

071938045 [2008] RRTA 255 (30 May 2008)

DECISION RECORD

RRT CASE NUMBER: 071938045

COUNTRY OF REFERENCE: Ethiopia

TRIBUNAL MEMBER: George Haddad

DATE DECISION SIGNED: 30 May 2008

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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).

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.

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.

The applicant applied to the Tribunal for review of the delegate's decision.

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

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.

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).

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'

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.

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.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

The Tribunal has before it the Department's file and the RRT 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.

Claims at the time of the protection visa application

The applicant is an Ethiopian national who undertook work in Lebanon on several occasions. She claims that the work was on each occasion described as domestic work. On one occasion she worked for a family who did not pay her salary regularly. She worked for this family for sometime. She was badly treated and was made to sleep outside with the animals. On another occasion she claims that the work was not as a domestic worker, as she was led to believe, but forced sexual servitude in Lebanon. She claims that she managed to escape from him captor, named "Person I" a few months after she started work for him and ran to a person, named "Person II" whom she knew from another contract of work in Country ZZ Person II helped her to find work in Country WW. She travelled from Country WW to Australia with the help of her employer.

The applicant claims that as a trafficked woman, she fears returning to Ethiopia as those who arranged to traffic her into sexual work, would seek to harm her or re-traffic her. She fears persecution as a former sex worker from her own community in Ethiopia as she would be a single female without male protection.

She also claims fear of persecution for imputed political opinion because her parent and sibling were involved in supporting the Organisation 1.

Claims at the time of review

The applicant provided a submission setting out her claims and addressing the delegate's decision record.

The applicant was invited to attend a hearing with the Tribunal and appeared before the Tribunal to give evidence and present arguments. The hearing was adjourned and resumed. The Tribunal hearing was conducted with the assistance of an interpreter in the Amharic (Ethiopian) and English languages.

The applicant was represented in relation to the review by a registered migration agent.

Oral evidence of the applicant at the Tribunal hearing

[Information amended pursuant to section 431 of the *Migration Act 1958* as it may identify the applicant].

Following is a summary of the oral evidence.

The applicant spoke of her work as a domestic worker in Lebanon and Country WW. During the discussion she described her experiences in some detail. Her first contract was with a family in Country ZZ and she does not claim any persecution during this period.

In relation to work she held in Lebanon she said, among other things, that the family lived in the upper level of an apartment. She said for several months or so that she worked there she worked every day from very early in the morning until midnight. She was not paid at all; she was permitted to telephone her family in Ethiopia but did not once tell them that she was not being paid. She slept outside with the animals.

The Tribunal observed to her that she had described the residence as an upper level of an apartment in Country ZZ, so what did she mean when she said she slept outside and what were the animals? She said on the balcony with the animals. At the resumption of the hearing some days later when the Tribunal expressed some doubt about her oral evidence including the likelihood of the animals being kept on a balcony of an apartment in Country ZZ; [information deleted: s431].

In relation to the subsequent job in Lebanon, the applicant in answer to some questions from the Tribunal said that unlike the previous jobs she did not sign a contract. The Tribunal asked that given her immediately previous experience was not a favourable one whether she enquired with the employment agent in Ethiopia; she said she did not. Asked why she did not ask, she said she believed that people may not be the same. She described how she ran away from her employer "Person I" who, she claimed, forced her into sexual work in a brothel. She said a few weeks after she started work Person I took a liking to her and she only had to sleep with Person I and not the clients; she stayed in Person I's room and discovered her passport in a drawer in Person I's room. Person I took her shopping but she did not take her passport on the first trip out with Person I so as not to raise his suspicion, or to gain his trust. On another occasion Person I trusted her to shop alone arranging to meet her later; she had taken her passport from Person I's room. As soon as Person I left, she ran away to a person named "Person II" whom she knew from her first contract in Country ZZ. Asked how she travelled to see Person II, she said Person I had given her some money to buy clothes but she kept it and took a taxi. Asked if she recalled approximately how long the journey was by taxi and how much she paid; she said it was a short trip and the fare was a small amount.

At the resumption of the hearing, the Tribunal expressed doubt about some of the oral evidence she had given including her account that Person I gave her money to buy clothes and that she paid a small amount as the taxi fare to travel to another part of Country ZZ. It presented to her information from independent sources including an Internet site for currency conversion [information deleted: s.431]

The applicant, when speaking of her job in Country WW, referred to her employer as a religious organisation. The complex comprised three buildings: offices, a residence and a school. The Tribunal noted that in her written statement which she submitted with the protection visa application she had described her employer in Country WW as a family. She said that the religious organisation *is* a family. She worked 6 days a week and had Sundays off. She only went to church to attend mass on Sunday and returned home. She was always required to help with other work beyond her working hours.

