

Heard at Field House
On 12 July 2004

HB(Ethiopia EDP/UEDP members)Ethiopia CG [2004]UKIAT 00235

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

25 August 2004

Before:

Dr H. H. Storey (Vice President)
Mr Andrew Jordan (Vice President)
Mr C. H. Bennett

Between

APPELLANT

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation

For the Appellant: Mr P. Lewis, Counsel instructed by Otchere
Collisons, Solicitors

For the Respondent: Mr A. Sheikh, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of the Ethiopia who appeals against the determination of an Adjudicator, Ms Linda Freestone, promulgated on 6 January 2004, dismissing the Appellant's appeal against the decision of the Secretary of State to refuse both his asylum and human rights claims.

2. The Appellant was born on 27 July 1981 and is now 22 years old. He claimed to have entered the United Kingdom on 16 July 2003 using false documents. He claimed asylum on 17 July 2003. The Secretary of State's decision to refuse his asylum claim and to issue directions for his removal to Ethiopia was made on 15 September 2003. This gave rise to a right of appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002. The Appellant appealed on 25 September 2003.
3. In a statement prepared as part of his application dated 26 July 2003, the Appellant stated that he was born and bred in Gonder, Ethiopia, some 700 km from Addis Ababa. His father, a supporter of the Derg regime, had been killed by forces of the EPRDF in 1990. In 1993, whilst at college studying clinical nursing, the Appellant became involved with the Ethiopian Democratic Party (EDP), although he did not become an "official member" until February 2001. [See E2] The Appellant stated that he was an active participant of the party, contributing financially to it and taking part in meetings and demonstrations as well as in recruitment. In April 2001, Gonder College boycotted classes in support of the student demonstrations taking place at the University in Addis Ababa. As a result, his college was closed for a week. The Appellant said that he was the only member of the EDP at his college, although all of the students participated in the boycott.
4. The Appellant claimed that he was arrested on 28 April 2001 in Gonder and accused of organising the demonstrations on behalf of the EDP. He stated that he was released on 23 July 2001, some three months later, on the basis that he signed a document promising not to continue his involvement with EDP. He claimed that he was released on bail. During the course of his detention, the Appellant said that he was ill treated.
5. Almost two years passed. On 11 May 2003, the Appellant claimed that the police were looking for him. He was not at home and the information is derived from what his mother told him to the effect that they wanted to arrest him because of their suspicions that he was still actively involved with the EDP. The Appellant contacted his uncle who made arrangements for the Appellant's departure from Ethiopia.
6. When dealing with his arrest and detention in April 2001, the Appellant stated that he was one of 13 people arrested in Gonder and that he was unaware of whether his fellow detainees were subsequently released. See his answer to question 68 of the interview. In his answer to the following

question, however, the Appellant stated that they were not released because, had they been, he would have known. The Appellant was asked why the authorities waited until mid 2003 before seeking to re-arrest him. He answered:

"I know they are after me and I was doing my political activities slowly and cautiously. Maybe they were trying to collect enough evidence."

The Adjudicator records in paragraph 21 of the determination the Appellant explaining in evidence that, after his release, his activities were carried out in a clandestine manner. He told the Adjudicator that he attended meetings on a monthly basis but made sure no one was following him. In paragraph 22 of a statement prepared by the Appellant and dated 3 November 2003, the Appellant's account of his involvement after his release in July 2001 was described in these terse terms:

"I continued to participate despite the governments threats. I have got a commitment to my nation and my people and I was ready to expose the government about its political incorrectness and about its Administration."

It is difficult for the Tribunal to deduce from this passage what the Appellant was *actually* doing.

7. Since his arrival in the United Kingdom, the Appellant has participated in the activities of the EDP, now the United Ethiopian Democratic Party, (UEDP). In the Country Report for Ethiopia, dated April 2004, prepared by CIPU, the UEDP is referred to on page 68. The party was formed in July 2003, at about the same time as the Appellant left Ethiopia, and was an amalgamation of the EDP and another Ethiopian party, the EDUP. The current head of the UEDP is Dr Gebeyehu. It is one of a number of political parties in Ethiopia. A full list is set out at Annex B of the CIPU report (page 65). In the May/August elections of 2000, prior to the formation of the UEDP, the EDP managed to gain two seats in Parliament. The Oromo People's Democratic Organisation polled 178 seats. The Amhara National Democratic Movement polled 134. These two parties represent over one half (312) of the 546 seats in Parliament. The EPRDF managed 19 seats.
8. The state of the opposition parties is referred to in paragraph 5.26 of CIPU, derived from an IRIN news report of August 2003 to the effect that 15 Ethiopian opposition parties had formed what was called a "rainbow coalition" to challenge the political hold of the

current government. The United Ethiopian Democratic Forces became the largest coalition opposition within the country. Among the other main parties is the UEDP. The UEDP is specifically referred to in paragraphs 5.40 to 5.43. It is said that the party has some 20,000 members.

