LSH
Heard at: Field House

HS (Risk on Return – Detention – HIV/AIDS – Art 3) Eritrea [2004] UKIAT 00090

On 17 February 2004
Dictated 1 March 2004

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

28.April 2004

Before :

Miss K Eshun (Chairman)
Mr D J Parkes

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the appellant: Mr C Williams, of Counsel instructed by Arona Sarwar & Co, Solicitors
For the respondent: Ms T Hart, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Eritrea, born on 1 January 1970 appeals with leave against the determination of an Adjudicator (Mr P P Murphy) dismissing her appeal against the decision of the respondent made on 2 May 2001 to give directions for her removal from the United Kingdom as an illegal entrant following refusal to grant her asylum.

2. The appellant claims to have travelled to the United Kingdom via Ethiopia. She claimed to have arrived in the United

Kingdom with false documents on 29 August 1997. She claimed asylum on 29 August 1997.

3. Her appeal was heard by an Adjudicator on 30 January 2002. The decision dismissing her appeal was promulgated on 19 March 2002. Leave to appeal against that decision was given by the Tribunal on 16 April 2002 because the Adjudicator had not clearly considered the report of Dr Trueman.

4. The Tribunal heard the appeal on 24 June 2002 and dismissed it in a determination promulgated on 5 August 2002.

5. On an appeal to the Court of Appeal, the Tribunal's decision was quashed and the appeal was ordered to be heard by a different Tribunal. The reason for the order was on the grounds that the Tribunal erred by ignoring or placing little or no weight upon the report of Dr Trueman. The reasons given by the Tribunal for rejecting the said report and or for holding that Dr Trueman was not an expert witness, were irrational.

6. Basically the argument is that the fact that Dr Truman is a medical doctor does not preclude him from giving evidence about his personal experience of genuine refugees leaving from Addis Ababa and their patterns of making a claim for asylum. The submission was that Dr Trueman is qualified to give such evidence given that the matter lay within his personal experience. Therefore the appellant was entitled to have Dr Trueman's report considered and taken into account and not dismissed out of hand.

7. The Adjudicator accepted that the appellant is of mixed parentage, having an Eritrean mother and an Ethiopian father. He did not accept that the appellant is at risk of being stateless. He found that she is Eritrean.

8. The Adjudicator accepted that the appellant was detained by the authorities, but had doubts about the length of her captivity.

9. The Adjudicator said that two Convention reasons were offered in connection with this appeal. These were her ethnicity and her imputed political opinion. There was also a suggestion that this was a single woman returning, and the issue of social group might arise.

10. In respect of the issue of ethnicity, the Adjudicator found that the appellant had taken no steps to establish her ethnic identity as an Eritrean.

11. In respect of an imputed political opinion, the Adjudicator found it reasonably likely that the appellant had served some time in detention, but had no political opinion. She did not

belong to any political grouping. The only possible suggestion of an imputed political opinion may be because her father might have been involved with the Dergue. She herself pointed out that her father had the briefest of liaisons with her mother. She did not know her father. She had no connections with her father. The only association she has with her father is that of mixed parentage. She has not been seen to be a political activist, and was released by the authorities. The Adjudicator did not accept that the appellant has an imputed political opinion to the level of a well-founded fear of persecution.

12. As to the Convention reason of belonging to a particular social group, the Adjudicator found that this appellant did not fit into such a social group.

13. As regards Article 3 of the ECHR, the Adjudicator found that the appellant was vague about torture. He accepted that she had been in custody for a period and found that the treatment set out was not directed at her specifically. All those in custody suffered the same ill-treatment. The appellant eventually resolved that custody. She was released. The Adjudicator did not find that the appellant's treatment reached the relevant threshold of severity. The appellant had not outlined any evidence whatever beyond her say so that she would suffer Article 3 continually in the future. The appellant satisfied the authorities sufficiently for the authorities to release her. Accordingly he did not accept that the appellant was at a real risk of Article 3 difficulties were she to be returned to Eritrea.

14. At the hearing Counsel submitted new evidence in the form of a medical report from Dr Jeanette Medway on the appellant's HIV and the availability of appropriate treatment in Eritrea. Her report is dated 16 February 2004.

15. The Home Office CIPU report of October 2003 was submitted by Ms Hart.

16. Counsel asked the Tribunal to take account of Court of Appeal decisions in **N** and **Djali** and the UNCHR position paper about return to Eritrea.

