

LSH
Heard at: Field House
On 20 May 2004

AA (Vulnerable Female –
Article 3) Ethiopia CG [2004]
UKIAT 00184

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

8 July 2004

Before:

**Mr G Warr (Vice President)
Dr H H Storey
Mrs R Faux, JP**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

APPELLANT

and

RESPONDENT

Representation:

For the appellant: Mr L Parker, Home Office Presenting Officer
For the respondent: Ms F Meyler (Refugee Legal Centre)

DETERMINATION AND REASONS

1. The Secretary of State appeals the determination of an Adjudicator (Mr P S Aujla) who allowed on human rights grounds the appeal of a citizen of Ethiopia (hereinafter referred to as the appellant) from the decision of the Secretary of State to refuse her application for asylum.
2. The appellant was born in Ethiopia in May 1982. Her parents had got divorced when the appellant was very young. Her mother went to Saudi Arabia. The appellant remained with her father who later remarried. In 1996 the appellant was at home with her

father, stepmother, sisters and brother when two soldiers came into the house. Her father was beaten and taken away. The soldiers later returned and beat up the appellant's stepmother. The appellant's stepmother was pregnant. She died later in hospital. The appellant and her sister's brother went to stay with her aunt. Arrangements were made for the appellant to travel to Saudi Arabia where the appellant was able to join her mother in 1996.

3. The appellant's mother worked as a domestic servant and she arranged for the appellant to work for a family in Saudi Arabia. This family treated the appellant very badly. The appellant then worked for an American family who later returned to the United States. They unsuccessfully tried to obtain a permit for the appellant to travel with them. The appellant then worked for another family who also started to mistreat the appellant. After about 2 months this family decided to come to the United Kingdom during the summer holiday in 1998 and brought the appellant with them. After two weeks the appellant ran away. She was then aged 16. She was taken into care by Westminster Social Services. On 27 January 1999 an application was made on the appellant's behalf for exceptional leave to remain in the United Kingdom on the basis that she did not know the whereabouts of her family and would have no one to support her should she be returned to Ethiopia. It was said that there was widespread violence and discrimination against women. On 26 June 2000 a further letter was written to the Secretary of State concerning the appellant's vulnerability. On 7 April 2003 the Secretary of State refused the application for exceptional or discretionary leave and also refused the implicit application for asylum.
4. The asylum appeal was withdrawn before the Adjudicator.
5. There was before the Adjudicator a psychiatric report prepared by Dr M Al-Yassiri dated 27 September 2003. The Adjudicator's determination concludes as follows:

"35. I bear in mind the findings in the psychiatric report that although the appellant is not suffering from post traumatic stress disorder, there are various aspects of her mental health which make her vulnerable. She suffers from excessive anxiety, difficulty to control the worry, relentless [sic], difficulty in concentrating and disturb sleep. The doctor has put it down to abuse by the appellant's stepmother during childhood as well as abuse by the family for whom she worked as a domestic servant. The doctor has stated that there is a high probability of developing a major depressive episode as well as for the deterioration of her present psychological symptoms.

Given that background, coupled with the fact that the respondent has not challenged the appellant's age, and the fact that the initial statement she gave to the solicitors was not an asylum application but a request for exceptional leave to remain, I am not surprised that some important aspects of her story were left out of her first statement and that she found herself confused in the asylum interview about what she had stated in the first statement at the age of 16. She was interviewed in 2003, when she was nearly 21.

36. I have taken the appellant's second statement into account in which she explains the credibility points raised by the respondent. On the totality of the evidence before me, I find that the credibility points raised by the respondent have been answered adequately and that any outstanding aspects of the issues raised are purely peripheral and do not go to the core of the appellant's claim. I am prepared to accept the appellant's account about her family's circumstances. I find that the appellant did go to Saudi Arabia as claimed from where she was brought to the United Kingdom by her employers. I am prepared to accept her account that she has no family left in Ethiopia, certainly not any members of the family with whom she has any contact. I am also prepared to accept her account that she worked as a domestic servant and that she was brought to the United Kingdom as such as well as her account that she was abused by the families that she worked for.
37. The issue before me to decide is whether or not the appellant's protected rights mentioned in Article 3 are engaged. I bear in mind the very high threshold if Article 3 is to be engaged. I also bear in mind that the appellant is a lone young woman who will be returning to Ethiopia where she has no family or friends and she has been out of the country since 1996 when she was of the tender age of 14. Given the fact that she has suffered abuse at the hands of the two families for whom she worked as a domestic servant, and taking into account her mental health as explained in the psychiatric report, I find that the appellant would not remember much about life in Ethiopia and would, for all intents and purposes, be going to an almost unfamiliar territory.
38. The background material shows that women are still at risk of ill-treatment in Ethiopia. I quote selectively from CIPU (paragraphs 6.109-6.114) where it is stated that the traditional practice of abduction as a form of marriage is illegal but is still believed to be practised widely in many