9. In paragraph 35 of the determination, the Adjudicator accepted the Appellant's account of his arrest during the student revolt in 2001. She found it implausible, however, that, having been released in July 2001, the authorities would show any interest in the Appellant two years later in May 2003. Yet it was this incident, according to the Appellant, that prompted his departure from Ethiopia. The Adjudicator recorded that the Appellant did not provide any evidence of specific incidents of activity that would have brought him to the attention of the authorities, as he claims, in mid-2003. Accordingly, the Adjudicator concluded that the Appellant's activities in Ethiopia were not such as to establish the reasonable likelihood of persecution on return or a violation of his human rights. In addition, the Adjudicator considered the Appellant's involvement in the UEDP in the United Kingdom and concluded that this, too, would not engage either Convention.
10. The Appellant appealed. In the grounds of appeal, the Appellant relies upon the positive findings of fact made by the Adjudicator as to the Appellant's involvement in the demonstrations of April 2001. In paragraph 1(vi) of the grounds, it is said that the Adjudicator accepted the Appellant's account that in May 2003 he was informed by his mother that the police were looking for him on account of his political activities. This is simply incorrect. The Tribunal has considered the Adjudicator's findings and it is apparent that the Adjudicator rejected the totality of the Appellant's account that the authorities showed any interest in the Appellant in May 2003, some two years after his arrest in 2001. In our judgment, this was a substantial misstatement of the Adjudicator's findings and one which may have influenced the grant of permission given by the Vice President.
11. It was submitted by Mr Lewis on behalf of the Appellant that the Appellant remained and remains of continuing interest to the authorities. Given that he had been detained, tortured and told not to participate further, he submitted the Appellant was not simply an ordinary member of the UEDP. In support of his submissions he relied upon a list of essential reading. This may be summarised in the sub-headings provided by him:

Human Rights Violations. According to the US State Department Report, 2003, the government continued to arrest and detain persons arbitrarily, particularly those suspected of sympathising with or being members of the OLF. There are credible reports of widespread human rights abuses.

Treatment of Political Opposition. On 19 April 2001, one EDP member was shot and killed by security forces at his home and "about 40 EDP members were arrested", including the Secretary-General and one executive member. This was part of the student protests. Information on the EDP's website indicated that in April 2002, 23 EDP members were arrested and "some were released after they were told they will be shot in their heads if they organise any opposition."

Restriction on Human Rights Reporting. The government restricted freedom of the press and continued to harass, threaten, arrest and detain journalists.

Impunity of Security Forces. Security forces guilty of Human Rights violations were not held responsible by the government.

Absence of Judicial Oversight. Although nominally independent, the judicial process is subject to political pressure. The judicial process is flawed.

12. Mr Lewis sought leave to adduce fresh evidence. He told the Tribunal that he had been informed by staff from the Tribunal on the Wednesday before the hearing that the appeal was being considered as a country guidance case. As a result, his Instructing Solicitors were able to seek funding for an expert report to assist the Tribunal. The report dated 9 July 2004 has been prepared by Dr JR Campbell of SOAS, a Senior Lecturer at the Department of Sociology and Anthropology.

13. In paragraph 68 of the judgment of the Court of Appeal in **E and R [2004] EWCA Civ 49**, it was noted that an appellate court has a discretion to admit new evidence (CPR 52.11(2)), but it is normally exercised subject to *Ladd v Marshall* principles, raising in particular the issue whether the material could and should have been made available before the decision. In paragraph 88, the Court extracted three principles from its earlier decision in **Khan v Secretary of State [2003] EWCA Civ 530**, the last of which was that:

"c It illustrates the intrinsic difficulty in many asylum cases of obtaining reliable evidence of the facts giving rise to the fear of persecution, and the

need for some flexibility in the application of *Ladd v Marshall* principles. "

The Court concluded:

"92. In relation to the role of the IAT, we have concluded

- a. The Tribunal remained seized of the appeal, and therefore able to take account of new evidence, up until the time when the decision was formally notified to the parties;
- b. Following the decision, when it was considering the applications for leave to appeal to this Court, it had a discretion to direct a re-hearing; this power was not dependent on its finding an arguable error of law in its original decision.
- c. However, in exercising such discretion, the principle of finality would be important. To justify reopening the case, the IAT would normally need to be satisfied that there was a risk of serious injustice, because of something which had gone wrong at the hearing, or some important evidence which had been overlooked; and in considering whether to admit new evidence, it should be guided by *Ladd v Marshall* principles, subject to any exceptional factors."