17. Counsel submitted that the appellant was diagnosed HIV positive in October 2002 after the Adjudicator's determination and the Tribunal's determination. It was a new ground of appeal and leave was sought to argue this ground on 20 June 2003 before a differently constituted Tribunal. Ms Hart had no objection to this issue being raised as a new ground.

18. The issues before the Tribunal are:

(1) Will the appellant be denied nationality because she did not vote in the referendum.

(2) Will she be detained on return to Eritrea because she had been detained before.

(3) As she is HIV positive, is there medical treatment available to her in Eritrea.

19. Counsel relied on the original grounds of appeal to the Tribunal in 2002.

20. The first ground of appeal related to the Adjudicator's finding at paragraph 16 that there was no risk of the appellant being stateless. Counsel submitted that the Adjudicator failed to consider the Trueman report on the country situation in Eritrea, failed to give reasons for rejecting the report and failed to consider Mr Gilkes report.

21. Counsel said that the Adjudicator made reference to the report of Dr Trueman at paragraph 11 of the determination. At paragraph 15 the Adjudicator accepted that the appellant was detained in the past. Dr Trueman at paragraph 24(b) of his undated report said that in his experience release from prison was a positive factor for detention. It was Counsel's submission that by only referring to Dr Trueman's report, the Adjudicator gave that report inadequate treatment. Therefore the appeal should be allowed on this basis and remitted for a fresh hearing. In the alternative if the Tribunal are able to allow the appeal outright then it can do so on the basis of the current report of Dr Trueman.

22. Counsel then referred us to paragraph 2.3 of the grounds of appeal which said that the Adjudicator's finding at paragraph 19 that there was no Convention reason was irrational and suffered from a manifest want of reasoning. It was submitted that by not voting the appellant manifested a political opinion. Counsel submitted that the Adjudicator at paragraph 19 did not explain properly why there was not a Convention reason. The Adjudicator did not deal with the claim that the appellant did not vote in the referendum. The risk to her of not voting in the referendum is corroborated by Dr Trueman.

23. The next ground of appeal was that the Adjudicator should have accepted the appellant's length of detention. His failure to make a finding on it impacted on future risk. Counsel submitted that the implication of Dr Trueman's conclusion is that the longer a person is detained, the more that person would be at risk. There is a probable difference between a lengthy or shorter detention because of the likelihood of records being kept. The Adjudicator did not give reasons for

saying why he did not accept the appellant's length of detention.

24. Counsel's next argument was that the Adjudicator erred in law at paragraph 20 of the determination by saying that the appellant was not singled out for prison conditions. He relied on **Jayakumaran**. Counsel submitted that the detention and ill-treatment of the appellant amounted to persecution of those who did not vote in the referendum. Furthermore, the manner in which she was detained and the length of that detention crossed the threshold into Article 3.

25. Counsel further argued that the Adjudicator failed to consider if detention in the past was a powerful indication of future persecution. The **Demirkaya** point relates back to Dr Trueman's point that release from prison is a positive factor for detention.

26. Although Counsel was relying on paragraphs 2.7 and 2.8 of the grounds of appeal, he said that he could not argue these grounds with the same force as the earlier grounds. Paragraph 2.7 of the grounds of appeal argued that the Adjudicator misdirected himself in law in holding that Article 3 ECHR is a qualified right. When the Adjudicator said "all of these points have to be weighed against the duty of the respondent in the exercise of policy of immigration control", the Adjudicator was not referring to Article 3 but to Article 8. In Counsel's view the Adjudicator was conducting a balancing exercise, which is not applicable to Article 3 which is a non-derogable right and cannot be interfered with. Counsel recognised that the extra-territorial effect of Article 8 has been curtailed by **Ullah**. He further submitted that the Adjudicator had not considered that the appellant would be discriminated against on account of race if returned to Eritrea.

27. Counsel then turned to the new ground of appeal in relation to the appellant's HIV diagnosis. He said that the appellant was diagnosed as HIV positive in the latter part of 2002 when she became pregnant and lost the baby. Dr Medway's report shows that only the basic health systems are available to 60% of the people. Without access to anti-retroviral treatment, the appellant will go on to develop AIDS. The CIPU report says that an NGO is providing free treatment and that was a one-off in order to prevent pregnant women transferring the virus to their unborn child. He accepted that the report does not deal with the cost and ease of private access to treatment.

28. Counsel said that if we were not with him on the asylum and Article 3 arguments, then the HIV issue was a separate issue that needed to be considered by an Adjudicator.

