

1114122 [2012] RRTA 441 (29 May 2012)

DECISION RECORD

RRT CASE NUMBER:	1114122
DIAC REFERENCE(S):	CLF2011/169340
COUNTRY OF REFERENCE:	Ethiopia
TRIBUNAL MEMBER:	Brook Hely
DATE:	29 May 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.

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 2011.
3. The delegate refused to grant the visa [in] November 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.
18. 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

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.

Background

20. [In] October 2011, the applicant lodged with the Department the application under review. As part of that application, he provided to the Department a detailed statutory declaration setting out his protection claims. The decision record of the delegate provides a convenient summary of those claims, as follows:

The applicant's claims and supporting documentation are at folios 24-29 & 73-83 of file number CLF2011/169340 and may be summarised as follows:

- In 2003 (Western calendar) he attended a peaceful demonstration outside the Ministry of Education. The following day the police came to his family home and questioned his mother on his involvement in the demonstration.
- In 2009 (Western calendar) he was asked to [work] at the Victory Day celebrations, but did not attend. He was questioned about his non-attendance and a few days later, [in] June 2009, two police officers came to his home and took him to the police station in [Village 1], [Town 2], Addis Ababa.

They then transferred him to [another] prison where he was imprisoned for approximately 3 months.

- While in prison, he met and developed a friendship with a man called [Mr A] who spoke to him about the Oromo people and the mission of the Oromo Liberation Front (OLF).
- Because he agreed with the OLF's goals, he offered to assist their cause by [recording] music in his studio that could be sold for fundraising purposes.
- About three weeks after he was released from prison, [Mr A] came to see him at the studio. He was introduced to [Mr B] and some other members of the OLF and for about three months they worked together making their first CD. A second CD was recorded about 3 — 4 months later and then he produced another CD which was very successful all over Ethiopia.
- He continued to make albums for the OLF and [work] at government fundraising events and government functions. In April 2011 he travelled to [Country 3] to [work] at a private function and while there he received an invitation to [work] in Australia.
- About a month prior to his departure to Australia, he heard that [Mr B] had been arrested and imprisoned. He was scared and went into hiding at his mother's house out of the city. He has since been told that all other members of the OLF who worked with him on producing the fundraising CDs have been arrested. His mother told him that the police had been looking for him.
- He fears that if he were to return to Ethiopia he will be targeted by the police and the Ethiopian Government for his involvement with the OLF. He believes the police are looking for him and he would be arrested, imprisoned and tortured

21. [In] November 2011, a delegate of Minister refused the application on the basis that she was not satisfied that the applicant was a person to whom Australia owed protection obligations.

Tribunal hearing

22. The applicant appeared before the Tribunal [in] April 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Amharic and English languages. The applicant was represented in relation to the review by his registered Migration agent, who also appeared at the hearing.

Personal background

23. The applicant gave evidence that he was born in Addis Ababa and lived at the same family house in Addis Ababa his entire life prior to coming to Australia. When asked about his education history, the applicant confirmed that he completed secondary school in 1993 or 1994 (note: all references to dates are using the Ethiopian calendar unless stated otherwise). He then completed [his studies] in 1995. He then worked [in the entertainment industry] for [7 months], before returning to Addis Ababa and working [in the same industry]. In 2000 he then opened a [studio] by himself. He did not employ any people, although one of his friends ([Mr C]) sometimes helped in the studio and he would reimburse [Mr C] for basic fuel and meal expenses. The applicant also confirmed his international travel history [in this industry]

as set out in his application to the Department, including various travel to [various countries] and Australia.

24. When asked about his family, the applicant confirmed that his parents are still alive and living in their family house in Addis Ababa. His father works as a driver and his mother distributes [products]. He has [four siblings]. [One sibling] is at [university] and [regularly] comes home during vacations. [Another sibling] is [working] to complete [a Degree]. Another [sibling] is [studying] in Addis Ababa and lives at the family home. His other [sibling] works as a [designer] and also lives in the family home. He also has 2 [half-siblings], one of whom lives in [Country 3] and the other lives in [Addis Ababa].

Protest outside the Ministry of Education

25. The Tribunal asked the applicant about his alleged involvement in a student protest outside the Ministry of Education. The applicant gave evidence that the demonstration was opposed to changes announced by the Minister of Education that the school leaving certificate would only run up to grade 10 rather than grade 12. When asked, the applicant confirmed that he was not arrested in connection with this matter. However, he said that he was demonstrating with 6 of his friends. The demonstration was peaceful, although some looting and rioting broke out which was caused by thieves. It seemed like there was no law and order so the military government came and restored order. The military then began collecting information from the area to arrest those who participated. His 5 friends were arrested and the police came to his family home. However, the police officer was Oromo and spoke in the Oromo language with his mother. Because of this, the officer was lenient on her and did not search the house. The applicant confirmed that he did not actually speak to the police officer and did not have any further problems as a consequence of this, although the applicant noted that it made him very stressed and afraid. He said that he did not visit his friends in prison for the first 5 months, after which he saw them in prison and took them clothing and food from their families.
26. The Tribunal put to the applicant that it could seem that his involvement in this protest had not caused him any further problems with the authorities. The applicant confirmed that they arrested his friends and it caused him to be shocked and in fear. When asked, the applicant gave evidence that this incident took place in 1996.

Circumstances leading up to his arrest

27. The Tribunal asked the applicant about the circumstances leading up to his arrest. The applicant gave evidence that he was often invited to [work in events] for the government. He was too afraid to refuse, so he did this work even though he did not want to. In 2001 he was invited to [work at a performance] at the Victory Day celebration [in] May. When asked when he first [worked] at Victory Day, the applicant gave evidence that he began [working at] the Victory Day celebrations when he was in [school] and [sometimes] up to 4 different Victory Day celebrations during the year, as there were other Victory Day celebrations held by different parties at different times. He confirmed that he had [worked] in each Victory Day celebration held [in] May from 1995 until 2001 (2009 in the European calendar).
28. The Tribunal asked the applicant why he did not [work] at the Victory Day event in 2001, the year that he was arrested. The applicant gave evidence that he was feeling unwell and was also too busy with his work at his studio. He was also feeling very stressed and decided that he did not want to participate. When asked who he told, the applicant gave evidence that the

Chairman of his local Kebele, a man named [Mr D], asked him to [work]. The applicant said that he did not refuse, but he did not want to go. When asked whether he had that conversation before or after the event, the applicant said that he was asked to attend before the event. Later, after the event, [Mr D] asked why he did not attend.

29. When asked whether he told anyone in advance that he would not attend the Victory Day event, the applicant responded that he did not tell anyone; he just did not want to go. The Tribunal sought to clarify whether this meant that he had agreed to [work] at the event, but then just did not turn up. The applicant responded that it was an order from [Mr D] to participate in the event. The applicant said that he did not give any promise, he just kept quiet. When asked when this conversation took place, the applicant said that it was one week prior to the event. The Tribunal flagged with the applicant its difficulty accepting that he was a [professional] who was directed to attend only one week prior to the event, and then he simply did not turn up without telling anyone. The applicant responded that it was common for the Victory Day event that they give an order and tell people to come and participate. He said that they called all over the town and he thought that the others would be able to cover for him if he did not attend, so his absence would not matter. He added that he just decided not to go.
30. The Tribunal put to the applicant that, according to his statement to the Department, he knew [Mr D] from his contact with the council when they organized him to [work]. The applicant agreed that he knew [Mr D] as he was the Chairman of the Kebele and he often organized such things. The Tribunal noted that it seemed unusual that, if the council had organized for him to [work], he simply did not turn up without telling anyone if he was a [professional in the industry]. The applicant reiterated that he thought it would not matter if he did not go because there would be other [people in the industry] attending who could cover for him.
31. The Tribunal asked the applicant about his subsequent conversation with [Mr D] after the Victory Day event. The applicant said that they spoke about 3 days after the event in the street. The Tribunal confirmed with the applicant that these events took place in May 2001 under the Ethiopian calendar. The Tribunal put to the applicant that his statement indicated that he ran into [Mr D] [in] May, which would be approximately 11 days after the Victory Day event, not 3 days as he had indicated in his oral evidence. The applicant initially responded that there must have been some mistake when they wrote the dates. He then gave evidence that, under the Ethiopian calendar, [the first date in] May translates to [another date in] May under the European calendar.
32. The Tribunal asked the applicant what happened when he met with [Mr D] in the street. The applicant gave evidence that [Mr D] asked him why he did not attend the Victory Day event. The applicant told him that he was sick and tired and could not participate. [Mr D] then was bullying him with some authoritarian expressions and accused him of favouring the past government and still being with groups opposed to the government. The applicant told [Mr D] that he was very frustrated and said boldly that he did not accept him or his government. He also told [Mr D] that he was sick of him. When asked, the applicant confirmed that he believed it was because of this conversation that he was later arrested.
33. The Tribunal flagged with the applicant its difficulty accepting that he would be arrested in these circumstances, given that it was such a minor indiscretion and he was otherwise [regularly employed] for government events who did not appear to have been regarded as politically active. The applicant responded that, in Ethiopia, if any person in authority or a Chairman of a Kebele is not happy with someone or suspects them then they can put them in

