

**0802534 [2008] RRTA 369 (25 July 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0802534

**COUNTRY OF REFERENCE:** Ethiopia

**TRIBUNAL MEMBER:** Paul Fisher

**DATE DECISION SIGNED:** 25 July 2008

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## **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 and Citizenship 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, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. 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. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act 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 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

9. 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.

10. 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 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. 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.
16. 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 persecution 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.
17. 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.

18. 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.

## **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. The visa applicant is an adult national of Ethiopia. She has previously visited Australia in the early 2000s, and most recently arrived as the holder of a different visa.
21. The applicant lodged an application for a Protection Visa in which she set out her protection claims as follows:

[Information about the applicant's submission amended in accordance with s.431 as it may identify the applicant]

The reason way I seek protection is that;

In previous government which was led by Mengistuu Hailemariam I was a professional as well as a leader of an association in my district in Town I and Addis Abeba for many years in the late 1900s. In the late 1900s the government changed and FDRE (Federal Democratic Republic of Ethiopia) started to control the country. This government distributed Ethiopia into tribes saying Tigrians, Oromos, Amharas, Guraages and so on. Because of this struggle against FDRE started underground and different parties were organised and I became a member of one of these opposition parties called CUD Coalition for Unity and Democracy. Since I was a specific type of professional I had to communicate about my country but it was prohibited by the upper classes. So I suffered a lot in my workplace and outside. I could not work safely. I was torched mentally by constant harassment which degraded me and touched my moral because of my tribe Amhara and my political stand. So I was forced to leave my job many years before my retirement and joined the opposition party called CUD Coalition for Unity and Democracy which struggles for the unification of Ethiopia. I was helping them in party activities

In 2005 May, the third countrywide election occurred and the opposition party CUD got the highest number. At that time the acting government FDRE continued persuading, arresting, and killing members of the opposition party and I was taken by force from my home and arrested for sometime in an area and released by a bail who can bring me to court when I am wanted or can pay up to a significant amount in Birr. Some of my colleagues Person 1, Person 2, Person 3, Person 4, Person 5, Person 6 and Person 7 were murdered. My family was in trouble. One of my children Person 8 fled from my home scared of the soldiers and disappeared when I was in jail and still I do not know where Person 8 is. The other Person 9 was arrested for a short period taken from my home because of me.

In the early 2000s, I got the chance to come to Australia for some time. While I was in Australia my children told me that individuals came with a weapon and get in home, frighten them and search for documents of CUD. When they did not get

anything they told them they will kill me otherwise my children have to give them everything which is attached with the party. From that time onwards my children were very afraid every night. When I returned home the pursuit did not stop. Different people came to my home frequently and frightened me about the matter of the party. So was obliged to leave my own home and stay moving from place to place sheltered by friends fearing that I might be arrested again or might be killed.

But fortunately I am granted a visa to come to Australia again for some time. If I return to my country I fear that I will be placed in prison again and perhaps even killed for my political beliefs. So I seek protection I say please save me from danger.

22. The application Form C also notes that the applicant fears that she will be killed or tortured if she was to return home; that the acting government, FDRE Federal Democratic Republic for Ethiopia, will mistreat her; that she faced a great difficulty when she returned home after a period of staying in Australia in case of her political opinion and even now her family is telling her that the problem is not stopping, and that the authorities of the country will not protect her because at the time of countrywide elections many people were killed and much property was destroyed and the government thought all the destruction in the country was led by the CUD and all the responsibilities laid down on this party. As she is a member of this party the government suspects that she is guilty so if she goes back the government will think she organised some other members who are against them in Australia and take harsh action or might kill her.
23. In support of the application certified copies of the following documents apparently relating to the applicant were submitted:
  - A qualification for her profession issued by an institution;
  - Another qualification from her profession issued by an institution;
  - A membership card of the Coalition for Unity and Democracy;
  - A letter from a government authority with authorised translations, dated the early 2000s and stating that it is known that the applicant has been a member of the CUD and involved in political activities and against the government, for which reason she has been imprisoned for a period of time at a correctional facility and released on bail for a significant amount with a provisional order to appear again in required. Accordingly, since she is required for the same reason after receiving this subpoena she is required to appear in person within 24 hours at a specific location and talk to them urgently or necessary action will be taken wherever she is found;
  - A letter of support from the Coalition for Unity and Democracy dated the early 2000s indicating that the applicant has been a party organiser in a branch and has been the front vanguard and participated tirelessly and contributed to the peaceful cause of their organisation. While doing so she has been harassed and suppressed by security forces and also imprisoned. Although she had many years left before retirement, the government forced her to retire unlawfully and some of the people she was imprisoned with have been unjustly killed. Since the founding of the organisation she has been working as a typist and contributed immensely and due to that, the ruling party, the EPRDP, is still keeping her under surveillance as well as harassing and intimidating her;
  - A birth certificate and;

- The bio data and visa pages of the applicant's passport.
24. In the early 2000s the application was refused by a delegate of the Minister. The delegate accepted that the applicant has held membership of the CUD and that members of that party had been arrested following the May 2005 elections. The delegate even considered it may have been plausible, given the country information of widespread arrests, that the applicant had, in fact, been imprisoned following the election and released on bail but noted that there was no independent evidence that the applicant had been of interest to the authorities since that time. The delegate was concerned about the authenticity of the document said to be issued by the government authority, noting that she did not even apply for a visa to come to Australia for many months and the authorities had ample opportunity to detain and question her during that period had they wished to do so. The delegate also noted that the applicant had previously travelled to Australia at a time when she claimed to be the subject of the adverse interest of the authorities. The delegate considered that the applicant's failure to claim asylum on that occasion, and the delays between the issue of the government officials letter and the application for a visa to return here, as well as the fact that she had apparently departed Ethiopia without difficulty, cast doubts on the veracity of her claims.
25. After the decision had been sent to the applicant, an undated file note was placed on the departmental file indicating that information had been received in confidence from a third party suggesting that that the applicant had never, in fact, been a member of the CDU party or worked as a typist for that party, or participated in any demonstrations.