The Tribunal asked the applicant whether she had anyone to contact when she arrived in Australia. She said she contacted the relations of a friend in Country WW.

The Tribunal asked the applicant how she arranged to obtain a visa to travel to Australia. She said that when the Person III and others were returning for a trip to Lebanon; she told them she was too afraid to go with them and wanted to stay in Country WW. They asked if she had anyone she could go and visit while they are away; she said she had relatives in Australia. The Tribunal asked if she does have relatives in Australia. She said she does not. Asked why she told her employer that she had relatives in Australia given this was not true; she said if she did not have relatives in Australia, they would not have helped her to obtain the visa. Asked why she made this supposition, she said that she thought unless an applicant had some-one in Australia they would not be granted a visa. Asked again why she made this supposition she said that is just what she told the employer.

The Tribunal referred her to details of two contact persons she had listed in her visa application to Australia and asked if it was those whom she contacted on arrival in Australia. She said it was not either of the two she listed; she called another contact person that her friend in Country WW had given her but she did not list in the visa application. The Tribunal asked why she did not list this third contact; she said she was only required to list two. Asked why she thought she was only required to list two given there is no such restriction in the application form; she said she does not know these details, her employer told her.

The Tribunal observed that she gave earlier evidence that while she was employed at the religious organisation, she worked 6 days and was expected to help with various duties outside her set hours of work; she had time off on Sundays and she only went to church and returned home; so how did she come to know of relatives in Australia or friends in Country WW that she contacted on arrival in Australia; she said after she went to Church on Sundays, she went to visit friends.

When she arrived in Australia, she called her contact that went and picked her up and took her to her home. The next day she called her employer to say she arrived safely. Person III asked her for her telephone number and she gave it to him/her. A few weeks later the Person III called her and asked her to come back to work as he/she had returned to Country WW and will be returning to Lebanon for an unlimited period of time and will require her to go to Lebanon with them. She became afraid and applied for asylum.

The Tribunal referred to the applicant's oral evidence regarding the routine of the Person III and the others returning to Lebanon every year for two months in summer; so why did the Person III return to Country WW early. She said that she thought they might have met up with Person I and they were planning to harm her. Asked to confirm that she believed that Person III would collaborate with a supposed brother operator to cause her harm, she said "Yes".

The Tribunal asked the applicant if she has been in contact with anyone in Ethiopia. She said she contacted a friend of her parent in Ethiopia a few days after she arrived in Australia. She wanted to know about her relative's and parent's circumstances. Her parent's friend told her that he/she had no idea where her sibling was and that her parent was in trouble. Her parent's friend told her the situation was very bad in Ethiopia; everyone is in trouble and advised her never to return.

The Tribunal referred to her earlier evidence that she sent money regularly to her family in Ethiopia. She said she stopped after her one of her parents died. Asked why given she left her sibling in the care of neighbours, she said she was afraid to send money because if she called

they might tell her something bad has happened to her sibling. She said she was concerned about her sibling but she did not want to hear about him/her.

The Tribunal asked the applicant if she attempted to contact her fiancé. She said she did once soon after she arrived in Australia; he told her that his relative was in Country YY He told her he was about to leave Ethiopia but did not tell her where he was going.

The Tribunal asked if she has been in contact with anyone else, she said she also contacted a friend in Country UU. He/she told her that he/she does not know where her fiancé is but that his sibling was killed. He/she told her to be careful. The Tribunal asked if she has been in contact with this friend in Country UU more recently to enquire about her fiancé, she said she hasn't because he/she told her he/she would contact her if anything happens.

Imputed political opinion

In relation to her imputed political opinion, the applicant said that her parent and sibling are members of Organisation 1. She became aware of it when she was taken for hours of interrogation during her visit at the time of her parent's death. She said during the interrogation they said her other parent is a member of Organisation 1 and she might as well be, and they hither. She knew her parent was opposed to the government but through her interrogation she found out that her parent was deeply involved. Asked how she perceived this to affect her, she said when she called her parent (during her last visit to Ethiopia) he/she told her that people in the area where they lived did not like him/her because they were all pro-government but he/she was not.

The Tribunal asked the applicant if she was a member of a political party in Ethiopia, she said she was not, but she felt that things would be better if Organisation 1 were to take power in Ethiopia. Asked what she knew about Organisation 1 to lead her to this opinion, she said she knew from the name of the party that they would work for everyone as the name means "everyone together" Asked if she knew anything beyond the name and its meaning, she said she is aware because she discussed this issue with friends in Country WW She and they believed that government divides the people of Ethiopia because they look after their own people.

The Tribunal asked what she fears if she were to return to Ethiopia. The applicant said if she were to return to Ethiopia, they know that her family are supporters of Organisation 1; they would think that she too is a member of the party and they would kill her because she has no family. Those who sent her to Person I might find her and send her back to Lebanon.