prison for 3 or 6 months directly. He added that they don't take you to court for the first 3 or 6 months and there are so many stations to arrest people. He said that this is not a big deal for [Mr D] to arrest him for 3 months. He added that [Mr D] may have made a special report that he (the applicant) was involved in a political organization, such as to a higher body within the police or prison system. The Tribunal noted that, if this was the case and [Mr D] was so powerful that he could have people detained for 3 – 6 months simply for defying his authority, it might seem unusual that he would defy [Mr D]'s direct order to attend the Victory Day event, then not explain his absence or tell anyone that he would not be attending and then lash out when [Mr D] queried his non-attendance. The applicant responded that he was participating with them for a long time. When [Mr D] asked him to participate in this particular year, he did not think that he would take such serious actions. The applicant added that he was angry on that day and was sick and tired. He also did not think that [Mr D] would take the matter so seriously.

Arrest

34. The Tribunal asked the applicant how long after his conversation with [Mr D] he was then arrested. The applicant responded that it was maybe 3 – 6 days later. He said that he was arrested in his family house in the mid-afternoon. His grandmother and housemaid were the only members of the household home at the time, as his parents were both at work. He was taken to a car and then driven to the police station at [Village 1]. He was held for one night and then taken to a prison station in [Town 2]. When asked if this was a prison, the applicant said that it was like a police station; it had an office and also 6 cells. He said that this was the place where you were held until you were taken to court. He gave evidence that he was detained for 3 months, during which he was never taken to court or questioned by anyone. When asked, the applicant confirmed that no one asked him a single question throughout that 3 month period. The Tribunal flagged its difficulty accepting that he would not be asked even a single question while being held. The applicant responded that this is normal in Ethiopia and the same thing happened to his friends when they were in prison for 6 months following the protest outside the Ministry of Education.
35. The Tribunal asked the applicant why he was taken to a different police station. The applicant said that the initial police station was just temporary and only had one room, whereas the other police station had 6 rooms and was a place where people were held prior to going to court.

Period in detention

36. When asked about his meeting with [Mr A] in prison, the applicant gave evidence that they met during his first day in prison. When asked, the applicant gave evidence that [Mr A] had already been in prison for about 4 months. The applicant gave evidence that, when he entered the prison, there were many prisoners sitting around the edge. There was a practice whereby the first time you enter the prison there would be a payment made to other prisoners, known as 'the money for the candle' The Tribunal noted that he claimed in his statement that he could not pay this amount because he did not have his wallet and was only wearing his pyjamas. The applicant agreed and said that he was just wearing sports trousers. The Tribunal noted that it could seem unusual that he was wearing pyjamas if he was arrested in the mid-afternoon. The applicant responded that it was just sports clothing, but he used it for pyjamas also. When asked, the applicant gave evidence that he did not know how long the prisoner boss of the cell had been imprisoned. The applicant also confirmed that he received weekly visits from his family and they brought him meals during his time in prison.

37. The Tribunal asked the applicant if he was ever told why he was being detained. The applicant said that he was not, although he just assumed it was because of his conversation with [Mr D]. The Tribunal put to the applicant that it might seem unusual, if he was suspected of being involved with the OLF or another political dissident party, that he was never questioned about the OLF or his political activities or beliefs. The applicant said that he does not think that they had any evidence of his OLF involvement and he believes that he may have just been arrested so that he would fear the authorities and obey their orders.
38. The Tribunal raised with the applicant its concern that his evidence regarding his detention did not appear consistent with country information regarding relevant police procedures. The Tribunal put to the applicant that it was its understanding that, under Ethiopian law, a person is normally detained at a police station during the investigation stage. Then, after the investigation is completed, they are transferred to prison. The Tribunal noted that it was also its understanding that the investigation stage required the suspect to be brought before a court, normally within the first 48 hours. The Tribunal noted that, while it was aware that police procedures were not always strictly followed in Ethiopia, it might seem unusual that he would be held at a police station for such a long period without being charged, taken before a court, or even asked a single question by the police as part of their investigation process. The applicant responded that this might be the law on paper, but they do not follow what the law says. He said that what the police did to him is a very minor thing and he was aware of an incident involving a famous singer who was held in police prison for 2 years and only went to court 2 times.
39. The Tribunal put to the applicant the concern of the delegate that it might seem unusual that he would befriend someone in detention who was accused of being an OLF supporter if he himself was being detained as a suspected OLF supporter, given that this would presumably reinforce the police suspicions against him. The applicant responded that [Mr D] is from the Tigray ethnic group and they are ruling Ethiopia. Because of this, perhaps [Mr D] thought he was involved with the OLF. The Tribunal noted again that, if he believed there were such suspicions about him, it might seem unusual that he would then befriend an accused OLF supporter while in prison as this would presumably only make his situation worse. The applicant responded that he met [Mr A] in prison and perhaps they began to suspect him more after that.
40. When asked how he got home from prison, the applicant gave evidence that he was called to the prison office and given a serious warning not to participate in political parties. He was then directed to sign a piece of paper confirming that he would not be involved in any political parties. He then went out and called his family, who came and picked him up.

Period following his release from detention

41. The Tribunal asked the applicant about his situation following his release from detention. The applicant gave evidence that, while in prison, [Mr A] explained to him all about the OLF and its strategies and policies. [Mr A] also gave him an idea about how he could help the OLF through his [skills in the entertainment industry]. When asked, the applicant said he did not know [Mr A]'s surname. The applicant said that, in Ethiopia, when people get introduced they just use their first name. The Tribunal noted that [Mr A] was not simply someone he was introduced to, but was someone with whom he allegedly became very close while in detention and who converted him to start working to assist the OLF. The Tribunal noted that it might seem unusual in these circumstances that he was not able to tell the Tribunal [Mr A]'s surname. The applicant then gave evidence that when friends meet in Ethiopia to discuss

politics they do not go into such matters because if they are arrested they might then be able to disclose information about other people. He said that they only disclose first names so that they could not leak details of surnames if they are arrested. The applicant added that he was not concentrating on [Mr A]'s name as they just discussed the programs and strategies of the OLF.

42. The Tribunal asked the applicant what he actually did for the OLF. The applicant said that they brought songs and he made them into CDs. They then took the CDs to raise funds for the OLF. When asked about other OLF figures with whom he had an association, the applicant gave evidence that [Mr A] introduced him to a man named [Mr B], who would take the CDs to sell and distribute. After this introduction, he had no more contact with [Mr A]. When asked, the applicant also could not recall the surname of [Mr B]. He could only recall the surnames of the singers whose CDs he produced.
43. The Tribunal asked the applicant whether any of the recordings he produced had a political message. The applicant responded that they did not. When asked, the applicant confirmed that his friend who assisted in the studio, [Mr C], was not aware that he was [doing] this work for the OLF. The applicant confirmed that [Mr C] was present during most of these recordings. The Tribunal asked whether this meant that there was no discussion during these interactions of any connection with the OLF. The applicant said that they did not speak about the OLF in the recording area due to the need for secrecy because the OLF is not legal. The singers would come and they would only discuss the songs.
44. The Tribunal put to the applicant the difficulty of the delegate in accepting that he would associate with [Mr A] and other OLF figures so soon after his release from detention given that he had only just signed a document saying that he would not engage in such activities and he would be monitored. The applicant gave evidence that he is Oromo and this is recorded on his ID card and is also apparent from his name. He was opposed to the government's practices in suppressing the Oromo people and he believed that the ruling government should be removed and there should be true democracy. He also did not believe there was any viable political alternative to the government except the OLF. The applicant said that, for these reasons, he felt compelled to participate in these activities.

