LSH

Heard at Field House
On 18 December 2002

APPEAL NO HX26601-2002
AA (Children - Eritrean) Ethiopia
CG [2002] UKIAT 06533

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

....14.02.2003...

Before:

Mr G Warr (Chairman)
Mrs E Morton

Between

ARSEMA ABREHA

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant, who was born in Ethiopia, appeals the determination of an Adjudicator (Mr M Weisman, OBE) who dismissed her appeal against the decision of the Secretary of State to refuse her application for asylum. He also dismissed the human rights appeal.

2. The appellant was represented before us by Mr M Chatwin, of Counsel, instructed by S Osman, Solicitors. Mr D Ekagha appeared for the Secretary of State.

3. The appellant, although born in Ethiopia, is Eritrean through her father. Her mother is Ethiopian. She was born on 3 June 1987 and is still only 15. She had problems following the border dispute in 1998 between Eritrea and Ethiopia. On 24 November 2000 her father was captured by Ethiopian security forces in Addis Ababa. The security forces came to the appellant's house, hit the appellant on the back, throwing her out of her home, and proceeded to

ransack the house. Her mother was hit in the struggle and taken away. The appellant went to stay with a friend. The appellant then learnt that her mother had been beaten up very severely by the police and died of her injuries on 10 January 2001. The security forces had raided the house because the father was suspected of being involved with the EPLF Eritrean Government – he had been suspected simply because he was an Eritrean. The appellant's mother, who had been released from her period in detention prior to her death, told the appellant that she had only been released because she herself was Ethiopian.

4. The appellant suffered these events when she was only 13. She arrived in this country and applied for asylum in July 2001. Although the Secretary of State refused the application, he granted her leave to remain until 2 June 2005 the day before her 18th birthday.

5. The Adjudicator was prepared to give the appellant the benefit of the doubt that her parents had suffered as described but he was not prepared to accept that the appellant was at the time of the hearing of any particular interest to the authorities. If the incident took place, it was not carried out with the connivance or support of the government. It may have been irresponsible or undisciplined.

6. The Adjudicator also took into account the fact that she had been looked after by a friend and had gone to Kenya prior to her departure for the United Kingdom. She had the opportunity to apply for asylum in Kenya and he concluded that her reasons for coming to the United Kingdom were economic.

7. Among the points taken in the grounds of appeal was that it would be odd for a 13 year old to be considered to be an economic refugee. A complaint was also made about the suggestion that the state might not be responsible and accountable for the deaths of the appellant's parents. There was no ground of appeal on human rights grounds and the Chairman did not give leave in respect of any human rights points. The Chairman was concerned, however, that attention was not focused on Eritrea, the country of the appellant's nationality.

8. Counsel submitted that the Secretary of State and the Adjudicator had dealt with the question of citizenship properly and had viewed the case against the situation in Ethiopia, where the appellant had been born and bred. It was appropriate to consider Ethiopia bearing in mind paragraph 8 of Schedule 2 to the Immigration Act 1971. There was no evidence for example, that the appellant was not Ethiopian as well as Eritrean. Ethiopia was also a country to which there was reason to believe that the appellant would be admitted. No point was taken on this aspect. There might be

difficulties about the appellant getting to Eritrea as three witnesses were required to establish Eritrean nationality.

9. Although the appellant had exceptional leave to remain, this was not a period of 4 years exceptional leave to remain. It lapsed on her 18th birthday. She was a child with nowhere to go to. She had suffered persecution at a tender age and had been orphaned by the actions of the state. It was Counsel's submission that the persecution she suffered continued. She would be returned as an orphan and suffer the continuing consequences of what had happened to her as a 13 year old.

10. It was suggested to Counsel that the state had not been interested in the appellant – she had been injured in the course of an attempt to get at her parents. Counsel accepted that she had not been singled out by the authorities.

11. Mr Ekagha submitted that the appellant would not be of interest on return and would not suffer persecution. There was no evidence that the Ethiopians would return her to Eritrea. In any event, the objective evidence showed that deportees were catered for in Eritrea. In paragraph 6.106 of the October 2002 Country Assessment most of the deportees had apparently been accepted in Eritrea as citizens. The deportees had integrated into society: see paragraph 6.111. The situation was not as gloomy as painted.

