

IMMIGRATION APPEAL TRIBUNAL

YT (Minority church members at risk) Eritrea CG [2004] UKIAT 00218

Date of Hearing: 27 July 2004

Date Signed: 28 July 2004

Date Determination Notified: 09 August 2004

Before:

Mr Andrew Jordan (Vice President)
Mr D. Parkes (Acting Vice President)
Mrs L.R. Schmitt

Between

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

For the Appellant: Mr J. Bild, Immigration Advisory Service

For the Respondent: Mr A Hutton, Home Office Presenting Officer

1. The Appellant is a citizen of Eritrea who appeals against the determination of an Adjudicator, Mr D. G. B. Trotter, promulgated on 16 January 2004, following a hearing at North Shields (King's Court) on 10 December 2003 dismissing the Appellant's appeal against the decision of the Secretary of State to refuse both his asylum and human rights claims.

2. Although it had earlier been in issue, there was no substantive dispute before the Tribunal that the Appellant was born on 19 May 1985. He is now 19 years old but was aged 17 when he arrived at Heathrow on 9 September 2002 and applied for asylum. The Secretary of State made a decision on 1 November 2002 refusing to grant leave to enter and refusing to grant the Appellant asylum. This gave rise to a right of appeal under section 69 (1) of the Immigration and Asylum Act 1999. The Appellant duly appealed on 12 November 2002.

3. There is no cross-appeal by way of a Respondent's notice. Accordingly, the facts found by the Adjudicator are the basis of the appeal before us. The Appellant's case is that he was converted from his Orthodox faith into the Pentecostal Church as a result of being introduced to it by his sister. From an early age he was an activist in the Kale Hiwot ["Word of Life"] Church in Eritrea, the KHCE. He attended the church in Asmara. In paragraph 7 of a statement attached to his application, the Appellant stated that, from the outset, he was involved in distributing leaflets and organising meetings, alongside other members of the church. His activities included approaching non-church members in the local community, although this was done discreetly in order to avoid the attention of the authorities. The church was tolerated by the authorities in Asmara, partly because it had international members and partly because it assisted in organising local social projects. In May 2002, however, the KHCE church in Asmara was closed down by the authorities, although the elders encouraged the congregation to maintain local groups and to continue studying and teaching their religion. Although the Appellant was only 17, senior members of the church appointed him as a group leader in the neighbourhood and at his school. He arranged meetings, one of which was interrupted by the authorities. The Appellant was arrested and ill-treated. Over a period of two months in prison, he was interrogated and assaulted on approximately 9 separate occasions by different officers. The Appellant gave an account of an escape from a prison to which he was transferred that the Adjudicator rejected.

4. The Adjudicator was persuaded that the Appellant has maintained his interest in the Pentecostal Church whilst living in the United Kingdom. He is an active member of the church in Newcastle. The Adjudicator regarded his activities there as consistent with his genuine profession of religious adherence.

5. In paragraph 25 of the determination, the Adjudicator set out his findings as to the level of involvement of the Appellant in the KHCE in Asmara:

"The Appellant's case is that he was arrested as the leader of a "house church". Perhaps that is putting the matter a little too high - what he seems to have done was for a brief period (about six weeks) to have held Bible study and prayer meetings in his home attended by perhaps a dozen or so people. For all that, however, and in the light of the evidence of the way in which the authorities treated Pentecostals in the period after the 21 May 2002 decree I do accept on the lower standard of proof firstly that he was an active member of his congregation, secondly that part of that activity following the closure of the church involved him in the activities that he described, thirdly that these activities caused his arrest and fourthly that after his arrest in his original prison of incarceration he was interrogated and beaten. I do not think that he was beaten every day but I do not find his exaggeration of the amount of the beating in interview of great materiality. I note that in the statement which he handed over at the time of the SEF interview he says he was interrogated nine times and beaten on that number of occasions, I think that is the truth, although no doubt under the pressure of trying to convince the interviewer of the truth of the core of his account he somewhat exaggerated."

6. Mr Bild, who appeared on behalf of the Appellant before us, accepted that he was not in a position to contest the Adjudicator's rejection of the Appellant's account of his escape and proceeded on the basis of the Adjudicator's findings on this issue.

7. The Adjudicator reasoned that the Appellant would not be of any immediate interest to the authorities on his return to Eritrea, although he would be "logged in" (to use the Adjudicator's expression) as a man who had been detained following the crack down on the "Pentes" but who had been released and was of no further interest to the authorities. As the Adjudicator had rejected the Appellant's account of his escape, he would not be treated as an escapee. See paragraph 28 of the determination. In paragraph 29 of the determination, however, the Adjudicator considered the Appellant's future on return to Eritrea:

"Even if the Appellant were of no interest to the authorities on his return to Eritrea I have to consider whether he would become of interest to them as a result of his religious convictions... It is my view almost impossible that a man with this man's religious convictions would be able on return to his native land to refrain from the manifestation of his Christian faith as he understands it or to limit his manifestation of his faith to meetings of less than five people in a house. The overwhelming likelihood is that he would, by virtue of his religious convictions, feel compelled to preach the Gospel whether it be publicly or (more likely) in an underground house church."