Travel to [Country 4] and [Country 3]

45. The Tribunal asked the applicant about his claims regarding his trip to [Country 4] to [work] at the Ethiopian embassy. The applicant said that this occurred in 2003, approximately 6 months after his release from prison. The Tribunal noted that it might seem unusual that he would be invited by the government to [work] at its embassy in [Country 4] and given a diplomatic passport so soon after this period in detention. The Tribunal noted that this might seem inconsistent with him being regarded as a suspected OLF supporter. The applicant said that he was only secretly supporting the OLF. They had invited a [musician] to perform and [that person] then invited him to come along, as they had previously [worked] together in [Country 4]. The Tribunal noted again that the OLF was a banned, terrorist organization, so it could seem unusual that he would be granted a diplomatic passport and allowed to [work] at the Ethiopian embassy if, only 6 months earlier, he had been held in detention for 3 months on suspicion of OLF involvement. The applicant responded that they did not have any information about that. The Tribunal noted that he had been held for 3 months and then forced to sign a document declaring that he would have no political involvement, which could suggest that there was a political motivation for his detention. The applicant said that his participation in the OLF came after his release from prison. He believed that his case was

limited to the police station and did not go to a higher body and he got his diplomatic passport from the Minister at the time.

46. The Tribunal asked the applicant about his travel to [Country 3]. The applicant was initially uncertain as to the timing of this visit. The applicant believed that he was in [Country 3] approximate 6 months after his visit to [Country 4]. When asked, the applicant confirmed that he never had any troubles entering or exiting Ethiopia.
47. The Tribunal referred the applicant to his claim that he checked with immigration prior to leaving for [Country 3] to see if he was banned from leaving Ethiopia. The applicant said that, after he was released from prison, he signed a document which said that he was not allowed to leave the country for 1 year. However, they had given him a diplomatic passport and allowed him to go to [Country 4]. He then wanted to check to see if he was still able to travel to [Country 3]. The Tribunal queried whether this was a normal service of the immigration department, that a person can check if they are on a banned travel list. The applicant responded that he went to check with immigration if he was allowed to leave the country or not. The Tribunal noted that it might seem unusual that he was able to simply call up and check to see if he was on a banned travel list. The applicant responded that he just wanted to check. The Tribunal queried again how he was able to do this as it might seem that this information would not be publicly available. The applicant then gave evidence that he was famous and was friends with a well-known Tigray fighter who knew some people working in the immigration department. He went with her and she introduced him to people and he came to know this information through her.
48. The Tribunal put to the applicant its concern that it had asked him several questions about how he was able to access this information regarding the banned travel list yet he did not make any mention of this alleged friend until very late in his evidence. The Tribunal noted that he had also been asked about this matter during his Department interview yet he made no mention of this alleged friend. The applicant responded that he was not asked in detail about this during his Department interview but was only asked short questions. The Tribunal noted that it might seem unusual, if he was only able to access this information through a friend with a contact in the immigration department, that he had not mentioned this detail until so late in his application even when being directly questioned about this matter. The applicant reiterated that he was not asked in detail. He added that this friend also helped him to get his passport renewed quickly. He added that he (the applicant) was a well-known [in the entertainment industry] and they trusted him.
49. The Tribunal asked the applicant why he did not seek asylum while in [Country 3]. The applicant said that he had been to [Country 3] before and had travelled to other countries before, including Australia, but he did not have any problems at that time. When asked, the applicant confirmed that he first had problems in Ethiopia just prior to his most recent trip to Australia.

Application for Australian visa

50. The Tribunal asked the applicant about his process of applying for his Australian visa. The applicant said that a [person] in Sydney processed the visa for him. The applicant confirmed that he began this application process about two months prior to [Mr B]' arrest. The Tribunal noted that it was common with Australian visa applications that an applicant would be asked to provide a criminal record certificate. The applicant said that he was never asked for any

such certificate and he did not provide one. He added that he was not even interviewed for his visa.

Arrest of [Mr B]

51. The Tribunal asked the applicant about the arrest of [Mr B]. The applicant said that when he heard about it he was very shocked. When asked how he heard about it, the applicant said that it was printed in the newspaper and the heading printed names and pictures and accused them of being terrorists. The Tribunal noted his claim to the Department that he had been trying to obtain a copy of this article from friends in Ethiopia. The applicant gave evidence that his friends are unwilling to send the article because they are too scared.
52. When asked what he did when he found out about [Mr B]'s arrest, the applicant gave evidence that he went and lived in a house owned by his mother in another suburb of Addis Ababa. When asked why he did not leave the country, the applicant said that he could not go straight away as he did not have a visa and it was very hard to leave the country immediately. The Tribunal noted that it might seem unusual that his Australian visa was granted [in] August 2011, yet he did not arrive in Australia until [September] 2011. The Tribunal queried why he did not leave Ethiopia sooner, once he knew that [Mr B] had been arrested. The applicant gave evidence that they initially issued an electronic visa from [a neighbouring country], which [Mr C] brought to him. However, there was no system to leave the country with just an electronic visa so he requested a paper visa from the embassy in [the capital city].
53. When asked, the applicant said that he was in hiding for approximately 20 – 30 days before leaving the country. He confirmed that he never went home or to his [studio] during this period. The Tribunal queried what he told [Mr C] he was doing during this period. He said that he told [Mr C] that he was just [working for an upcoming] concert in Australia. When asked, the applicant confirmed that he did not have any problems while departing Ethiopia. The applicant also confirmed that he did not experience any other problems in Ethiopia prior to coming to Australia which were relevant to his claim for protection.

Events following his arrival in Australia

54. The Tribunal asked the applicant about the situation in Ethiopia after he came to Australia. The applicant said that, whilst in Australia, he heard that [Mr A] was arrested and the police then came to his (the applicant's) family house searching for him. When asked about [Mr A]'s arrest, the applicant said that about 4 or 5 days after coming to Australia he called [Mr C] to discuss some business. [Mr C] told him that he saw on the television [Mr A] being arrested and he recognized him as one of the applicant's customers. The Tribunal queried how [Mr C] would recognize [Mr A], given that [Mr A] had only come to the studio once or twice. The applicant said that [Mr A] is very unique and is an older person with recognizable features who is different from the other customers. The Tribunal flagged its difficulty accepting that [Mr C] would meet this person only once or twice and then recognize him on television close to 2 years afterwards. The applicant said that [Mr C] must have remembered him.
55. The Tribunal asked the applicant about the police coming to his family house. The applicant said that, after speaking with [Mr C], he then called his mother and she told him that the police had come to the house looking for him. This happened about 4 days after his arrival in Australia. When asked how long prior to this conversation the police raid happened, the applicant said that he was in shock at the time and did not ask her this question.

56. The Tribunal put to the applicant that it might seem to be an implausible coincidence that [Mr B] was arrested one month prior to his departure; he was then able to depart Ethiopia without incident; and then the police came to his house only a few days after he had just safely left the country. The applicant responded that his route to Australia took about 3 days and he believed that [Mr B] did not give up anyone's name until then. He noted that OLF members are trained with great discipline to withstand torture. The Tribunal noted again that it might nevertheless have difficulty accepting this sequence of events as plausible. The applicant added that, even if [Mr B] was tortured, they would still need to go to his house to get documents. He also believed that [Mr B] would not have released these secrets for about a month.
57. The Tribunal asked the applicant whether the police also went to his studio. The applicant said he believes that they did, as his sister told him that his studio was broken into. However, he does not know for certain if it was the police. The Tribunal put to the applicant that it might seem unusual that the police would not have gone to the studio if this was his link to the OLF and was the place where he met the various OLF people. The Tribunal also noted that it might seem unusual that the police would formally come to his house looking for him, yet then break into his studio in secret. The applicant responded that they went to his family house and searched it. He also believes that they also broke into the studio, although he does not know for certain who did this. He added that there was not anyone in the studio at the time because it was locked and he was the only person with the key so they would have had no option but to break in to gain access.
58. The Tribunal asked the applicant about any further visits to his family home by the police. The applicant said that they had visited his house on two occasions. The first time they just asked questions of his mother and the second time they came searching for documents.
59. The Tribunal referred the applicant to the reference in his statement to the Department about the imprisonment of Gedion Danel. The applicant said that his sister told him that Gedion Danel was arrested and he is [a] famous singer. The applicant confirmed that this was not relevant to his claims but was simply an example of another friend [who had been arrested].
60. The Tribunal put to the applicant its concern that it had not been able to locate any country research relating to the names [Mr A] or [Mr B] with a connection to OLF-related arrests, yet his claims indicate that their arrests were reported in the media. The applicant responded that, when the news came out, they did not refer to them as OLF members, but simply called them terrorists. He does not know if the reports actually mentioned their names as OLF members. The applicant added that there is no free media in Ethiopia and if these people were released from prison they could corroborate his claims.