14. Applying these principles, we were satisfied that the report should be admitted. Its late production is explained by the late designation of the appeal as a potential guideline case. It is at least arguable that funding would not have been permitted unless and until that designation was made known.

15. The principal discussion in the report concerns the Appellant's involvement with the UEDP in London:

"A further problem exists for the Appellant. As an active member of the London branch of the UEDP - an electoral alliance which the EDP entered into several years ago - his activities, and those of the UEDP will have been monitored by a Political Councillor at the Ethiopian Embassy in London. Embassy officials actively cultivate links with resident Ethiopians in England and actively monitor their political activities. Until recently this activity was co-ordinated by a Major in the Federal Police who was appointed to the Embassy between 1998-2000.

In the refusal letter, an assumption is made (paragraph 9) that because the EDP is a registered political party, that membership in it is protected by the Constitution. I would point out that even a cursory examination of human rights reports makes it clear that rank and file members and supporters (really, those suspected of supporting a party) are routinely harassed, arrested and detained for varying periods of time without being charged. Furthermore, a routine outcome of detention is mistreatment/torture."

16. The Adjudicator found the Appellant's account to be broadly consistent. See paragraph 34 of the determination. However, she expressed one significant reservation. She did not find it plausible that, two years after the Appellant's release, he would be approached by the authorities. In our view, the Adjudicator was fully justified in concluding that there was no credible evidence of any specific incident in the period 2001 to 2003. The Appellant's own statement, also found at E4, is to the effect that he continued to participate in the EDP despite government threats but he failed to identify any activities likely to have caused renewed interest. In any event, according to his interview, his activities were being carried out cautiously [question 71]. The Adjudicator recorded in paragraph 21 of the determination that everything he did after his release was done in a clandestine manner. In which case it is unclear on what basis he considered he was kept under surveillance.

17. The only reason provided by the Appellant for his leaving Ethiopia is contained in his statement:

"My mother informed me that they wanted to arrest me because they suspect I was still actively involved with the EDP."

However, no information is provided as to how the Appellant's mother came to know of the intention of the authorities or their motivation. In our view, the Adjudicator was not obliged to attach weight to such tenuous evidence.

18. Such interest as the authorities may have shown in the Appellant in May 2003 must be assessed in the light of the events of 2001. His arrest arose in the context of student demonstrations involving a boycott of the college by all the students. He was one of several arrested. We consider that it was open to the Adjudicator to conclude that the Appellant's evidence failed to provide any clear reason why the authorities would wish to approach him two years later.

19. What are we to make of the Adjudicator's assessment of the EDP/UEDP in the light of the further materials now before us? Such involvement as the Appellant had with the EDP/UEDP should be considered in the knowledge that it is a legal party, that it has participated in elections and, in May 2000, won two seats in Addis Ababa. The April 2004 CIPU deals with the two parties in these terms:

Ethiopian Democratic Party

5.39 Political Parties of the World, updated January 2002 stated that, "The EDP was formed in 1998 following a split in the All Amhara People's Organization [AAPO]. It fielded 15 candidates for the federal House of People's Representatives in May 2000, winning two seats in Addis Ababa. Its policies included land reforms to benefit peasant farmers. EDP party members (including candidates in current local government elections) were among those targeted by the security forces in May 2001 in a campaign against 'political activists' following the violent suppression of student demonstrations in Addis Ababa".

United Ethiopian Democratic Party

5.40 IRIN news observed that the EDP has since joined forces with the Ethiopian Democratic Union Party to form the United Ethiopian Democratic Party (UEDP). Its leader Dr Admasu Gebeyehu said it had some 20,000 members and described it as 'one of the largest' political parties in the country.

