refugeesinternational.org/policy/field-report/ethiopia-eritrea-stalemate-takes-toll-eritreans-and-ethiopians-eritrean-origin> Accessed 14 June 2012)

Ethiopian Government directive on residency status of Eritreans in Ethiopia

58. On 23 January 2004 the Ethiopian government issued the *Directive Issued to Determine the Residence Status of Eritrean Nationals Residing in Ethiopia* The directive noted that on the

formal achievement of independence by Eritrea in 1993 (Following the end of the Ethiopian Civil War (resulting in victory for the then allies of the Eritrean independence forces) Eritrea declared their independence in 1991. This independence was formally recognised by Ethiopia and the international community in 1993 following a referendum.), persons of Eritrean origin became Eritrean nationals, however, many of these people remained in Ethiopia. Section 2 of the directives notes that:

59. The objective of this Directive is to provide the means to any person of Eritrean origin who was a resident in Ethiopia when Eritrea became an independent State and has continued maintaining permanent residence in Ethiopia up until this Directive is issued to confirm whether he or she has acquired Eritrean nationality, and to determine his or her status of residence in Ethiopia. (*Directive Issued to Determine the Residence Status of Eritrean Nationals Residing in Ethiopia* 2004 (Ethiopia), Published 23 January <http://www.unhcr.org/refworld/country,,LEGISLATION,ETH,,48abd56c0,0.html> Accessed 14 June 2012)
60. Part 2 Section 4 reads:
 - 4.1. A person having an Eritrean passport or any document conferring Eritrean nationality or a person serving the Eritrean Government in a sector reserved exclusively for Eritrean nationals is considered as having Eritrean nationality.
 - 4.2. A person of Eritrean origin who has not opted for Eritrean nationality shall be deemed as having decided to maintain his or her Ethiopian nationality and his or her Ethiopian nationality shall be guaranteed. (*Directive Issued to Determine the Residence Status of Eritrean Nationals Residing in Ethiopia* 2004 (Ethiopia), Published 23 January <http://www.unhcr.org/refworld/country,,LEGISLATION,ETH,,48abd56c0,0.html> Accessed 14 June 2012)
61. Based on the country information set out above together with the applicant's evidence regarding her background and circumstances, the Tribunal finds that she is a national of Ethiopia and therefore for the purposes of the Convention the Tribunal has assessed her claims against Ethiopia as her country of nationality.
62. In determining whether an applicant is entitled to protection in Australia, the Tribunal must first make findings on the claims the applicant has made. This may involve an assessment of the applicant's credibility. In assessing credibility, it is important to be sensitive to the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims. That said, the Tribunal is not required to accept uncritically any or all allegations made by the applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. Moreover the Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvaduri v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547. If the Tribunal makes an adverse finding with confidence in relation to a material claim made by an applicant, but is unable to make a finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true.

63. The Tribunal has considered the applicant's claims to fear persecution for reason of her race, and her actual and imputed political opinion as an active member of the Eritrean opposition including the Eritrean Liberation Front.
64. In respect of the applicant's claims regarding her Eritrean 'race', the Tribunal has taken into account the following law and country information:
65. In *Calado v Minister for Immigration and Multicultural Affairs* (1998) 81 FCR 450, the Federal Court, at 455, made the following observations with respect to the Convention ground of race:

When considering the meaning of the expression "race" in a case such as the present, it is appropriate to take into account the "popular" understanding of the term which accords importance to physical appearance, skin colour and ethnic origin. There can be no single test for the meaning of the expression "race" but the term connotes considerations such as whether the individuals or the group regard themselves and are regarded by others in the community as having a particular historical identity in terms of colour, and national or ethnic origins. Another consideration is whether the characteristics of members of the group are those with which a person is born and which he or she cannot change. These questions are discussed by Brennan J in *The Commonwealth v Tasmania* (1983) 158 CLR 1 at 243-244. At the latter page his Honour said:

"As the people of a group identify themselves and are identified by others as a race by reference to their common history, religion, spiritual beliefs or culture as well as by reference to their biological origins and physical similarities, an indication is given of the scope and purpose of the power granted by par (xxvi). The kinds of benefits that laws might properly confer upon people as members of a race are benefits which tend to protect or foster their common heritage or their common sense of identity. Their genetic inheritance is fixed at birth; the historic, religious, spiritual and cultural heritage are acquired and are susceptible to influences for which a law may provide..."