The Tribunal observed to the applicant that the applicant had earlier stated that during the applicant's last visit to Ethiopia a neighbour had told the applicant that he had seen an updated list of people wanted by the authorities which included the applicant's name and therefore the applicant feared departing Ethiopia. The Tribunal asked what work the neighbour was involved in to enable him to have access to such a list; [information deleted s.431]. The Tribunal asked the applicant, given the applicant had entered Ethiopia a very short time prior to departing why would the authorities not have detained the applicant on entry to question the applicant; the applicant said that they might have thought that the applicant knew of the applicant's parent's whereabouts.

The Tribunal invited the applicant to comment on information and inconsistencies in her evidence. The applicant's representative requested and was granted time to consult with the applicant's social worker and to respond in writing.

After the hearing

Following the hearing, by letter [date & year specified] pursuant to s.424A of the Act, the Tribunal invited the applicant to respond and, or, comment on information. The letter provided as follows:

The particulars of the information:

- The Departmental file includes information referred to in the delegate's decision that your employer in Country WW provided information that since your arrival in Australia, they have had no contact with you; they also provided information that you had told them you wanted to travel to Australia to see someone whom you knew in Ethiopia and who has migrated to Australia. They were under the impression that you were returning to your employment after the holiday you said you were having in Australia. They also provided information that they understood from you that your parent had passed away many years ago.

Why this information is relevant to the review

This information is relevant to the review because you provided oral evidence to the Tribunal that you had contact with your employer in Country WW on a number of occasions since you arrived in Australia. The first occasion you called them and provided your telephone number. After about two weeks, the Person III from your place of employment in Country WW called you and asked you to cut your holiday short as they will be returning to Lebanon for an unlimited period of time and they wanted you to accompany them to Lebanon. You also provided in oral evidence that you told your employer in Country WW that you would be visiting relatives in Australia. You also provided in oral evidence to the Tribunal that your parent passed away in [year specified]; this would not be characterised as "many years ago" when a person is referring to the event in [year specified], as your employer was. You will note that the information above indicates a significant inconsistency with your oral evidence to the Tribunal. This may cause the Tribunal to have doubt about the reliability of some evidence you provided in relation to your claims and the events and circumstances relevant to your claims. Subject to your comments, the Tribunal may conclude that it does not accept as credible evidence you have given in support of your claims for the grant of the visa; this may form the reason of part of the reason the Tribunal may then affirm the decision under review.

The Tribunal received a lengthy submission from the applicant's representative. The full submission may be found at folios 48-99 of the Tribunal's file. This submission states that it responds to the Tribunal's letter inviting the applicant to comment/respond to information and refers to various other matters following the hearing. The submission advises that the applicant has been referred by her general practitioner to a psychiatrist for assessment and treatment. It requests a further four weeks to allow the applicant to provide a report from the psychiatrist. The submission provides a summary of the issues it presents which may be conveniently reproduced as follows:

- a) Response to the matters in the Tribunal's letter and further submissions and evidence regarding the applicant's credibility;
- b) Response to matters highlighted by the Tribunal as being relevant to potential credibility findings by it in relation to the applicant;

It then follows with a description of attachments to the submission as:

- i) Further statutory declaration made by the applicant;
- ii) Report from the applicant's Counsellor/Advocate;
- iii) Letter from a doctor;
- iv) Department of Immigration and Citizenship document entitled "Refugee and Humanitarian Visa Applicants Guidelines on Gender Issues for Decision Makers".

The submission goes on to address the items in its summary. In relation to responding to the information in the Tribunal's letter, it identifies the information and refers to the applicant's further statutory declaration made on [date specified]. It highlights some of the applicant's statement in the statutory declaration: the applicant suffers from memory loss; sleep deprivation; she is not eating and believes that these factors affected her ability to respond to the Tribunal's questions during the hearing. She had a severe headache during the hearings; she often forgets day-to-day commitments and is often surprised that she forgets such important details; as a result she found it difficult to respond to the Tribunal's questions and the length of the hearings impacted on her ability to give evidence. Reference is also made to the attachments from the Counsellor/Advocate and the doctor which comments corroborate the applicant's comments regarding her poor mental health.

In relation to the information in the Tribunal's letter, the submission states that the representative obtained from the Department the information which the Tribunal may be referring to in its letter. This information is contained in an email from an officer in the Australia High Commission in City TT who spoke to Person III and then relayed the information to the Department in City SS. The submission argues that as the email stated that the "the religious organisation knew very little of [the applicant's] background" it is contradictory with the comments of Person III including that she understood that the applicant's parent "had been dead for many years" and although Person III said that he/she knew "very little" about the applicant's background "Person III was sure that he/she would have been told [of any intentions to stay in Australia] as they were very close". This is contradictory and in contrast with the applicant's statutory declaration in which the applicant states that Person III was one of her employers and did not have a "close" relationship and in her oral evidence she had said that the people at her employment were not particularly nice to her.

