

JH
Heard at Field House
On 23 August 2002

APPEAL NO HX/48290/2001
FA (Risk-ELF-RC-Activity)
Eritrea CG [2002] UKIAT 05039

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:
31st October 2002
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Before:

MR H J E LATTER (Chairman)
MR A A LLOYD
MR C A N EDINBORO

Between

Freweini Ashmelash

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Appearances:

For the appellant: Mr D Mukherjee of Counsel
instructed by Scudamores, Solicitors
For the respondent: Mr I Graham, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Freweini Ashmelash, a citizen of Eritrea, against the determination of an Adjudicator (Ms A Dhanji) who dismissed her appeal against the respondent's decision made on 26 May 2001 refusing to vary her leave to remain following the refusal of her claim for asylum.
2. The appellant entered the United Kingdom on 28 January 1996 as a domestic servant with a family who travelled from Sudan. After two days she took the opportunity of running away. She made a call to an Eritrean community centre and was provided with help and support.

On 31 January 1996 she went to the Home Office in Croydon and claimed asylum.

3. The background to her claim can be briefly described as follows. The appellant was born in Eritrea in December 1964. In the 1970s she lived with her parents in Asmara but because of the civil war her father sent the appellant and her mother back to Adi Teklay in the Hamassien Province. This area was an ELF stronghold and the appellant became involved in a children's project called the Pioneer Project. She was sent to a training camp where she learned combat tactics, politics and literature. She also graduated from a medical training centre and worked in Hamib hospital until 1980 looking after injured fighters. In 1980 the fighting between the two liberation movements the ELF and the EPLF intensified and in 1981 the military wing of the ELF was driven out of Eritrea. The appellant along with many other members of the ELF left for Sudan. She lived in Korokom for seven months with a group of ELF fighters until June 1981. She then moved to Kassala where the ELF had a hospital and an office. The ELF were unable to accommodate her and she obtained employment as a domestic worker.
4. The appellant continued with her activities with the ELF as a member of the women's association. In 1985 she moved to Khartoum. In 1991 the EPLF liberated Eritrea and following liberation the EPLF with the help of the Sudanese government attacked ELF groups in the Gash district. Many ELF members were deported. In 1992 she took employment with a particular family as a domestic worker. They were devout Moslems and from the beginning she was under pressure to change her faith. The appellant says that she remained loyal to her Christian faith and to her political ideologies which kept her alive during these years. In January 1996 a few days before the family travelled to London, her employer told her that she had to travel with them. She contacted a fellow ELF member in Khartoum who told her to get in touch with the Eritrean community if she went to London. She was given a telephone number.
5. Both the Secretary of State and the Adjudicator took the view that the appellant would not be at risk of persecution on return to Eritrea. The Adjudicator accepted the core of her evidence that she had had a long involvement with the ELF albeit at a fairly low level. She accepted that the appellant left Eritrea at the time and in the circumstances that she had described. She accepted that the appellant had been attending ELF meetings in the United Kingdom. However, for the reasons which she gives in paragraph 7 of her determination she was not satisfied that the appellant would face a risk of persecution on return. It was her view that the appellant was not politically sophisticated. She had left Eritrea in 1981 when she was about 17 years old. She had never been arrested or detained by the Eritrean authorities. She was not satisfied that the appellant would attract any particular adverse attention were she to be returned. She dismissed the claim on both refugee and

human rights grounds. She was not satisfied that there would be a breach of Article 3 nor Article 10.