66. In that case his Honour was concerned with the meaning of the expression "race" in the Australian Constitution which in par (xxvi) confers power on the Commonwealth parliament to make special laws for the people of any race. In interpreting the conferral of a constitutional power it is appropriate that the term should be given a liberal and practical interpretation.
67. The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* also provides some guidance, although it is not definitive: *Chan v MIEA* (1989) 169 CLR 379 at 392, per Mason CJ. It states, at paragraphs 68 and 70:

68. Race, in the present connexion, has to be understood in its widest sense to include all kinds of ethnic groups that are referred to as "races" in common usage. Frequently it will also entail membership of a specific group of common descent forming a minority within a larger population. Discrimination for reasons of race has found world-wide condemnation as one of the most striking violations of human rights. Racial discrimination, therefore, represents an important element in determining the existence of persecution.

70. The mere fact of belonging to a certain racial group will normally not be enough to substantiate a claim for refugee status. There may, however, be situations where,

due to particular circumstances affecting the group, such membership will itself be sufficient ground to fear persecution.

68. The discussion of the Convention ground of “race” in both the *Handbook* and the Federal Court’s decision in *Calado* emphasise the broad nature of that term.
69. The Thomas report, at p.6, explains that there are competing views on the question of whether Eritreans constitute a race or just a nationality:

The question of whether ‘Eritrean’ should properly be referred to as an ethnicity or as a nationality is also complicated. Eritrea is made up of nine different ethnicities, and the dominant Tigrinya group in Eritrea, in fact, share many ‘ethnic’ characteristics with the Tigrayans of northern Ethiopia. Eritrea is a nation state containing these ethnic groups and so Eritrean should properly be called a nationality rather than an ethnicity. However, within Ethiopia, the term *gossa* is used to refer to the different ethnic ‘nationalities’ which make up Ethiopia; what western discourse might see as ‘ethnic’ groups. Ethiopians interviewed in Cairo told me that they see ‘Eritrean’ as a *gossa* in the same way as ‘Amhara’ or ‘Oromo’. When questioned whether they saw Eritreans as biologically different from Ethiopians, they affirmed that they did. This reinforces the evidence collected from testimonies, which reveals that parentage and blood relations have determined judgements of who is and who is not Eritrean far more than has formal possession of the nationality of either Eritrea or Ethiopia. It is therefore important to remember that, because at least some Ethiopians seem to believe that Eritreans form a separate ethnic group, it cannot be ruled out that Eritreans and people from mixed families have suffered persecution on the grounds of imputed ethnicity.

70. Based on the above the Tribunal considers that the applicant is likely to have been perceived in Ethiopia as being of a discrete Eritrean ethnicity.
71. The Tribunal is of the view that persecution on the grounds of imputed race can bring a claim within the scope of the Convention, even if that perception is mistaken, as it is well established that this can occur with respect, for example, in the case of other Convention grounds. The High Court has held that persecution may occur for perceived political opinion or perceived membership of a particular social group: see, for example, *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 at 416 per Gaudron J and at 433 per McHugh J. The Full Federal Court in *WALT v Minister for Immigration and Multicultural Affairs* [2007] FCAFC 2 (Mansfield, Jacobson & Siopsis JJ, 22 January 2007 stated at [38] that there was no apparent reason in principle why persecution could not occur for imputed religious beliefs, as well as for imputed political beliefs or imputed membership of a particular social group. In *Ram v Minister for Immigration and Ethnic Affairs* (1995) 57 FCR 565, Burchett J stated at 568-9:

People are persecuted for something perceived about them or attributed to them by their persecutors...In this area, perception is important. A social group may be identified, in a particular case, by the perceptions of its persecutors rather than by the reality. The words “persecuted for reasons of” look to their motives and attitudes, and a victim may be persecuted for reasons of race or social group, to which they think he belongs, even if in truth they are mistaken.

72. Similarly, in *Saliba v Minister for Immigration and Multicultural Affairs* (1998) 89 FCR 38, the Court held at 49. :

... for Convention purposes, a claimant's political opinion need not be expressed outright. It may be enough that a political opinion can be perceived from the claimant's actions or is ascribed to the claimant, even if the claimant does not actually hold the imputed opinion.