### **Review Application**

26. In the early 2000s, the Tribunal received an application for review of the delegate's decision, accompanied by a letter from Person 10 stating that her office is assisting the visa applicant with her application, and that further documentation and support will be provided as soon as possible.
27. In the early 2000s, the Tribunal wrote to the applicant pursuant to s 424 of the Act indicating that it would like to examine the originals of her Coalition for Unity and Democracy ID card, Coalition for Unity and Democracy letter of support dated the early 2000s, and letter from the government authority dated the early 2000s, and inviting her to provide this information.
28. In the early 2000s the Tribunal received the requested original documents, along with a supporting submission, country information, and a further statutory declaration by the applicant in the following terms:

[Information about the applicant's submission amended in accordance with s.431 as it may identify the applicant]

1. I am a female of Ethiopian nationality born in the mid 1900s. My tribal background is Amhara.
2. I have many children being many boys and many girls. I was widowed in the early 2000s. One of my children (Person 11) was granted refugee status while in Uganda and has lived in a state in Australia since the late 1900s. Many of my children lived with me in Ethiopia.
3. I am currently an applicant to the Refugee Review Tribunal and my file number is 0802534

4. In this declaration, unless otherwise specified, all dates are expressed in the Gregorian calendar rather than in the Ethiopian Calendar in which my original documents relevant to my application are written. Similarly, the dates of events which I recall in the Ethiopian Calendar have been converted to Gregorian calendar dates using the converter found at:  
<http://www.derassian.org:8080/ethiopic/ealet.html>.
5. I worked as a professional from the late 1990s until I was forced to resign in the early 2000s [NB there is an error in the year in paragraph I at page 5 of the decision against which this review application is brought.]
6. Some years before the election in May 2005 I joined the political party known as the All Ethiopian Unity Party (AEUP) The AEUP later joined with 3 other groups to form the Coalition for Unity and Democracy known as the CUD. My CUD membership card was issued in the early 2000s and the original card is attached to this declaration.
7. In the early 2000s I obtained an Ethiopian passport because Person 11 had said they would like me to visit her in Australia. The process to obtain the passport took several months.
8. I worked for the CUD in the campaign for the elections.
9. After the election I continued working for CUD. In the early 2000s there started to be many demonstrations by CUD supporters. I participated in some of those demonstrations. In the early 2000s I was at home with my family when my house was entered by a number of uniformed individuals armed with weapons. I was immediately told to stand up and go to the transport outside the house. I was struck with weapons while walking to the transport.
10. I was taken directly to the Town II facility, a distance from Addis Ababa where I was held in a small room with several other people. A large number of people were detained at the same time as I was because there were many people in the main hall when I arrived there. I was never charged with any offence nor did I ever appear before a court.
11. During my detention one of my children (Person 9) was jailed because of me for a brief period and my other child (Person 8) ran away after being visited by soldiers at my home. I do not know where Person 8 is and have had no contact with them since.
12. I was kept in that room and interrogated at regular intervals and then less frequently. The interrogations concerned my support for those opposing the government. I was released some months later. I don't recollect the exact date but it was in the early 2000s.
13. While I was in detention, some of my CUD work colleagues were murdered. [see the CUD letter]
14. I was released on what would I think be understood in Australia as a surety. The surety was provided by my family member in the amount of a significant amount of Ethiopian Birr which I understand to be a significant amount AUD at the exchange rate prevailing at the date of this declaration. My wage as a professional in the early 2000s was significantly less Ethiopian Birr per month.
15. From the early 2000s for some months I visited Person 11 in Australia on a different visa Subclass. The airline ticket was purchased in Australia and sent to me in Ethiopia.
16. After my arrival in Australia Person 11 sought to extend the visa period but was told it was a type of visa that could not be extended. During my stay in Australia

there was a community gathering addressed by an Ethiopian refugee professor who lives in the United States I don't recall his name and don't have the advertising brochure for the event. He urged us to maintain the struggle for democracy in Ethiopia and that things would become better. Person 11 and I listened to a recording of his speech on an Ethiopian community radio program in Australia and also watched a video made of the speech. Despite my fears, this was a strong influence on me returning to Ethiopia after my visit to Australia. I also wanted to see my children in Ethiopia.