In relation to the information from the Department which indicates that the applicant had told her place of employment that she had come to see someone in Australia whom she knew from Ethiopia as opposed to her evidence that she was coming to visit relatives, the submission reiterates that the Tribunal should have considerable doubt about Person III's comments. The submission notes that the applicant had given oral evidence that she did not tell her employer that the relatives she would be visiting were not in fact her own relatives. The applicant also stated in her statutory declaration of [date specified] lodged with her protection visa application that a friend in Country WW told her that she had a relative and some friends in Australia she should visit. This, the submission states, is also consistent with information the applicant provided to the Department in her visa application that she wanted to visit a "friend" and a "relative" in Australia although she acknowledges that she did not clarify that there were not her own friends or her own relatives.

In relation to the information regarding the applicant's employer stating that they have had no contact from the applicant since she left Country WW as opposed to the applicant's evidence that she has spoken to a Person IIII, the submission argues that it is not clear from the information that Person IIII had had no contact with the applicant and refers to the interview with the Department during which the applicant stated that it was Person IIII who told her that they would be returning to Lebanon for an extended period of time and required her to return to Country WW.

The submission then refers to concerns regarding the credibility or plausibility of the applicant's evidence expressed by the Tribunal during the hearing. It comments on the applicant's reference to her employer, a religious organisation in Country WW as the "family"; the amount of the taxi fare the applicant stated she had paid when she escaped from "Person I" which was part of the money Person I had given her in total for shopping; the applicant's revised evidence to the Tribunal regarding the number of times she had visited Lebanon while working for the religious organisation; the applicant's account of her work at the brothel; her account of her work with the family in Lebanon for a while where she received no pay; her account that that family had kept animals on the balcony of an apartment [information deleted: s.431]; the implausibility that the applicant would not discuss her problems in the secure environment of a religious organisation but she did with a person she had known causally from her first contract in Country ZZ when she escaped from "Person I"; and the sequence of events around the time of her parents death.

The Tribunal received a further submission from the applicant's representative. The submission responds to the information in the Tribunal's letter in relation to the time of death of her parent. A document was attached and its English translation. The translation states that the document was issued by a named organisation [date & year specified]. It states that Person IV passed away and the funeral was held on [date & year specified]. The submission argues that the date is consistent with the applicant's oral evidence that her parent had died on [date & year specified] and further submits that this now casts doubt on all the information provided to the Department by Person IIII (from a religious organisation in Country WW, the applicant's previous employer); and the information obtained from the applicant should not be relied on by the Tribunal in relation to the applicant's credibility.

The Tribunal received a further submission from the applicant's representative advising that the applicant was unable to secure an appointment with a named health organisation due to a four-month waiting list but was referred to another health facility for urgent psychiatric assistance. The submission includes an attachment from a psychiatrist and a further report from the applicant's Counsellor/Advocate.

The Tribunal will refer to the submissions; the statutory declaration; and the reports from the counsellor/advocate and the applicant's treating doctor below.

FINDINGS AND REASONS

In order to be a refugee under the Convention, it is necessary for the applicant to be outside her country of nationality and for her to hold a well-founded fear of persecution for reasons of at least one of the five grounds enumerated in the Convention.

The Tribunal is satisfied on the basis of a copy of her valid Ethiopian passport that she is a national of Ethiopia. She arrived in Australia as the holder of another type of visa and as she

has made no claim against any other country, the Tribunal will assess her claims against Ethiopia.

The applicant has claimed that she needs protection for reasons of: being a member of a number of particular social groups including: imputed political opinion as a member of her family, a single Ethiopian woman with no family protection, fear of being trafficked for forced labour including as a sex worker, Ethiopian woman, young Ethiopian woman.

The Tribunal will consider her claims in turn:

Claim of being trafficked for exploitation of labour

The applicant has claimed that on an early contract she worked for a family for a while who treated her badly and did not pay her; or paid her occasionally. The claim is that the applicant belongs to a particular social group who is vulnerable to trafficking for exploitation of labour.

The meaning of the expression “for reasons of ... membership of a particular social group” was considered by the High Court in *Applicant A*'s case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...

It is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.

The Tribunal accepts that a particular social group may exist which may be described as “Young Ethiopian women domestic workers accepting work contracts in Lebanon”. Country information discussed below indicates that trafficking of young women out of Ethiopia for exploitation of labour in Lebanon occurs. An extract from a UNICEF report referred to below states:

“Presently only one private employment agency for sending migrant workers to Lebanon has legal recognition. This concerns very few of all the potential candidates. Even if the immigration authorities did not issue visas for other migrant workers to Lebanon, this does not mean that trafficking would be stopped. It seems that the traffickers are using neighbouring countries like Tanzania and Kenya as transit countries for Ethiopian women to the Middle East and Gulf. The Ministry of Foreign Affairs established an Inter-Ministerial National Committee in June 1999 to look into the issue of Ethiopian women who are being trafficked to the Gulf States and Lebanon. IOM is supporting the government initiatives. Since the beginning of 2003, the Ministry of Labour and Social Affairs has taken over the responsibility of the Inter-Ministerial National Committee.”