73. The Tribunal therefore finds that the applicant's claims bring her within the scope of the Convention ground of race. The Tribunal accepts that the applicant fears persecution in Ethiopia for the Convention reasons of her race and her actual and imputed political opinion. The Tribunal also considers that the applicant's Eritrean background when considered in the context of her political activities and affiliations would have been likely to contribute to an imputation of a political opinion to her by the Ethiopian authorities.

74. The Forced Migration and Refugee Studies Program of the American University in Cairo's Working Paper No.7 entitled *Refugees and Asylum Seekers from Mixed Eritrean-Ethiopian Families in Cairo – 'The son of a snake is a snake'*, written by Louise Thomas (the Thomas report). The Thomas report was published in June 2006 <http://www.aucegypt.edu/ResearchatAUC/rc/fmrs/reports/Pages/default.aspx> and includes the following information relevant to the issue of whether people of mixed Ethiopian-Eritrean parentage face difficulties in Ethiopia:

6.5 Persecution in Eritrea and Ethiopia since the end of the war

The situation between Eritrea and Ethiopia is currently one of 'no peace, no war' and at the time of writing there is little evidence to suggest that much progress is being made towards a normalisation of relations between the two countries. The testimonies of refugees who have been in Ethiopia or Eritrea since the cessation of hostilities in 2000, and of those who have family members remaining in either country, indicate that the situation there for people of mixed parentage remains precarious, and has in some ways got worse since the end of the war. Government persecution does seem to have lessened, and deportations have largely ceased. However, while relations between Eritrea and Ethiopia remain so hostile, people from mixed families, especially those who evaded deportation during the war, and those returning from abroad, are still likely to be suspected of spying for the 'enemy' government. Importantly, many participants reported an increase in social hostility after the end of the war, and particularly after the names and numbers of soldiers killed in the war became known. As one participant explains, 'People's attitudes will not change in less than a century. Propaganda was necessary at the beginning of the war in order to gain people's support. Now hatred has been instilled on both sides and this will not go away, even with a change in government. It has gone too deep.'

6.5.1 Persecution in Ethiopia since the end of the war

6.5.1.1 Government persecution in Ethiopia since the end of the war

Five of the participants have been arrested in Ethiopia since the end of the war in 2000 on account of their family connections with Eritrea. Brief summaries of their experiences are below.

Having escaped deportation to Eritrea in 1998 MM, an Ethiopian with an Eritrean father, was arrested again in 2003 and beaten and threatened with death unless he admitted to being an Eritrean spy. 'They put a pistol to my head and told me that they would not beat me like before, but that they would shoot me this time. The

face of the man was very cruel and I could tell that he was not afraid to do it. I was sure that he was going to die this time. Then they beat me with the butt of the gun, kept me for five hours and then released me.'

The Ethiopian authorities had attempted to deport HTT to Eritrea in 1999 but she had been turned back at the border by the Eritrean authorities and imprisoned again in Ethiopia before being released after severe torture. In 2003 she was at the home of a friend when another friend told her that the police were looking for her. She went into hiding and escaped to Sudan. After arriving in Cairo in 2005 she learned that her brother had been arrested and taken to prison accused of being a member of the Eritrean Development Association, and that the authorities were arresting other people with Eritrean connections in her community.

KAG, an Ethiopian woman, was harassed and raped by security officials between 2001 and 2004, and finally arrested because she was married to an Eritrean man who had been deported. She was accused of collaborating with her husband and supporting the EPLF. The specific implications of the vulnerability of this participant to sexual abuse is explained further in Paragraph 6.7.

SZT is an Ethiopian whose Eritrean father was deported during the war. She was arrested in 2003 along with five other Eritreans. She was kept in a cell for five days. The others arrested with her were taken for questioning but she was not. Her mother paid for her to be released from prison.

In 2002 YMK was arrested in Egypt where she had been living since 1993, and was deported to Ethiopia. Her Eritrean father had been deported from Ethiopia to Eritrea in August 1998 and later died as a result of the harsh journey. Her brothers and sisters were living in hiding in Ethiopia, afraid of deportation or arrest. Upon arrival in Ethiopia in 2002, security officials at the airport searched her luggage and discovered a letter from her Eritrean father. She was arrested and detained and beaten for five days, accused of being a spy for Eritrea. She was eventually released on conditions and her passport was confiscated. She tried to apply for a *kebele* ID card but the officials at the *kebele* told her that 'the son of a snake is a snake' and refused her a card. After several months during which she lived in hiding with the rest of her family she was arrested again, and this time detained and beaten for seven days. When she was released, her family helped her to obtain documents to escape to Egypt again.

