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Heard at: Field House
on 10 June 2002

APPEAL NO HX42447-2001
GG (Return - Eritrean) Ethiopia
CG [2002] UKIAT 05996

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:
10 January 2003
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Before:

**Professor D B Casson (Chairman)
Mrs M Roe**

Between

**Gebre-Yohannis Goitom
aka Gabre Yohannis Goytom**

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. This is an appeal by an ethnic Eritrean against the determination of an Adjudicator (Dr R Kekić) dismissing his appeal on asylum and human rights grounds against the decision by the respondent on 22 April 2001 to refuse to grant leave to enter the United Kingdom and to give directions for removal to Ethiopia. Before us the appellant was represented by Mr R Solomon instructed by Spence & Horne, solicitors. The respondent was represented by Mr A Mole, Home Office Presenting Officer.
2. The appellant claimed to have been born in Asmara and to have moved to Addis Ababa in 1975, where he lived until July 1998, when he left the country. He arrived in the United Kingdom on 20 August 1998 and claimed asylum on arrival. He had travelled via Italy on a

Somali passport which he had tried to destroy. He was accompanied by his wife and son, who are his dependants for the purposes of the appeal; a daughter was born in the United Kingdom on 27 October 2000.

3. The asylum appeal was refused for reasons given in a letter dated 5 December 2001, which superseded a letter dated 2 April 2001.
4. The appellant gave evidence before the Adjudicator, who also considered background documentation including a report by Dr Pool dated 13 March 2002. It was common ground that the appellant was of Eritrean origin. The Adjudicator restricted her findings on the basis of removal to Ethiopia, in accordance with the respondent's intentions. The Adjudicator noted that the appellant's claim was based solely on the question of his ethnicity "and whether as an Eritrean he would be forcibly deported from Ethiopia or ill-treated in some other way." Having considered the evidence, and Dr Pool's report, which questioned whether the appellant would be accepted back to Ethiopia at all, the Adjudicator expressed her findings at paragraph 53 of her determination as follows:

"I find nothing in the report which persuades me, to the lower standard, that the appellant would face a current risk of persecution in Ethiopia. Most of the report deals with the past deportations and refers to material pre-dating the peace agreement and I therefore find that it does not advance the appellant's claim."

5. At paragraph 57, the Adjudicator noted that the evidence submitted by both sides showed a cessation of forced removals and some continuing repatriation with consent. More than 200,000 Eritreans remained in Ethiopia and there was no reason why the appellant could not safely return there. The evidence did not indicate a reasonable degree of likelihood that he would be subjected to persecution or any breaches of his human rights were he to return to Ethiopia.
6. The grounds of appeal are wide ranging, but Mr Solomon, who had not represented the appellant before the Adjudicator, made it clear that he was limiting his submissions to the question of the appellant's ethnicity. Mr Solomon put before us a letter from UNHCR dated 12 April 2002 and a further report by Dr Pool dated March 2002, both of which post-dated the Adjudicator's decision. In his submissions Mr Solomon accepted that there had been improvements in the situation, but he reminded us that the Adjudicator had accepted that the appellant was Eritrean; that he had been detained for one month in 1998 and that there had been a risk of repatriation which had ceased since December 2000. Mr Solomon submitted that there continued to be a risk of repatriation and ill-treatment which, although at a reduced scale, continued. Mr Solomon submitted that if the appellant was allowed entry (which he denied) he would be persecuted and ill-treated simply

because of his ethnicity. It was Dr Pool's opinion that he would be denied entry and that Eritreans had been turned back. In his submissions Mr Mole said that the Adjudicator's conclusion, on the basis of the evidence before her, was correct, and that there was no evidence that the appellant would be at risk on return to Ethiopia. Mr Mole submitted that the new evidence indicated an improvement in the situation with a virtual cessation of large scale deportations, although there might be deportations on an individual basis. He submitted that there was no evidence to show a reasonable degree of likelihood that this appellant would be deported. In his response, Mr Solomon pointed to the UNHCR view in June 2001 that the return of failed asylum seekers of mixed Ethiopian/Eritrean origin to Ethiopia should generally be ruled out. Mr Solomon accepted that the appellant was not of mixed descent but was a full Eritrean which, he submitted, made the risk greater. Mr Solomon further submitted that if the appellant were sent to Ethiopia he would be considered stateless, but he acknowledged that that was not a matter which was our concern.