17. On return to Ethiopia I was told by my children that while I was in Australia security forces visited my home and frightened them with weapons and threats. Using these threats they took letterheads and other miscellaneous documents associated with CUD.
18. In the early 2000s I was visited several times by people in plain clothes (one or two at a time) who questioned me about my visit to Australia, whether I had been involved in CUD activities in Australia and whether there was a CUD movement in Australia. They asked whether I collected money for CUD while in Australia.
19. I continued to live in my house with my children until a uniformed government official arrived and handed me a letter from a government authority and dated the early 2000s. That original letter is attached to this declaration. Also attached and marked "A" is a translation of the official letter obtained for the purposes of my original application for a protection visa.
20. The letter required me to attend the government office within 24 hours for urgent talks. I did not comply with the letter because I feared I would be arrested and possibly harmed or killed. The next day I ran away from Addis Ababa.
21. For the next few months I lived with my child in Province A, many Km out of Addis Ababa.
22. While in Province A, I rang a friend in Addis Ababa saying I was in trouble and asking them to send me any papers that could help me. I obtained a letter of support from the CUD setting out a summary of my work for the CUD and including the identities of my colleagues who were killed. The original of that letter is attached to this declaration and also attached and marked "B" is a translation of the letter obtained for the purposes of my original application for a protection visa. The purpose of the CUD letter was to get day to day support from people who supported CUD.
23. After Province A I moved to Province B many km out of Addis Ababa where I stayed with my family member for a further few months.
24. After Province B, I returned to Addis Ababa and lived in various places with friends connected with CUD. I was too scared to return to my house.
25. I arrived in Australia to see Person 11 and grandchildren again commencing the early 2000s and I applied for a protection visa in the early 2000s. The protection visa application was refused in the early 2000s.
26. From the early 2000s while in Australia I kept in contact with my family members in Addis Ababa by telephone and also listened to Ethiopian news on community radio. My children told me some months ago (exact date unknown) that my family member in Addis Ababa who had provided the surety had been questioned by government officials about me.
27. My children told me that the government officials have told my family member that he must bring me to the government officials' station or pay the Birr surety.



28. My children told me that my family member had visited them as recently as early 2000s asking when I would be returning to Ethiopia.
29. After arriving in Australia in the early 2000s I felt safe. I kept abreast of news from Ethiopia and decided to apply for protection. My child had to raise the bond and I took advice as to the best time to lodge the application for protection given my fear of returning to Ethiopia.
30. Because of the above I am scared to return to Ethiopia but particularly mention the following reasons;
  - a. I am still loyal to the aims and objectives of the old CUD and not the new CUD (CUDP) that participates in the parliament following the elections.
  - b. During the social unrest and political events surrounding the elections many people died. There are many people (encouraged by the government) who blame the CUD for those troubles and may seek revenge against people associated with the old CUD. Local neighbourhood organisations are able to identify people associated with the CUD and it would be potentially dangerous to return to my house.
  - c. There is still political repression in Ethiopia as seen in the lead up and conduct of the local government elections.
  - d. I already lost my long standing employment as a professional because of my political work, beliefs and associations with CUD.
  - e. I have already been arrested once without warrant and held in Town II facility for many months without facing court or being charged.
  - f. Armed men have previously visited my house and threatened myself and my children on account of my political work for the CUD.
  - g. In the early 2000s I was issued with a letter / Subpoena requesting my attendance at a government office in Addis Ababa and I failed to comply with that request due to fear of arrest, imprisonment and possibly maltreatment or even death. This has been the fate of other CUD activists and supporters. According to the official letter, I can be detained at any time in the future on account of my failure to comply with that letter. I went into hiding the day after the letter was given to me.
  - h. Person 9 was previously arrested due to my political involvement, held for a few weeks and released after which he ran away. Person 8 also ran away. I still don't know where he is.
  - i. Individuals have previously visited my house to question me about my first visit to Australia and what went on here.
  - j. Within the last few months my family member has been asked to bring me to the government office and has visited my family seeking to find out about when I will return to Ethiopia.
31. When I made initial application for refugee status I had only minimal support and advice in stating my case. I never spoke to the delegate considering my application. I am not a native speaker of English.
32. In making this declaration I received assistance from an electorate officer for Person 10 MP, a Federal Member of Parliament. It took several hours over many interviews to obtain and organise the information in this declaration. Person 11 who is an Australian citizen attended those interviews with me. Her command of English is functional but not sophisticated.

29. Also enclosed was a bundle of Country Information, said to support the applicant's claims, comprising the following:-
- the U.K. Home Office Country of Origin Information Report on Ethiopia, dated 18 January, 2008;
  - a Human Rights Watch internet report entitled, 'Ethiopia: Repression Sets Stage For Non-Competitive Elections';
  - a copy of the U.S. Congress' *Ethiopia Democracy and Accountability Act of 2007*;
  - a U.S. Senate Advocacy Packet on the Coalition for Human Rights, 2003;
  - a Department of Parliamentary Services information report about the *U.S. Human Rights, 2003 Bill*;
  - a Wikipedia extract giving a short history of the Coalition for Unity and Democracy;
  - the U.S. Department of State Country Reports on Human Rights Practices for 2007 on Ethiopia; and
  - a U.S. Department of State background note on Ethiopia.
30. The supporting submission, dated the early 2000s, takes issue with the findings of the delegate, and seeks to rely on the country information as being supportive of the applicant's claims. It makes a number of points, including the following;
- there is no evidence that the letter from the Addis Ababa government authority is not authentic;
  - the Applicant has sworn that it was handed to her by an government official;
  - she has acted on the assumption that the document was valid, and that compliance with it would expose her to the threat of persecution;
  - the Applicant's claim to have been detained at Town II, referred to in the official letter as 'Town II government authority', [s.431 information deleted]
  - the same report at [6.19] also makes reference to government officials using fraudulent warrants to enter the homes of Opposition supporters during in the early 2000s, when the Applicant claims to have been handed the letter. Thus, even if the Warrant was not, in fact, authentic, because it was fraudulently devised by government officials, or others employed by the Ethiopian authorities, this does not mean that it does not place her at risk of persecution;
  - information that the Applicant's family member has also been questioned by the government officials lends weight to the proposition that the letter is authentic, or, if not authentic, has been fabricated by someone other than the Applicant (and, implicitly, may still evidence a risk of persecution);
  - the letter shows that the Applicant paid a large sum of Ethiopian birr in bail which, while it is within the general range of reported bail amounts described in the U.K. Report at [13.03], is at the higher end of the range, suggesting that the Applicant might be a person of more than average interest to the authorities in Ethiopia;
  - the delegate's observation that it is not logical that the applicant would be released and then requested to report to the government officials again at some later time in relation to the same matter is, in the applicant's view, a subjective observation used to 'give texture

