

1009404 [2011] RRTA 281 (12 April 2011)

DECISION RECORD

RRT CASE NUMBER: 1009404

DIAC REFERENCE(S): CLF2010/53279

COUNTRY OF REFERENCE: Ethiopia

TRIBUNAL MEMBER: Patricia Leehy

DATE: 12 April 2011

PLACE OF DECISION: Sydney

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 and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Ethiopia, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] February 2010 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] April 2010. The delegate decided to refuse to grant the visa [in] October 2010 and notified the applicant of the decision and her review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] October 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

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

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

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

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's 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.
20. The applicant appeared before the Tribunal [in] January 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Amharic and English languages.

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21. According to her Protection Visa application, the applicant is a single woman who was born [in] Ethiopia, on [date deleted]. She says she is Christian. The applicant gives no information about family members. She says that she lived in [town deleted] until September 2005 and that since then she has lived [in Country 1]. She attended high school in Ethiopia. She says that from September 2005 until her departure for Australia she [vocation deleted] and received a salary for it.
22. The applicant claims she ran away from Ethiopia because of a fear of persecution for her political opinion. She says that the current government police force sexually abused and assaulted her. They tortured and mistreated her in prison because of her involvement with the main opposition party at the time, the CUD. She was a high school student in 2005 and also a Committee Member of the Student Association. In the elections in May 2005 the applicant played a major role in organising students in Addis Ababa to take part in the largest ever public demonstration in that city. There were three demonstrations held before and after the election as the government rigged the election. The army secret service and police killed many people including students, and arrested thousands. The applicant escaped unharmed and organised her escape. She was assisted by her godmother whose sister lives in [Country 1], where she managed to flee safely. The sister then said that she would no longer help the applicant but she would help her if she found an opportunity for education in another country.
23. The applicant applied successfully to study language in Sydney and she was granted a visa for a short time. When the visa expires she has nowhere to go because she fears persecution in her country. She says she was attacked by a group from the Ethiopian government's foreign mission in a [street].
24. The applicant says that her parents are dead. Her father was killed by the security forces of the EPRDF government because of his membership of the CUD, along with her brother and sister. The security forces destroyed, looted and burnt down her parents' home and belongings. The applicant was left alone, depressed and suffering emotionally because of the deaths of her father and siblings.

25. The applicant says that she fears she may be imprisoned or killed by the government security forces because of her record of involvement in the organisation of the political uprising of students. She would not be given a free and fair verdict in the justice system in Ethiopia.
26. The applicant says that the authorities will not protect her. Instead the government secret service and its police may rape her again, as animosity is rising high since the opposition leader Ms Birtukan Medeksa has been imprisoned. She says that the government has displayed the applicant's pictures all over the country at checkpoints.
27. The applicant applied for assistance under the ASA scheme and was granted it. Supporting documents for this application included a letter from [Agency A] stating that the applicant reported a range of signs and symptoms associated with posttraumatic stress. As a consequence of these symptoms, the applicant was not capable of undertaking paid employment.
28. The applicant attended an interview with a Departmental officer [in] July 2010. The applicant submitted a report from [company deleted] recommending an orthopaedic review because of a possible fibroma or bone cyst. Information provided by the applicant at her interview is summarised below:
 - The applicant told her story to a friend who wrote it for her in her Protection Visa application and since she can read English she believes the information in the application is accurate;
 - The applicant is of Amhara ethnicity and is Christian;
 - The applicant's passport is legal and she had no problems obtaining it;
 - In [Country 1], the applicant was living with her godmother's sister; she was not working but was helping with the children in the family;
 - The applicant lived in Addis Ababa in Ethiopia; she always lived in the same place up to 2005; she moved there in 1993; she did not work in Addis Ababa; she went to school from the age of 5 until she stopped going to school in year 10 in 2005; she discontinued her study for three years from [ages deleted]; the applicant continued going to school at [age deleted];
 - The applicant became a member of a political party and began working for them;
 - The applicant has no family in Ethiopia; her mother died when she was a child; her father was assassinated [in] May 2005; both her brother and sister were killed [in] June 2005;
 - When asked whether she was present when her family members were killed, she said that she was in Nazret with her grandmother; she was arrested [in] March and released [in] April and then moved to Nazret; she stayed there until she moved to [Country 1];
 - The applicant was involved with the CUD party; when asked what CUD stood for, she said that it was the Coalition for Unity and Democracy; she said she became a member in 2005 between January and February;

- The applicant decided to become a member of the party because she did not support the government, and the CUD stood for democracy and human rights and equality;
- She had not been involved in any political party previously;
- The CUD issued a membership card, but she did not bring it to Australia;
- When asked when the CUD party was formed, the applicant said she did not remember the exact date; when asked the year it was formed, she said she did not remember; she said that the government allowed political parties to be formed; she thought this was in 2004;
- When asked whether other family members had ever been involved in politics, she said her father had supported the CUD through his [business]; her father had probably been involved about a year before the applicant;
- When asked whether her father held any position within the party, the applicant said his role was to deal with the merchants and collect money for the party; apart from collecting money, the applicant did not remember whether he did anything else;
- When asked what activities for the party she had been involved in, the applicant said that mainly she dealt with students; she would distribute pamphlets to them; when asked the content of the pamphlets, the applicant said that they were to recruit youth to the CUD; when asked what the pamphlets actually said, the applicant said that the content was that the government was not in the interests of the people or meeting their needs, but if they supported the CUD they would provide a prosperous future for people;
- The applicant said that after she stopped school in [date deleted], she was still involved with the students; it was put to her that she had given the impression she was still at school when she joined the party; she said that this was so;
- When asked about her involvement in other activities on behalf of the CUD, the applicant said that she participated in delivering secret letters to people in the suburbs; when asked what was in the letters, she said that they were secret;
- When asked whether she went to party meetings, she said that she did; she was asked how many meetings she attended; she said she went three times a month; she said that she went to demonstrations twice in the Addis area;
- When asked the name of the current chairman of the CUD, she said that she did not know;
- It was put to the applicant that the CUD was a coalition, and was asked who the parties were who made up the CUD; she said that there were five parties; Medrak, United, Orinoan People's Party, Amhara Development, Amhara People's United Party;