6. At the hearing before the Tribunal Mr Mukherjee submitted that on the basis of the Adjudicator's findings the appellant would be returning to Eritrea as a known ELF member. The CIPU report April 2002 said that the government continued to detain numerous members of the ELF. He referred to Suleman (00/TH00038), a Tribunal determination which held that there was evidence that some ELF-RC former members and sympathisers had returned to Eritrea but had subsequently disappeared. He referred to the report from Dr Amrit Wilson, a report prepared after the hearing before the Adjudicator, in support of his contention that there was evidence of ELF-RC members returning to Eritrea and then being picked up and jailed without charge. He further submitted that there would be a breach of Articles 3, 8 and 10. The appellant was an unmarried mother with a young daughter. The father was having contact with the child. He referred to the father's witness statement dated 26 July 2002 saying that he had access twice a month and was providing emotional and financial support.
7. Mr Graham submitted that as the appellant had not taken part in any acts of terrorism or violence, she would not be at risk from the authorities in Eritrea. Members of the ELF-RC were not prevented from returning. The appellant had been away from Eritrea for twenty years and it was fanciful to think that she would now be at risk of persecution on return. The sources used in the report by Dr Wilson had not been identified. In reality there was no family life between the appellant's daughter and her father. Although a psychological report had been produced the position was not sufficiently serious to bring the appellant within either Article 3 or Article 8.
8. It is clear that numerous members of the ELF have returned to Eritrea. According to the CIPU report there are unconfirmed reports that some members have been detained but others have been appointed as governors as part of the government's attempt to integrate different sections of Eritrean society in to the administration. It also reported that some ELF members have taken up posts in government departments. The government's reaction to returning members depends upon the position held in the organisation and the type of activity undertaken. According to the report from Dr Wilson, the ELF-RC members have been persecuted widely by the Eritrean government simply for being members. It is said that this has also happened in Sudan where there have been a number of disappearances and also in Britain. The government takes a defensive attitude and hounds its critics even in London. A number of ELF-RC members have been picked up by the regime and jailed without being charged with no chance of a trial. This is particularly the case for low profile party workers who do not have influence or contacts to campaign for their release. The fact that the appellant had been a nurse rather than directly involved in the armed struggle would make no difference.

What would count against her would be her long term political affiliation and the fact that she would be categorised as a critic of the government and as a traitor.

9. Dr Wilson's report goes on to consider the appellant's situation as a single mother were she to be returned. It is Dr Wilson's view that she will be seen as an easy target for rape and sexual assault. If she tried to move to another part of Eritrea her reputation would follow her through the close-knit traditional networks. The fact that she had lived in Sudan would go against her too as there is a common belief that divorced women in Sudan end up as prostitutes. She would be socially and economically ostracised, making survival almost impossible.
10. The Tribunal also have a report from a psychologist, Edini Fejzic. According to this report the appellant suffered post-natal depression after the birth of her daughter. She has become very depressed and feels rejected and devalued as a human being. She still feels terribly guilty that her baby was not born in marriage.
11. The Tribunal also have a statement from a Mrs Lule Tekeste who has been granted indefinite leave to remain as a refugee. She describes herself as an active member of the ELF-RC who worked in Eritrea as an assistant nurse. It is her belief that the present Eritrean government will tolerate no opposition. She is a member with the appellant of the London branch of the ELF-RC. She claims to be aware of the Eritrean government being able to obtain detailed information about ELF members as they have many supporters in the UK. She believes that the appellant would be in grave danger were she to be returned to Eritrea.
12. In the light of this evidence the Tribunal have come to the view that there is a serious possibility the appellant might come to the attention of the authorities on return and be at risk of persecution because of her continuous support for the ELF-RC. The fact that the appellant would be returning as a single mother with a young child might in itself make her a person of additional interest and hostility from what Dr Wilson describes as the local power structures and the close traditional networks. The fact of the appellant's long standing support for ELF and her continued participation in its activities assessed in the light of the background evidence to which we have been referred, lead the Tribunal to the view that the risks the appellant might face can properly be categorised as real rather than speculative.
13. In the light of these findings the Tribunal is satisfied that there would be a risk of persecution under the Refugee Convention and of treatment contrary to Article 3. For the sake of completeness in our view a return to Eritrea, taking into account the length of time the appellant has been away from Eritrea and her current circumstances in the United Kingdom, would be a breach of her rights to private life under Article 8. The removal of her daughter would be a breach of her right to family

life as it would mean a loss of contact with her father who, although of Eritrean ethnic origin, is now a British citizen who would not be able to maintain contact with his daughter if returned to Eritrea. In the light of all the circumstances, the Tribunal would not be satisfied that removal would be proportionate to a legitimate aim within Article 8(2).

14. In these circumstances, this appeal is allowed.

H J E Latter
Vice President