rural areas. Women are often abused physically during abduction and forced sexual relationships accompany many marriages. It is estimated that there are more than 1000 rapes a year in Addis Ababa however there were only 68 rape convictions nationwide in the year ending September 2000. It is estimated that an average of about 84 rape cases per day in Addis Ababa are never reported or brought to court due to social and cultural problems.

39. When considering the appellant's case in light of the objective material, I bear in mind that she has no family in Ethiopia. She hardly knows anything about the country, having left at the tender age of 14. Her mental health is vulnerable. She will be returning to Ethiopia as a lone young woman. She will have no network of support and would not know who to turn to if she had problems. Taking all the evidence into account cumulatively, I have no hesitation in reaching the conclusion that the appellant would clearly be at risk of treatment contrary to Article 3 if she is returned to Ethiopia. As a lone young woman without support network, she will be at risk of abduction, rape and other forms of abuse. I find that there is a real risk of the appellant's Article 3 protected rights being breached if she is returned to Ethiopia."
6. The Adjudicator therefore allowed the appeal on human rights grounds, the asylum appeal having been withdrawn.
7. Mr Parker submitted that the appellant's generalised anxiety did not get anywhere near the required Article 3 threshold. There was no current medical evidence about her condition. The appellant did not suffer from post traumatic stress disorder.
8. So far as the appellant's age was concerned, she was not a minor. She was in her early 20s. Although she had left Ethiopia in 1996 she had spent 14 years in her own country. She had met a supportive friend through her local mosque as appeared from a letter written by the Women's Therapy Centre on 11 September 2000 set out in the appellant's bundle and she would be able to find similar support in mosques in Ethiopia. She had lived in Saudi Arabia and had adapted to life in the United Kingdom and would have no difficulty in re-adapting to life in Ethiopia. Reliance was placed on mere generalised risk on return. The risk of rape had to be seen in the context of the population of Ethiopia – 66 million. The appellant was not specifically at risk of rape – she was not someone who was likely to be detained for any reason nor was she a member of an opposition group. Reference was made to the US State Department Report. It appeared there were no problems returning to Ethiopia. There were no reports that members of the military who redeployed

from border areas to other regions sexually harassed and raped some young women – unlike the previous year. Many refugees had returned voluntarily to Ethiopia and it was curious that they should do so if conditions were so dire. There were indications of increasing moves to hold to account the local police for violence and human rights abuses – see “Ethiopia: A Situation Analysis and Trend Assessment” (January 2004) - a UNCHR commissioned report. At paragraph 5.2 of this report it was said there were still important protection issues in relation to individual cases. Reference was made to categories where individuals were most often at risk. These included “some of those involved in armed opposition to the government, and, in Oromia State, some perceived as actively or tacitly supporting them; some involved in political opposition particularly during electoral periods; certain political journalists and campaigning members of professional associations. In addition there is particular concern for those displaced by conflict and food insecurity, and for the communities which host them. IDPs remain one of the most vulnerable sectors in Ethiopia and consistently impact to increase the vulnerability of the communities amongst whom they live.”