- The applicant was asked whether she was affiliated with one of these parties; she said that she was only involved with the CUD;
- The applicant was asked whether she participated in any election campaigning on behalf of the CUD; she said that she did; she distributed pamphlets and delivered mail as part of the campaign; when asked when she started to do this she said it was in Addis in February 2005; she was asked whether she continued doing this, she said that she was until she was gaoled [in] March; she was kept until [a date in] April;
- She was asked what she was doing when she was arrested; she said it was Saturday and she and other youth members went to the church to pray; they were discussing a program to distribute pamphlets; other people were arrested at the same time, but some escaped;
- The church program was organised by the CUD through the students' superiors;
- When the applicant was in detention, there was torture and sexual assault;
- When asked whether she was ever charged, she said that she was not, they were just using their authority to torture and assault;
- When asked whether she had any other involvement after her release, the applicant said she was in pain from her leg; they were given a warning that they would receive severe and painful punishment;
- When asked about medical treatment, the applicant said that she was just treated by traditional medicine;
- The applicant was asked whether she voted in the elections in 2005, she said that she did not; she was asked whether she was interested in the outcome and in what happened during and after the elections, she said that she was; she was asked what happened in the 2005 elections, and said that CUD won only in Addis Ababa city, and the government said that in the rest of the country the government won, but this was not true;
- When asked whether the applicant was still in touch with the CUD at this time, she said that no-one knew where she was;
- When asked how she found out what happened to her family, the applicant said that her godmother told her, having heard it from neighbours;
- She said that it was the government police who were responsible for the deaths of her family members;
- When asked when she left she said it was [in] September 2005; she has not returned since;
- When asked whether she continued to support the CUD in [Country 1], the applicant said that there were CUD members who came there for fund-raising and medical treatment, and she would meet them;

- She was asked whether she continued to follow what was happening to the CUD in Ethiopia she said that she did; she was asked what had happened and said that the leader was arrested and others were also arrested; they are diminished in number;
- When asked whether the coalition still exists in Ethiopia, she said that they have changed the name now and it is called the UDJ; she thought the leader was a woman; she was asked whether she supported the CUD or the UDJ and said she supported the UDJ;
- The applicant was asked how she supported the UDJ in [Country 1] and Australia; she said that in Australia she has done nothing; but in [Country 1] when CUD members came there she participated in discussions;
- The applicant was asked whether she had considered approaching the UNHCR in [Country 1]; she said that she had not; she had not known she could do this;
- The applicant was asked whether she had any further problems when she was living in Nazret; she said that she was very careful and did not go out; they had distributed a lot of photos of the youth supporters; she only went to Addis to get a passport;
- When asked whether she had problems leaving Addis Ababa, she said that her godmother paid money to the person who puts a seal on the exit visa; the applicant did not know what her godmother had paid;
- When asked why she came to Australia in February 2010, she said that she came to study;
- She was asked why she could not continue to live in [Country 1], and said that there were some problems; there were some pro-government groups in [Country 1] and there were clashes; her godmother's sister with whom she lived planned to move back to Ethiopia and the applicant had nowhere to go;
- The applicant was asked to explain who the pro-government groups in [Country 1] were; she said that they were Ethiopian government personnel, and her relative was very concerned she might bring trouble to her;
- When asked about the nature of the clashes, the applicant said she suffered verbal abuse; when asked whether she experienced anything further, she said that the police were quick to interfere and stop their intended violence; this happened in about November 2009;
- When asked what she feared if she went back to Ethiopia, the applicant said that they would imprison and torture her and she knows that they have killed all her family members; this could happen to her;
- When asked why this would happen, she said that the police are like animals; they have destroyed everything; when asked again why they have done this, she said it was because they were supporters of the opposition;

- When asked whether she would continue to support the opposition party in Ethiopia, the applicant said that she would; she would do anything she could to support them;
- When asked why the authorities would continue to be interested in her after five years absence, the applicant said that they know what family she belongs to and who she was supporting;
- When asked whether she feared returning to Ethiopia for any other reason, she said that she was having a lot of mental health problems and was very depressed; she did not want to think about any further reasons.

29. The applicant travelled to Australia on an Ethiopian passport issued in August 2005. She remained in [Country 1] for five years before coming to Australia.

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30. The applicant submitted no additional information with her review application to the Tribunal. [In] November 2010, the applicant submitted a statement giving details of the persecution she claims to have suffered in her home country.