The Tribunal has considered the applicant's evidence in relation to her contract of which she claimed to have completed around one year. Her evidence about that period of her work appeared to lack credibility and was highly implausible. In her written statement of claims

she states that she was paid occasionally when her employer felt like paying her, but was not paid regularly for her work as agreed in the contract. In her oral evidence she stated that she was not paid at all for the entire period she worked for this family. According to her oral evidence, she took work overseas to help her family and they depended on her income. She said while she worked for this family she was permitted to call her family by telephone a few times a month. Yet she stated that she did not once tell her family that she was treated badly and was not being paid but continued to work. She said she could not escape for various reasons.

While the Tribunal accepts that she may have been intimidated by the family for whom she worked and may have been the subject of bad treatment; she did not provide plausible evidence as to why she would not tell her family of her circumstances; Presumably she would have spoken to her family in a language not understood by her employer and so it could not be for fear of being overheard. Her evidence that she was not allowed to pray or go to church also lacked a plausible explanation; asked if she had requested to be allowed to go to church, she said she knew her employer would say 'No', she did not ask. She stated in oral evidence that she was unable to escape even though she went out to help her employer to shop at the supermarket a few times a month. Her account that she felt unable to escape was similarly implausible. But, according to her evidence after one year she told the person of the house she wanted to return to Ethiopia, and the person simply agreed, bought her a ticket and took her to the airport. Further, her evidence that she was made to sleep outside with the animals; which were kept on the balcony of an apartment in Country ZZ was highly implausible and totally lacked credibility.

The Tribunal accepts that the applicant may not have been treated well while working for the family during which she claims to have been the subject of exploitation of labour. However, because of the inconsistency in evidence regarding her pay – in her written statement she stated she was paid some time; in her oral evidence she stated she was not paid at all – and the implausible evidence and lack of credibility, the Tribunal does not accept her evidence that she was not paid; or that she was not allowed to leave the house; or that she was so badly treated that she was made to sleep outside with the animals. The Tribunal finds that the applicant was not in the past a member of a particular social group which may be identified as “Young Ethiopian women domestic workers accepting work contracts in Lebanon”.

Claim of being trafficked as a sex worker

The Tribunal accepts that Ethiopian young women working as domestic workers outside Ethiopia may find themselves placed into forced sexual work. Country information discussed below indicates that trafficking of persons for exploitation of labour and sexual work occurs in Ethiopia.

The Tribunal has considered the applicant's evidence in relation to a work assignment in Lebanon. Her evidence in relation to this claim also significantly lacked credibility. The Tribunal does not accept her evidence that the alleged brothel would have a small number of sex workers to cater for a large number of guests. The Tribunal does not accept her evidence that some of the male guests frequented the brothel with their own wives or female partners. The Tribunal does not accept her oral evidence regarding her escape from the alleged brothel owner.

The applicant had an opportunity to comment on the lack of credibility regarding the amount of money she was given and the taxi fare she claimed to have paid. Her responses continued

to lack credibility. The Tribunal does not accept the written submission later that she could not reasonably be expected to remember the amount of taxi fare a few years after the event because the issue was not that the Tribunal expected or asked her to recall the exact amount; rather it was that the amount she stated was so unlikely given the value of the currency that no reasonable accommodation of a fading memory would explain it. Taken together, all of her evidence in relation to this claim significantly lacked credibility which leads the Tribunal to find that her claim is false. The Tribunal finds therefore that the applicant was not trafficked for exploitation as a sex worker.

In this regard, the Tribunal has taken into account the reports from medical professionals and from the counsellor advocate. The Tribunal does not question the diagnosis but rejects the causal link made in these reports to the applicant's claimed past experiences.

Imputed political opinion

The applicant claimed that her parent has gone into hiding because of his/her fear of authorities for his/her involvement with, or support of, opposition politics in Ethiopia. She claims that when she travelled to Ethiopia to visit her ailing parent (who soon afterwards passed away), the authorities detained and interrogated her for hours. They sought to find out from her the whereabouts of her parent and told her that her parent was a member or supporter of Organisation 1 and "she might as well be"; then they let her go. She said that she knew that her parent was opposed to the government because when she called him/her he/she told her that everyone in the area in which they lived was pro-government but he/she was not. However, during her interrogation the authorities told her that he/she was a member of the Organisation 1 and that is when she became aware that he/she was deeply involved.