5.41 The US State Department Human Rights Report 2003 noted that, "On September 30 [2003], six policemen removed the national flag from the office of the United Ethiopia Democratic Party (UEDP) in Masha Woreda, Sheka Zone, Southern Region, and detained UEDP representative Berhanu Hailu in Masha police prison for 3 weeks. He was released after posting \$580 (5,000 birr)".

5.42 The US State Department Human Rights Report 2003 noted that, "Some opposition political parties charged the Government with deliberately obstructing their attempts to hold public meetings. Local government officials granted the UEDP permission to conduct a conference in Mekelle on June 29 [2003]; however, on the day of the conference, UEDP officials were told that the regional government

needed the hall for an urgent meeting, and UEDP was denied its meeting venue”.

5.43 The US report further noted that, “Two teachers in Masha Woreda were dismissed [from their jobs] for being members of UEDP”.

20. It is apparent from these passages that EDP party members were targeted by the security forces in May 2001 following the suppression of the student demonstrations in Addis Ababa. Thereafter, as paragraphs 5.41 and 5.43 make clear, the incidents of harassment against UEDP members were specific events: in one case, following the removal of the national flag from the UEDP office in Mashe Woreda; in the other (in the same location), the dismissal of two teachers who were members of the party. These two events do not reveal widespread or routine harassment against the UEDP.
21. We were also referred to the documents at page 203 of the bundle from the Research Directorate, Immigration and Refugee Board, Ottawa, dated 27 August 2002. Amongst other things, this records the arrest and detention for 50 days of 4 EDP members, one of whom was rearrested. The arrests were reportedly because opposition parties had been implicated in trying to destabilise the government. Further, according to Human Rights Watch, of 100 or so EDP members arrested during the course of 2001, 90 were released without charge and four others were released on bail. The seven others, however, were still in custody without charge in November 2001.
22. The Adjudicator's overall assessment is set out in paragraph 36 of his determination:

"I do not find that the objective evidence supports the Appellant's claim that grass roots members of the UEDP are now being routinely harassed and targeted by the authorities. The only objective evidence in this respect that I have been referred to is at paragraph 5.20 of the CIPU report that states that there had been credible reports of violence against opposition members. This is a very general risk to all members of opposition parties. I do not find that this establishes that the Appellant with his particular profile, attending monthly meetings of the EDP clandestinely and giving financial support, is a real risk of persecution."

23. In our judgment, even in the light of more recent materials, the Adjudicator's conclusion remains sustainable insofar as conditions in Ethiopia are concerned.

24. Dr Campbell in his recent report of 9 July 2004 states on page 2:

"The Appellant describes a pattern of arbitrary arrest and detention in which the focus of the authorities concern his membership in the EDP; the Appellant's political activities would have been known to security officials. There are numerous cases of security officials repeatedly visiting the home of a "suspect" at which time they harass and threaten (sometimes they also beat and arrest) the person and his/her family. Thousands of supporters of registered opposition political parties had been picked up, detained without charge, and released on warning/ bail. Frequently officials return to harass former detainees and their families, making life extremely difficult for such persons (in addition to detention, salaries and bank accounts are frozen, and individuals may be dismissed from government jobs, etc)."

25. We do not find that we can attach significant weight to Dr Campbell's report. Principally, that is because the description of the Appellant's history given to Dr Campbell does not accord with the Appellant's own account. The Appellant speaks of a single arrest and detention following a student demonstration. Thus it is improper to describe his case as evincing "a pattern of arbitrary arrest and detention in which the focus of the authorities concerns his membership in the EDP." Furthermore, the Appellant's claim that his activities were carried out in a clandestine manner is contrary to Dr Campbell's note that the Appellant's political activities would have been known to security officials. Mr Lewis informed us that he advised his Instructing Solicitors to supply Dr Campbell with the Appellant's statement, the refusal letter and the Adjudicator's determination. None of these documents refers to a pattern of arbitrary arrest and detention of this Appellant. Furthermore, whilst over the years, a headcount of those supporters of registered opposition parties detained without charge may run into thousands, the specific incidents of harassment involving members of the EDP/UEDP do not establish widespread abuses.

26. We now turn to whether the risk faced by the Appellant is altered, substantially or at all, by reason of his involvement with the UEDP in London. At page 10 of the Appellant's bundle, we find a letter dated 5 November 2003 from Mr Lemma, the

Chairman of the Support Committee of the UEDP in London. This confirms that the Appellant has been a member of the Support Committee in the United Kingdom since August 2003. It continues:

"During this time, he has been actively involved in the activities of the Support Committee by discharging his responsibilities by way of attending meetings and paying his membership contribution."