to' the delegate's other observation about the questionable authenticity of the government officials' letter.

31. With respect to the country information generally, the submission argues both that it is clearly capable of supporting the proposition that a person with the Applicant's claimed experiences does face a real chance of persecution, if returned to Ethiopia, but, also that, given the geo-political situation, some of the U.S. and U.K. reports may well understate the significance of the risk to a person such as the Applicant, owing to the strategic importance of Ethiopia in the war against terror.
32. With respect to other issues raised by the delegate, the submission notes that exit visas have not been required for Ethiopian citizens departing that country since 2004, but in any case, it took the Applicant several months to obtain her passport; the Applicant has a profile which may place her at risk of persecution if she returns to Ethiopia, but may not necessarily cause her to have been detained whilst departing that country, especially given that it is technologically underdeveloped, and may not have the administrative capacity to keep tabs on people such as the Applicant at points of departure; that the Applicant has put forward evidence to the effect that she has been of interest to the authorities since that time, including in her Statutory declaration; that even the fact that a person may not be of interest to the authorities at a particular point is not necessarily determinative of whether or not they have a well-founded fear of being persecuted in a given country; that the Applicants failure to seek protection in the early 2000s is also addressed in her Statutory declaration, and, furthermore, as the majority of her children remain in Ethiopia, this was a considerable incentive to return there, despite her fears; that, despite having been served with the government officials' letter in the early 2000s, but not applying for an Australian visa until later, this should not be held against the Applicant, as she has deposed that she ran away in fear of her life, to Province A and Province B, many kilometres from Addis Ababa, and did not return to 'Addis' until the early 2000s, and, even then, did not return to her own home, but stayed with friends; that, even in the last major roundup of CUD supporters was in the early 2000s, as asserted by the delegate, an individual could still be at risk of persecution, even in the absence of any major roundups, and, in any event, it is necessary to distinguish between CUD and CUDP supporters, which the delegate does not appear to have done.
33. In general, the Applicant submits that the substance of her submission, and of her Statutory declaration, conforms with the timeline of verifiable principal events in her case, and in the general political situation prevailing in Ethiopia, and that there are no salient inconsistencies that would prejudice her Application.
34. In the early 2000s, the Tribunal sent the original documents, provided by the Applicant, to the Department of Immigration and Citizenship's Document Examination Unit, asking that the Coalition for Unity and Democracy letter of support, dated the early 2000s; the letter from the government authority dated the early 2000s; and the applicant's Coalition for Unity and Democracy I.D. card be examined, with a view to ascertaining their authenticity.
35. In the early 2000s, the Tribunal wrote to the Applicant, inviting her to attend a hearing.
36. In the early 2000s, the Tribunal received a response, indicating that the Applicant intended to accept the invitation to attend a hearing, and proposed to bring her Person 11, as well.
37. In the early 2000s, the Tribunal received, from the Department's Document Examination Unit, the Applicant's original documents, the Department's Reports explaining the

procedures by which these documents were examined, and the results of that examination, including:

- that the three documents were produced by desktop printing, [s431 information deleted];
- that the stamps on all three documents also appear to have been printed, rather than produced by the application of an actual wet stamp. [s431 information deleted]
- that both the letters have had alterations made to their dates and reference numbers; and
- that the alterations made to the government officials letter have left a latent impression on the CUD letter.

38. The document examiners observe that as the government officials document predates the CUD document, and as they both purport to have originated in different offices, and have been produced by different organisations, it would be highly improbable for such an impression to have been made if the documents were genuine. The report concludes that there is sufficient evidence to consider that the documents are unreliable.