OLF involvement in Australia

61. The Tribunal asked the applicant about any involvement with the OLF since coming to Australia. The applicant responded that he tried to communicate with the Oromo community in Australia to raise funds for the community. He said that they didn't discuss political organizations because it was very strict. When asked who he was raising money for, the applicant said that he met a person named [Mr E] and they discussed the OLF. He said they talked about helping the organization through fundraising and he also went to some OLF meetings.

62. The Tribunal sought to clarify the applicant's evidence on this matter. The applicant then gave evidence that he did not actually participate in an OLF meeting but he saw them sitting there. When asked how he knew that they were discussing the OLF, the applicant said that [Mr E] later told him. The Tribunal asked if he has since been involved with any meetings with this OLF group. The applicant responded that he had not, although they had made a program to meet in the future. The Tribunal flagged with the applicant its concern that his evidence on these matters was very vague and unclear. The applicant said that he is going to start participating, but he has not yet done so.
63. When asked, the applicant said that [Mr E] was aware of his past OLF support. The Tribunal asked if [Mr E] knew about what he did for the OLF in Ethiopia. The applicant said that he did; he discussed with [Mr E] why he arrived here and told him about his activities back in Ethiopia. The Tribunal asked the applicant if it was able to contact [Mr E] to take evidence to confirm this. The applicant responded that he does not know [Mr E]'s telephone number. When asked about the details of his [business], the applicant gave the name of [company name and address deleted: s.431(2)]. The applicant confirmed that he was happy for the Tribunal to contact the restaurant to speak with [Mr E].

Future fears

64. The Tribunal asked the applicant what he feared may happen to him if he were to return to Ethiopia. The applicant said that he believes that he will be arrested, questioned and tortured. When asked why, he said that it would be to dig for more information about the OLF. The Tribunal put to the applicant that some sources of country information indicate that there is only a remote risk of serious harm for a low level and non-combat supporter of the OLF such as himself. The applicant said that he read a book about a writer who was tortured in Ethiopia and kept a diary about all the things that had happened to him. The applicant said that this could happen to him also.

Failed asylum seeker

65. The Tribunal put to the applicant that it might need to also assess his level of risk as a failed asylum seeker returning to Ethiopia. The applicant said that he believes this will also put him at risk. The Tribunal noted that it may have difficulty accepting that he would be seriously harmed upon his return as a failed asylum seeker if the Tribunal were to conclude that he was not otherwise a person of interest to the authorities. The applicant said that he is in Australia and asking for asylum and if he goes back they will know this information and he will be at risk. If his visa is expired, they will ask why he stayed here and why he has come back and all these questions will be raised. The Tribunal flagged that it may have difficulty accepting that failed asylum seekers constitute a relevant particular social group for the purposes of the Convention. The applicant was unclear on how to respond to this issue and indicated that he was happy for this matter to be addressed by his legal representative in submissions.

Oromo ethnicity

66. The Tribunal referred the applicant to his claim of fearing return to Ethiopia because of his Oromo ethnicity. The applicant confirmed that this was correct. He said that the Oromo are a very strong opposition and comprise the majority of the population and because of this the government fears them. The Tribunal noted that there is a very large Oromo population in Ethiopia and it may have difficulty accepting that he faced a real chance of serious harm (as opposed to a lesser form of harm) simply because of his Oromo ethnicity. The applicant

responded that they are not against all Oromo people, but the conscious Oromo groups. He said that if they have a minor problem with the Oromo people then they take it very seriously compared with other ethnic groups because they fear the Oromo people so much. When asked about evidence of his Oromo ethnicity, the applicant produced a photocopy of his ID card which recorded his ethnicity. He agreed to provide the Tribunal with the original of this ID card from Ethiopia within 2 weeks.

Complementary protection

67. After explaining to the applicant the changes to the Migration Act introducing complementary protection, the Tribunal invited the applicant to comment on any separate claims or submissions he wished to raise on how he might meet this definition if his refugee claim did not succeed. The applicant responded that he was happy for this issue to be addressed by his representative in submissions.

Other matters

68. When asked if there was anything else he wished to say in his evidence, the applicant said that he initially came to Australia just to work and he did not prepare any evidence for a protection claim. He noted that he had previously travelled to different countries but had never felt himself to be at risk until now.

Contacting [Mr E]

69. The Tribunal then discussed with the applicant the prospect of the Tribunal contacting [Mr E] to take spontaneous evidence via telephone. When asked by his representative, the applicant gave evidence that [Mr E] does not know that he has applied for a Protection visa and they had not discussed his application. He said that they had both talked about being Oromo. The Tribunal noted that his earlier evidence indicated that he had discussed with [Mr E] his involvement with the OLF and the problems he had been having. The applicant confirmed that he told [Mr E] about this work producing CDs for the OLF. When asked, the applicant said that [Mr E] was not aware that he had been arrested or in prison and was not aware that the police were looking for him in Ethiopia.
70. The Tribunal noted its concern that his earlier evidence seemed to indicate that [Mr E] was familiar with his circumstances in Ethiopia. The applicant said that they discussed how he came to Australia and how he wanted to become involved with the Oromo community. The Tribunal noted that he had earlier indicated that he had discussed the OLF, not just the Oromo community. The applicant confirmed that he had talked with [Mr E] about preparing CDs for the OLF, but not in detail.
71. The Tribunal sought to clarify whether [Mr E] was aware that his OLF involvement had caused him problems. The applicant said that he does not know this. When asked whether [Mr E] was aware that he had applied for a Protection visa, the applicant said that he was. He noted that he had gone to see him the previous day (before the Tribunal hearing) to request a letter of support from the Oromo community. The Tribunal flagged with the applicant its concern that it might seem that he had engaged in this conduct to strengthen his claim to be a refugee which might lead the Tribunal to disregard this conduct. The applicant responded that he spoke with [Mr E].

72. The applicant's representative sought to clarify whether he spoke with [Mr E] about his OLF activities in Ethiopia. The applicant said that they roughly discussed this. When asked when, the applicant said it was about a month ago; the day before the Tribunal hearing he had then requested the support letter. The Tribunal noted that it could seem that discussing with [Mr E] his OLF activities was a significant matter and might put him at further risk. The applicant said that in Ethiopia you don't discuss the OLF and, because of this, he was still minded not to tell anyone about his OLF activities. The Tribunal queried why he therefore disclosed this information to [Mr E]. The applicant said that this was because [Mr E] was Oromo and he decided to tell him so that he could have someone to speak with to get some solutions.
73. The Tribunal asked the applicant whether he had any concerns about the Tribunal calling [Mr E] to verify his evidence on these matters. The applicant confirmed that he was happy for the Tribunal to contact [Mr E]. However, when the Tribunal attempted to contact [the business], the person who answered the call advised that [Mr E] was not present and could not be contacted. Despite further discussions with the applicant as to how it might contact [Mr E], the endeavour was ultimately unsuccessful and [Mr E] could not be contacted. The Tribunal then agreed to allow until [early] May 2012 to enable any further documents or submissions to be provided.

Post-hearing correspondence

74. Following the Tribunal hearing, the applicant provided to the Tribunal the original of his Ethiopian ID card (with translation), which identified his ethnicity as Oromo. He also provided a further statutory declaration responding to a number of concerns raised by the Tribunal during the hearing. Similarly, the applicant's agent provided to the Tribunal a detailed written submission responding to various concerns raised by the Tribunal at the hearing (as set out in the summary above), as well as referring to various sources of country information and previous RRT decisions relating to the persecution of OLF members and suspected members. The agent also provided a separate set of written submissions on the issue of complementary protection.

