



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee

co-financed by the European Commission

Case Summary

Country of Decision/Jurisdiction	United Kingdom
Case Name/Title	ST (Ethnic Eritrean - nationality - return) Ethiopia CG
Court Name <i>(Both in English and in the original language)</i>	Upper Tribunal (Immigration and Asylum Chamber)
Neutral Citation Number	[2011] UKUT 00252 (IAC)
Other Citation Number	
Date Decision Delivered	01 July 2011
Country of Applicant/Claimant	Ethiopia
Keywords	Persecution
Head Note (Summary of Summary)	Whether arbitrary deprivation of nationality amounts to persecution is a question of fact. The same is true of the denial of the right of return as a national; although in practice it is likely that such a denial will be found to be persecutory.
Case Summary (150-500)	<p>The appellant was born in Ethiopia on 1 October 1979. At the time of his birth Eritrea was a province of Ethiopia, having been annexed in 1962. Both of the appellant's parents were Ethiopian nationals. His father was Oromo but his mother was Tigrina with her roots in Eritrea.</p> <p>During the war between Ethiopia and Eritrea in 1998 his mother, as an ethnic Eritrean, was deported to Eritrea. On 24 July 1999, the appellant was detained by the Ethiopian authorities. He was held in harsh conditions, interrogated and beaten. He was released on 28 August 1999, subject to reporting and residence conditions. His Ethiopian ID card was taken by the authorities. On 6 September 1999 he was summoned back by the authorities but preferred to go into hiding, before leaving Ethiopia for the United Kingdom, which he reached in late September 1999.</p>
<i>Facts</i>	<p>The appellant was refused asylum by the Secretary of State, and an appeal against that decision was refused on 2 May 2008. The Immigration Judge found the appellant's account of his family background and experiences in Ethiopia to be credible, but that as an Ethiopian national there was a presumption that he would be allowed to return to Ethiopia, and he would not face persecution there.</p> <p>That decision was upheld on reconsideration. Permission to appeal was granted by the Court of Appeal on the basis that there was, <i>"a real prospect that the applicant will establish that both IJ and SIJ erred in law in applying a presumption that he was not at risk of being denied status as a national by reason of his legal right to be regarded as a national, particularly in the context of his accepted ill-treatment in the past"</i>. The Court of Appeal then remitted this issue to the Upper Tribunal for reconsideration on the basis</p>



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee
co-financed by the European Commission

	that the appellant's account had been accepted.
<i>Decision & Reasoning</i>	<p>The Upper Tribunal considered a number of authorities on the issue as to whether, and in what circumstances, deprivation of nationality and the right to return to one's country amounted to persecution.</p> <p>In summarising its general conclusions the Tribunal found;</p> <p><i>"128. ... (B) Although the question of whether a person is a national of a particular state is a matter of law for that state, the question of whether a national of a particular state has been lawfully or unlawfully deprived of the nationality of that state is a legitimate issue for a court or tribunal to determine, in the course of deciding a person's entitlement to international protection (paragraph 74).</i></p> <p><i>(C) Whether arbitrary deprivation of nationality amounts to persecution is a question of fact. The same is true of the denial of the right of return as a national; although in practice it is likely that such a denial will be found to be persecutory (paragraphs 76 and 82 to 89)".</i></p> <p>In regard to the facts, the Upper Tribunal gave the following guidance in regard to similar cases;</p> <p><i>(1) ...in many cases people were arbitrarily expelled to Eritrea without having been subjected to that process. Those perceived as ethnic Eritreans, who remained in Ethiopia during the war, and who were deprived of Ethiopian nationality, suffered arbitrary treatment, contrary to international law. Those who left Ethiopia at this time or who were then already outside Ethiopia were arbitrarily deprived of their Ethiopian nationality. Also during this time, the Ethiopian authorities made a practice of seizing and destroying identification documents of those perceived as ethnic Eritreans in Ethiopia (paragraphs 60 to 65).</i></p> <p><i>(2) A person whose Ethiopian identity documents were taken or destroyed by the authorities during this time and who then left Ethiopia is, as a general matter, likely to have been arbitrarily deprived of Ethiopian nationality. Whether that deprivation amounted to persecution (whether on its own or combined with other factors) is a question of fact (paragraphs 76 to 78).</i></p> <p><i>(3) The practices just described provide the background against which to consider today the claim to international protection of a person who asserts that he or she is an Ethiopian national who is being denied that nationality, and with it the right to return from the United Kingdom to Ethiopia, for a Refugee Convention reason. Findings on the credibility and consequences of events in Ethiopia, prior to a person's departure, will be important, as a finding of past persecution may have an important bearing on how one views the present attitude of the Ethiopian authorities. Conversely, a person whose account is not found to be credible may find it difficult to show that a refusal on the part of the authorities to accept his or her return is persecutory or based on any Refugee Convention reason (paragraphs 79 to</i></p>



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee
co-financed by the European Commission

81).