7. There is little dispute as to the relevant facts in this appeal. It is common ground that the appellant is Eritrean, born in Asmara, and that he lived in Addis Ababa from 1975 until July 1998. It is intended to return him to Ethiopia. The Adjudicator decided on the evidence available to her in February 2002 that his return would not expose him to a real risk of persecution or breach of protected human rights. It is also common ground that the situation has improved since then. We have the benefit of reports which were not available to the Adjudicator. In particular, the UNHCR letter dated 12 April 2002 reports that:

"The large scale deportation of Eritreans or Ethiopians of Eritrean origin, which took place in 1998/9, virtually stopped in 2000. However, according to the International Committee of the Red Cross (ICRC), deportation continued on an individual basis. Since then, the ICRC has monitored the repatriation of Eritrean civilians and/or prisoners of war from Ethiopia to Eritrea. Notwithstanding this, a group of 702 Eritreans and Ethiopians with Eritrean links were deported from Tigray by the Ministry of Security in June 2001 without the participation of the ICRC."

- 8, The report notes that the UNHCR office in Addis Ababa is aware of instances where Eritreans and Ethiopian nationals with Eritrean links have faced serious risks from the Ethiopian authorities. Examples of such risks include arbitrary deprivation of their Ethiopian nationality, summary expulsion to Eritrea, and internment as "enemy nationals". UNHCR's general understanding is that although the situation has improved somewhat, the threat of deportation remains despite the signing by both states of the cessation of hostilities agreement of 18 June 2000 and the comprehensive peace agreement of 12 December 2000. On the question of lawful status in Eritrea, the report states:

"The Eritrean Government has advised UNHCR that expellees from Ethiopia are not automatically considered to be Eritrean nationals, simply by virtue of Eritrean origin and/or participation in the 1992 referendum. Recent reports, however, indicate that expellees from Ethiopia are not turned away by the Eritrean authorities with a majority of them being granted the "blue card" which is akin to a national identity card with many of the inherent rights and obligations that come with nationality... the displacement of expellees, even those holding the "blue card" is a common feature in Eritrea."

9. Dr Pool's report dated 13 March 2002 states:

"The presence of the United Nations force at the moment appears to have halted the physical deportation of Eritreans but the popularity of the measure within Ethiopia remains, particularly with regard to those Eritreans owning both small and large portions of property and capital. The same social, economic and political pressures behind the original deportation process remain."

Dr Pool refers to the report that 200,000 Eritreans remain in Ethiopia, but says he has become increasingly sceptical of both the criteria used for defining "Eritreans" remaining in Ethiopia, Ethiopians "of Eritrean origin" and the concept of "resident". He says that the Ethiopian Government's categorisation of Ethiopians of Eritrean origin is highly political and the Secretary of State's statistic is of questionable proof of the numbers of Eritreans remaining in Ethiopia.

10. Dr Pool's caution is perhaps understandable but he expressly acknowledges that the presence of the United Nations force appears to have halted the physical deportation of Eritreans. The situation is not static. It cannot be said that there is no risk that on removal to Eritrea, the appellant would face deportation. The question, is whether there can be said to be a real risk of deportation, persecution or breach of human rights. Having considered the matter with care, we take the view that the Adjudicator was right in the decision based upon the evidence before her. We are clear that the situation has improved since the date of the Adjudicator's determination, as attested by the up-to-date evidence before us. Despite Mr Solomon's able submissions, we are not persuaded that this appellant's removal to Ethiopia would expose him to a real risk of persecution or breach of protected human rights by way of deportation or otherwise.
11. The appeal is dismissed.

D B Casson
Acting Vice President