Independent country information

Treatment of known or suspected OLF supporters

75. Ethnic Oromos constitute over 40 per cent of the population of Ethiopia, numbering at least 18 million people.¹ Minority Rights Group reports that despite their demographic significance in Ethiopia, the Oromo historically have "had little influence and representation within the Ethiopian/Abyssinian State", and that whilst some individual Oromo have held prominent positions within the army and bureaucracy, on the whole "[t]heir language and identity as Oromo...have been suppressed" The Oromo Liberation Front (OLF) was founded by Oromo nationalists in 1973.²
76. The OLF is currently a banned group, and was officially labelled a terrorist organisation by the Ethiopian House of Federations in June 2011.³

¹ 'Oromo of Ethiopia' (undated), World Directory of Minorities <http://www.faqs.org/minorities/Sub-Saharan-Africa/Oromo-of-Ethiopia.html> – Accessed 22 March 2010 .

² CORI 2010, *CORI Country Report – Ethiopia*, January, p.70 .

³ Human Rights Watch 2012, *World Report 2012 – Ethiopia*, 22 January .

77. In 2009, the International Crisis Group (ICG) reported that treatment of those associated, or accused of association, with the OLF was particularly harsh:
- “[h]arassment, intimidation and imprisonment of suspected OLF supporters remain widespread. Public and sometimes private criticism of OPDO⁴ and the regime are met by arrest. Detainees are regularly tortured and deprived of due process, and there are frequent but unsubstantiated allegations of targeted killings and disappearances of OLF members. A recurrent government method to silence critics is to accuse them of being OLF, OPC (formerly ONC) or OFDM members... Unsurprisingly, Oromiya has the country’s highest level of reported human rights violations”⁵.
78. More recent sources report that the authorities continue to target and mistreat known and suspected OLF supporters. Freedom House reasons that the government’s militarised response to rebel groups such as the OLF is justified as counter-terrorism, in part because of the OLF’s persistent political demands which have historically been couched in terms of ethnic nationalism, and in part because the OLF co-operates with Eritrea, which is Ethiopia’s regional political adversary. Freedom House states that whilst the OLF no longer has a realistic chance of achieving a separate Oromo state, the government perceives the OLF as the only alternative to the Oromo People’s Democratic Organization (OPDO), which is a minor party in the ruling coalition. The government:
- “...has therefore targeted the region [Oromia] for more systematic repression than is seen in other parts of the country, routinely persecuting individuals it suspects of being OLF supporters or sympathizers.”⁶
79. Furthermore, sources suggest that the government has accused ethnic Oromo, and particularly members of registered Oromo political parties, of association with the OLF in order to justify arresting them. Amnesty International’s *Annual Report 2011 – Ethiopia* noted reports of detention without trial, torture and killings of Oromo, who were often arbitrarily arrested on the grounds of supporting the OLF.⁷ Prolonged pre-trial detention without charge is reportedly common, particularly under anti-terrorism legislation which allows the police to request additional investigation periods, up to a total of four months, before filing charges.⁸ The US Department of State (USDOS) has also noted reports that torture is routinely used by police, prison officers and the military against alleged supporters of insurgent groups including the OLF. Torture has reportedly frequently been instigated or condoned by commanding officers.⁹
80. The USDOS provides one example from July 2009 whereby a student and member of an Oromo opposition party was detained and coerced into signing a statement that he was a member of the OLF. When released from detention, he was admitted to hospital for nerve damage, hearing damage and back injuries. A court initially sentenced the perpetrators to a fine, and then sentenced the primary perpetrator to three years imprisonment when the case

⁴ Oromo People’s Democratic Organization – a minor party in the ruling coalition government.

⁵ International Crisis Group 2009, *Ethiopia: Ethnic Federalism and Its Discontents*, Crisis Group Africa Report N°153, 4 September, pp.26-27 .

⁶ Freedom House 2011, *Countries at the Crossroads 2011 – Ethiopia*, UNHCR Refworld website, 10 November <http://www.unhcr.org/refworld/docid/4ecba64d32.html> – Accessed 21 March 2012 .

⁷ Amnesty International 2011, *Annual Report 2011 – Ethiopia*, 13 May .

⁸ Human Rights Watch 2012, *World Report 2012 – Ethiopia*, 22 January .

⁹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Ethiopia*, 8 April, Section 1 (c) .

was re-opened with the involvement of a diplomatic mission. However, the USDOS notes that the officer had not begun to serve the sentence by the end of 2010.¹⁰

81. Reports further state that OLF supporters have been subjected to closed trials, limited or no contact with legal counsel, and heavy sentences, including one case where the accused was sentenced to death.^{11 12}
82. 2011 reports from the Danish Refugee Council and *IRIN News* state that 47 per cent of new Ethiopian arrivals in Yemen are Oromo, and suggest that discrimination and perceived allegiance to the OLF were contributing factors in this migration pattern.^{13 14} The *IRIN News* report quotes a Human Rights Watch researcher: “[y]ou don’t even have to be an OLF sympathiser – any form of communication with someone who might have a link with the OLF could be enough to get you arrested”.¹⁵ According to a December 2011 report by the Oromia Support Group, Oromo who oppose or do not comply with the government, tend to be met with accusations of involvement with the OLF. Members of registered Oromo opposition parties “are tarred with the same brush”.¹⁶
83. In March 2011, 200 members of Oromo opposition parties were arrested and detained, and accused of being involved with the OLF. They included former members of parliament, election candidates and party officials. According to Human Rights Watch, at least 89 of the detainees were charged, some with terrorism-related offences. In August 2011, two more Oromo political opposition leaders and seven party members were arrested on charges of involvement with the OLF. Human Rights Watch reported that “at least 20 other ethnic Oromo were arrested in this same sweep”.¹⁷ Amnesty International also reported the August 2011 arrests of the two political leaders.¹⁸
84. The Oromia Support Group states that the Somaliland authorities co-operate with Ethiopia, and that Oromo suspected of supporting the OLF have been forcibly repatriated from Somaliland since 1996. In September 2011, Ethiopia’s Prime Minister Zenawi requested the Somaliland President and Home Affairs Minister return more than 500 people, mainly Oromo accused of supporting the OLF. Three days later, the Somaliland government announced that

¹⁰ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Ethiopia*, 8 April, Section 1 (c)

¹¹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Ethiopia*, 8 April, Section 1 (e)

¹² Amnesty International 2011, *Annual Report 2011 – Ethiopia*, 13 May .

¹³ Danish Refugee Council 2011, *Mixed Migration from the Horn of Africa to Yemen*, Yemen Mixed Migration Task Force website, June, p. 16

http://www.mmyemen.org/c/document_library/get_file?p_l_id=11104&folderId=11497&name=DLFE-1333.pdf – Accessed 21 March 2012 .

¹⁴ ‘Cautionary migration tales are no deterrent’ 2011, *IRIN News*, 22 November <http://www.irinnews.org/printreport.aspx?reportid=94279> – Accessed 21 March 2012 .

¹⁵ ‘Cautionary migration tales are no deterrent’ 2011, *IRIN News*, 22 November <http://www.irinnews.org/printreport.aspx?reportid=94279> – Accessed 21 March 2012 .

¹⁶ Oromia Support Group 2012, ‘Persecuted in Ethiopia: Hunted in Hargeisa’, Report No. 47, Oromo Liberation Front website, February, p. 8 http://www.romoliberationfront.org/News/2012/Report_47_Hargeisa.pdf – Accessed 21 March 2012 .

¹⁷ Human Rights Watch 2012, *World Report 2012 – Ethiopia*, 22 January .