31. Her claims are summarised below:

- She was unlawfully imprisoned without a court decision;
- She was forced to walk on gravel on her knee and sustained severe damage to it;
- She was not allowed hospital access for treatment of her knee;
- Access to her by relatives, friends and the Red Cross was not allowed;
- She was given very little food and water; she was not permitted to use a bathroom whether for showering or toileting;
- She was imprisoned in a small cell with 24 other people;
- She was raped at gunpoint by investigating officers from the security force, and this was very traumatising and shocking for her; she suffers from emotional stress and depression;
- She suffered persecution when in the hands of the EPRDF government security forces because of her political opinion and participation in political activity;
- The applicant lost her loved ones including her father and two siblings to the Ethiopian security forces; her belongings and the property of her parents were confiscated or destroyed;
- The applicant is still listed as a wanted fugitive against whom the death penalty was imposed in absentia;

- She would be targeted for revenge at the hands of the police if she returned to Ethiopia;
- While in [Country 1] the applicant continued her activity as a member of the CUD; she was in phone communication with difference branches of her party and recruited new members in [Country 1];
- She aimed to form a support group for the CUD in [Country 1]; while trying to recruit new members she was targeted by “Ethiopian government foreign mission organised gang attacks”; they were believed to be from the EPRDF foreign mission;
- The applicant decided to apply to study in Australia because she believed that it was the most peaceful and safe country for her.

32. [In] November 2010 the Tribunal received a letter dated [on an earlier date in] November 2010 from [Mr A], [an official] of the Australian Ethiopian Community Good Family Welfare Association. In the letter [Mr A] states that the applicant has been known to him since April 2010. He says that she has been doing various voluntary activities in their community and that she is honest and trustworthy, admired by [Mr A] and his colleagues. He says that the applicant has indicated that she has some anxieties about her current status as a refugee applicant, and that the association has been doing its best to support her by providing general counselling using their community volunteers. He says that they will refer her to access to professional counselling.
33. [On a further date in] November the Tribunal received a letter dated [in] November 2010 from [name deleted], Church Council Chairperson for [church deleted], stating that the applicant actively participates in his church, and always attends all church services. She has established a close relationship with the church and the community and is involved in voluntary activities.
34. [In] January 2011, the Tribunal received a letter dated [the previous day] and signed by [Mr A and Mr B], [officials] of the Australian Ethiopian Community Good Family Welfare Association (AECGFWA). In the letter, the writers says that the applicant presented herself to the organisation in March 2010. Since then she has been involved on a voluntary basis in welfare activities such as helping the elderly and mothers. She told the organisation that she had left Ethiopia because of political unrest and persecution after her involvement with the political opposition during the 2005 general elections. The applicant has a strong fear of returning to Ethiopia and believes she will be mistreated by the authorities. The writers say that the applicant needs emotional, psychological and physical support because of her stress and anxiety relating to her fear of returning to Ethiopia. They say that “she has sleeping and eating disorder and desperately needs ongoing counselling” The writers says that they have found the applicant to be honest, trustworthy and decent as a member of their association and have received reports indicating that she is dependable and trustworthy. The writers says that their organisation will continue to support the applicant, who has the potential to be a good citizen.
35. [In] January 2011, the Tribunal also received a letter from [name deleted], who is the State Member for [electorate deleted]. In his letter, [name deleted] says that he met the applicant in the company of [Mr A], of the AECGFWA, and that [Mr A] and his Association are very

supportive of the applicant and believe her to be a very honest person, and accept her history in Ethiopia. He asks for a sympathetic consideration of the applicant's claims.

36. The applicant attended a Tribunal hearing [in] January 2011. She brought her Ethiopian passport, issued in August 2005, to the hearing. There were numerous visa stamps in the passport relating to [Country 1]. The first [Country 1] visa was issued in Cairo. Thereafter there were several visa extensions, the more recent indicating that she was permitted to remain in [Country 1], accompanied by her boss.
37. The applicant brought witnesses to the hearing. They were [Mr A] and [Mr B] from the AECGFWA, and [Ms C], a deacon at the applicant's church. All came to Australia in the late 1990s. [Mr B] and [Ms C] had returned to Ethiopia for a visit in the past two years.
38. At the hearing, the applicant gave the following relevant information up to the adjournment of the hearing to a later date:
 - The applicant has attended psychological counselling on only one occasion since she came to Australia; this was some months ago; she is not currently on medication for her stress and anxiety;
 - When asked what she feared if she returned to Ethiopia, the applicant said that she would be killed; this would happen because she was a member of the opposition party, and she was previously imprisoned and tortured;
 - When asked who would harm her, she said that it was the present government who would kill her; they would kill her as soon as she arrived;
 - When asked why they would kill her as soon as she arrived, she said it was because she left the country illegally; she said that when she was released from prison she was given a strong warning, that she should not be part of any opposition activity in future;
 - The applicant was asked whether she had in fact engaged in any further political activity in Ethiopia, and said that she had not done so; she had gone immediately to Nazret; she then went to [Country 1] to stay with her godmother's sister;
 - It was put to the applicant that she did not engage in any political activity in [Country 1]; she said that she did; there were members of the party in [Country 1] and she was involved in meetings and other activities;
 - The applicant was asked whether she had any trouble obtaining a passport, and said that she had no problems; it was put to her that it was surprising that she was able to get a passport so soon after being released from prison; she then said that her godmother had to pay a bribe to get the passport; when asked whether she knew anything more about how she obtained the passport, she said she did not;
 - It was put to the applicant that her [Country 1] visa was issued in Cairo; she said this was so; she was asked why it was issued in Cairo, and she said that the passport was sent to her godmother's sister and she arranged the visa; the applicant has never been to Cairo; she went directly to [Country 1] where she stayed until she came to Australia;

- The applicant was asked whether she could stay in [Country 1] indefinitely, given that they had already extended her [visa] on several occasions; she said that she could only stay there as long as her godmother's sister was living there; she was employed by an international organisation, [details deleted]; she is still employed by [details deleted] but now lives in Addis, Ethiopia;
- The applicant said that she lived with her godmother's sister in [Country 1] and looked after her children; she knew her before she went to [Country 1]; the godmother's sister is not political, and does not support either side.

