

LSH
Heard at Field House
On 20 November 2002
Dictated 21 November 2002

APPEAL NO HX/51623/2001
TG (Mixed Ethnicity) Ethiopia
CG [2002] UKIAT 07289

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:
18th March 2003
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Before:

**Mr H J E Latter (Chairman)
Mr A A Lloyd, JP
Rt Hon the Countess of Mar**

Between

TIGIST GETACHEW

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Appearances:

For the appellant: Mr B Hussain, of Counsel, instructed by
Aston Clarke, Solicitors

For the respondent: Mr D Ekagha, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Tigist Getachew, a citizen of Ethiopia, against the determination of an Adjudicator (Mrs C M A Jones) who dismissed her appeal against the respondent's decision made on 25 March 2001 giving directions for her removal following the refusal of her claim for asylum.
2. The appellant arrived in the United Kingdom on 20 April 1998 using a false passport. She claimed asylum on 23 April 1998. Her claim was supported by a statement dated 30 August 2000. She said that her father was a prominent and one of the regional leading figures of the

All-Amhara People's Organisation (AAPO). She supported him by providing secretarial services and working as a liaison between him and the group under him. Her claim was based on her political opinion as a supporter of AAPO. She claimed that on 15 November 1998 she had been arrested and detained for 3 months. During that period she was subjected to ill-treatment including beatings and rape. In her statement she said that her mother disappeared because of her origins. In her interview she explained that her mother was Eritrean and had been deported to Eritrea. For the reasons which the respondent has set out in his reasons for refusal letter dated 21 December 2000 he was not satisfied that the appellant had a well-founded fear of persecution. He noted that the appellant claimed that her father had been arrested in 1995 and held for a year but he still lived in Ethiopia.

3. The Adjudicator has summarised the appellant's account in paragraphs 4-8 of her determination. She said that the appeal was first listed for hearing on 8 May 2002 when the appellant raised a fresh basis for her asylum claim, her mixed ethnicity and the fact that her Eritrean mother had been deported to Eritrea. The case was adjourned for this issue to be reconsidered. The Home Office maintained their decision. The appeal was heard on its merits by the Adjudicator on 18 June 2002. It was the appellant's claim that she became involved with and gave secretarial assistance to AAPO, gradually increasing her involvement to attending demonstrations and assisting with leaflet distribution. She said that her role increased in importance and she became involved in youth recruitment and secret conferences. Her father was arrested in May 1995, and brutally beaten in front of both her and her mother. He was detained for a year. On 15 November 1997 the appellant herself was arrested because of her involvement with AAPO. She spent 3 months in detention where she was beaten, tortured and raped. In February 1998 she was released on condition that she report fortnightly to the police station. She says that she was constantly watched, followed and intimidated. Sometimes she was picked up and taken to a police station for no apparent reason. Unable to tolerate this level of harassment she decided to flee the country and did so in April 1998.
4. The Adjudicator's assessment of the appellant's credibility is set out in paragraphs 28-34 of her determination. The Adjudicator noted that the appellant had claimed she was released from detention on 27 February 1998 in her SEF whereas as interview she said that it was 27 February 1997. The Adjudicator did not accept her explanation that she had not adapted to a change to the European calendar. She found the appellant's description of the circumstances of her arrest far fetched. She commented that although the appellant had indicated throughout that she was of mixed ethnicity, she had failed until the hearing date on 8 May 2002 to reveal that she feared persecution on that account. She found it extraordinary that she had failed to mention this fear earlier and accepted the respondent's assertion in his letter of 14 June 2002

that this issue was added in an attempt to enhance her claim to remain in the United Kingdom.