8. There is no issue that arises in relation to this part of the determination. The following passage, however, was the subject of detailed scrutiny by the Tribunal:

"I have to ask myself whether this would place him at any risk of further ill-treatment. It is in my view highly significant that following the immediate aftermath of the decree of 21 May 2002 *there is no compelling objective evidence to support the proposition that Pentecostals continued to be persecuted in Eritrea*. The up-to-date Country Assessment does not give any authoritative corroboration of such a proposition and the objective evidence tendered by the Appellant only goes to the immediate post decree period. Like the Home Office Presenting Officer I find it significant that by 2003 it was possible for the pastor of this man's own church to be in communication with the United Kingdom by telephone and by fax illustrating that even so senior an individual is no longer considered by the authorities to warrant detention or ill treatment. I am aware that since that fax was sent it has been asserted that the pastor has been arrested but this would seem to be an assertion inconsistent with the general relaxation that appears to have happened since the Spring of 2002 and I do not accept that assertion." [Our italics.]

9. In paragraph 30 of the determination, we consider that there is a finding by the Adjudicator of considerable importance in the context of this appeal. He stated:

"On this basis it seems to me that the Appellant *who would have been at risk had he been returned to Eritrea in accordance with the Removal Directions* has been able to obtain some security from that risk by effluxion of time and a relaxation of the situation in Eritrea." [Our italics.]

10. It is apparent from the passages that we have set out above that the Adjudicator found the Appellant to be an activist in the KHCE and that his religious convictions were

sufficiently strong to compel him to preach the Gospel either in public or, more likely, in an underground house church. The Adjudicator also accepted that he had been arrested, detained and imprisoned for a period of two months and that, during the course of his imprisonment, he had been interrogated and beaten on at least nine occasions. Although the Adjudicator made no express finding that this amounted to persecution for a Convention reason, it seems to us that the Appellant's description of his ill-treatment was broadly accepted by the Adjudicator, although subject to some exaggeration. We consider, however, the Adjudicator was making a finding that the Appellant had been persecuted for his adherence to the church. In the remainder of the determination, however, the Adjudicator made it equally clear that he considered this incident was a consequence of the immediate aftermath of the events of 21 May 2002 and that, thereafter, there followed a general relaxation in the authorities' attitude towards Pentecostals such that they were either not ill-treated at all or only to an extent that fell below a level of ill-treatment sufficient to cross the threshold of a claim under either Convention. It is this contention that is the subject of the appeal. The question that the Tribunal is asked to resolve is whether the background evidence supports the Adjudicator's finding that there has been a general improvement in the position of Pentecostal Christians in Eritrea since May 2002.

11. For the purpose of this appeal, we were provided by the Appellant with two bundles of material. In addition, the Secretary of State provided the Country Report on Eritrea prepared by CIPU in April 2004. There is no dispute that, on 21 May 2002, the Eritrean government closed all churches other than the Orthodox, Roman Catholic and Lutheran denominations. All other groups, including KHCE, have been closed down. The KHCE church is part of Serving in Mission (SIM), an international organisation. Elsewhere in the background information, SIM is described as an evangelical Protestant Mission which used to be called the Sudan Interior Mission and is one of the oldest African mission agencies, established in 1893, presumably with links to other Pentecostal or evangelical churches in other parts of the world. Mr K. Riegert from SIM (Canada) wrote an e-mail to the Appellant's solicitors on 28 February 2003 to the effect that the term "Pentecostals" refers to evangelical Christian churches as well as Methodists, Baptists, Jehovah's Witnesses and other charismatic Christian groups. As a result of the May crackdown, all the affected members of the Pentecostal churches have had to meet in private homes, normally under the direction of group leaders. Mr Riegert had personal knowledge of one pastor who was imprisoned on several occasions beginning in April 2002 and as well as other examples.