9. Miss Meyler submitted that in contrast to the case of **Hariri [2003] EWCA Civ 807** (23 May 2003) the appellant had been found to be credible. She had no family in Ethiopia. She had suffered as noted by the Adjudicator. Her father had been beaten. Her stepmother had died after being beaten. The appellant would suffer a major depressive episode if removed. There was a history of abuse in Ethiopia and Saudi Arabia. There were 84 rapes every day in Addis Ababa.
10. Mr Parker submitted that the case did not reach the high threshold required. Reference was made to **SK [2002] 05613** and **N.[2003] EWCA Civ 1369** (16 October 2003).
11. The depressive illness would not make the appellant more vulnerable. She would not be more at risk because of depression. There was no evidence of any current fear of return. Her asylum claim had been withdrawn. She would not fall outside the class of persons considered in **Hariri**. There was not a consistent pattern of gross and systematic violations of human rights.
12. At the conclusion of the submissions we reserved our determination. We have carefully considered the points made on both sides and the material that has been placed before us. The objective evidence includes the October 2003 and April 2003 Home Office Country Assessments. The appellant’s bundle includes the Amnesty International report covering events in Ethiopia in 2003; the 2003 United States Human Rights Report

published in May 2004; a Human Rights Watch report: "Ethiopia Overview of Human Rights Developments (January 2004) and a UNHCR commissioned report (January 2004) entitled "Ethiopia: A Situation Analysis and Trend Assessment". The medical report (which has not been updated since the Adjudicator hearing) is to the effect that the appellant is not suffering from post traumatic stress disorder or major depressive illness. She had no active suicidal ideations nor had she made previous attempts at suicide. She was taking anti-depressants described by her GP. The appellant was however suffering from generalised anxiety disorder. She was presently in a vulnerable state and if forcibly repatriated to Ethiopia where she had no contact with her family "and has reasons to be fearful, there is high probability of developing a major depressive episode as well [as] the further deterioration of her present psychological symptoms. She feels relatively safe in this country. The perception of safety aided by the help and support [given] by the network of her former foster family and her determination to study." The doctor recommended increasing her anti-depressant medication and considered that the appellant would benefit from psychological support in the form of counselling. It is not clear if any steps have been taken to implement the consultant's recommendations.

13. The Adjudicator allowed the appeal because the appellant was a lone young woman who would be returning to Ethiopia where she had no family or friends. She had been out of the country since 1996 when she was aged 14. The territory would be unfamiliar. In paragraph 38 of the determination reference is made to the generalised risk of rape. In paragraph 39 the Adjudicator simply repeats the point about the appellant being alone and having left Ethiopia at the age of 14. He adds that her mental health is vulnerable and she would have no network of support. As a lone young woman without support she would be at the risk of abduction, rape and other forms of abuse.
15. Mr Parker submits that there has been a huge wave of returning Ethiopians to Ethiopia and it would be surprising if conditions were so dire that 800,000 voluntary returns had taken place – see paragraph 6.137 of the April 2004 country assessment.
16. Clearly rape and other forms of domestic violence are a serious problem in Ethiopia. We note in paragraph 6.139 of the Home Office Country Information Report that although the 1994 Constitution which provides for the equality of women, domestic violence including wife beating and marital rape was a pervasive social problem. While women had recourse to the police and the Courts, societal norms and limited infrastructure prevented women from seeking legal redress, particularly in rural areas. Social practices obstructed investigations and

prosecutions in rape cases, and many women were not aware of their rights under the law. However, rape sentences have been handed down in line with the 10 to 15 years proscribed by law – see paragraph 6.139 of the assessment. Abuses committed by redeployed soldiers were not reported unlike the previous year. Awareness of the issue of the rape is reflected in the fact that the Ethiopian Women’s Lawyers Association had conducted research on a number of rapes committed and the number of rape convictions handed down. It is noted that the police and courts had begun to enforce laws protecting women and children more seriously than in the past – see paragraph 6.140 of the April 2004 report (reflected in paragraph 6.123 of the report available to the Adjudicator). Abduction continues in the Oromia region and the southern region, despite the government’s attempts to curb the practice.