5. The background evidence supported the appellant's description of prison conditions as poor but the Adjudicator's examination of the objective material did not reveal to her a predilection on the part of the guards for the rape of female prisoners. She came to the view that the appellant had grossly exaggerated her claim. She accepted as reasonably likely the fact that she was of mixed Ethiopian/Eritrean race and was a low level supporter of AAPO but she was not satisfied that the appellant had been arrested, detained tortured or raped as she alleged. In the light of those findings she was not satisfied that the appellant had a well-founded fear of persecution nor that to return her would be a breach of the United Kingdom's obligations under the Human Rights Convention.
6. Mr Hussain sought to challenge the reasons on which the appellant's account had been rejected. In particular he submitted that it was wrong to draw an adverse inference from the appellant's failure to raise her fear of persecution due to her mixed ethnicity before the hearing on 8 May 2002. The position was that at the hearing on 13 March 2002 the Secretary of State's representative had informed the Adjudicator that he wished to seek an adjournment so that the issue of ethnicity could be covered as it was a matter not dealt with in the refusal letter. The appellant had not sought the adjournment. The issue had been raised by the Secretary of State. Even if he came to the view that it did not give rise to a well-founded fear of persecution, it was wrong to criticise the appellant by saying that she had attempted to enhance her claim.
7. Mr Hussain also submitted that the Adjudicator had been wrong to attribute weight to a simple error as to the date of her release from detention. The Adjudicator was right that the background evidence did show there was no general problem with the rape of female prisoners but it did not follow that the rape had not occurred. On the basis that the appellant had been an activist for AAPO, she would still be at risk. Mr Hussain referred the Tribunal to the determination in Assefa [2002] UKIAT 02897. On the facts of that case it was accepted that the position in Ethiopia was sufficiently unstable that the claimant may be at risk of forced deportation. The Tribunal asked Mr Hussain whether it was his submission that there was still a risk of forced removal evidenced in the background information. He conceded that he could not show that there would now be a real risk of deportation for the appellant.
8. Mr Ekagha submitted that the Adjudicator had been entitled to reach her findings on credibility on the basis of the evidence before her. He did accept in the light of the record of proceedings on the appeal file that the initiative in investigating the claim on the basis of the appellant's mixed ethnicity did come from the Presenting officer.

9. It is clear from the record of proceedings that when this appeal was listed for hearing on 13 March 2002, an application was made by the Secretary of State's representative for an adjournment so that this issue could be considered. The Adjudicator's note reads as follows:

"H/O apply adjournment.... The RFR letter not consider (issue) of mixed ethnicity. To be considered. Possibility ELR will be granted ... mixed ethnicity came to light late".

10. The response to this further investigation is set out in the letter dated 4 June 2002. The respondent explains why he has decided not to alter his decision to refuse asylum. The letter asserts that the appellant when interviewed with regard to her asylum claim did not mention the fear of persecution due to her ethnicity. In the light of this he was of the opinion that if what she was claiming was true it was reasonable to expect that she would have mentioned this part of the alleged claim during her interview. He was of the opinion that she had attempted to enhance her claim in order to remain in the United Kingdom.

11. The Tribunal take the view that it is wrong to draw any adverse inferences against the appellant on this basis. She had not sought to enhance her claim. She has stated that her father is Ethiopian and that her mother is Eritrean. The respondent indicated at the hearing on 13 March 2002 that he wished to reconsider this aspect of the claim. The appellant can hardly be criticised for agreeing to an adjournment on this basis. It seems to the Tribunal that it is unjustified in these circumstances to assert that she has sought to enhance her claim in order to remain in the United Kingdom.

12. Dealing with the issue of the rape, it is reported in para 4.35 of the CIPU Country Assessment April 2000 that female prisoners are housed separately from males and that rape does not appear to be a problem. We were referred to the US State Department Report at page 16 (A85) that a guard had been accused of raping a female prisoner. He had been arrested and was awaiting trial. If anything, this tends to show that if a matter came to the attention of authorities, they would take action. However, as the grounds assert, the fact that rape may not be prevalent does not indicate that it did not occur on this occasion although of course the prevalence of rape is a relevant factor to be taken into account.