29. He further submitted that the appellant has no family in Eritrea for support. She would be a single woman returning to Eritrea. She is of mixed ethnicity. This will lead to discrimination. She lost contact with her mother when she left Eritrea. Her mother was ostracised when she had a child with an Ethiopian man. If the appellant is not able to work she will not be able to pay for treatment. Her facts are distinguishable from the facts in **N** who was from Uganda and the Court of Appeal found that Uganda does have treatment for HIV sufferers. The appellant does have a real risk of developing a low CD count. This would engage Article 3.

30. Counsel further submitted that removal of the appellant from any medical treatment and support she is getting here would lead to a violation of Article 8.

31. Counsel submitted that the Secretary of State through no fault of his did not consider proportionality in relation to Article 8. As per **Edore** the Tribunal is seized of consideration of the Article 8 claim.

32. Counsel submitted that consideration of the appellant's case suffered a delay of 4 years. As the Adjudicator made findings of fact, including his acceptance that the appellant was detained in the past, he would ask the Tribunal to conclude that the appellant came here in good faith seeking asylum. It is the good faith of her claim that this appellant shares with **Shala**.

33. Counsel submitted that the appellant has been in the United Kingdom for 7 years. The delays in the consideration of her asylum application were not her fault. These factors should be weighed into the balance and it should be found that it would be disproportionate to remove her.

34. He would therefore request that the appeal be remitted to a new Adjudicator to consider the HIV element in relation to Article 8.

35. As to the appellant's claim that she is stateless, Counsel said that Dr Trueman's report identifies key reasons why the appellant would be at risk and would not be granted a passport. She did not vote in the referendum and has a history of past detention. She is also a person of mixed parentage. These factors together mean that she would suffer discrimination and would be at risk of detention and ill-treatment.

36. In response Ms Hart submitted that the Adjudicator directed his attention to specific paragraphs of Dr Trueman's report. The Adjudicator had a vast amount of objective evidence which he referred to in reaching his decision.

37. Ms Hart submitted that the determination was not flawed because the Adjudicator made no reference to the length of the appellant's detention. His lack of finding as to the length of detention was not sufficient to flaw his determination.

38. Ms Hart submitted that there was no source for Dr Trueman's opinion at paragraph 25 of his report that the Eritrean authorities are very unlikely to admit the appellant to Eritrea. Ms Hart said that paragraph 5.7 of the October 2003 CIPU report contradicts that opinion. This states that the Operations Chief at the Department of Immigration and Nationality for Eritrea in November 2002 stated that if a person's parents or grandparents were born in Eritrea, then they would be entitled to Eritrean nationality. He also confirmed that applicants would not be asked about their views, political or otherwise. Paragraph 5.6 of the CIPU report also gives a list issued by the Eritrean Embassy for obtaining Eritrean nationality. Ms Hart said that it was confirmed by the Tribunal in the case of **16L** which refers to the Court of Appeal decision in **Tekle**, that a claimant's political opinion was not relevant as was his inability to vote in the referendum. Ms Hart said that the question we need to ask is how much weight can be given to Dr Trueman's report.

39. She said that the Adjudicator found that the appellant has no political opinion so any misdemeanour of her father would have no effect on her. She was released by the authorities. She was of no interest to them. She had no political leanings or profile of her own. Anything she may have relates to her father who she does not even know. Furthermore at paragraph 7 of the determination the appellant confirmed that she was not detained because of an imputed political opinion. She was released because she gave the right answers. The Adjudicator also considered the Convention reason of social group and dismissed it.

40. Ms Hart submitted that although the Adjudicator did not decide the length of time the appellant was detained, he found that the ill-treatment she suffered did not reach the threshold to breach Article 3. The Adjudicator found that although the appellant had been treated harshly, this was not persecution.

41. With regard to the statement from the appellant's solicitor, Arona Sarwar, Ms Hart said that this was not signed or dated. In it Mr Sarwar said that he had written to the Eritrean Embassy on 2 December 2004 requesting information as to the requirements for obtaining an Eritrean passport. Mr Sarwar claimed that he had sent further letters but had not received any written response. He called the Eritrean Embassy on 14 January and was requested to call back. He

made further calls on 16 and 17 when the lines were engaged. On 4 February 2004 he managed to speak to the Embassy who informed him that to obtain a passport of citizenship the person must have an ID and to obtain this the person will need three Eritrean witnesses with their own ID to confirm that the applicant is Eritrean. Ms Hart said that we have no copies of the letters that were sent to the Eritrean Embassy and therefore we do not know what questions were asked. The CIPU report is evidence that the Eritrean Embassy does answer questions. She asked the Tribunal to put any weight we thought relevant on the letter.