17. It does appear from the material to which we have been referred that the state is making attempts to deal with the problems of abuse of women. So far as state actors are concerned, the UNCHR commissioned report to which we have made reference reports that there are some indications of increasing moves to hold to account the local police and others for violence and human rights abuses, although it is right to say that the optimism is by no means unqualified. The military appears to have been professionalised over the previous decade and did not step beyond a constitutionally defined role in 2001. The appointments of a Human Rights Commission and Ombudsman had the potential to become an initiative of great significance.
18. We do believe that it is important to take into account paragraph 5.2 of this report headed “Policy Implications”. We appreciate that the instances given are not exclusive. However, we are of the opinion that if the report had been of the view that women such as the appellant were at risk on return they would have been included in the categories set out in paragraph 5.2 (see paragraph 8 above). The appellant does not appear to fall into any of the categories referred to – those involved in armed opposition to the government or in political opposition, certain political journalists and campaigning members of professional associations. It is to be borne in mind that the appellant’s appeal against the refusal of her asylum claim was withdrawn before the Adjudicator. It is also of note that it is stated that the refugee population in Ethiopia is smaller currently than at any time since 1991. The national political directory in Ethiopia is comparatively stable and relatively positive although the peripheral areas are insecure - reference is made in particular to Gambella.

19. We take Counsel's point that in Hariri the appellant had not been found to be credible, unlike this case. We take into account that in this case the Adjudicator accepted the appellant's history. However, it was still necessary for the Adjudicator to be satisfied that returning her to Ethiopia would expose her to a real risk. She had not shown that she would face any risk personal to her in Ethiopia as a result, for example, of her or family's political involvement. Success in her claim depended on showing that she fell within a category or categories of persons. As was stated in Hariri "the fact that ill-treatment or misconduct might be routine or frequent would not be enough". She is a lone young female who has not been in Ethiopia for some time. However, she had lived in her country for 14 years. She is a single female but she is now over 20 and has no physical problems. She has no suicidal ideation. She is not suffering from post traumatic stress disorder nor is she currently suffering clinical depression.

20. The Adjudicator does not demonstrate why the appellant would be at risk of a breach of Article 3 if she were returned to Ethiopia. The abuses suffered by the appellant in Saudi Arabia are of limited relevance. She does not face return to that country. The abuses suffered there are therefore only relevant insofar as they demonstrate her vulnerable mental state as a result of her adverse experiences there. It is not established on the evidence before us that the risk in Ethiopia of abduction, rape and other forms of abuse which the Adjudicator refers to are other than generalised risks. It is not demonstrated that in Ethiopia there is a consistent pattern of gross, flagrant or mass violations of individuals' rights. Moreover, it is not demonstrated that the appellant would be more at risk in Ethiopia because of her vulnerability.

21. We have already referred to the fact that rape sentences had been handed down in line with the sentences proscribed by law. We have also referred to the research conducted by the Ethiopian Women's Lawyers Association. That and the fact that rape cases are regularly reported indicate that the matter is a matter of public concern. Indeed the evidence is to the effect that the police and courts have begun to enforce laws protecting women and children more seriously than in the past – see paragraph 6.140 of the country assessment. Greater efforts were made to arrest men who had raped children and when convictions were secured prison sentences were imposed on some rapists. In Addis Ababa two police women had been assigned to each district. Women's groups had claimed that police often did not investigate reports of adult rape however, while prosecutors had taken over a year to bring charges and then only for infractions of the lowest possible penalty.

22. We can only interfere with the Adjudicator's decision if it was plainly wrong. However, taking into account the matters relied on by the Adjudicator cumulatively, we simply see no basis for finding that the appellant would be exposed to a consistent pattern of flagrant or mass violations of her human rights. The appellant's mental health, her youth, the fact that she is a single woman, the fact that she has been out of Ethiopia for a number of years and remembers little of it, none of these factors in our view establish that she would be exposed to a real risk of a violation of her human rights. The Adjudicator states that the appellant would not have a support network. However, given that she has managed to establish support networks in the United Kingdom through her mosque we see no reason to assume she would be unable to obtain help, if necessary from mosques in Addis Ababa. She would be returning to her own country where she had lived for 14 years. We do not in any way wish to sound unsympathetic about the problems that the appellant will undoubtedly face in her country. She will face difficulties. However, we do not find that she has established that she will face a real risk of torture or inhuman or degrading treatment or punishment on return to Ethiopia. The Adjudicator was wrong so to hold. Although we were not invited to consider any other Articles, we do not find that any interference with the appellant's family or private life would be disproportionate, bearing in mind the observations of the Tribunal in the case of M [2004] 00024 (Croatia).
23. The Secretary of State's appeal is allowed and the decision of the Adjudicator is reversed.

G Warr
Vice President