

On: 13 January 2005
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NM (Draft evaders – evidence of
risk) Eritrea [2005] UKIAT 00073

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

22 March 2005

Before:

Mr H J E Latter (Vice President)
Mr T S Culver
Mr R Baines JP

Between

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation:

For the appellant: Mr C Jacobs of Counsel

For the respondent: Mr S Ouseley, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant, a citizen of Eritrea, appeals against the determination of an Adjudicator, Mr T Davidson, who dismissed her appeal against the decision made on 18 March 2004 giving directions for her removal following the refusal of her claim for asylum.

Background

2. The appellant arrived in the United Kingdom on 19 July 1999 with an Arab family she was working for. She left them two days later and applied for asylum on 2 August 1999. Her application was refused by

the Secretary of State and the Adjudicator heard the appeal against this decision on 4 June 2004.

3. The appellant is an Eritrean national born in Asmara on 2 March 1972. She claims to be a Muslim from the Jiberti tribe. She has three brothers and three sisters as well as a half brother from her mother's side and three half siblings from her father's side. She lived with her family until she left Eritrea in 1991. Her father was an outstanding member of the ELF, as the appellant described it, and continued his membership until 1991 when he was arrested by the EPLF. She was not a member of the ELF herself but had helped her father with his ELF papers. The only person who knew about this was a friend who was arrested on 10 June 1991. The appellant managed to avoid arrest even though officials came to her home looking for her. She managed to escape to Sudan on 25 June 1991.
4. She found work there as a domestic worker with a Sudanese family. In January 1992 her uncle took her to Ethiopia so that she would be able to get a contract for work in Saudi Arabia. She subsequently worked for three different families there. When the war between Ethiopia and Eritrea started, Eritrean government supporters in Saudi Arabia asked her to contribute financially to aid the war effort but she refused as she did not support it. She attempted to change her Ethiopian passport for an Eritrean one but she was threatened and told that she would not be considered an Eritrean national and would not be able to go back. In July 1999 the Arab family she was working for came to the United Kingdom. She left them on 21 July 1999 and applied for asylum on 2 August 1999.

The Adjudicator's Findings

5. The Adjudicator did not accept that the appellant's father was an outstanding member of the ELF but an ordinary member. However, he did accept that he had been arrested and detained in June 1991 and that the appellant had fled to Sudan and later worked in Saudi Arabia. He was not satisfied that she was of any particular interest to the authorities because of her former or current political activities. He did not accept her evidence about seeking to change her Ethiopian passport to an Eritrean one and being asked for a contribution to the war effort. He found that she must have been issued with some sort of passport because she had said that she would not be allowed to work in Saudi Arabia without a passport and she would have needed one to enter the United Kingdom. He held that there was no reasonable likelihood that she would be persecuted if returned to Eritrea.
6. The Adjudicator accepted the evidence which showed that the human rights situation in Eritrea was generally very poor. He considered the argument that there would be a risk arising from the appellant's

liability for military service and the possible consequences if she refused. He was not satisfied that the appellant would in fact be liable for military call up in the light of paragraph 5.56 of the CIPU Report which referred to women between the ages of eighteen and twenty seven being required to participate in the National Service Programme including military training and civilian work programmes. As the appellant was over the age of thirty, she would appear to have escaped those provisions. The Adjudicator noted that the maximum penalty for refusing to perform military service was three years imprisonment. Even if the appellant were to be considered a draft evader and arrested and imprisoned on that account, it would not amount to harsh or inhuman treatment. The appeal was dismissed on both asylum and human rights grounds.