13. In our view the Adjudicator wrongly attached weight to the failure to assert a risk on the grounds of mixed ethnicity regarding this as an attempt to enhance the claim. This fact taken with the other factors to which we have referred lead us to have a real doubt as to whether the adverse finding on credibility is properly sustainable on the evidence.

14. The Tribunal have considered whether we should remit this for rehearing or whether on the basis of the information before us we are

able to make our own assessment as to the credibility of the evidence. We have reminded ourselves of the guidance in Karanakaran [2000] Imm AR 270 and in particular at 304 where Sedley LJ said: "testing a claim ordinarily involves no choice between conflicting accounts but an evaluation of the intrinsic and extrinsic credibility, and ultimately the significance of the applicant's case....What the decision makers ultimately make of the material is a matter for their own conscientious judgement, so long as the procedure by which they approach and entertain it is lawful and fair and provided their decision logically addresses the Convention issues. Finally, and importantly, the Convention issues from first to last are evaluative, not factual. The facts, so far as they can be established, are signposts on the road to conclusion on the issues; that are not themselves conclusions. How far this process truly differs from civil or criminal litigation need not detain us now."

15. The Tribunal have reviewed the evidence given by the appellant in her SEF, her interview, her written statements and her oral evidence as recorded by the Adjudicator. We have taken into account the conflict between what was said at interview that she had charges brought against her and was released on bail whereas in her SEF form and during cross-examination she said she had no outstanding charges against her. We note also that her father has remained in Ethiopia. However, there appears to be no evidence that he continues to be active on behalf of AAPO. We have considered the circumstances in which she was detained. Looking at the evidence as a whole, whilst accepting that there are a number of areas of doubt, we do not feel that we can reject the appellant's evidence as untrue. Bearing in mind the relatively low standard of proof in an asylum claim and the need to avoid undue delay in the determination of appeals, we have come to the view that in the interests of justice do not require us to remit this case so that the appellant's credibility can be tested all over again by a different Adjudicator. On the facts of this case it seems to us to be wrong in principle where we have found that the Adjudicator's reasons for rejecting the appellant's account to be unsustainable, to subject the appellant to having the whole matter reheard when on the basis of the evidence before us we are satisfied that there is at least a serious possibility that what she has said might be true.
16. The Tribunal will therefore proceed on the basis that the appellant was arrested, detained and ill-treated as she had described. She has been active in her support of AAPO since 1994. Her role on this basis was not limited to distributing leaflets but acting as a link between her father and his group before he was arrested and detained for a year because of his political activities. It is the appellant's claim that after she was released from detention she was watched, followed, intimidated and sometimes picked up and taken to the police station.
17. Mr Hussain submitted that the background evidence did not draw a distinction between high profile and low profile members of AAPO. He

referred to a report dated 21 March 2001 at A59 following the student demonstrations which said that over 30 members of AAPO had been detained and remained in detention. Issues relating to AAPO are set out in paras 5.55-9 of the CIPU Country Assessment April 2002. There is further information at A62-69, albeit in a now out-dated report from P S Gilkes. In the light of the background evidence the Tribunal are not satisfied that there would now be no risk to the appellant on return. The Tribunal refer to the extract from the Human Rights Watch Ethiopia Report for 2001 set out in the Adjudicator's determination. This refers to a deterioration of civil liberties in Ethiopia during 2001 and the arrest of 400 AAPO members between April and June 2001. The Tribunal is not satisfied that it is only those with high profile positions in AAPO who would be at risk. Looking at the appellant's own circumstances, for the reasons we have given, the Tribunal have come to the view that her fears of persecution because of her membership and support for AAPO are well-founded.

18. If the claim were to be based solely on the appellant's mixed Eritrean - Ethiopian ethnicity, the Tribunal would not be satisfied that that factor by itself would put the appellant at risk. There is no current evidence before us of forcible deportations to Eritrea and in our view no real prospect of that happening to the appellant.
19. However, for the reasons that the Tribunal have given, this appeal is allowed.

H J E Latter
Vice President