12. In the bundle prepared specifically for the appeal before the Tribunal, we have been provided with a Freedom House press release dated 7 July 2004 indicating that various members of Pentecostal denominations have been arrested in the course of 2004. Pastor Hagos of the Rema Evangelical Church in Asmara has been arrested and his whereabouts remain unknown. Helen Berhane, a singer popular amongst the youth, has been held since 13 May 2004 in a shipping container at the Mai Serwa military camp, apparently because she refused to sign a paper recanting her Christian faith and agreeing not to participate in Christian activities. Her arrest follows a similar earlier case. The Press Release continues that since the crackdown, pastors, soldiers, women, children and the elderly have been jailed after being caught worshipping, reading the Bible or praying together. It records that the US State Department reports that over 300 Christians remain in prison. The US Commission on International Religious Freedom recommended that

Eritrea be classified as a country of "Particular Concern" as a result of religious persecution.

13. Mr Bild also referred us to the general human rights problems experienced in Eritrea. In the Amnesty International report of May 2004, page 1, (page 5 of the bundle) there is reference to Aster Yohannes, the wife of a detained former minister, who returned to Eritrea in December 2003 from the USA where she had been studying. She was detained at the airport and has never been seen since. In addition, 10 independent journalists remain in secret detention and incommunicado since their arrest in September 2001 when the entire private press was banned. On page 13 of the report, Amnesty International deals with religious persecution. It records an upsurge of religious persecution of members of minority Christian faiths since early 2003. On pages 15 and 16, there is a list of incidents, demonstrating a pattern of frequent arrests in February to May 2003, a resumption again in September 2003 which was intensified in 2004. These included 57 students, including girls, arrested in August 2003 on account of possessing bibles. Some were held in underground cells, others imprisoned in metal shipping containers in sweltering conditions with little food and no medical care. Those held were put under pressure to abandon their faith. Most were released after some weeks but some leaders are, apparently, still detained. Of direct relevance to the present appeal is reference to the arrest on 23 November 2003 of 8 KHCE members, including the pastor, in Mendefera. Worshipers in two Pentecostal churches in Asmara were arrested in a February and March 2004. On 18 March 2004, 20 members of the Appellant's church in Assab were detained. Amnesty International has stated that there are currently reported to be over 400 members of minority churches in detention in spite of international criticism.

14. It may be of some significance that no apparent reason has been provided for the crackdown. It has been suggested that it is partly linked to government action against young people trying to avoid military conscription. This might well explain the government's attitude towards the Jehovah's Witnesses who hold deep-rooted objection to military service. It is less easy to explain in relation to the Appellant's own position where there is no credible evidence of any moral or ethical objection to military service. It may be that, although a secular state, the Eritrean authorities favour the Orthodox Church and seek to resist charismatic churches, particularly those having links abroad.

15. The Country Report prepared by CIPU in April 2004 provides this information:

Non-Sanctioned Religious Groups

6.40 The US Department of State report on Religious Freedom, 2003, noted that, "74 military and national service personnel were arrested in February 2002 and remained imprisoned near Assab during the period covered by the report [1 July 2002, to 30 June 2003]. Reports suggest that they are being detained until they repudiate their faith. Some of the detainees reportedly have been rolled around in oil drums, abused by fellow prisoners, and the women sexually abused; some of the detainees reportedly suffer from partial paralysis and other physical injuries as a result of their torture. Other reports describe other individuals and groups in the military and national service who have been detained, harassed, and physically tortured for practicing non-sanctioned religions". [6b] (p4)

6.41 The US Department of State report on Religious Freedom 2003 documented numerous abuses of non-sanctioned religious groups:

On 1 January 2003 “50 members of the Rhema Church in Asmara were detained for 10 days without charge. On 16 February 2003, an additional 17 Rhema Church members were detained for 15 days after meeting in a private residence; some of the members reportedly were beaten while in detention”. [6b] (p3)

On 16 March 2003 “more than 70 members of different Protestant churches (Rhema, Full Gospel, Kalehiwot, and Mesert Cristos churches) in Asmara were detained for 10 days. This group reportedly was held in a metal shipping container without ventilation or sanitation facilities”. [6b] (p3)

On 23 March 2003 “40 members of the Philadelphia Church in Asmara were detained for 8 days, and some reportedly were subjected to physical torture and pressured to recant their faith. The pastor and other church leaders who went to inquire on their behalf also were detained. Members reported that their pastor was forced to walk barefoot over sharp stones. After 8 days, relatives were forced to sign papers stating that those detained would not attend church services or meet in their homes with other church members”. [6b] (p3)

On 17 April 2003 “15 members of a splinter group of the Orthodox Church in Kushte were attacked while meeting in a private residence. A few of the members were admitted to the hospital for treatment as a result of the attacks. On the same day in Asmara, 11 members of the Mesert Cristos Church were arrested while meeting at their church building and detained for 1 day”. [6b] (p3)

6.42 Amnesty International advised that “On 7 September [2003], 12 members of the Eritrean Bethel Church, including two children, were arrested at a prayer meeting in Asmara”. [7g] (p2)