39. The applicant asked and was granted a short adjournment. On resumption, the applicant gave the following information:

- The applicant was born in Nazret, but moved to Addis when she was [age deleted]: she moved with her father, brother and sister; her mother had died when she was younger;
- It was put to the applicant that she had said in her application form that she went to [City 2] high school; [City 2] is not in Addis Ababa; the applicant said it was about [distance deleted] from Addis; she was asked whether she lived there to do her high school study; she said she only went there for one year; she was asked why she went to a school so far away; she said that it was because of a health problem; her father understood this and sent her away for her health; she was asked what her health problem was, and said that in Addis it is very cold, but it is much warmer in [City 2], so her father sent her there; she was [age deleted] when she was there; she agreed that this might have been about 1999;
- The applicant was asked what year of high school she was doing in [City 2]; she said it was Year 8; she was asked whether she went to school when she came back to Addis; she said that she discontinued for a while, and then went to school in Addis; she was asked why she stayed away from school; she said it took some time to find a new school; she was asked how long she stayed away from school, and said it was two years; it was put to her that it would not take this long to find a new school; when she did not respond, it was put to her that she was being asked these questions because she had claimed to be a student activist, and it was important for the Tribunal to understand where and when she went to high school and what she did there; in addition, she had said in her application that she had studied to Year 10 at [City 2] high school, but now said that she was there for only one year, Year 8;
- The applicant was asked again where she went to high school; she said that she started Year 9 in Addis after a two year break from school; she was asked to explain why she had a two year break; she said she was not feeling well, and stayed home; she was asked whether she was not feeling well for two years; she said that was so; she was reminded that it was important to tell the truth;
- The applicant confirmed that she did Year 9 in Addis in [year deleted], and then did Year 10 [the following year]; she was asked whether she went beyond Year 10, and she said that she did; she went on to do Year 12;

- It was put to the applicant that at her interview she had said that she studied up to Year 10, and she also said this in her application; she was asked what in fact happened; she said that she was telling the truth; she went to [City 2] for Year 8, then took two years off; she then did Year 9 in Addis in [year deleted], and Year 10 [the following year]; she said that she took a year off after [year deleted], then did Year 11 in [year deleted], and Year 12 [the following year];
- The applicant was asked whether she had any educational records; she said that they had all been destroyed in Ethiopia; she did not submit any educational records when she applied for a student visa;
- The applicant said that she attended the same high school in Addis, the [name deleted] primary and secondary school; she got a certificate when she finished Year 12 but she has not got it and cannot get it because the house was destroyed when her father died; she was asked whether she went to Nazret without any documents; she said that when she was released from gaol she did not have anything or take anything;
- It was put to the applicant that she was quite adult by the time she did Year 12, in that she was [age deleted]; she said that there is no age limit on school attendance; she was asked whether her fellow students were her age; she said about half were younger and some older;
- The applicant said that both her brother and sister, who are older than she is, were CUD supporters; her brother engaged with youth in his area and her sister, who attended [university deleted], also worked with students;
- The applicant was asked whether they were actual members of the CUD and she said that they were; she was asked how long they had been members of the CUD, and she said that she could not remember how long but they were there since its inception;
- The applicant asked for and was granted a ten minutes adjournment.

40. After the adjournment the applicant asked for the hearing to be postponed because she was very distressed and disturbed and was not functioning mentally. She said that since her application had been rejected she had been very stressed, and she had sought an appointment with a counsellor. However, she was told she was not able to get an appointment immediately. The applicant said that her own GP had referred her to a psychologist, and an appointment had been made for her [in] January 2011. It was agreed that the hearing would be postponed until a psychologist's report was received. The applicant gave the Tribunal a letter from her GP which consisted of a referral form to a psychology service. She was asked to give the Tribunal a letter from her GP stating that she had been referred to a psychologist and describing her current condition. This would need to be submitted to the Tribunal by [a date in] January 2011. The applicant agreed that the Tribunal discuss her condition with her GP, [name deleted].
41. All the applicant's witnesses, when invited, said they wished to make a comment. All stated that the applicant had difficulty in remembering things and sometimes found it hard to concentrate. She seemed to have great difficulty with past memories. She appeared to have emotional and psychological problems, and they in the association had tried to arrange

professional counselling for her, but the waiting list was very long. All agreed that the applicant is a very honest and helpful person. She is very shy and silent. [Ms C] and [Mr B] said that they found the situation in Ethiopia very bad when they visited there. [Mr B] said that people have no right to comment on what is going on in Ethiopia, and those who do are taken away and not seen again. [Ms C] said that when she was there 4 months ago she saw students imprisoned and living in appalling conditions. She said that now students and workers must support the government or they cannot be employed or continue to study.