She claimed that it was the reason she left her young sibling with neighbours and left Ethiopia the day after her interrogation. She was told by a neighbour that her name was on a list of persons of interest to the authorities. [Information deleted: s.431].

The applicant's evidence on this claim was vague and general. She stated briefly that she had suspected some involvement and he/she told her in a telephone conversation that most people in the area in which they live are pro government, he/she was not. Similarly with other evidence, it significantly lacked credibility. The Tribunal, on the basis of the evidence she has provided, does not accept the applicant's claim that her parent was a member of a political party or that the applicant's parent had fled out of fear of the authorities; or that the applicant's parent and sibling are of adverse interest to the authorities

The Tribunal does not accept that she was arrested and interrogated by the authorities. The Tribunal does not accept the applicant's evidence that a person known to her told her that her name is on a list of persons of interest to the authorities and does not accept that she bribed an official at the border to exit Ethiopia.

The Tribunal is satisfied that the applicant has not in the past suffered persecution for reason of imputed political opinion. It has considered whether her future conduct or that of the applicant's parent may cause the applicant to face a real chance of persecution and serious harm in the reasonably foreseeable future. On the basis of the evidence before it, the Tribunal finds that the applicant does not face a real chance of persecution and serious harm in the reasonably foreseeable future if the applicant were to return to Ethiopia for reasons of imputed political opinion.

Credibility of the applicant's evidence

The issue of the credibility of the applicant's evidence also concerned her account of her work in Country WW and what she had told her employers to assist her to obtain a visa to Australia.

The Tribunal has considered the applicant's statutory declaration of [year & date specified]. It is claimed that she was not eating or sleeping lately; she was suffering from severe headaches during the hearing and had difficulty answering questions. She suffered from memory loss and forgets daily commitments. The applicant comments on the discrepancy in her evidence and the information provided by Person 'III' in Country WW regarding the time of her parent's death and submitted a document from the church in Ethiopia which supports her oral evidence in relation to her parent's death. The Tribunal accepts the evidence from the church as confirming the applicant's version.

The Tribunal does not however, accept that on this basis it must discount all other information given by Person 'III' to the Australian High Commission in Country WW. Nor does it accept the applicant's oral evidence that she feared the religious organisation and the Person III would collaborate to return her to the alleged brothel owner.

In her written statement, the applicant referred to her contract of work in Country WW as working for a family. In her oral evidence to the Tribunal she referred to the same as working for a religious organisation. When asked why, she stated that the religious organisation is a family. This is only a poor attempt to revise evidence which has been exposed to be false.

The applicant's account relating to the information she gave her employer for the purpose of the visa to Australia also lacked credibility. The Tribunal notes that providing false information to obtain a visa for the purpose of fleeing to safety does not in itself give rise to issues of credibility. On the contrary, it may serve to support oral evidence and later explanations. However in the present case, the Tribunal found the applicant's evidence and later explanations in written submissions regarding the question the religious organisation being described as 'family' and the information regarding visiting relatives in Australia, and listing only two contacts neither of whom was the person she actually contacted when she arrived in Australia to be at best disingenuous.

The Tribunal found the applicant's evidence generally regarding all her claims of past experiences to be untruthful.

Future Conduct

The Tribunal has considered the applicant's likely future conduct and whether she would face a real chance of serious harm for any of the claimed reasons relating to trafficking of women.

The evidence of her previous contracts of work outside Ethiopia and particularly in the Middle East is of relevance to this consideration. While the Tribunal has found that she has not in past been trafficked for exploitation or suffered serious harm, it is likely that she may in the reasonably foreseeable future accept contracts of work in the Middle East if she were to return to Ethiopia.

The country information on trafficking of women supports a claim of fear of vulnerability to this risk. The United Kingdom Home Office 2008 Country of Origin Information Report on Ethiopia quoting from various sources provides:

Trafficking in women

26.03 Trafficking of women is a growing problem. In an IRIN report dated 13 June 2003: “The IOM says that illegal traffickers who prey on could make up to 7,000 Ethiopian Birr (more than US \$800) for each victim they send overseas. The IOM say women aged between 18 and 25 are targeted by traffickers at colleges and in poor districts in towns and cities.” **[9ac]** The US State Department’s Human Rights Report 2004 notes that: “There were credible reports from the EWLA and the International Organization for Migration (IOM) that many female workers who travelled to the Middle East as industrial and domestic workers were abused. In August [2004], the Government opened a new consulate in Dubai, in part to assist Ethiopian women workers who were abused.” **[3b] (p16)**

26.04 Anti-Slavery International in the Report of the Eastern and Horn of Africa Conference on Human Trafficking and Forced Labour, dated 5-7 July 2005, notes that:

...