6.43 The US Department of State report on Religious Freedom 2003 noted that, “There were several reports that on occasion police tortured those detained for their religious beliefs, including using bondage, heat exposure, and beatings. There also were credible reports that some of the detainees were required to sign statements repudiating their faith or agreeing not to practice it as a condition for release. In some cases where detainees refused to sign, relatives were asked to do so on their behalf. Some of these statements reportedly threatened execution for those who continued to attend unsanctioned religious services or meetings”. [6b] (p3)

6.44 On 18 September 2003 Amnesty International stated that, “Fifty-seven young male and female members of minority Christian churches are being held in metal shipping containers at Sawa military camp in Western Eritrea. They were arrested in mid-August [2003] and are being held incommunicado in harsh conditions, which amount to torture or cruel, inhuman and degrading treatment. The 57 prisoners of conscience are school students from all over Eritrea who were sent to Sawa Military Camp in western Eritrea for a compulsory 3-month summer course under new pre-National Service education regulations. They were arrested in the camp for possessing bibles in the Tigrinya language (although this is not illegal) and are imprisoned in metal shipping containers. Conditions in the containers, which have no light or ventilation, are said to be extremely hot and suffocating, and they are allegedly being given little food, refused medical care and have to perform bodily functions inside the container. They are being pressurized to sign statements to abandon their religion and re-join the majority Eritrean Orthodox Church. Five others arrested with them were allowed to go free when they signed the statements”. [7h] (p1)

16. We were also referred to the decision of the Tribunal in *MA (Female draft evader) Eritrea CG [2004] UKIAT 00098*, (Ouseley J., President). Having considered the background material, the Tribunal considered the position of a young female, liable for military conscription, who would be identified as a draft evader. The Appellant was not a person who was likely to refuse to undertake national service for religious or conscientious reasons such as a Jehovah's Witness. Neither was she a deserter from the frontline because she had not served. Furthermore, the Appellant had no claim under the Refugee Convention because her claim based on religious reasons or imputed political opinion had been properly rejected. Nor did her claim arise as a result of an unlawful departure from the country. Nevertheless, the Appellant's claim was allowed under Article 3 of the ECHR, largely because of a UNHCR recommendation, to be reviewed in mid 2004, following the return from Malta of about 220 Eritreans in 2002, some of whom were of draft age or failed asylum seekers. The evidence as to what happened to those returnees from Malta was uncertain. All of them were initially detained, although those over 40 or with children were subsequently released. The conditions of detention were congested, unsanitary and uncomfortable, leading to disease and malnutrition, which may have resulted in some deaths.

17. In our judgment, the material before us does not support the Adjudicator's conclusion that there has been an improvement since the events of May 2002. In particular, the information to which we have referred does not support the Adjudicator's conclusion that there has been a relaxation in the attitude of the Eritrea authorities towards the minority churches. The Adjudicator did not identify the written source for his conclusion that it is now safe for persons like the Appellant to return. The Adjudicator's reasoning that "there is no compelling objective evidence to support the proposition that Pentecostals continued to be persecuted in Eritrea" is contrary to the material to which we have referred. His reliance upon the fact that the Appellant was able to communicate with his pastor in 2003 (indicating that even such a senior figure was no longer considered by the authorities to warrant detention) is undermined by the

Appellant's account that the pastor has since been arrested. The Adjudicator rejected that part of the evidence as inconsistent with his view of the general relaxation that he considered to have happened since the spring of 2002. We now have the evidence, however, of continued arrests in 2003 and 2004, including the arrest of a KHCE pastor.

18. In the context of the Adjudicator's other findings this is of particular significance. The Adjudicator expressly found that the religious "profile", (if we may properly use this expression), was of a man whose religious convictions would render him incapable of limiting his involvement to meetings of less than five people in a house, as required by law. More important still is the Adjudicator's finding in paragraph 30 of the determination that, absent the relaxation he felt existed in Eritrea, the Appellant would have been at risk of persecution on return. As a result of our conclusion that there is no compelling evidence of a relaxation, it is an inevitable consequence that, had the Adjudicator so found, he would also have found the Appellant liable to persecution.

19. For these reasons, we consider that the Adjudicator was wrong in his finding that there has been a general relaxation in the Eritrean attitude towards minority churches. Since it is clear from his determination that his rejection of the Appellant's claim was based solely upon his finding that conditions had improved, the Appellant's claim must succeed. Given the Adjudicator's findings as to what the Appellant is likely to do on return to Eritrea as a result of his religious convictions, we are satisfied that his activities will result in his coming into conflict with the authorities. This is likely to result in his detention in conditions that violate the Refugee Convention and his Article 3 rights.

Decision: The Appellant's appeal is allowed.

Andrew Jordan
Vice President
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