42. [In] January 2011, the Tribunal wrote to the applicant, asking her to request her GP to write to the Tribunal about her emotional and psychological condition and his reasons for referring her to a psychologist. She was also asked to submit the psychologist's report after her meeting with this person [two days later], together with his/her opinion on her capacity to give evidence at a Tribunal hearing. She was also advised that the Tribunal would find it helpful to take evidence from her godmother or her godmother's sister, either orally by way of a phone call, or by way of a written statement about her experiences in Ethiopia and [Country 1].
43. [In] January 2011, the Tribunal received from the applicant a letter giving the name and telephone number of her godmother in Ethiopia. She attached to her letter a letter dated [on an earlier date in] January 2011 from [Mr D], psychologist. In his letter he says that he had one session with the applicant [in] January 2011 and made a referral for the applicant to [Agency A]. He says that he will continue to see her for treatment of her Post Traumatic Stress Disorder for a further 11 sessions. He says that the applicant is able to function with day to day tasks, but prefers to isolate herself from others "due to concentration difficulties, memory difficulties, frustration and exhaustion."
44. The Tribunal wrote to [Mr D] [on a later date in] January 2011 seeking his written opinion on the applicant's capacity to give oral evidence in support of her Protection Visa application. He was advised that if in his opinion she was unable to attend a hearing within two weeks, he should indicate whether she might be capable of attending a hearing within a reasonable period, suggesting that this might be within the next 4 to 6 weeks.
45. [On the same date], [Mr D] responded to the Tribunal's letter, stating that the applicant would not be able to give oral evidence in her current state or within 4 to 6 weeks. He states that she "will be able to give oral evidence to the Refugee Review Tribunal when she has come to terms with her torture and trauma and loss which can be achieved through her progress in therapy which can only happen at [the applicant's] own pace of recovery."
46. The Tribunal wrote to the applicant [in] February 2011 inviting her to attend a Tribunal hearing [in] April 2011. The applicant responded [on a later date in] February 2011 stating that she wished to attend a hearing.
47. The applicant attended a hearing [in] April 2011 accompanied by [Mr B] and his wife [name deleted]. While [Mr B] said that he was able to give evidence about the applicant on the basis of his knowledge of her for some months in Australia, he had been in Australia for some years and had not recently been in Ethiopia. The applicant was advised he would not be required to give evidence. The Tribunal took evidence by phone from [name deleted], the applicant's godmother in Ethiopia. The applicant brought her passport with her to the hearing.

48. The applicant said that she had had four sessions with a psychologist since her last hearing, and was on a waiting list to see a counsellor at [Agency A]. She was asked whether she was taking medication, and said that she was taking medication for the damage done to her leg when she was in detention. She was not taking prescription medication, but was taking herbal medication and was advised to do so until she saw a psychiatrist at [Agency A]. She said that she took anti-depressant medication in [Country 1], but had stopped taking it. She said that in Ethiopia after her release from prison she took medication regularly which she obtained on the black market.
49. The applicant was reminded of the discussion which had taken place at the last hearing. She said that because she was extremely stressed at the time of the last hearing she gave a confused account. She said that she was born in Nazret in [year deleted], and in [year deleted] she started in first grade at five years of age. She stayed at school in Nazret until she was [age deleted], when her mother died. The applicant said that her father then moved the applicant and her two siblings to Addis Ababa. The family was in crisis then because of the loss of their mother. The applicant was too distressed to be able to go to school in Addis for some 8 years. Her father, who was a [businessman] used to take her with him when he travelled round the country on business. In [year deleted], when the applicant was [age deleted], she started in Year 6 at high school in Addis. She was a year 12 student in 2005.
50. The applicant said that when her Protection Visa application form was completed the person who wrote down her information made a mistake. He said that she went to high school in [City 2], but in fact she only spent time there with a friend.
51. The applicant said she did not sit for her final examination in 2005 because she was arrested. When she was released, she went to Nazret and did not go back to school in Addis.
52. The applicant was asked whether her family had been involved in politics before the 2005 elections. She said that her father, sister and brother were all involved in the AEUP before they supported the CUD. The applicant was in the Youth Association of the AEUP at school. The students were very involved in electioneering before the 2005 elections. She said that in Ethiopia the youth are very important in politics, not just university students, but also high school students. The applicant said that her father and brother worked together in the business. Her father had an important role campaigning with [details deleted] to support the CUD. Her sister was a supporter at university.
53. The applicant was asked whether her father had any personal contact with the leadership of the CUD. She said that he did not have a personal contact with the main leader at that time, who was Hailu Shawal, but he did have some contact with Birtukan Mideksa, who was second in command. He was [part] of a group of businessmen who collected money to support the CUD.
54. The applicant was asked what happened to her father and siblings. She said that there was a big election rally [in] May 2005 to support the anti-government forces and there were other rallies. Troops were brought in to disperse the crowds and they shot a lot of people. There was some speculation that the shooting was not random and that some people were targeted. She said that she assumed that they were targeted. They never found the place where their bodies were buried. She never received any official advice about what happened to them. She said that her family home in Addis was burnt on the night of the demonstration [in] May 2005 after her father and siblings had been killed.