The Grounds of Appeal and the Submissions

7. Permission to appeal was granted limited to the issues arising from the liability for military service. The grounds assert that the appellant is of military age and would be interrogated and ill-treated as a suspected draft evader. They rely on *MA (Female Draft Evader) Eritrea CG* [2004] UKIAT 0098.
8. At the hearing before the Tribunal Mr Jacobs argued that the Adjudicator had proceeded on the wrong factual basis when assessing military service. The evidence was that all citizens between the ages of eighteen and forty five were required to participate in the National Service Programme: A127, A139, A142 and A145.
9. The fact that the appellant would not have received call-up papers was not determinative: in *MA* the applicant had not been called up. The risk arose from the perception of being a person likely to have evaded the draft. The claim must be set in the context of the human rights crackdown currently taking place in Eritrea. The background evidence showed an almost fanatical drive by the authorities to force those liable for military service into military camps. Anyone being returned was at risk of being suspected of leaving Eritrea because they wished to evade the draft. Mr Jacobs argued that *SE (Deportation - Malta - 2002 - General Risk) Eritrea CG* [2004] UKIAT 00295 was wrongly decided and in any event there was now further evidence highlighting the risk on return for those regarded as draft evaders.
10. Mr Ouseley submitted that it must be relevant to take into account whether an appellant had been called up for military service. The risk was for those who sought to evade the draft. The background evidence should be considered with care. The appellant had not specifically refused to do military service.

Consideration of the Issues

11. The Tribunal is satisfied from the background evidence that the upper age limit for military service is 40. The Adjudicator accepted that the age limit for women was 27 but failed to take into account the other background evidence identified in Mr Jacob's submissions showing that the upper age limit in fact applied to both men and women. We are satisfied that the Adjudicator erred in law in this respect.
12. There is no doubt from the background evidence that the Eritrean authorities have not hesitated to resort to torture and that the police have severely mistreated army deserters and draft evaders: US Department of State Report 2003. This is illustrated by the fate of the Maltese returnees in September and October 2002 when they were all arrested although subsequently, women, children and those over the conscription age limit of 40 were released. Eighty five of those kept in detention appear to have been identified as conscript deserters but the other ninety five were still sent to secret mainland prisons: A97. According to the same report National Military Service is a key government policy of nation building representing a continuity of military oriented mobilisation by a predominantly EPLF Government.
13. Conscription is enforced by the regional administrations through round-ups. The police search houses, workplaces and streets and detain suspected evaders to check their identity documents. The government's attempts to enforce the draft have included the arrest of thousands of people (A4) leading to an escape attempt in which a number of prisoners were killed. There is a BBC Report about this incident at A6. Initially it was denied by the Eritrean authorities but this denial was later modified to the extent of saying that the number of deaths had been totally exaggerated.
14. In July 2004 a number of Eritreans were deported from Libya and there are reports and in particular the Amnesty report of 28 July 2004 (A80-1) that they have been detained in military camps. Most are believed by the authorities either to have deserted from military service or to have evaded conscription. This report also confirms that thousands of young Eritreans have fled military conscription in the past few years and those caught evading service are detained indefinitely without charge or trial in harsh conditions and tortured. The Tribunal is satisfied and the evidence put before us is clear that at present in Eritrea those who are suspected of evading and refusing conscription are at risk of ill treatment and torture.
15. The issue in this appeal is whether there is a real risk that the appellant would be suspected of being a draft evader. In normal circumstances it might be argued that someone who had been out of the country for many years and had not been summoned for military service would

not be at risk. However, it is clear from the background evidence that the situation is not normal in Eritrea so far as the government's attitude towards military service is concerned. There is a political impetus to enforce military service as part of the reconstruction of Eritrea and a failure to perform it is seen as disloyalty to the authorities. The evidence of the returns from Malta and Libya indicate that the Eritrean government is exceptionally suspicious of those of military age who are returned. It was not only the draft evaders amongst the Maltese returnees who were detained. Those of military service age, even those not identified as evaders, remain in detention. A similar fate has happened to the Libyan returnees.

16. On the evidence as it stands at present, the Tribunal is satisfied that there is a reasonable likelihood that this appellant might be at risk. It is not just a case of her being a returnee of draft age. She may be additionally vulnerable because of her family's political history, the Adjudicator having accepted that her father had been a member of the ELF. Looking at the appellant's circumstances in the light of the current background evidence the Tribunal find that there is a real risk that she will be perceived as a draft evader leading to a risk of detention and ill-treatment.
17. There is further evidence before us which was not before the Tribunal in *MA*. We are satisfied that being perceived as a draft evader does carry political connotations in the eyes of the Eritrean authorities to the extent that the appellant would be at risk of serious harm for a Convention reason, her perceived opposition to the current government. These findings distinguish this case from the position in *SE* which primarily dealt with the issue of risk for returnees as such.
18. Accordingly, this appeal is allowed on both asylum and human rights grounds.

H J E Latter
Vice President

Approved for electronic transmission