(4) Although, pursuant to *MA (Ethiopia)*, each claimant must demonstrate that he or she has done all that could be reasonably expected to facilitate return as a national of Ethiopia, the present procedures and practices of the Ethiopian Embassy in London will provide the backdrop against which judicial fact-finders will decide whether an appellant has complied with this requirement. A person who is regarded by the Ethiopian authorities as an ethnic Eritrean and who left Ethiopia during or in the immediate aftermath of the border war between Ethiopia and Eritrea, is likely to face very significant practical difficulties in establishing nationality and the attendant right to return, stemming from the reluctance of the Ethiopian authorities to countenance the return of someone it regards as a "foreigner", whether or not in international law the person concerned holds the nationality of another country (paragraphs 93 to 104).

(5) Judicial fact-finders will expect a person asserting arbitrary deprivation of Ethiopian nationality to approach the embassy in London with all documentation emanating from Ethiopia that the person may have, relevant to establishing nationality, including ID card, address, place of birth, identity and place of birth of parents, identity and whereabouts of any relatives in Ethiopia and details of the person's schooling in Ethiopia. Failing production of Ethiopian documentation in respect of such matters, the person should put in writing all relevant details, to be handed to the embassy. Whilst persons are not for this purpose entitled to portray themselves to the embassy as Eritrean, there is no need to suppress details which disclose an Eritrean connection (paragraph 105).

(6) A person who left Ethiopia as described in (4) above is unlikely to be able to re-acquire Ethiopian nationality as a matter of right by means of the 2003 Nationality Proclamation and would be likely first to have to live in Ethiopia for a significant period of time (probably 4 years) (paragraphs 110 to 113).

(7) The 2004 Directive, which provided a means whereby Eritreans in Ethiopia could obtain registered foreigner status and in some cases a route to reacquisition of citizenship, applied only to those who were resident in Ethiopia when Eritrea became independent and who had continued so to reside up until the date of the Directive. The finding to the contrary in *MA (Disputed Nationality) Ethiopia [2008] UKAIT 00032* was wrong (paragraphs 115 and 116).

(8) The 2009 Directive, which enables certain Eritreans to return to Ethiopia as foreigners to reclaim and manage property in Ethiopia, applies only to those who were deported due to the war between Ethiopia and Eritrea and who still have property in Ethiopia (paragraphs 117 and 118).

(9) A person who left Ethiopia as described in (4) above, if returned to Ethiopia at the present time, would in general be likely to be able to hold property, although the bureaucratic obstacles are likely to be more severe



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee
co-financed by the European Commission*

	<p><i>than in the case of Ethiopian citizens. Such a person would be likely to be able to work, after acquiring a work permit, although government employment is unlikely to be available. Entitlement to use educational and health services is, however, much more doubtful. At best, the person will face a bureaucratic battle to acquire them. He or she will have no right to vote (paragraphs 119 to 124).</i></p> <p><i>(10) Such a person would be likely to feel insecure, lacking even the limited security afforded by the 2004 Directive. Tensions between Ethiopia and Eritrea remain high (paragraph 125).</i></p> <p>To summarise the factual and legal conclusions of the Upper Tribunal, the appellant had done all that could be reasonably expected of him to secure documentation from the Ethiopian Embassy to allow him to return to Ethiopia. He would not be able to re-acquire his Ethiopian citizenship, or to return to Ethiopia as a non-national.</p> <p>Although unnecessary to do so, as the appellant had been found to have a well founded fear of persecution for reason that he had been arbitrarily denied his right to citizenship, the Upper Tribunal went on to consider the position of a person who nevertheless might be able to return to Ethiopia as a non-citizen. The Upper Tribunal found that such a person would be able to work and own property, although there may be practical impediments put in their way in these regards. He may be arbitrarily denied the right to use education and health services. He would not have the right to vote. Additionally, with no status in Ethiopia, and given the ongoing tension between Ethiopia and Eritrea, and in the light of those large numbers fleeing Eritrea to avoid its Draconian form of military service his lack of status in Ethiopia, he would experience a very high degree of insecurity in Ethiopia to such a degree that that fear would amount to a fear of persecution.</p>
<i>Outcome</i>	The appeal was allowed. The appellant was held to be entitled to the protection of the Refugee Convention.