12. The Secretary of State never deported children without making arrangements for their reception with the UN or other appropriate agency. Children would not be returned without suitable arrangements having been made for their reception.

13. Mr Chatwin submitted that the Tribunal should focus on the position today. Anything could happen in 2005. The Country Assessment was not of assistance as that dealt with the position of those forcibly expelled. The Eritrean authorities require documentation as was made plain in paragraph 5.6 of the assessment – three witnesses were required.

14. The persecution suffered by the appellant was a continuing state of affairs and although the effects might reduce with the passage of time it would be persecutory to return the appellant at present. Counsel acknowledged there was no medical evidence before us as to the appellant's current state of health.

15. We reserved out determination. Counsel makes it plain that he was not relying on the fact that the appellant might herself be the target of persecutory intentions by the authorities. His submission was based on the fact that the appellant had suffered harm in the past and that the effects of the harm suffered were so grave that it

would carry forward and it would be persecutory to return her in present circumstances.

16. The Tribunal has listened carefully to the arguments put forward. Undoubtedly the appellant suffered gravely and was effectively orphaned by the actions of the state. But it is our understanding of the evidence that the appellant was merely brushed aside by the security forces in their efforts to get at her parents. She was not and is not the object of interest, as the Adjudicator found.

17. There may be circumstances in which past experiences would have such a grave present impact upon an individual that it would be a breach of his human rights to return him. In the ordinary course of events, one would expect strong medical evidence to buttress such a submission. Human rights arguments were not put before us and in any event the Chairman had not granted leave to pursue any human rights arguments. Perhaps that is unsurprising, since the appellant has leave to remain until 2005. Counsel's submissions were, however, focused on the question whether the appellant would suffer persecution for a Convention reason if returned today.

18. We reject his submission that the persecution continues. It is necessary in cases under the 1951 Convention to consider whether an individual's fear of suffering persecution is well-founded as at the date of hearing. Although we would not support every word of the Adjudicator's determination, we are in agreement that the Adjudicator was correct in stating that the appellant was not of interest for a Convention relevant reason. We do not think it appropriate in the circumstances of this appeal to consider the appellant to be an economic migrant. She was, as the grounds of appeal make clear, a very young person when she came to this country.

19. We are to look at the situation as to what would happen if the appellant were to be returned now. In those hypothetical circumstances, we are satisfied that the appellant would not be returned without suitable arrangements being made for her reception. Mr Ekagha submits, and we accept, that that would be the position. Of course she is not to be returned as a child. She will not be returned, if at all, before her 18th birthday. At that time she can be advised appropriately about her status and whether to apply for an extension of her leave to remain. Any application will be considered against the prevailing circumstances at that time. What we must do is to consider the circumstances pertaining today.

20. If the appellant were removed, there would be appropriate reception conditions and on the basis of the material before us we are not satisfied that the appellant would be persecuted because of her ethnicity or suffer potential persecutory conduct as a deportee from Ethiopia to Eritrea. Steps have been taken to facilitate the

integration of deportees into society and documentation is provided by the government valid for a period of time. If during that time deportees were able to find the required witnesses they would be issued with appropriate documentation confirming their nationality. For those who could not demonstrate Eritrean ties, the government would grant them identity documents that specified they were Ethiopian but permitted them to stay in the country. It is reported that at times deportees were subjected to harassment and detention by military authorities checking for deserters and draft dodgers.

21. We are of course concerned with purely hypothetical circumstances. About 75,000 persons have been deported to Eritrea from Ethiopia and although there was initial uncertainty about their nationalities most have apparently been accepted in Eritrea as citizens (see paragraph 6.106 of the Country Assessment).

22. Counsel did not direct to our attention to any material in the bundles that have been lodged. Both parties confined their attention to the country assessment. It was Counsel's submission that the appellant's return would expose her to persecution because of the past events which would have a continuing impact on her. We reject that submission. It is not established to the required standard that the appellant would suffer persecution for a Convention reason if returned to Ethiopia. Human rights issues are not before us today. The appellant need not be troubled about her immigration status in the United Kingdom until she is 18 when we are confident that any application she makes for leave to remain will be sympathetically considered. However, on the material before us, we must dismiss this appeal.

23. Appeal dismissed.

G Warr
Vice President