55. The applicant said that she last saw her father before she was put in prison in March 2005. She was asked how this happened. She said that it was a Saturday and her group along with other youth groups were at a gathering to organise a demonstration the following Monday. The police arrived and some people ran and escaped. There were about 35 students at the gathering altogether, and some 21 were captured and arrested. There were about 10 from the applicant's high school, and the others were from nearby high schools. They were put inside a military truck which was driven by uniformed men with batons and guns. She did not know where they went, it was up a dirt track. The women and men were separated when they got to the prison. There were already other people there. She later found out that some had been there for 3 months or more. They were all part of the political opposition of the government. They were all political prisoners. At that time there was an uprising of people against the government. She was kept for [deleted] days in gaol. When she was released she did not know where they were. She said that they were not questioned or told anything. At night, the girls were taken out of the room they were in and most of them were raped. She was raped. The applicant said that when she was released from prison she was very sick and exhausted. Her knees were damaged because she had been forced to walk on her knees over stones. They had to carry stones above their heads and move forward on their knees. This was their punishment.
56. The applicant was asked what happened when she was released. She said that she did not know where she was. She went to a small marketplace which she found out was called [name deleted]. This was a place between Addis and Nazret. The applicant did not try to contact her parents because she did not want to contact them while she was in the state she was in. She felt her life had been destroyed. She had been morally and physically destroyed. She decided to contact her godmother in Nazret.
57. The applicant was asked whether she told her godmother what had happened to her. She said that her body could tell her, and she understood what had happened. She could not tell her family anything. A girl whose virginity has been taken without her consent is a shameful thing in her culture. She could not tell anyone what had happened to her. Her godmother understood what had happened to her, and the applicant told her that she had been in prison. She was staying with her godmother when she heard about the deaths of her family members. A merchant who was a neighbour of her father's had contacted her godmother and told her about the family deaths.
58. The applicant said that her godmother felt that she had a responsibility for the applicant because of her closeness to the applicant's mother. With the rest of her family gone, the applicant had no-one to look after her. Her godmother persuaded her sister to let the applicant stay with her in [Country 1]. The applicant had been given a strict warning on her release not to involve herself in politics. They only let her go because she had become very sick. When she knew of the situation of her father and siblings she wanted to act against the government, but she accepted that she had to leave the country.
59. The applicant was asked whether she had had any contact with other prisoners after she left the prison. She said that she maintained some contact with a close friend. However she had been infected with HIV/AIDS. The applicant found out when she was in [Country 1] that she had died. Most of those who had been imprisoned crossed the border out of Ethiopia. Some died during that crossing.
60. The applicant said that her godmother's sister worked for the [details deleted] in [Country 1].

61. The applicant's godmother gave evidence by phone from Nazret. She confirmed that the applicant had lived with her after she had been released from prison in 2005. She said that she had been told that the applicant's father, brother and sister had disappeared as well, so the applicant had nowhere to go. She said that she had a responsibility from God to save the applicant's life. She had a sister working in [Country 1], and she begged her to take the applicant there, though her sister was not very happy with the idea. When the sister's term expired she was transferred to Khartoum in Sudan to work. She said she had to send the applicant back to Ethiopia. The godmother begged her sister to help send the applicant elsewhere to save her life, and she arranged for her to come to Australia as a student.
62. The godmother was asked whether it was still dangerous for the applicant to come back to Ethiopia. She said that the situation was extremely difficult currently because of the general unrest in the Arab world in Middle East countries. They have been arresting people belonging to opposition parties and some are kept under house arrest. The situation is deteriorating. If she was forced to return, her life would be in extreme danger. The godmother said that the applicant has no family members in Ethiopia, and no-one to assist her. The godmother said she knew the applicant's mother and father very well. She knew he had been very involved with politics in 2005. He and his son and daughter were killed for that reason. The applicant was unaware of what had happened to him until after he had been killed when she came out of prison. She had nowhere to go then, and no family members remaining, so the godmother thought she had to assist her.
63. It was put to the applicant that the Tribunal was aware from the country information that the political opposition was almost wiped out in the 2010 elections. While Ms Mideksa had been released after the elections, it seemed it was likely to be very difficult for any opposition to the government to be effective. However, the Tribunal would need to be satisfied that the applicant herself would be targeted for a Convention reason if she returned to Ethiopia. She said that she knew that if she went back things would be extremely difficult. She would be at risk of prison. She said that when she was released from prison before, she was almost paralysed. She was mentally and emotionally dead. She was given a very serious warning not to get involved in politics. The applicant was asked whether she thought she would get involved in politics if she returned to Ethiopia. She said that she would. She would do anything to avenge the deaths of her family members. They had destroyed all her family, and she had nothing, not even photos or any graves to visit. Her mother had died when she was a child and she had nothing left.
64. The applicant said that if she went back she would participate in any sort of activity which might bring down the regime. She would do anything possible to destroy them. The applicant said that she had tried to follow political events in Australia. She said that most of the opposition supporters she knew previously have disappeared. The media have been jammed, and people cannot access the media except via satellite. There are no human rights left in Ethiopia.
65. The applicant was asked whether anything had happened to her since she left Ethiopia to make her believe that the Ethiopian authorities might be still interested in her. She said that the government still has undercover people everywhere. They look like friends. There was an incident in [Country 1] when they caused problems for her. She thought this was a free country in which she could do what she wanted, but realised that even there she was watched. In [Country 1] there were some supporters of the opposition parties. They used to have meetings in their houses when there were cultural events. The applicant went to a meeting which was meant to be a fund-raiser for the opposition. Government agents were also at the

gathering. She was approached by one of them who said “I know you; you are still doing what you did before” He punched her and she ran away. She realised she could not live there anymore. This was in 2009.

66. The applicant was asked whether it was usual for Ethiopian people to have political meetings in [Country 1]. She said that they were not official. They just used to meet in each other’s houses to talk about politics on weekends, or on occasions when there are cultural or religious festivals. The applicant said that her godmother’s sister tries to be politically neutral. She lives outside Ethiopia a lot. She did not know about the applicant’s circumstances or about the details of her life. The applicant did not go regularly to meetings, but when there were Ethiopian festivals where they celebrated, such as Christmas or Easter, the applicant would take advantage of these occasions to talk to people.
67. The applicant was asked whether she had been involved in any political activity in Australia. She said that in Sydney there are both pro-and anti-government groups, but she had had no opportunity to get involved because she became very sick when she arrived. She said that she was mentally and physically damaged, and was having treatment for her knee injuries. She cannot sleep. All of these things had held her back. She finds she is unable to talk to people in a group, though she would love to participate. The applicant said that when she came to Australia she was very anxious when she saw any police or security people. She was scared they would imprison and torture her. She is now feeling more secure but she is not free from her anxieties.