42. With regard to the medical report, Ms Hart said that the appellant was not receiving any treatment at all. The Court of Appeal decision in **N** is clear-cut and provides guidance. Only exceptional and extreme cases can be considered. Currently the appellant is in a reasonable state of health. The question is whether treatment is available in Eritrea. Ms Hart submitted that the medical report is speculative in that it talks about "if the appellant develops HIV" and "if she becomes pregnant". She submitted that none of this takes us above the level of **N**.

43. As regards the **Shala** point Ms Hart accepted there was a lengthy delay. The appellant arrived in the United Kingdom in 1997. The refusal letter was issued in 2001. She was diagnosed as having HIV in 2002. The Tribunal hearing was in 2003. The appellant could have made an application for the HIV to be considered by the Tribunal but she did not.

44. Ms Hart said that the CIPU report sets out the different methods to achieve Eritrean nationality. The appellant says that she does not know of three witnesses. Ms Hart said that the three witnesses can be from anywhere in the world. It is difficult to conceive that somebody who has a mother who is Eritrean and was born in Eritrea cannot find three such people.

45. In reply Counsel submitted that the concluding paragraph of the latest UNCHR report of 6 March 2002 is in line with Dr Trueman's report and with whatever the Embassy official said to the Home Office delegation. The UNCHR report says that the displacement of expellees, even those holding the blue card, is a common feature in Eritrea. UNHCR generally takes a strong view against the return of unsuccessful asylum seekers to a situation of displacement within their own countries. This is because in UNCHR's experience, displaced persons frequently live in conditions that raise serious protection concerns.

46. Counsel submitted that the medical report is not speculative in that the appellant is likely to develop full blown AIDS and in

that respect to remove her from the United Kingdom would amount to a breach of Article 3.

47. After hearing arguments from both parties, the Tribunal reserved their determination in order to consider all the evidence.

48. The thrust of Counsel's argument was that the Adjudicator's determination was flawed because he failed to give proper consideration to Dr Trueman's report. Although Counsel further submitted that the Adjudicator did not give proper consideration to Dr Gilkes report, he did not specifically draw our attention to extracts of Dr Gilkes report that were of relevance to this appeal.

49. We accept that the only mention of Dr Trueman's report was a reference to it at paragraph 11 of the Adjudicator's determination. The Adjudicator mentioned certain pages of the report on the situation regarding the 1993 referendum. He did not apply the report to his consideration of the appellant's appeal. Therefore whilst we accept Counsel's submission that the Adjudicator failed to give any or adequate consideration to Dr Trueman's report, we do not find that his determination is flawed on account of that failure.

50. We were not of the opinion that this appeal ought to be remitted for a fresh hearing. The Adjudicator had accepted all of the appellant's evidence with the exception of doubts about the length of her detention. In the circumstances, we took the view that we could decide this appeal ourselves by considering Dr Trueman's report of 30 May 2003.

51. We observe from Dr Trueman's antecedents that his experience is very much limited to Ethiopia and what he has gained from discussions with Human Rights Organisations, and British and American Embassies in Ethiopia about Eritrea. Indeed, his report on the objective situation in Eritrea is taken from the US Statement Department Report (paragraph 11 of his report). The current US State Department Report is in the public domain and therefore we find that Dr Trueman was not saying anything new. At paragraph 18 of the report he states that he has personally read over 20 statements from descendants of Eritrea who have fled from Ethiopia and at least five statements from children of mixed parentage, who had fled from Eritrea. In our opinion the experience gained from his limited contact with very few Eritreans cannot be regarded as an expert opinion as to the generality of the situation for all Eritreans. Whilst it is not our intention to disregard the limited experience of Dr Trueman, we cannot on the other hand give it the sort of weight Counsel expected us to. We note that at paragraph 23 of his report Dr Trueman said that the appellant's history was familiar to him from the

statements he had read from Eritreans and their descendants who have left Ethiopia and Eritrea. He found her statement entirely credible. We find that he was not saying anything beyond the Adjudicator's findings.

52. Dr Trueman at paragraph 24(b) said that in his experience being released from prison is a positive factor for detention. Once the security apparatus has shown an interest in an individual, he or she is at a higher than average risk of detention, torture, disappearance and extrajudicial killing. When he says "in my experience", we presume that he is talking about his limited contacts. This limited experience, in our view, is insufficient to base an opinion that release from prison is a positive factor for detention. Furthermore, he says a large part of the report is based on objective information from other sources. He does not identify these other sources. In the circumstances, we attach little weight to Dr Trueman's opinion that release from prison is a positive factor for detention and whatever else he says.