27. The Chairman of the Support Committee, quite properly, does not seek to express an opinion on whether the Appellant is at risk in the United Kingdom or on return to Ethiopia.

28. We have already set out Dr Campbell's assessment of the risk faced by those involved with the UEDP in London in paragraph 15, above. On the basis of his assessment, we are prepared to accept that the Ethiopian Embassy in London monitors the political activities of Ethiopian citizens resident in England. However, we are unable to accept that this means that the Embassy's officials are capable of monitoring the activity of every Ethiopian citizen. Simple constraints of resources must inevitably mean that the Embassy will concentrate upon the more important or the most active opposition figures. It cannot be inferred that the Appellant, described by the organisation itself as "discharging his responsibilities by way of attending meetings and paying his membership contribution" is an obvious target for surveillance. There are also, of course, significant difficulties in an Embassy official identifying an individual, even if his photograph is taken. Short of having a database with which the photograph can be compared, surveillance by the Embassy is unlikely to lead to identification without further information being supplied. Bearing in mind the Appellant's relatively minor role in the UEDP in London, the Tribunal is not satisfied that the fresh material establishes that the Appellant's activities in London will place him at risk on return. We consider that it is speculative to say that he is monitored in the way suggested by Dr Campbell:

"As an active member of the London branch of the UEDP... his activities... will have been monitored by a Political Councillor at the Ethiopian Embassy in London."

29. We have also considered the statement made by Dr Campbell on pages 2/3 of his report to the effect that all individuals who are repatriated to Ethiopia are detained and questioned at the port of entry. He goes on to say that if the authorities determine

the person left the country illegally i.e. without a valid exit visa and/or using an illegally obtained passport, the person will be *indefinitely* detained. At page 18 of the US State Department Report for Ethiopia, 2002, we find:

"The law requires citizens and residents to obtain an exit visa before departing the country."

The Appellant stated at page 9 his statement of 3 November 2003 that he entered the United Kingdom using a false passport because he could not obtain a legal passport from the Ethiopian authorities. He also said that he did not know the details of that passport because the agent held that passport at all times. In the course of his Screening Interview, however, the Appellant gave a somewhat different account:

"I did not see the name in the passport. The agent told me in case I was stopped to give my name. [Question: Was your picture in the passport?] Yes, because I have already given my picture. The agent told me to give my name and date of birth in case I was stopped. If the passport control ask your name, you can give them your name and date of birth."

30. On this material we consider that the passport used by the Appellant contained his correct biographical details and his photograph. There is little to suggest that the passport did not also contain an exit visa, as one would be required on departure. In these circumstances, it is difficult to understand what the Appellant meant by its being a false passport. Be that as it may, the material before the Adjudicator and the Tribunal is insufficient to establish that the Appellant left the country illegally, that is without a valid exit visa or using an illegally obtained passport.

Conclusions

31. In our judgment, the Adjudicator reached a sustainable conclusion in rejecting the Appellant's account that the authorities demonstrated any interest in the Appellant two years after his arrest in April 2001, following his involvement in a student demonstration. Almost the sole basis for the Appellant's claim to be of continuing interest is the Adjudicator's reference in paragraph 21 of her determination to his evidence that, after his release, he acted in a clandestine manner, even though he was being kept under surveillance. Nevertheless, this did not prevent him attending meetings on a monthly basis as "he would make

sure no one was following him." In our judgment, the Adjudicator was entirely justified in placing little or no weight on the Appellant's own assertion, without more, that he was under surveillance. This aspect of his claim is not referred to elsewhere. Furthermore, the objective evidence does not support a claim that members of the UEDP are subjected to routine persecution.

32. We are also satisfied, having considered the fresh material, that the report of Dr Campbell does not establish to a reasonable likelihood that the Appellant's activities with the UEDP in London place him at risk. In particular, we consider the Appellant's limited involvement as one who attends meetings and pays his contributions is not reasonably likely to result in his being monitored or identified. Nor do we consider that the circumstances in which the Appellant left Ethiopia have been demonstrated as likely to result in his detention (whether or not indefinitely) on return. For these reasons, we are satisfied that the Adjudicator reached a sustainable conclusion. The appeal is dismissed.

Decision: The Appellant's appeal is dismissed.

Andrew Jordan
Vice President
13 August 2004
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