Country Information

Current situation in Ethiopia

68. The US State Department in its 2010 *Country Report on Human Rights Practices* for Ethiopia (released 8 April 2011) states:

In the May national parliamentary elections, the EPRDF and affiliated parties won 545 of 547 seats to remain in power for a fourth consecutive five-year term. In simultaneous elections for regional parliaments, the EPRDF and its affiliates won 1,903 of 1,904 seats...

Human rights abuses reported during the year included unlawful killings, torture, beating, and abuse and mistreatment of detainees and opposition supporters by security forces, especially special police and local militias, which took aggressive or violent action with evident impunity in numerous instances; poor prison conditions; arbitrary arrest and detention, particularly of suspected sympathizers or members of opposition or insurgent groups; detention without charge and lengthy pretrial detention; infringement on citizens' privacy rights, including illegal searches; use of excessive force by security services in counterinsurgency operations; restrictions on freedom of speech and of the press; arrest, detention, and harassment of journalists ... police, administrative, and judicial corruption; harassment of those who worked for human rights organizations ... societal discrimination against persons with disabilities and religious and ethnic minorities.

69. Human Rights Watch in its 2010 Report comments that “The Ethiopian government’s grassroots-level surveillance machine extends into almost every community in this country of 80 million people through an elaborate system of *kebele* (village or neighborhood) and sub-*kebele* administrations, through which the government exerts pressure on Ethiopia’s largely rural population.”

Ethiopia in 2005

70. In its 2005 Country Report, the US State Department reported on the elections in that year:

After the May elections, serious human rights abuses occurred, when the opposition parties refused to accept the announced results, and in November after the Coalition for Unity and Democracy (CUD) called for civil disobedience, which resulted in widespread riots and excessive use of force by the police and military...

While the law stipulates that all suspects be arraigned before a court within 48 hours, the leaders of the CUD, civil society, and journalists were held without access to courts, counsel, and family for many days. Human rights groups and political parties (such as the CUD, UEDF, and OFDM) reported that police and local militia detained thousands of persons in police stations and detention camps for several days in order to conduct interrogations.

71. The 2005 Country Report comments on several occasions in 2005 when government forces opened fire on unarmed civilians.

Composition of the CUD

72. At the time of the 2005 elections, the CUD included four parties: the All Ethiopian Unity Party (AEUP), led by Hailu Shawal; the United Ethiopia Democratic Party-Medhin (UEDP-Medhin), led by Admassu Gebeyehu; the Ethiopian Democratic League (EDL), led by Chekol Getahun; and Rainbow-Ethiopia, led by Birhanu Nega.¹ After the 2005 elections, the National Electoral Board of Ethiopia assigned the CUD party name and license to a splinter group of the CUD and the party's ballot symbol to another former CUD coalition party – Lidetu Ayalew's EDP-Medhin.²

73. After the November 2005 protests, 131 CUD leaders, journalists and civil society leaders were arrested and charged with a variety of offenses, including treason and "outrages against the constitutional order." In 2007, the politicians were convicted but subsequently pardoned and released from prison.³

74. An article headed "Ethiopia: Judge Mideksa to become head of new UDJ party –Report" published on 22 March 2008 in the Jimma Times indicates that the CUD had been renamed "Unity for Democracy and Justice" and that Judge Mideksa had been named as its head (<http://www.jimmatimes.com/article.cfm?articleID=31232>).

Failed asylum seekers

75. Recent information on the treatment of failed asylum seekers to Ethiopia is very limited, but indicates that the treatment of a returnee by the authorities would depend on the extent to which the person was seen to be a threat to the current government.
76. In 2006 Amnesty International stated it believed that:

¹ Human Rights Watch 2010, "One Hundred Ways of Putting Pressure": *Violations of Freedom of Expression and Association in Ethiopia*, March, p. 12.

² Human Rights Watch 2010, "One Hundred Ways of Putting Pressure": *Violations of Freedom of Expression and Association in Ethiopia*, March, p. 18-19.

³ Human Rights Watch 2010, "One Hundred Ways of Putting Pressure": *Violations of Freedom of Expression and Association in Ethiopia*, March, p. 16.

CUD activists and suspected activists at national or local levels, as well as civil society activists and journalists who had criticized the government, who have fled the country on account of experienced or threatened human rights violations, would be those who are at risk of arbitrary and indefinite detention, possible torture or ill-treatment, unfair trial or even extrajudicial execution, if forcibly returned to Ethiopia.⁴