These testimonies indicate that the Ethiopian authorities have continued persecuting people from mixed families since the end of the war in 2000. In fact, 11 of the 20 participants from Ethiopia left Ethiopia since the end of the war for reasons directly or indirectly related to their being from mixed families. While Eritrea and Ethiopia remain effectively enemies, people in Ethiopia with family connections with Eritrea will remain vulnerable to suspicion of collaboration and disloyalty.

6.5.1.2 Social harassment in Ethiopia since the end of the war

Participants present in Ethiopia after the end of the war have reported that social harassment and exclusion did not end with the war, and in fact got worse. As the full extent of the damage caused by the war and the names of casualties were published, people from mixed families became increasingly isolated and vulnerable.

75. The applicant has provided oral evidence to the Tribunal which remained consistent in its detail with her original statement of claims. Where inconsistencies arose, the applicant explained them. Her evidence is also consistent with independent country information before the Tribunal in respect of the recent history of Eritrea and Ethiopia.

76. The Tribunal found the applicant to be a credible witness who has described in great detail the circumstances and events which have given rise to her fear of persecution should she return to Ethiopia.
77. In respect of the applicant's evidence of past harm inflicted on her, her evidence is supported by the medical report of [her Dr] which reports physical findings consistent with an episode of described assault and also that the applicant is severely psychologically impaired. It is also supported by the report of [the] (Psychiatry Registrar) which states that the applicant has been treated for post-traumatic stress disorder and major depression, and when assessed reported constant anxiety, hyper-vigilance, flashbacks and nightmares related to traumatic experienced in Ethiopia and Eritrea, poor sleep, poor appetite, depressed mood, difficulties with concentration and limited coping strategies. The Tribunal gives significant weight to these reports.
78. On a consideration of the evidence before it, considered as a whole, the Tribunal accepts that the applicant was arrested and detained in Ethiopia on several occasions as she has claimed and that she was abused and beaten in detention. The applicant claims that she is fearful of future persecution for reasons of her race and her political opinion if she returns to Ethiopia.
79. The Tribunal finds that the harm which the applicant fears should she return to Eritrea, being arrest as political dissident, detention, interrogation and potential deportation to Eritrea amounts to persecution within the meaning of the Convention definition. Looking to the future, although past events are not a certain guide to the future, nevertheless a determination of what is likely to occur in the future will require findings as to what has occurred in the past because what has occurred in the past is likely to be the most reliable guide as to what will happen in the future. (*MIEA v Guo* (1997) 191 CLR 559 at 575).
80. Given the Tribunal's findings in respect to the applicant's claims and in the context of the country information before Tribunal as set out above, the Tribunal finds that there is a real chance of the applicant experiencing serious harm for a Convention reason should she return to Ethiopia now or in the reasonably foreseeable future. On the basis of the evidence before it and in a consideration of independent country information, the Tribunal is satisfied that the applicant's actual and imputed political opinion are the essential and significant reasons for the applicant's fear of persecution. It accepts that the persecution feared, including arrest and detention by the Ethiopian authorities for reason of her membership of the ELF and her political opinion and activities, would involve serious harm to the applicant and would amount to systematic and discriminatory conduct.
81. The Tribunal has considered whether it would be reasonable for the applicant to relocate to another part of Ethiopia where she would be free from the harm that she fears. Because the persecution is not localised, the Tribunal considers that there is no part of Ethiopia to which the applicant could reasonably be expected to relocate where she would be safe from persecution.
82. The Tribunal has considered the applicant's right to enter and reside in Eritrea, where she was born. However because the Tribunal has found that the applicant is an Ethiopian national, it also finds that she does not have legally enforceable right to reside in Eritrea. The Tribunal therefore finds that she has no legally enforceable right to enter and reside in any other country apart from her country of nationality. The applicant is therefore not excluded from Australia's protection by s.36(3) of the Act. It follows that the Tribunal is satisfied that the

applicant is a person to whom Australia has protection obligations under the Refugees Convention.

CONCLUSIONS

83. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

84. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.