¹⁸ Amnesty International 2011, *Urgent Action: UA 263/11 Opposition Politicians Arrested, Risk Torture*, 2 September .

it would deport illegal immigrants and by 1 October, 300 Ethiopians had apparently been earmarked for deportation.¹⁹

85. Reporters Without Borders recently quoted an anonymous Ethiopian journalist as stating that the OLF had abandoned its demand for autonomy. According to the statement, local journalists did not cover the story due to fear of arrest.²⁰ OLF websites are reportedly blocked.²¹
86. However, a May 2011 UK Home *Office Operational Guidance Note – Ethiopia* concludes that ordinary low-level, non-combat members of the OLF, who have not previously come to the adverse attention of Ethiopia’s authorities are unlikely to attract attention from those authorities.²²

Reports relating to the arrest of OLF figures named ‘[Mr A]’ or ‘[Mr B]’

87. No reports were located naming an ‘[Mr A]’ or ‘[Mr B]’ in connection with OLF-related arrests in the circumstances claimed by the applicant.
88. [An] editor [with the same first name as Mr B] was reportedly detained in [2010] [detail deleted: s.431(2)].²³ [He] was released from [detention] [details deleted: s.431(2)].²⁴
89. However, sources report that a series of arrests throughout 2011 targeted suspected OLF members. Human Rights Watch reports that mass arrests of ethnic Oromo persisted throughout 2011, and that a crackdown with arrests of journalists and opposition politicians occurred from June to September.²⁵ In September 2011, Amnesty International reported that “[l]arge numbers of ethnic Oromos have been arrested on the accusation of belonging to or supporting the Oromo Liberation Front”.²⁶
90. Also in September 2011, the *Sudan Tribune* reported that the Ethiopian police had arrested 29 people suspected of having links with the OLF. A police spokesperson stated that “[s]ome of the suspects were provided training on setting explosives and related terrorist plots in neighboring countries”, but did not specify which countries would be targeted. The *Sudan Tribune* article does not provide the names of all those arrested, however it does state that nine of the detainees were apparently members of Oromo opposition parties. The government anti-terrorism task force responsible for the arrests claimed that some of the detainees had been using legitimate political party membership to cover up their involvement with the OLF.²⁷

¹⁹ Oromia Support Group 2012, ‘Persecuted in Ethiopia: Hunted in Hargeisa’, Report No. 47, Oromo Liberation Front website, February, pp. 25, 40-43

http://www.romoliberationfront.org/News/2012/Report_47_Hargeisa.pdf – Accessed 21 March 2012

²⁰ Reporters Without Borders 2012, ‘Two journalists sentenced to 14 years on terrorism charges’, UNHCR Refworld website, 27 January <http://www.unhcr.org/refworld/docid/4f22aa7f2.html> – Accessed 21 March 2012 .

²¹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Ethiopia*, 8 April, Section 2 (a)

²² UK Home Office 2011, *Operational Guidance Note – Ethiopia*, May, p. 5 .

²³ [citation deleted: s.431(2)]

²⁴ [citation deleted: s.431(2)]

²⁵ Human Rights Watch 2012, *World Report 2012 – Ethiopia*, 22 January .

²⁶ Amnesty International 2011, *Urgent Action: UA 263/11 Opposition Politicians Arrested, Risk Torture*, 2 September .

²⁷ ‘Govt Arrests 29 ‘Terrorists’ Including Opposition Members’ 2011, *All Africa Global Media*, source: *Sudan Tribune*, 5 September <http://allafrica.com/stories/201109070484.html> – Accessed 19 March 2012

91. As mentioned in the response to Question 2, a similar spate of arrests occurred during March 2011. According to a 30 March article in *Businessweek*, 64 members of the Oromo Federalist Democratic Movement and the Oromo People’s Congress were imprisoned in Addis Ababa at the time of writing. The government denied claims that political activists were being targeted, with a government spokesperson stating that those arrested were members of the OLF.²⁸

Granting of diplomatic passports in Ethiopia

92. The Tribunal was unable to locate any specific information relating to the question of whether former prisoners would be granted diplomatic passports to [work] at government events. However, sources suggest that a range of measures exist that allow authorities to prevent individuals deemed of interest from departing Ethiopia.
93. According to the Immigration and Refugee Board of Canada (IRB), albeit dated advice, to obtain a passport “a person must normally present an identity card issued by his or her local *kebele*, which serves as proof of address, or in the absence of such an identity card, a letter from the local *kebele*”. If employed, a passport applicant would also provide a letter from his or her employer, while a university student would be required to provide a letter from the university. To receive an exit permit, a valid passport is required.²⁹ In 2009, DFAT noted that “Kebele or other identity documents are not ‘routinely’ required at airports” as immigration staff normally cross-check hard and electronic copies of passports.³⁰
94. According to the Ethiopian Law Blog website, which purports to be written by lawyers from an Ethiopian private law firm, the following people are eligible for diplomatic passports:
- Ambassadors, Diplomatic Agents, Attaches And Consular Representatives who are assigned in the Ethiopian Embassies, Permanent Missions And Consular Posts abroad and to their spouses
 - Ethiopian government envoys holding such ranks as may be specified by directives of the ministry and who travel abroad to participate in conferences or meetings or for other government business
 - Ethiopian government envoys holding such ranks as may be specified by directives of the ministry and who travel abroad to participate in conferences or meetings or for other government business;
 - Government officials holding such ranks as may be specified by the ministry and who travel abroad for various purposes;
 - Ethiopian employees of international and regional organizations with the rank of diplomatic status and their spouses
 - Distinguished dignitaries specified by the ministry.

²⁸ Davison, W 2011, ‘Ethiopian Denies Arrest of Opposition Party Activists’, *Businessweek*, 30 March <http://www.businessweek.com/news/2011-03-30/ethiopian-denies-arrest-of-opposition-party-activists.html> – Accessed 26 March 2012

²⁹ Immigration and Refugee Board of Canada 1999, *ETH33212.E – Ethiopia: Procedures for travelling within and leaving Ethiopia; how passports and exit permits are obtained; and whether kebele authorities must be notified*, 16 November .

³⁰ DIAC Country Information Service 2009, *Country Information Report 09/41 – RRT Country Information Request ETH34594: Airport Departure Procedures*, (sourced from DFAT advice of 6 May 2009), 6 May .

95. Diplomatic passports are issued by the Ethiopian Ministry of Foreign Affairs, once an application is received from the applicant or a government office. There is also a ‘service passport’ which is available to a range of civil servants and their spouses, and “Ethiopians who don’t qualify to earn a diplomatic passport but who travel abroad for government business”. Applicants must submit an application specifying the grounds on which they qualify for a service passport.³¹
96. According to information provided by the Department of Foreign Affairs and Trade (DFAT) in 2008, “the Ethiopian government has been known to withhold passports of political dissidents and others deemed out of favour”. DFAT sources were unaware “if a bribe can be paid to get around this” DFAT noted that Ethiopia was generally less corrupt than other regional countries, and while bribery could not be ruled out, they were aware of high-profile opposition members obtaining travel documents and departing the country.³²
97. With regard to the ability of opposition party members to move freely in and out of Ethiopia, DFAT reported in 2010 that while family members of active opposition party members may be targeted by the government, “[t]he primary targets of harassment are most likely to be the active members themselves”. According to DFAT, “[a]ll exits and entries from Ethiopia are recorded in a database, including the name of the immigration officer checking the passport...[d]ata is entered accurately as officers are punished if mistakes are made”. While not specifically related to Bole airport, DFAT reported that “any bribery at the airport would most likely need to involve high ranking security officials due to increasing security at the airport and random cross checks of travellers documents at all areas of the airport”. DFAT noted that three active authorities – the Federal Police, the Security Service, and Immigration – are based at airports. With regard to the OLF in particular, DFAT advised the following:
- The OLF is an outlawed political organisation. Should at any time government security personnel believe that anyone has affiliations with OLF, they could target the individual, be it cutting short their travel plans or detaining and charging them while in country for the said affiliations.³³
98. In a separate report from May 2009, DFAT noted that “[i]f the courts consider that a person should not leave the country, they issue a letter informing Ethiopian Immigration to that effect. The Immigration office then sends to departure control officers a list of those people who should not be permitted to leave”.³⁴ [country information deleted: s431(2)].³⁵
99. In 2005, DFAT reported that “[a] person wanted by security personnel would likely face problems with Immigration (the passport issuing office and at departure control). Depending on the extent of the security force’s interest in detaining a person, that individual’s biodata would likely be disseminated to the eleven border crossings, as well as to the two international points of departure managed by Immigration authorities”. With regard to bribery, DFAT noted that “Bole International Airport, in particular, has more stringent

³¹ This information is undated, however it appears that the Ethiopian Law Blog website was established in 2009. See: ‘Brief Note on the Immigration Law of Ethiopia’ (Undated), Ethiopian Law Blog website <http://ethiopianlaw.com/blog/comments/134> – Accessed 26 March 2012 .

³² Department of Foreign Affairs and Trade 2008, *DFAT Report No. 768 – Ethiopia: RRT Information Request: ETH32591*, 1 February .