FINDINGS AND REASONS

77. On the evidence before it, including the evidence of the applicant's passport, the Tribunal accepts that she is a citizen of Ethiopia. The Tribunal further finds that she has no right of entry to any other country, although she has spent the past five years in [Country 1] under the sponsorship of her godmother's sister, a [details deleted] employee who has since been moved to another country.
78. In considering the applicant's evidence, the Tribunal has taken into account the psychological reports submitted by the applicant and her conduct at the Tribunal hearing. The psychologist had recommended that she should not attend a hearing for a significant period, and the Tribunal complied with that recommendation. When the applicant attended the hearing, she satisfied the Tribunal that she was able to participate fully at the hearing. She was able to understand questions and provide logical and coherent responses. She was able to put arguments in support of her claims. The Tribunal formed the impression that the applicant was a generally reliable witness, and broadly accepts her account of events, though found her memory of dates was less reliable. It has given the applicant the benefit of the doubt in relation to dates, having accepted the psychologist's diagnosis of post-traumatic stress disorder which might indicate difficulties with recall, especially of painful events, such as the deaths of family members. The applicant was also able to provide a credible narration of events, with considerable detail readily provided when she was questioned. The essential elements in her evidence have remained constant throughout her written and oral evidence. The Tribunal also formed the view that her witness, her godmother, was truthful in her account of events.
79. The Tribunal had some concerns about the applicant's apparent lack of detailed knowledge of the constituent parties in the coalition which became known as the CUD. However, having had the benefit of her account of events at the Tribunal hearing, it accepts that the applicant, who was politically very inexperienced at the time she began to involve herself in activities on behalf of the CUD in early 2005 may not have been aware of its history or its leaders, even though she was involved in activities on its behalf. The coalition was in fact volatile and broke up after the 2005 elections. The applicant was able to name without hesitation the persons she thought to be leaders of her local opposition, and she may not have been aware of the highest-ranking leaders in her party since she had not had anything to do with them. She was able to name Hailu Shawal as the leader of the AEUP, presumably because her father and siblings would have spoken about this party. She was also aware, as indicated at her interview with the Department, that the CUD had changed its name since she had been in [Country 1] and had become the UDJ party under Mideksa. The Tribunal finds that the applicant's lack of detailed knowledge of what appears to have been a very convoluted history of formal political opposition in Ethiopia does not undermine her essential credibility about her experiences in Ethiopia.

⁴ Amnesty International 2006, *Ethiopia: Prisoners of conscience on trial for treason: opposition party leaders, human rights defenders and journalists*, 2 May, p. 12.

80. The Tribunal accepts that the applicant, along with her family, was a supporter of the opposition coalition in 2005, and had supported one of its constituent parties prior to the formation of the CUD. The Tribunal accepts that the applicant was very disturbed after the death of her mother when she was [age deleted], and that for some time she did not attend school after the family moved to Addis Ababa. It accepts that she attended high school in Addis Ababa, and was part of a student group which supported the opposition parties in the lead-up to the elections in 2005.
81. The Tribunal accepts the applicant's claim that she was arrested, detained and seriously mistreated when she was part of a group of students discussing the organisation of a demonstration in March-April 2005. It accepts that she was detained in an unknown location for a substantial period of time, and that while in detention she suffered severe mistreatment, including rape. The country information indicates that treatment of this kind by government authorities in Ethiopia was not uncommon in 2005, and that prisons were often in secret locations.
82. The Tribunal further accepts that the applicant's family members were killed while she was in detention or shortly afterwards, and that as a result she was looked after by her godmother, who arranged for her to escape harm by working for the godmother's sister in [Country 1].
83. The Tribunal accepts that the applicant was observed and challenged by government supporters when she attended gatherings in [Country 1] of anti-government supporters and sympathisers.
84. The Tribunal is satisfied that the applicant has been persecuted in the past in a Convention sense for reason of her political opinion as a supporter of the CUD coalition in Ethiopia in 2005.
85. The Tribunal has considered whether there is a real chance that the applicant will be persecuted if she returns to Ethiopia in the foreseeable future.
86. While the applicant herself does not have a high political profile, both she and her immediate family members have been seriously harmed or killed in the past for reason of their support for the political opposition in Ethiopia. She is now without immediate family in Ethiopia, and in particular without any male relatives.
87. The country information indicates that following the 2010 elections in which the political opposition was all but eradicated, the government has repressed expressions of opposition political opinion, and has in particular been responsible for the arbitrary arrest and detention of those simply "suspected" of sympathising with the opposition.
88. The applicant expressed with a notable degree of commitment her continuing opposition to the government of Ethiopia at her Tribunal hearing. In particular, she blames the government for the deaths of her father, brother and sister. The Tribunal accepts that she continues to be a committed supporter of the political opposition in Ethiopia, and would be involved in opposition political activity if she were to return there.
89. The Tribunal has also taken account of the country information which raises some concerns about the attitude of the authorities towards returned suspected opposition supporters to Ethiopia (paras 75-76). The fact that the applicant has been outside the country since 2005 after the elections might, in the Tribunal's view, cause particular attention to be paid to her on

her return. In that event, records may be able to indicate not only that the applicant was previously arrested and detained but that her father and siblings were killed for their suspected involvement in supporting the opposition. While the Tribunal does not consider it likely that the applicant would be questioned and harmed on her return for reason of her political opinion, it finds that the chance of this happening is a real chance, in that it is not remote or insubstantial or a far-fetched possibility.

90. In any event, even if the applicant were not questioned and harmed by being arrested and detained on her return, the Tribunal is satisfied that there is a real chance that the applicant would involve herself in anti-government political activity if she returned to Ethiopia. She is a female, without any close family or male family members, which would indicate that she has little social or emotional support in Ethiopia. Given the repressive conditions in Ethiopia, together with the applicant's personal and social vulnerability, and most crucially her very committed opposition to the regime she believes responsible for the death of her family members and her own serious mistreatment, the Tribunal finds that there is a real chance that the applicant would be persecuted in a Convention sense for reason of her political opinion if she returned to Ethiopia in the foreseeable future. It finds that she would not be able to rely on any family or other support if she were to be targeted by the Ethiopian authorities, and that this lack of support, together with her gender, would add to the seriousness of the harm she might face if she came to the adverse notice of the Ethiopian authorities. It is satisfied that the applicant has a well-founded fear of persecution in Ethiopia, within the meaning of the Convention.

CONCLUSIONS

91. 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) for a protection visa.

DECISION

92. 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.