### **The Tribunal Hearing**

39. The applicant appeared before the Tribunal in the early 2000s to give evidence and present arguments, via video-link from another Australian state. Also present at the hearing was Person 11, who did not give evidence. The Tribunal hearing was conducted with the assistance of an interpreter in the Amharic (Ethiopian) and English languages, who was present in the hearing room in Melbourne.
40. The Tribunal explained its role, the purpose of the hearing, and the Convention definition of a refugee, under which the Applicant must be found to come if the Application were to succeed. The Tribunal confirmed with the Applicant that the basis of her claim is her actual, and/or imputed anti-Government Political opinion, based on her claimed involvement in the Coalition for Unity and Democracy in Ethiopia. Asked whether or not there was any other reason why she might fear persecution in Ethiopia, she indicated that there was not. The Tribunal indicated that it had read the material submitted by the Applicant, and agreed, in general terms, that her claims, if true, may give rise to a well-founded fear of persecution for a Convention reason, in Ethiopia. The Tribunal indicated that the issue of concern to it was the Applicant's credibility, whether or not her claims are, in fact, true.
41. The Applicant gave her full name, address, and date of birth. She indicated that she had been involved in the Coalition for Unity and Democracy (CUD) in Ethiopia, also known as a kinjit. Asked when she had joined the CUD, she said that before the CUD was even organised, she had participated in the All-Ethiopian Unity Party (AEUP) in the late 1900s, and she then became a member of the CUD in the late 1900s.
42. The Tribunal clarified that the Applicant was making these references in terms of the Ethiopian calendar, with the result that the years more or less equated to the early 2000s. The Applicant was asked which parties comprised the CUD. She said that there were four parties, but then could only name three of them; Medhin, Rainbow and AEUP. When asked what the name of the fourth party was, she said that she could not remember for the time being. Asked for the names of the leaders of the CUD, she named Hailu Shawal, Birhanu Nega, Birtukan Medeska, and then said that there are many leaders.

43. The Applicant was asked whether or not she knows any of the senior leaders personally, but she said that they don't know her – only the lower people knew her.
44. The Applicant was asked what had happened to her as a result of her claimed involvement in the Party. She said that she had a lot of pressure on her at that time, in the work environment. [s431 information deleted]. She couldn't continue to work. She was detained in the late 1900s, and held until the following year.
45. The Applicant said that there was an announcement by the government that if a person is a member of the Coalition for the Union of Democracy, he should be sacked from work. She said that she was dismissed from work and forced to take her pension early. Normally, to get a pension, you need to be of a certain age, but she was forced to become a pensioner before that age, because she was a member of the CUD. This had taken place in the late 1900s.
46. The Tribunal pointed out that a letter from the employer dated the late 1900s, suggests that she was a professional at that time, but the Applicant was adamant that she became a pensioner prior to this date, because of her CUD involvement.
47. The applicant was asked how she obtained the letter from the government officials. She said that she had first come here as a visitor, but, when she returned to Ethiopia, people were visiting her at her place, and asking her about the CUD movement in Australia. She said that the government officials came to her home in the late 1900s (early 2000s in the Western Calendar), and she had to sign, acknowledging receipt of the letter she was given at that time.
48. The applicant was asked to confirm if this was after she had been released from detention. She confirmed that it was, that she had been released from detention, came to Australia, and then went back. The Tribunal asked her to confirm that it was on a specific date that she received that document and she agreed that it was. The Tribunal then pointed out that the translation says that the date of the document corresponds with a different date in the early 2000s. The applicant then said that the letter was written on a specific date, she received it on sometime later, and that in the conversion of the calendars, the first date becomes a different date in the early 2000s.
49. It was put to the Applicant that the dates had been changed on the letters, apparently from the late 1900s to a date one year later. She said that the letters were like that when she received them. The Tribunal indicated that it was puzzled as to why the letter would have been altered, but the Applicant said that she had not changed it.
50. The applicant was asked to confirm that she had received the government officials' letter in the late early 2000s, some weeks later, and she confirmed that that was the case.
51. The applicant was then asked when she had received the letter from the Coalition for Unity and Democracy. She said that after she received the letter from the government officials, she moved the next day to Province A. The purpose of moving was to hide from the government officials. While she was there, she rang friends in the CUD, asking them to send letters to help her. She was at Province A for some months.
52. The Tribunal pointed out that the CUD letter had also been altered so that the dates read the late 1990s instead, apparently of a year earlier. The applicant reiterated that she hadn't changed it. The Tribunal again indicated that it was very odd that both these documents

would have been changed in the same way, but she said that she doesn't know anything about that.

53. The Tribunal then explained to the Applicant that it had had her documents examined by the Department's document examination unit, and put to the applicant the results of that examination. [s431 information deleted]. The Applicant said that she doesn't know how they were produced, she just knows that a government officials officer came and provided the letter to her.
54. It was also pointed out to the Applicant that the document examination process had revealed that alterations made to one of the documents, the government officials' letter, had left a latent impression on the subsequent letter from the CUD
55. The Tribunal indicated that it might have difficulty accepting that the documents were genuine, in light of the fact that the alteration to one had left an impression on the other, especially when document on which the impression had been left purported to pre-date the other document, and also purported to come from a completely separate source. The Applicant responded by saying that she knows nothing about this.
56. The Tribunal indicated that it was inclined to the view that these documents were unreliable, in that they may not be from the sources claimed, for the reasons [s431 information deleted], and had both been altered in a similar fashion. The similarities might suggest that the documents had been prepared and/or altered by the same person.
57. The Tribunal also suggested that the alterations of the dates might appear to have been made to suit her claims, because if the dates on the documents had not been altered from the late 1990s to later, as they appeared to have been, then they would date from when she claimed to have been in detention, in which case they would be inconsistent with her claim to have been in detention at that time.
58. The Tribunal indicated that it was seriously concerned about the authenticity of the documents, and that as a consequence it also had concerns about the truthfulness of her claims generally. The applicant replied that she hadn't solicited the letter from the government officials' letter, but she did ask for the other document.
59. The Tribunal also indicated to the applicant that the Department had received other, adverse information which the Tribunal considered it had an obligation to put to her for comment, as the information appeared to be credible, significant and relevant. The Tribunal then put to the applicant the substance of the information which was adverse to the Applicant, namely she had never been involved in political activities or demonstrations in Ethiopia, and was simply trying to prolong her stay in Australia. The Applicant asked whether or not the Tribunal was referring to the fact that, when she first applied to come to Australia, she had said that she didn't have any political involvement. The Tribunal indicated that it was in fact referring to information which came from a third party, but was given in confidence.
60. The Tribunal then sought to summarise the issues of concern to it. The Tribunal noted that although the applicant had given reasonably consistent evidence, she had been unable to recall all of the four coalition partners in the organisation she claimed to have been involved in, which failing the Tribunal considered surprising given the nature of her claimed involvement.