³³ DIAC Country Information Service 2010, *Country Information Report 10/9 – ETH10033: Political disappearances and departure information*, (sourced from DFAT advice of 19 February 2010), 23 February

³⁴ DIAC Country Information Service 2009, *Country Information Report 09/41 – RRT Country Information Request ETH34594: Airport Departure Procedures*, (sourced from DFAT advice of 6 May 2009), 6 May .

³⁵ [country information deleted: s.431(2)]

security as a result of direct flights to the US, UK and Israel. However, it has been noted that the physical layout of boarding areas at Bole does not preclude a passenger boarding a flight without having his/her documents examined at the boarding gate when traffic volumes are high”.³⁶

Treatment of failed asylum seekers

100. While limited recent information on the treatment of known or suspected failed asylum seekers was located, indications are that the treatment a returnee would receive from authorities would depend on the extent to which the individual would be seen as a threat to the current government.
101. In July 2009, Human Rights Watch (HRW) claimed that Somaliland authorities had forcibly returned Ethiopian asylum-seekers on a number of occasions. HRW reported that “[i]n at least several cases Ethiopia’s government has asked the Somaliland authorities to hand into its custody asylum-seekers who Ethiopian officials believe have ties to insurgent groups in Ethiopia, and the Somaliland authorities have generally complied with such requests” According to the report, most asylum-seekers entering Somaliland from Ethiopia are ethnic Oromo or Ogadeni clan Somalis, and “suspected ONLF and OLF members returned to Ethiopia face a high probability of arbitrary detention and torture”.³⁷
102. According to information provided by DFAT in 2008, “Ethiopian authorities do pursue opposition leaders within the country and abroad...there have been several cases of political protesters being arrested and detained (and most likely tortured)”. DFAT noted that “it is very difficult to assess what threat the individual in question might face. The key question would be whether or not Ethiopian authorities saw him as a real threat. If so, then he could face serious problems, but if not he might be able to return without incident”.³⁸
103. In June 2008, the *Sudan Tribune* reported that “400 Ethiopians which [sic] were stranded in Eritrea for years returned home this week under the auspices of the international committee of the Red cross (ICRC)”. The Ethiopians were reportedly welcomed by “hundreds of residents and officials of Mekelle town, in the northern Tigray region”. The repatriation was based on “the consent of each individual with cooperation of authorities from both sides”.³⁹ Previously, 623 people were repatriated under similar conditions in March 2008.⁴⁰
104. According to an October 2007 report by Amnesty International, “Sudanese authorities forcibly returned 15 recognized refugees to Ethiopia, handing them over at the Ethiopia-Sudan border. Their whereabouts are now unknown and Amnesty International believes they are at risk of enforced disappearance, arbitrary and incommunicado detention, torture and unfair trials”. The individuals were reportedly part of a larger group of Ethiopian refugees “arrested in early July 2007 by Sudanese intelligence officers in Khartoum and Blue Nile

³⁶ DIAC Country Information Service 2006, *Country Information Report 06/52 – Ethiopia: Passport Issue Arrangements*, (sourced from DFAT advice of 15 September 2006), 15 September

³⁷ Human Rights Watch 2009, “‘Hostages to Peace’: Threats to Human Rights and Democracy in Somaliland”, 13 July, p.43 <http://www.hrw.org/sites/default/files/reports/somaliland0709web.pdf> – Accessed 15 July 2009 .

³⁸ Department of Foreign Affairs and Trade 2008, *DFAT Report No. 768 – Ethiopia: RRT Information Request: ETH32591*, 1 February .

³⁹ ‘Red Cross repatriates 400 Ethiopians from Eritrea’ 2008, *Sudan Tribune*, 13 June <http://www.sudantribune.com/spip.php?article27521> – Accessed 18 June 2008 .

⁴⁰ ‘635 people repatriated’ 2008, *Reuters*, 17 March <http://www.alertnet.org/thenews/fromthefield/220224/ac86f052509b8ad74639ef387fbaa725.htm> – Accessed 19 March 2008 .

state” Among those repatriated were believed to be the leader of defunct opposition party, the Ethiopian Democratic Union, and alleged members of the Oromo Liberation Front.⁴¹

FINDINGS AND REASONS

Country of nationality

105. The Tribunal accepts that the applicant is a citizen of Ethiopia. It accepts as evidence of this the copy of the applicant’s passport provided to the Department. The Tribunal has assessed the applicant’s claims against Ethiopia as his country of nationality.

Credibility concerns

106. The Tribunal accepts that ‘applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.’ The Tribunal also accepts that ‘if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt. (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para 196). However, the Handbook also states (at para 203):

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

107. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind 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.
108. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220).
109. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, 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. (see *Randhawa v Milgea* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)
110. In the present case, the Tribunal has a number of concerns with the credibility of the applicant. As set out earlier in the summary of the evidence at the hearing, the Tribunal has concerns with the plausibility of many of the claims made by the applicant in his evidence. For example, it strikes the Tribunal as unusual that a professional [in the entertainment industry] such as the applicant would simply did not turn up to the Victory Day event for

⁴¹ Amnesty International 2007, ‘UA 280/07: Forcible return/fear of torture or ill-treatment/incommunicado detention/prisoner of conscience’, 31 October http://www.amnesty.org/en/alfresco_asset/9187ebe6-a2b0-11dc-8d74-6f45f39984e5/afr250242007en.html – Accessed 18 January 2008 .

which he had been booked without giving any advance warning, despite claiming later in his evidence that [Mr D] had ordered his attendance and was a very powerful figure who could have people arbitrarily arrested at will for defying his authority. The Tribunal also has difficulty accepting that the applicant would have been arrested for such a minor altercation with [Mr D], or that he was then not asked a single question, charged or given any information as to why he was detained over a period of 3 months. In this respect, the Tribunal notes that country information indicates that usual police procedure is to bring a suspect before a Magistrate within 48 hours to be charged as part of the police investigation stage, and thereafter the person is transferred prison.⁴² The Tribunal also regards it as unusual that the applicant would befriend someone in jail who was suspected of OLF involvement, given that this would clearly make his own predicament much worse. The Tribunal also regards it as unusual that the applicant would be issued a diplomatic passport in order to [work] at the Ethiopian embassy only 6 months after him being detained for 3 months on apparent suspicions of OLF support. The Tribunal also has difficulty accepting that it was such a fortunate coincidence that the authorities did not discover any link between the applicant and the OLF until a couple of days after he had left Ethiopia, despite him having been assisting the OLF for approximately two years and his main OLF associate, [Mr B], having been arrested one month prior to the applicant's departure. The Tribunal also has difficulty accepting that the police would formally attend his home for questioning and then searching, yet would then break into his studio in secret.

111. However, notwithstanding the above concerns, the Tribunal notes that there were also other positive aspects to the applicant's evidence. The Tribunal traversed a large range of subject-matters across a very lengthy hearing, throughout which the applicant otherwise gave generally consistent and credible evidence. Having listened to the recording of his Department interview, the Tribunal notes that the applicant's evidence has remained generally consistent throughout the processing of his application by the Department and the Tribunal. The Tribunal also accepts that the applicant often provided plausible responses to many of the Tribunal's concerns raised at the hearing, both when directly questioned at the hearing and then in his subsequent statutory declaration provided to the Tribunal after the hearing. For example, whilst unlikely, the Tribunal accepts that it is plausible that the applicant's arrest and detention were an unofficial, local matter instigated by his kebele Chairman to punish the applicant's recalcitrance. If so, this might explain why correct police procedures were not followed and why his detention was not discovered at the time his diplomatic passport and travel to [work] at the Ethiopian embassy in [Country 4] were arranged at a higher level of government. Similarly, in relation to the Tribunal's concerns that the applicant would befriend an OLF suspect whilst in prison given the circumstances, the Tribunal accepts that his detention would have been an unfamiliar and frightening experience, which could have led to him forging unlikely friendships. It is also plausible that the applicant managed a lucky escape by departing the country just prior to him being wanted by the authorities.
112. Moreover, the Tribunal is particularly mindful in this case of its obligation to consider the possibility that it might be wrong unless confident of its rejection of an applicant's claims under the 'What if I am wrong?' test arising from cases such as *MEIA v GUO* (1997) 191 CLR 559, *Abebe v The Commonwealth* (1999) 197 CLR 611; *MEIA v Wu Shan Liang* (1996) 185 CLR 259 and *MIMA v Rajalingam* (1999) 93 FCR 220. The Tribunal is mindful of the

⁴² See, eg, Special Rapporteur on Prisons and Conditions of Detention in Africa (2004), *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia, 15 – 29 March 2004*, pp.24-25.

serious consequences likely to befall the applicant if its credibility concerns are misplaced and his claims are indeed true. In this respect, the Tribunal notes that, according to the applicant's claims, the police have been actively pursuing him at his family home and have already arrested his main OLF contact. Given country information set out earlier regarding the serious mistreatment by the authorities of suspected OLF activists, the Tribunal accepts that the applicant's probability of serious harm in Ethiopia (if his claims are true) is very high. The Tribunal is reminded of Dixon J's often cited comments in *Briginshaw v Briginshaw* (1936) 60 CLR 336, regarding the application of the standard of proof in civil proceedings (at 361-2, emphasis added):

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, **or the gravity of the consequences flowing from a particular finding** are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.

