ar HA (Low Level ELF) Eritrea [2003] UKIAT 00206

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 7 March 2003

Date Determination notified:18.06.03

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Before:

Mr G Warr (Chairman)
Mr C Thursby

Secretary of State for the Home Department

APPELLANT

and

RESPONDENT

Representation
For the appellant : Mr D. Suldhana of Howe & Co.
For the respondent : Mr D. Buckley, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Secretary of State appeals the determination of an Adjudicator (Miss M.J. Pirotta) allowing the appeal of Mrs H. Abraham, a citizen of Eritrea, hereinafter for convenience referred to as the appellant, from a decision of Secretary of State to refuse her application for asylum. The Adjudicator allowed her appeal on human rights grounds also.

2. Mr G. Saunders appeared for Secretary of State while Miss G. Brown of counsel, instructed by Moody & Woolley, appeared for the appellant.

3. Before turning to the submissions, we should reproduce the facts helpfully summarised by the Adjudicator in paragraphs 13 to 18 of the determination which read as follows:

‘The appellant's account

13. The appellant's father was an official of the Mengistu regime during the Ethiopian colonisation of Eritrea and critic of the Eritrean government. The family fled in 1990 when the Eritrean People’s Liberation Front gained power and her father was later arrested. When the Ethiopian authorities deported all Ethiopians with Eritrean origins, her father was released and deported. She had not had any news of his whereabouts since 1993.

14. The appellant was herself a supporter of the Eritrean Liberation Front Revolutionary Council and actively worked to spread information. She said in evidence that the members were not known to each other for reasons of security, that they should not be able to identify each other to the authorities, which did not explain how she could communicate information to the members from the officials.

15. The appellant feared arrest by the authorities when she was told her home was to be raided and fled in 1995 with her husband and daughter to Shuma Nejs Tahaty, hiding for a week, then to Addis Ababa later to Shashiment. In 1999 the appellant's husband was arrested by the EPRDF and deported to Eritrea. She knew nothing of him since. The appellant went with her daughter to Yemen, then came to the United Kingdom on 8 January 2001.

16. The appellant asserted that she was afraid to return to Eritrea because of her father’s political history, her own involvement with the Eritrean Liberation Front which is opposed to the Eritrean People’s Liberation Front, and racism as a result of her mother’s Tigran ethnicity.

17. The appellant also said that she would refuse to serve the Eritrean government by way of national service which is compulsory, and draft evasion punishable by imprisonment. Further, as she had not paid taxes in her absence aboard, the government would refuse her services on her return.

18. In the interview the appellant said she had remained in Ethiopia with her husband for 5 years, leaving when she feared deportation because of her ethnicity. She had spent three days in Yemen. She had joined the ELF seven years before. She had not been arrested or detained. She feared persecution still

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> despite the passage of time. The government in power was repressive and political opposition was not permitted.'

4. The Adjudicator found the appellant's case account to be credible. She found that the appellant was a member of a social group. In this respect it is clear that the Adjudicator misdirected herself but she did go on to find that the Convention reason was political opinion. There had been a claim that the appellant would suffer because of her ethnicity but this the Adjudicator was not satisfied about. The Adjudicator makes a reference to the fact that objective evidence showed that 'as a draft evader she would be persecuted, likely to be detained'. The Adjudicator felt that Article 3 was engaged as the treatment of other political activists and threats to the appellant's safety reached the minimum level of severity required to constitute a breach of Article 3.

5. Mr Saunders questioned where the Adjudicator had had the material to find that the appellant had any fear of military service and indeed in her self completed evidence form it had been written against the questions relating to military service 'N/A' – i.e. not applicable. There was no evidence about military service in either the form or the statement or the subsequent interview. Reference was made to Sepet and Bulbul [2001] ImmAR 452. The draft evasion point had been dealt with utterly inadequately by the Adjudicator.

6. The appellant had claimed that she had undertaken activities for the Eritrean Liberation Front – Revolutionary Counsel (ELF-RC) and this was dealt with in paragraphs 6.62 to 6.67 of the October 2002 Country Assessment. Mr Saunders drew particular attention to the last sentence of paragraph 6.67 which reads 'Those who had been responsible for anything that could be interpreted as terrorism or violence may be likely to come to the attention of the authorities.'

7. The appellant had only carried out low level activities, nothing akin to terrorism or violence. It was not enough simply to be a member of the ELF-RC. Reference was made to Ibrahim [2002] UKIAT02628. We were also referred to Ghedle [2002] UKIAT01112. The Adjudicator had correctly dismissed the appeal on the grounds of ethnicity.