53. We also looked at the Adjudicator's findings in relation to the appellant's detention. He accepted that the appellant was detained but had doubts about the length of her captivity. It is our considered opinion that the Adjudicator's doubts about the appellant's length of detention and therefore a lack of finding as to the appellant's length of detention do not in any way undermine the Adjudicator's conclusions. The fact is that the appellant was released from detention because the authorities were satisfied with the answers she gave to their questions. We agree with the Adjudicator that however unpleasant her detention was, she was able to confirm the necessary political solution so that the authorities no longer had an interest in her. Indeed her response to question 18 at B(6) of her interview confirms that the authorities no longer had any interest in her. She was asked "what happened in the time between you being released and leaving Eritrea? The appellant's response was "when returned, I tried to live a normal life but I was unable either to work or educate myself. My mother then made the arrangement to leave." The appellant left Eritrea in 1997. Therefore, given that the authorities were no longer interested in the appellant, and her departure was not on account of any fear she may have had of the authorities at the time, we cannot place any reliance on Dr Trueman's opinion that release from prison is a positive factor for detention were the appellant to be removed to Eritrea.

54. Counsel submitted that the longer appellant remained in detention, the more likely it is that her detention would be on record. We do not accept this submission; it is not supported by objective material. But even if that were so, the same record would show that the appellant was released because

she was no longer of any interest to the authorities having satisfied them with her answers to their questions.

55. We now turn to Counsel's argument that by not voting in the referendum the appellant had manifested a political opinion. Paragraph 6 of the skeleton argument of 18 August 2003 stated that the appellant's evidence of persecution for non participation in the referendum is plausibly corroborated by the expert report of Dr Trueman. The persecution identified by the appellant was 2 weeks detention in a police station followed by 1 year in a detention camp without trail.

56. We know from the objective evidence that the referendum was held in 1993. The Adjudicator appears to have accepted that the appellant did not vote in the referendum. According to the appellant, because she did not vote she could not get an identity card and could not enrol in school and continue with her education. She was unable to get employment or take part in any form of social and economic activity. It was because of this intolerable situation that she decided to approach the authorities and asked them to issue her with some form of documentation. She went to the Kebele in December 1995 and it was following on from this that she was arrested and detained for 2 weeks and then detained for a further year. We can accept that her failure to vote in the referendum was perceived to be a political act. By the same token having released her from detention, on account of the answers she had given, we find that the authorities must have accepted that the appellant possessed a political opinion that was not adverse to their own. In the circumstances, there is no reasonable likelihood that on return to Eritrea the appellant would be detained on account of any imputed political opinion attributed to her due to her failure to vote in the referendum. Furthermore, the objective evidence does not indicate that a failure to vote in the referendum, which took place over 10 years ago, is still an issue that is likely to lead to any repercussions by the authorities.

57. The Adjudicator had found that the treatment she suffered was harsh but did not amount to persecution. We agree with that finding. Although we accept that the appellant need not be singled out for persecution, we agree with the Adjudicator that the ill-treatment she suffered in custody did not reach the threshold of severity so as to amount to a breach of Article 3.

58. We do not accept the submission in paragraph 2.7 of the grounds of appeal that at paragraph 21 the Adjudicator misdirected himself in law in holding that Article 3 is a qualified right. It is clear to us that at paragraph 21 the Adjudicator was considering the appellant's claim under Article 8 of the ECHR, namely her right to respect for private and family life. The Adjudicator's finding in respect of Article 3

can be found at paragraph 20. In that paragraph the Adjudicator gave clear reasons as to why he did not accept that the appellant was at real risk of Article 3 difficulties were she to return to Eritrea. His findings in relation to Article 3 are, in our view, sustainable.

59. In the light of our consideration of the evidence before us, we find that the appellant has failed to establish that on her return to Eritrea she will be persecuted for a Convention reason or ill-treated in breach of Article 3 of the ECHR.

60. We note what the UNCHR says about internally displaced people in Eritrea. We are of the view that the UNCHR's concerns are not about failed asylum seekers returning to a situation where they would suffer persecution for a Convention reason or ill-treatment in breach of their Article 3 rights. The UNCHR are concerned with the conditions faced by displaced people. Although they say that these conditions raise serious protection concerns, they do not specify what those protection concerns are. There is insufficient information before us to enable us to conclude that these protection concerns are such that they reach the threshold of persecution within the 1951 Convention or the threshold of Article 3 ill-treatment.