“The traffickers involved here range from local brokers, relatives, and family members to friends of victims. Returnees also play an important role in luring potential victims into agreeing to travel with promises of a ‘better life’ in countries of destination. Many of the returnees are also involved in trafficking by working in collaboration with tour operators and travel agencies. Some of the challenges faced by NGOs in the fights against human trafficking in Ethiopia include weak legislation, poor enforcement and inadequate support by the Government in tackling the problem. In addition, low knowledge levels, inadequate capacity as well as resource constraints hinder a holistic approach in addressing the problem of human trafficking and forced labour in the country.” **[82]**

26.05 The UNICEF report ‘Trafficking in Human Beings, Especially Women and Children in Africa 2005’, states that:

“Even if Ethiopian women wish to migrate for work purposes, many of them become victims of trafficking, lured by false promises of good jobs, high salaries and easy life. There have been many reports of abuse of Ethiopian migrant women recruited for domestic work in the Middle East and Gulf States. They find themselves abroad in very exploitative situations where they are abused and ill-treated in working conditions comparable to modern day slavery. In this context, when a woman reaches her destination, the employer of the agent from the employment agency permanently withholds her travel papers and official documents, undermining her basic human right to free movement. The Private Employment Agency Proclamation 104/1998 aims at regulating all employment service entities and particularly at protecting the rights, safety and dignity of Ethiopians employed and sent abroad, with aggravated penalties for abuses of human rights and physical integrity of workers.” **[28e]**

“The proclamation states that:

a licence is required for any person who wishes to set up a private employment agency.

This agency must prepare a formal contract of employment and submit it to the authorities.

If the agency is providing services for hiring and sending workers abroad, the agency must fulfil the additional obligations:

ensure that the employment contract fulfils the minimum working conditions set in Ethiopian law;

be responsible for ensuring the rights, safety and dignity of worker

have a branch office or representative in the receiving country

provide orientation for the worker before he or she is sent abroad, concerning the work and the country

notify the nearest Ethiopian Embassy of the worker's presence

deposit guarantee funds in a recognized financial institution; US\$30,000 if up to 500 workers can be placed by the agency, US\$ 490,000 for between 500-1,000 workers and US\$ 50,000 for more than 1,000 workers." [28e]

The UNICEF report further continues: "Presently only one private employment agency for sending migrant workers to Lebanon has legal recognition. This concerns very few of all the potential candidates. Even if the immigration authorities did not issue visas for other migrant workers to Lebanon, this does not mean that trafficking would be stopped. It seems that the traffickers are using neighbouring countries like Tanzania and Kenya as transit countries for Ethiopian women to the Middle East and Gulf. The Ministry of Foreign Affairs established an Inter-Ministerial National Committee in June 1999 to look into the issue of Ethiopian women who are being trafficked to the Gulf States and Lebanon. IOM is supporting the government initiatives. Since the beginning of 2003, the Ministry of Labour and Social Affairs has taken over the responsibility of the Inter-Ministerial National Committee." [28e]

26.06 The Forced Migration Organisation Research Guide on Trafficking of Young Girls and Women in Ethiopia, accessed 7 August 2006, states that:

"Weakness in the Ethiopian legal structure has further exposed women to exploitation. The Ethiopian Penal Code defines trafficking in 'women, infants and young persons' narrowly without considering other forms of trafficking. According to the Article 605 of the Penal Code, the term trafficker refers to a person who transports women, infants and young people out of the country illegally by enticing them or otherwise inducing them to engage in prostitution. Labour trafficking, which does not fall under the 'prostitution' category, is thus not given due attention and cannot be formulated and the government of Ethiopia is now engaging in various endeavours to protect the rights of its citizens in the Diaspora. In this regards, the Private Employment Agency Proclamation No 104/1998 was a step forward. The Ethiopian government through the Ministry of Foreign Affairs also created the General Directorate in charge of Ethiopian Expatriates Affairs in January 2002. Through this body, Ethiopian migrants are encouraged to return, participate in national affairs, mobilize the Ethiopian community abroad, conduct researchers, etc." [83]

The FMO report continues: "Another major obstacle to monitoring the well-being of the trafficked women is their change in identity. Almost all the women migrants to

Middle - Eastern countries with Christian names tend to change their names to Muslim names to facilitate the visa process. However, this poses a great challenge for the Ethiopian government to trace migrants as they have two identities.” [83]

26.07 The USSD report for 2006 notes that private individuals trafficked young women to Djibouti and Middle Eastern countries, particularly Lebanon, the United Arab Emirates, Saudi Arabia, and Bahrain for involuntary domestic labour, or as domestic or industrial workers. Some women were trafficked for sexual exploitation to Europe via Lebanon. Typical routes out of the country involved travelling through Djibouti, Yemen, and Syria; through Addis Ababa international airport, or across the Somali-border. It was estimated in October 2005 that 30,000 Ethiopian women were working in Beirut, most of who had been trafficked. [31] (p18, Section 5, Trafficking in Persons)

Advice from the Australian Department of Foreign Affairs and Trade (DFAT) also provides:

The issue of trafficking is one that is only recently getting attention at the government level, given the exponentially rising number of people migrating illegally and being trafficked to foreign countries. The government works through the Ministry of Labour and Social Affairs (MOLSA) in the prevention area but has a lot of work to be done in terms of protecting victims.