61. The Tribunal also noted that from the evidence before it, including the fact that the documents appeared to have been altered, [s.431 information deleted], it could be inferred that the documents on which she sought to rely were not genuine, and this suggested that she was trying to support her claims using false evidence. The Applicant denied this.
62. The Tribunal added that it had also received an allegation that the applicant was not, in fact, involved with the CUD as claimed.
63. The Tribunal explained for the purposes of s.424AA that these concerns might cause it to affirm the decision under review, and explained to the applicant that she had the right to respond, either orally or in writing, and to seek an adjournment before responding.
64. The applicant reiterated that she had received the letters from the government officials and the CUD and that she does not think that they would provide forged documents.
65. After conferring with her sibling the applicant initially said that she was not going to ask any questions or submit any written documents. However, she then said that she wished to postpone the hearing to another time. The Tribunal indicated that if she just wished to make further oral submissions it would be prepared to adjourn the case to later the same day, but that if she wished to make written submissions it would be prepared to afford her more time. The applicant asked for an adjournment of several weeks. Asked for what purpose, she indicated that she wanted to prepare a written response to 'all these things' and also asked whether she could submit further documents. At the same time, she conceded that it would be very hard for her to get another document from the government officials, and that the CUD, which had been dismantled.
66. The applicant also indicated that did not understand the Tribunal's concern about the date on the letter from the employer. The Tribunal indicated that it was not concerned about that date on that letter, owing to the earlier explanation about the confusion between the references It was satisfied that the letter predated the time when she claims to have been forced onto the pension (and did not, therefore undermine that claim). The applicant also indicated that since she left Ethiopia her pension payment had stopped. The Tribunal said it was not surprised, as even in Australia pensions are generally not portable. However, the issue for it was whether she had been forced onto a pension at all and, if so, whether this was as punishment for her political activities or for some unconnected reason.
67. The applicant indicated that she would try to prepare a submission, and asked for several weeks' adjournment. The Tribunal noted that it was required to give priority to refugee cases, and that there was a ninety-day statutory time limit, which it would, ordinarily, be reluctant to extend for such a period. It indicated to the Applicant that it was prepared wait a few weeks for any further written submissions or materials

### **Post Hearing**

68. In the early 2000s the Tribunal received a letter from the applicant, in English, stating that:
  - There are a lot of difficulties in Ethiopian for opponents of the government like her;
  - Only she knows her fear and persecution;
  - If she had no fear of violence and revenge she would have been living in her home with her children not moving from place to place to hide herself;

- If she returns to Ethiopia danger awaits her; and
- She would like help to stay here where can rest and not be in fear.

### Country Information

69. The Human Rights Watch World report for 2007, released in January 2008, and accessed on 21 July 2008 from <http://www.hrw.org/wr2k8/>, includes the following on Ethiopia:

The Ethiopian government's human rights record remains poor, both within the country and in neighboring Somalia, where since early 2007 thousands of Ethiopian troops have been fighting an insurgency alongside the Transitional Federal Government of Somalia.

Government forces committed serious human rights violations, including rape, torture, and village burnings, during a campaign against Ethiopian rebels in eastern Somali Region (Region 5). Abuses also took place in other parts of the country, notably in Oromia State where local officials carried out mass arrests, extra-judicial killings and economic sanctions.

...

In Addis Ababa, the government pardoned and released dozens of opposition leaders and journalists detained since the post-election crackdown in 2005. However, the press remains hobbled and local human rights organizations operate with great difficulty.

70. The United States Department of State 2007 Country Reports on Human Rights Practices released on 11 March 2008 and accessed on 21 July 2008 from <http://www.state.gov/g/drl/rls/hrrpt/2007/100481.htm> includes the following on Ethiopia:

Human rights abuses reported during the year included: limitation on citizens' right to change their government during the most recent elections; unlawful killings, and beating, abuse, and mistreatment of detainees and opposition supporters by security forces; poor prison conditions; arbitrary arrest and detention, particularly of those suspected of sympathizing with or being members of the opposition or insurgent groups; detention of thousands without charge and lengthy pretrial detention; infringement on citizens' privacy rights and frequent refusal to follow the law regarding search warrants; use of excessive force by security services in an internal conflict and counter-insurgency operations; restrictions on freedom of the press; arrest, detention, and harassment of journalists for publishing articles critical of the government; restrictions on freedom of assembly; limitations on freedom of association; violence and societal discrimination against women and abuse of children; female genital mutilation (FGM); exploitation of children for economic and sexual purposes; trafficking in persons; societal discrimination against persons with disabilities and religious and ethnic minorities; and government interference in union activities, including killing and harassment of union leaders...