61. We accept that there was a 4-year delay in the consideration of the appellant's asylum application. We do not accept that she came here in good faith seeking asylum and therefore do not accept that her case is akin to Shala. Her answer to question 18 clearly indicates that she left Eritrea not because of a fear of persecution by the authorities but because she was unable to gain education or employment. Furthermore, the delay in reaching a decision in respect of her asylum application has worked to her advantage. She has now been here 7 years and has been able to gain an education. This education should stand her in good stead on her return to Eritrea.

62. We now turn to the appellant's medical condition. The appellant has been diagnosed with HIV. The fact of the matter is that the appellant is not currently under going any treatment. Dr Medway said that whilst the appellant has a CD 4 count of over 500 she does not require ARV treatment for her own health. However she needs to be monitored at this stage on a 3 monthly basis in order to monitor her CD 4 count. Given that the appellant is not receiving any medical treatment in the UK at the moment, her removal from the United Kingdom would not lead to any serious harm. Therefore the appellant does not come within the **Razgar** principle in Article 8.

63. We also agree with Ms Hart that the conclusions of Dr Medway are speculative and are based on what is likely to happen in the future if the appellant has another pregnancy, has a baby and is without ARV treatment. We reject Counsel's submission that because Dr Medway says that there is a real risk of the appellant going on to develop AIDs at some point in the future, the Tribunal can determine today that at that future point when she does develop AIDS she would cross the threshold into Article 3 as she would not be able to have access to treatment for AIDS. It would certainly be alarming indeed if a Tribunal had to rule that an appellant cannot be removed today because at some point in the future, she is likely to develop full blown AIDS, for which she is not likely to get access to treatment. We are bound by Ravichandran and the Asylum and Immigration Act to look at matters at the date of hearing, not at an indeterminate time in the future.

64. In **N** Laws LJ held that the application of Article 3 where the complaint in essence is of want of resources in the applicant's home country (in contrast to what has been available to him in the country from which he is to be removed), it is only justified where the humanitarian appeal of the case is so powerful that it could not in reason be resisted by the authorities of a civilised state. Dyson LJ said that the question was whether the facts in **N** disclosed a case which was so exceptional and in respect of which the humanitarian consequences were so compelling, that the IAT might reasonably conclude that Article 3 was engaged. In his judgement the applicant did not satisfy that test. Her case was similar to that of many who suffer from HIV/AIDS. They enjoy sophisticated medical treatment in this country which keeps the disease at bay, and which ensures that they have a reasonable life expectancy. If they are returned to their countries of origin, they will be unlikely to receive the medical treatment that they currently enjoy, and as a result, their life expectancies will be substantially reduced. It seemed to him that if the Article 3 door was open to such cases, it would be opened far wider than was intended by the signatories to the European Convention on Human Rights, and far wider than the Court envisaged in **D**. Tragic though such cases undoubtedly are, unless they have some special feature which gives rise to particularly compelling humanitarian conditions, they do not need the stringent requirement that they be truly exceptional in order to satisfy the Article 3 criteria.

65. We find in the light of the judgment in N that the appellant's case is neither exceptional nor in respect of the humanitarian conditions so compelling that we have to reasonably conclude that Article 3 is engaged.

66. We now turn to the issue of statelessness. We place no weight on the unsigned and undated statement from the

appellant's solicitor Arona Sarwar. That statement was not accompanied by the copy letters that were written to the Eritrean Embassy. We have no objective information that says that the three witnesses the appellant will require, are witnesses who reside in the United Kingdom. The appellant was born and bred in Eritrea and we have no doubt that there are many Eritreans who know her and who will be able to provide evidence of her identity.

67. We reject Dr Trueman's opinion that the Eritrean authorities are very unlikely to admit the appellant to Eritrea. We do not know the source upon which his opinion is based. Furthermore, it is contradicted by the statement of the Operations Chief at the Department of Immigration and Nationality for Eritrea. In the light of the appellant's maternal parentage, we find that the appellant should have no difficulty obtaining Eritrean nationality. We also rely on the decision in **16L** and **Tekle,** which held that a claimant's political opinion or his ability to vote in the referendum is not relevant to obtaining Eritrean nationality. In the circumstances, we find that the appellant is not stateless.

68. On the totality of the evidence we find that the appellant has failed to discharge the burden of proof upon her in relation to her asylum and human rights appeals. Accordingly, her appeal is dismissed.

Miss K Eshun
Vice President