The Administration for Refugee and Returnee Affairs is a government agency that has the mandate to work in this area, but truly focuses on refugee affairs.

Legal mechanisms for victims of trafficking are in their infancy, and discussions with related organisations suggest that a lot needs to be done to afford victims of the required level of legal protection. Offering legal protection remains to be the hardest facet of preventing trafficking because of the legal constraints that prevent victims from successfully bringing legal charges against the traffickers. Efforts to gradually enhance the capacity of the legal system continue with the help of various international organisations (IOM being at the forefront.)

Victims of trafficking are therefore unlikely to get help from the Ethiopian government.

As noted briefly above, at the forefront of these anti trafficking movements in Ethiopia is the IOM. IOM works in close collaboration with the government and agencies to increase awareness and to contain trafficking activities. The organisation works with UNICEF and other NGOs that concentrate on tackling trafficking.

IOM's protection activities are meant to provide victim assistance to those affected by trafficking to identify whether the three factors defining victims of trafficking are present (recruitment, transport and exploitation). On this front, IOM works closely with various Government of Ethiopia (GoE) agencies (MOLSA, Ministry of Foreign Affairs, and Ethiopian Immigration).

Working with local NGOs, IOM's assistance involves provision of food and shelter to victims. This assistance extends to a maximum period of three months (except for rare exceptions). Additionally IOM helps trace and identify victims' families. IOM colleagues explained that this is usually a difficult task as the victims often recall only fragment details, which aren't helpful. IOM uses Ethiopian immigration files as well as neighbouring police authorities to recover relevant information. IOM has helped 80 such victims, which include adults who have participated in the organisation's vocational training programmes. IOM has also provided start up funds in the forms of business grants to those intending to set up their own businesses.

Many workers returning from foreign countries have gone through immense abuse. Many return with mental or physical problems and are not capable of immediately joining their respective families. IOM's psychosocial teams works towards narrowing down this gap to improve their re- integration process.

This may depend on where they reside. It has also been widely rumoured that non-Amharas are promoted to top posts in government offices to ensure 'ethnic diversity'. As Amharas had been privileged during the Emperor's time, key government offices were naturally given to them then. Since the downfall of the Military regime over 15 years ago, the government in power has shown visible signs of discrimination in terms of making the Amhara region low development priority and discriminating against the Amhara intellectuals. It also happens to be that key opposition groups are led by Amharas including All Amhara Peoples' Organisation (AAPO), CUD and Ethiopian Patriotic Front (EPF) among others.

(Department of Foreign Affairs and Trade 2007, DFAT Report No. 07/82 – CISQUEST9137/8:Ethiopia: Country Information, 14 November

Taking the country information together with the applicant's past work in the Middle East indicates that the applicant may be vulnerable to trafficking and exploitation. The Tribunal has considered that the applicant has some knowledge of the risks and some past experience. This however, does not remove the vulnerability of future likelihood of being trafficked for exploitation.

On the basis of the above, the Tribunal is satisfied that the applicant faces a real chance of persecution and serious harm in the reasonably foreseeable future if she were to return to Ethiopia for reasons of being a member of a particular social group "Young Ethiopian women domestic workers accepting work in the Middle East". The Tribunal finds this constitutes the essential and significant motivation for the persecution.

The reports indicate that the persecution is uncontrollable by the government of Ethiopia: The DFAT advice referred to above includes relevantly that: *Legal mechanisms for victims of trafficking are in their infancy, and discussions with related organisations suggest that a lot needs to be done to afford victims of the required level of legal protection. Offering legal protection remains to be the hardest facet of preventing trafficking because of the legal constraints that prevent victims from successfully bringing legal charges against the traffickers. Efforts to gradually enhance the capacity of the legal system continue with the help of various international organisations (IOM being at the forefront.) Victims of trafficking are therefore unlikely to get help from the Ethiopian government.* The Tribunal therefore finds that the applicant cannot access adequate state protection.

The Tribunal has considered whether the applicant could reasonably relocate within Ethiopia and avoid a real chance of persecution. The country information does not indicate that the risk is confined to a region or part of Ethiopia only. Therefore relocation is not a viable option in the present case.

The Tribunal is satisfied that the applicant's fear is well-founded. The Tribunal finds that she is a refugee.

CONCLUSIONS

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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

Sealing Officer's ID: ntreva