Security forces committed politically motivated killings during the year. Security forces committed arbitrary killings during the year. For example, on January 16, two police officers beat, shot, and killed Tesfaye Taddese, who was an organizer for the opposition Coalition for Unity and Democracy (CUD) during the 2005 parliamentary elections. An autopsy later revealed that the victim had lost several teeth and one eye from the beating before being shot. The police officers were arrested and an investigation was ongoing at year's end...

During the year the UEDF, CUDP, OFDM, and ONC reported arrests of members and the forced closure of nearly all political party offices throughout the country (see



section 1.d.) and intimidation of landlords to force their eviction. There were credible reports that the government used legal means to harass leadership from an influential opposition political party, utilizing government agencies to restrict party control and membership...

The EPRDF, its affiliates, and EPRDF supporters controlled all seats in the 112-member House of Federation, whose members were appointed by regional governments and by the federal government. Membership in the EPRDF conferred advantages upon its members, and the party owned many businesses and awarded jobs and business contracts to loyal supporters.

The largest opposition party in the House of Peoples' Representatives was the CUDP, composed of most of the former CUD coalition members, which held 61 seats.

Registered political parties must receive permission from regional governments to open local offices. Opposition parties, such as the CUDP, UEDF, and OFDM, claimed that the pattern of widespread intimidation and violence directed against members of opposition political parties by local government officials continued throughout the year. Opposition parties and the press reported hundreds of such cases, including killings, beatings, arrests, and property confiscation.

71. With respect to the applicant's claim to have been forced into an early retirement, the Tribunal was unable to find any recent evidence of this practice in the context of the political upheaval in which the applicant claims to have been involved, but the practice does appear to have occurred in Ethiopia. A paper entitled *The Role Of Civil Society Organisations In Democratisation Process In Ethiopia* by Sisay Gebre-Egziabher, presented at the Fifth International Conference of the International Society for the Third-Sector Research (ISTR) "Transforming Civil Society, Citizenship and Governance: The Third Sector in an Era of Global (Dis)Order" July 7-10, 2002 at University Of Cape Town Cape Town, South Africa and accessed from <http://www.istr.org/conferences/capetown/volume/gebre.pdf> on 17 July 2008 includes the following:

Trade Union leaders and other workers who actively participated in unions' affairs were forced to give up their union posts, were suspended from their jobs, forced to retire contrary to the law, or laid off, etc.

72. The *Political Handbook of the World 2007* (Banks, Muller and Overstreet, eds, Washington, CQ Press, 2007) states the following at 398:

The CUD was the leading opposition force in the May 2005 national elections, dominating the balloting in Addis Ababa and other cities. The government ultimately credited the CUD with winning 109 seats, although the coalition strongly challenged the accuracy of the final results, and a number of its successful candidates refused to take their seats in the House of Peoples' Representatives. The question of whether or not to boycott the legislature apparently caused significant dissension within the coalition, and undercut efforts by CUD Chair Hailu Shawel to merge the CUD components into a single party. In September the AEUP, RE: MDSJ, [Rainbow] and EDL reportedly announced support for the merger and creation of the Coalition for Unity and Democracy Party (CUDP). However, the UEDP-Medhin resisted that initiative, prompting the national election board to refuse recognition of the CUDP on the grounds that the CUDP required full participation of all of its electoral components.

73. On the other hand, the views of some commentators such as Antony Shaw suggest that it was in fact the AEDP which stymied the formation of the CUDP. His piece, *Some thoughts on the CUD and other opposition parties* published on 1 December 2005 on the Sidama Concern

website at [http://www.sidamaconcern.com/news2005/some\\_thoughts\\_on\\_the\\_cud.htm](http://www.sidamaconcern.com/news2005/some_thoughts_on_the_cud.htm) and accessed by the Tribunal on 21 July 2008 includes the following:

In fact, there were two points when the CUD came very close to accepting the idea of participation in parliament. On both occasions, it was the AEUP, and Hailu Shawel in particular, which played the major role in preventing it.

## **FINDINGS AND REASONS**

74. The applicant claims to be a citizen of Ethiopia. She has produced documentary evidence of her background in Ethiopia, and entered Australia as the holder of what, subject to what is said below, is an apparently valid Ethiopian passport. The Tribunal finds on this basis that she is a national of Ethiopia and has assessed her claims against that country.
75. In light of the country information available to it, including that provided by the applicant, the Tribunal also accepts that involvement in or association with the Coalition for Unity and Democracy, whether in its original incarnation or as the reformed CUDP, can potentially place a person at risk of persecution in Ethiopia for the Convention reason of political opinion, and lead to the sort of sanctions which the applicant both claims to have experienced in the past and fears in the event of her return to Ethiopia.
76. However, for the reasons set out below, the Tribunal does not accept that that is the case for this applicant, because it does not believe key aspects of the applicant's claims.
77. The applicant's claims are confined to the Convention ground of political opinion. She claims to be a member of the CUD coalition party, having come to it via a background of involvement with one of its constituent parties, the All Ethiopian Unity Party (AEUP).
78. The applicant appeared from her evidence at the hearing to have some knowledge of the political system in Ethiopia generally and the CUD movement in particular, although there were also deficiencies which caused some concern to the Tribunal, such as the fact that she could not name all four of the coalition partners, and the Tribunal also notes that although she claimed to be opposed to the CUDP merger, the constituent AEUP party in which she claims long term involvement appears, on the basis of the political Handbook of the World entry extracted above, to have been one of the willing coalition partners, with the UEDP-Medhin party being the group which refused to opt in to the CUDP. However, the country information on this point is equivocal, and the Tribunal is prepared to give applicant the benefit of the doubt on these matters, and accept that her analysis of that situation may in fact be correct.
79. However, the Tribunal cannot accept as truthful the applicant's claims as to either her membership of the CUD or as to her having been targeted by the Ethiopian authorities as a consequence of any political views or activities, for the reason that it does not accept that the documents submitted in support of those claims are genuine, and furthermore because it has formed the view that they are not only bogus, but have, in the case of the letters from the government officials and the CUD, been altered after their production to make them appear temporally consistent with her claims. The conclusion which the Tribunal draws from this is that the applicant has invented her claims, has solicited documents to support those claims, and that someone, whether or not the applicant herself, has subsequently altered them when it was realized that the original dates did not make sense because the content of the letters is retrospective, indicating that the applicant had already been released, but the original dates fall within several months period when the applicant claims to have been in detention and