113. The Tribunal appreciates that the principle in *Briginshaw* is not of direct application to the decision-making of an inquisitorial tribunal. However, in the Tribunal's view, his comments remain of relevance to the application of the 'What if I'm wrong?' test in cases such as the present, if only to remind the Tribunal that the high probability and gravity of the consequences that would flow from a negative finding of the Tribunal should not be divorced from the Tribunal's consideration of whether its doubts with a particular claim are sufficiently confident as to reject that claim.
114. The Tribunal has also had regard to the Tribunal's published *Guidance on the Assessment of Credibility*⁴³, which highlights many of the fears and concerns that occupy the minds of genuine refugee applicants, as well as other relevant cultural and language barriers, which can affect the plausibility and presentation of an applicant's claims. The Tribunal has also had regard to the written submissions of the applicant's agent on this issue.
115. In the present case, after carefully considering all the evidence, the Tribunal has formed the view that it is unable to reject many of the applicant's claims with sufficient confidence and, as set out below, has therefore accepted the possibility that those claims are true notwithstanding the Tribunal's credibility concerns discussed above.

Assessment of the applicant's claims

116. The applicant accepts that the applicant is of Oromo ethnicity and is a successful and reasonably well-known [in the entertainment industry] in Ethiopia, as claimed by the applicant in his evidence. In accepting this, the Tribunal notes that the applicant's ethnicity is recorded on his identity card and he has produced to the Tribunal [two CDs], as well as links to other [events on the internet].
117. For the reasons set out earlier, the Tribunal has some concerns with the credibility of the applicant in respect of his claims of past problems in Ethiopia and involvement with the OLF. However, the Tribunal is not sufficiently confident in those concerns as to reject his claims regarding this history of events and, in accordance with the 'What if I am wrong?' test, has proceeded on the assumption that those claims are true notwithstanding its concerns.

⁴³ MRT-RRT, *Guidance on the Assessment of Credibility*, August 2008, available at <http://www.mrt-rrt.gov.au/Conduct-of-reviews/default.aspx>.

118. The Tribunal is therefore prepared to accept the applicant's claims that he was involved in a protest outside the Ministry of Education in approximately 1996 (Ethiopian calendar) and, thereafter, the police came to his home but did not search his house because the police officer was sympathetic to his situation because his mother spoke to him in Oromo. However, the applicant's evidence makes clear that this incident had no residual problems for him and did not bring him to the attention of the authorities thereafter, as evidenced by the fact that the police never returned to his residence, he was able to travel freely in and out of Ethiopia on many occasions and he was granted a diplomatic passport to [work] at the Ethiopian embassy in [Country 4].
119. The Tribunal is also prepared to accept the applicant's claim that he was arrested in or around May 2009 (Gregorian) following an altercation with his kebele chairman after he failed to [work] at the Victory Day event. The Tribunal is also prepared to accept that he was detained without charge or explanation for 3 months, during which time he was mistreated. Once again, however, the applicant's evidence indicates that these events did not afterwards cause him to become a person of adverse interest to the authorities, at least beyond his kebele, given that he was able to travel freely in and out of Ethiopia to [Country 4], [Country 3] and then Australia, and was also granted a diplomatic passport to [attend an event] at the Ethiopian embassy in [Country 4].
120. However, the Tribunal accepts that the events following the applicant's release from prison have contributed to him now holding a well-founded fear of persecution for reason of actual or imputed political opinion. In particular, the Tribunal is prepared to accept that the applicant befriended an OLF supporter whilst in prison, [Mr A], who convinced him to assist the OLF by producing CDs in his studio to be sold to raise funds for the OLF. The Tribunal is also prepared to accept that the applicant assisted in the OLF in this manner, as set out by the applicant in his oral evidence. The Tribunal is also prepared to accept that, approximately one month prior to his departure from Ethiopia, the applicant's main OLF contact, [Mr B], was arrested. Given these matters, the Tribunal is also prepared to accept that, a few days after his departure from Ethiopia, the police came to his family home to question the applicant and then returned on a second occasion to search the home. The Tribunal is also prepared to accept that the police went to the applicant's [studio] in their search for him and, upon finding the studio locked and unoccupied, entered the studio by force.
121. In relation to the applicant's alleged making contact with a man in Australia named [Mr E] and discussing possible OLF fund-raising activities, the Tribunal notes that it found the applicant's evidence on this matter to be very vague and evasive. Whilst the applicant ostensibly agreed to the Tribunal telephoning [Mr E] to take evidence, he appeared very reluctant to do so and then began minimising the extent of [Mr E]'s knowledge of his background in Ethiopia compared with his earlier evidence on this subject. The Tribunal has also had regard to the operation of s.91R(3) of the Act and whether the applicant's conduct in becoming acquainted with [Mr E] and discussing OLF activities was simply to strengthen his refugee claim. However, the Tribunal acknowledges that there is little of weight to support its suspicions in these matters. In light of its overall positive assessment of this application, the Tribunal is prepared to give the applicant the benefit of the doubt that he has made contact with an OLF supporter in Australia, [Mr E], and the two have discussed his past OLF fund-raising activities and have also discussed engaging in future OLF fund-raising activities. The Tribunal is also prepared to accept that the applicant engaged in this conduct otherwise than for the sole purpose of strengthening his refugee claim and, accordingly, s.91R(3) does not exclude the Tribunal's consideration of that conduct.

122. In light of the Tribunal's acceptance of the above matters, combined with relevant country information set out earlier regarding treatment by the authorities of known or suspected OLF supporters, the Tribunal accepts that the applicant's return to Ethiopia in the reasonably foreseeable future would give rise to a chance of serious harm that is not remote or fanciful and, accordingly, amounts to a real chance. In making this finding, the Tribunal accepts from country information set out earlier that the government has regularly and frequently subjected known or suspected OLF supporters to serious harm, including through intimidation, interrogation and punishment.
123. With respect to the additional requirements of s.91R(1), the Tribunal accepts that the essential and significant reason for the persecution feared by the applicant is his actual or imputed political opinion and, accordingly, the requirements of s 91R(1)(a) are met. Having regard to the non-exhaustive list in s 91R(2) of the type and level of harm that will constitute 'serious harm' for the purposes of s 91R(1)(b), the Tribunal accepts that the persecution feared by the applicant involves serious harm, including significant physical harassment or ill-treatment and a threat to his life or liberty. It follows that the requirements of s 91R(1)(b) are also met. In relation to the requirements of s 91R(1)(c), the Tribunal is satisfied that the persecution would involve conduct which is systematic in the sense of being deliberate and premeditated (see *VSAI v MIMIA* [2004] FCA 1602) and discriminatory in the sense that it would be directed at the applicant for reason of his political opinion. It follows that the requirements of s 91R(1) are met in this case.
124. Given that the agent of the feared persecution is the Ethiopian authorities, the Tribunal further finds that neither state protection nor internal relocation would be available to the applicant in this case, particularly given that his risk of harm could materialise immediately upon his arrival at the airport in Ethiopia.
125. Having regard to the above, the Tribunal accepts that the applicant has a well-founded fear of persecution for a Convention reason (political opinion) if he were to return to Ethiopia now or in the reasonably foreseeable future.

Safe third country

126. There is no evidence before the Tribunal that the applicant has a right to enter and reside in any third country for the purposes of s 36(3) of the Act and, accordingly, the Tribunal finds that he does not have any such right.

CONCLUSIONS

127. 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

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