8. Miss Brown submitted that the appeal of Secretary of State should be dismissed, alternatively the matter should be remitted for a fresh hearing. It had been acknowledged that the Adjudicator's treatment of the military service issue had been inadequate. Although military service had not been mentioned by the appellant in her interview, the position was that she did not fear military service at the time of her departure. It was not the reason she left. It was suggested to counsel that in paragraph 23 the Adjudicator had recorded the appellant as stating in evidence that she had avoided military service because of her political opinions and ethnic persecution. This suggested that it was part and parcel of her claim, contrary to counsel's submissions. Counsel submitted that she had not brought herself to the attention of the authorities by her avoidance of military service. It had been

her political opinion which had caused her problems. That was what was operating on her mind, rather than military service. The case of Ghedle (which we have cited above) made it clear that it depended on the position held what the consequences would be on return. There was a sliding scale. The appellant had said that she had been distributing leaflets which was on one hand low level but might be integral to the organisation as a whole. The appeal should be dismissed or remitted for a fresh hearing. Mr Saunders had no submissions in reply.

9. The question of military service did not feature in the appellant's account in her self completed form, in her statement or at interview. The form is a detailed one, giving three main reasons for her claim, none of which mention an aversion to military service. The appellant had the assistance of legal representatives at the time of completing this form. The form makes it quite clear that all relevant information should be given. As we have already observed, it was indicated that military service was not applicable in the circumstances of the application on page 11 of the form. At her interview, the appellant was asked whether there was anything to add to what she had said or what was included in her statement (see question 51) and she replied in the negative. There was nothing about military service mentioned at the interview and nothing about military service in the grounds of appeal which followed the respondent's refusal letter. The Adjudicator states that the appellant's evidence closely followed her interview and statement in paragraph 22 of her determination but does not appear to have observed that there was no mention whatsoever of the question of military service. Counsel submitted that the matter had surfaced in paragraph 9 of the skeleton argument lodged before the Adjudicator. We should observe that no material was lodged on behalf of the appellant before us. The only material before us was lodged by the Secretary of State. On the court file we note that the Adjudicator's bundle starts with the appellant's statement and this makes no reference to the question of military service – indeed the statement is simply a reproduction of the statement previously submitted to the respondent, giving the four heads of claim which do not mention military service. It is simply asserted in paragraph 9 of the skeleton argument that the appellant would be required to perform military service under conditions which amount to a breach of Article 3. It is not clear whether the evidential foundation came for this submission. The case of Sepet and Bulbul makes it clear that the appellant cannot make out a claim as a conscientious objector under the 1951 Convention and the Adjudicator does not appear to have explored this aspect at all. On 12 December 2000 a comprehensive peace agreement was signed between Ethiopia and Eritrea (paragraph 4.18 of the Home Office Country Assessment) and on 13 April 2002 the International Tribunal at the Hague announced its decision on the border dispute which was welcomed publicly by the two governments of Eritrea and Ethiopia. In July 2002 the pilot phase of the planned Eritrean demobilisation plan was reported as being completed (see paragraph 5.41 of the Assessment). The National Demobilisation and Reintegration Process (DRP) aims to demobilise 200,000 from the Eritrean armed forces, with the pilot scheme demobilising 5000. Those demobilised are reintegrated into civilian life. It is recorded that since the beginning of the border war in 1998 more than 6% of Eritrea's population has served in the armed forces and as a result both the civil service and

private companies have suffered serious staff shortages. Paragraph 5.43 continues:

> 'In order to meet the urgent demand for manpower, the government plans to employ soldiers in local public works programmes – such as building dams, repairing roads and public buildings – while they awaiting demobilisation. Since this move, however, reports claimed that soldiers in Eritrea have been mounting checks on young men and women to track down those that have dodged the draft.'

10. Despite the last sentence in this paragraph, it does appear to be clear on the evidence that the army is, so to speak, turning its swords into ploughshares to a considerable extent. We would consider it would be speculative to assume that the appellant, who was born in 1967, would be exposed to inhuman or degrading treatment. Counsel directed our attention to no material that would support the Adjudicator's conclusions. As we have observed, none was lodged before us.

11. It is quite clear on the evidence that the appellant gave that she was involved with the ELF-RC at a low level, undertaking leafleting activities and distribution of literature. At her interview she was asked (question 17) 'Did you do anything else besides delivering leaflets?' and the appellant is recorded as replying 'No'. Counsel submits that the case of Ghedle establishes that there is a sliding scale and that treatment on return depends on the role and activity of a person who claims to be involved with the ELF. The appellant is, in our view, and indeed on any sensible view of the evidence, a low level supporter of the ELF-R. She is not someone who has been responsible 'for anything that could be interpreted as terrorism or violence' – see paragraph 6.67 of the Country Assessment and Ibrahim at paragraph 7 of the determination.

12. We conclude that the Adjudicator misdirected herself on the objective evidence and the authorities and insofar as she found that the appellant was not low level but a 'dissident political activist' her findings are unsustainable. We find no reason to remit this matter for a fresh hearing. The material lodged before us and the authorities which we have referred to establish that the Secretary of State's grounds of appeal are made out and it is right to reverse the Adjudicator's conclusions both under the 1951 Convention and on her findings under Article 3.

13. The appeal of the Secretary of State is allowed and the decision of the Adjudicator is reversed.

G. WARR
VICE PRESIDENT