when many CUD figures were in fact, detained by the Ethiopian government, namely in the aftermath of elections.

80. The Tribunal has also placed weight on the allegations received by the Department in confidence, as they appear relevant, credible and significant: see *Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 225 CLR 88. They also tend to accord, in terms of the credibility of the applicant's claims, with the Tribunal's conclusions about the applicant's credibility in light of its conclusions concerning the documentary evidence on which she seeks to rely.

81. The Tribunal has formed the view that its obligations to afford the applicant procedural fairness in respect of this information have been discharged without identifying the source of the information. In *Applicant VEAL*, the Court made the following observations at [28]-[29]:

The appellant submitted that procedural fairness further required that he be given the letter because, if he did not know who had written the letter, one obvious form of answer to the allegations made in it would be denied to him. He could not say that the author of the letter was not to be believed. That is, he could not attack the credibility of the informer unless he knew who the informer was.

So much may readily be accepted. But it by no means follows that the Tribunal was bound to give the appellant a copy of the letter, or tell him who had sent it, or even tell him that the information had been sent in written form. To give the appellant a copy of the letter or tell him who wrote it would give no significance to the public interest in the proper administration of the Act which, as pointed out earlier, required that those entitled to a visa be granted one and those not entitled be refused. It is in aid of that important public interest that, so far as possible, there should be no impediment to the giving of information to authorities about claims that are made for visas. That public interest, and the need to accord procedural fairness to the appellant, could be accommodated. They were to be accommodated, in this case, by the Tribunal telling the appellant what was the substance of the allegations made in the letter and asking him to respond to those allegations. How the allegations had been given to the Tribunal was not important. No doubt the appellant's response to the allegations would then have had to be considered by the Tribunal in light of the fact that the credibility of the person who made the allegations could not be tested. And that may well leave the Tribunal in a position where it could not decide whether the allegations made had substance. But the procedure outlined would be fair to the appellant and it would be a procedure which accommodated what Brennan J described in *Kioa* as the "problem of confidentiality".

82. The Tribunal therefore does not accept that the applicant has been involved in politics as claimed, or that she herself or any of her relatives have experienced any adverse consequences as a result of her claimed political activities

83. It is possible that the applicant has retired early from her profession as claimed, but in light of the other adverse findings about the applicant's credibility, the Tribunal finds that even if this has occurred, it was not imposed on the applicant for any punitive reason connected with her political views or activities, or for any other Convention reason

84. The Tribunal explained to the applicant at the hearing its concerns about her credibility, and she was also granted an adjournment and the opportunity to respond in writing. However, the responses offered by the applicant have done nothing to allay the Tribunal's concerns.

85. For the reasons set out above the Tribunal rejects in its entirety the claim that the applicant has in the past experienced serious problems in Ethiopia capable of amounting to persecution for reason of her political opinion, or for any other Convention reason.
86. In this respect the Tribunal notes that the applicant also initially claimed to be at risk of harm on account of her Amharic ethnicity and, possibly, her membership of a particular social group, namely the teaching profession, but at the hearing when asked to clarify the basis for he claims she sought to rely solely on the Convention ground of political opinion. The Tribunal has considered that claim, but formed the view, in light of its findings about the applicant's credibility generally, that the applicant has not in the past experienced any serious harm on account of her Amharic ethnicity and or her former membership of the teaching profession.
87. An applicant does not have to show past persecution in order to demonstrate a well-founded fear of being persecuted. In *Abebe v The Commonwealth* (1999) 197 CLR 611, Gummow & Hayne JJ at [192] observed that:
- [r]egrettably, cases can readily be imagined where an applicant's fear is entirely well founded but the particular applicant has never suffered any form of persecution in the past.
88. In the present case, however, the Tribunal does not accept that the applicant has been involved in politics in the past, or has attracted any adverse attention from the Ethiopian authorities for that or any other Convention reason. There is no evidence before the Tribunal to suggest that this might change if the applicant were to return to Ethiopia. Having had regard to all the evidence, the Tribunal finds that there is not a real chance that the applicant will encounter serious harm capable of amounting to persecution for reason of her political opinion or for any other Convention reason in the event that she returns to Ethiopia, either now or in the reasonably foreseeable future.

## CONCLUSIONS

89. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

## DECISION

90. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer's I.D. Iward