

## **DECISION RECORD**

**RRT CASE NUMBER:** 1002664

**DIAC REFERENCE(S):** CLF2009/156473

**COUNTRY OF REFERENCE:** Ethiopia

**TRIBUNAL MEMBER:** Mary Urquhart

**DATE:** 29 November 2010

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## **STATEMENT OF DECISION AND REASONS APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under [s.65](#) of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Ethiopia arrived in Australia on [date deleted under [s.431\(2\)](#) of the *Migration Act 1958* as this information may identify the applicant] October 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] November 2009. The delegate decided to refuse to grant the visa [in] April 2010 and notified the applicant of the decision and her review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] April 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under [s.411\(1\)\(c\)](#) of the Act. The Tribunal finds that the applicant has made a valid application for review under [s.412](#) of the Act.

## **RELEVANT LAW**

6. Under [s.65\(1\)](#) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. [Section 36\(2\)\(a\)](#) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

8. Further criteria for the grant of a Protection (Class XA) visa are set out in [Part 866](#) of Schedule 2 to the [Migration Regulations 1994](#).

#### Definition of ‘refugee’

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who: owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* ([1989](#)) [169 CLR 379](#), *Applicant A v MIEA* (1997) [190 CLR 225](#), *MIEA v Guo* ([1997](#)) [191 CLR 559](#), *Chen Shi Hai v MIMA* [[2000](#)] [HCA 19](#); [[2000](#)] [201 CLR 293](#), *MIMA v Haji Ibrahim* [[2000](#)] [HCA 55](#); [[2000](#)] [204 CLR 1](#), *MIMA v Khawar* ([2002](#)) [210 CLR 1](#), *MIMA v Respondents S152/2003* (2004) [222 CLR 1](#) and *Applicant S v MIMA* [[2004](#)] [HCA 25](#); [[2004](#)] [217 CLR 387](#).

11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

16. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

20. Documentation submitted with the application for Protection includes:

- A certified copy of the applicant's aunt's ([Ms A]) Oromo Liberation Front membership card;
- A letter of support from [name and position deleted] of the South-eastern Region Melbourne Oromo Community Association, signed [in] December 2009;
- A letter from [doctor's name deleted], volunteer GP, at [Agency 1] states as follows:

"Re: [The Applicant] DOB [Date]

I consulted with this lady on [date] February 2010 in my role as General Practitioner working in an honorary capacity at [Agency 1].

[The applicant] states that she was imprisoned for over two years from February 2005. She states that she was badly treated and pulled roughly by the hand resulting in an injured left little finger.

On examination she has a fixed deformity at the proximal interphalangeal joint and is unable to fully flex this joint. The appearance is consistent with an inadequately treated fracture which was the result of trauma whilst in prison. Examination of her mental state suggests symptoms of post traumatic stress disorder. She has severe nightmares, flashbacks, daytime anxiety and startles easily. She is also depressed, sleeps poorly and cries often.

I recommend a psychiatric assessment of [the applicant]".

### **Primary decision**

21. The Department file reveals that the applicant arrived in Australia on a Business (short stay) visa [in] October 2009 which was valid until [a date in] November 2009. The applicant lodged a Protection visa application [in] November 2009.

22. The delegate of the Department records that at the time of lodgement of the Protection visa application the applicant was not represented by a migration agent. However, prior to her interview with the Department, the applicant nominated [Agency 1] as her authorised recipient and provided a second account of her claims.

23. The applicant is a [age deleted] woman from Ethiopia and claims to have lived in Addis Ababa for most of her life. She is the second eldest child in her family and has nine siblings. The applicant claims that she was raised by her father and step mother and knows her mother and step siblings.

24. The applicant completed year 12 where she studied Afan Oromo as one of her subjects before helping her uncle with his family business. The applicant has also completed a 6 month [course] in 2001 (Gregorian calendar) and a [diploma] in 2009 (Gregorian calendar).

25. In her business short stay visa application the applicant provided a letter from the “[employer deleted]” that states she was working as a sign language interpreter and as taking her annual leave to travel to Australia. The applicant supplied financial information in a letter from the Awash International Bank. The applicant claimed to own certain shares.

26. The applicant submitted several statements in support of her application. The first which was submitted to the Department states the following:

“My name is [name]. I was born on [date]. I came to Australia on [date].

The reasons I was forced to seek asylum in Australia are as follows:

When I was in Ethiopia I was being accused of being a sympathizer and member of Oromo Liberation Front (OLF). I had been imprisoned for two years incommunicado from February 2005 to March 2007. While in prison I was being tortured, interrogated, beaten, and threatened. The prison guards and the EPRDF Officers broke my little finger in the process of beating me.

Even though I was released in March 2007 I was being harassed and followed well after I was released from jail. The aim of the torture and beating was so that I would reveal the whereabouts of my father who was also a member of OLF, and other members of the Oromo Liberation Front. Methods of torture included, whipping, leaving us in a dark room and sleeping on a concrete floor.

At one point when my father was in hiding in Ethiopia, they asked me if I knew his whereabouts and I told them I didn't know his whereabouts and other members of OLF, they tortured and beat me. I suffered a great deal psychologically and physically. My father had been jailed several times and he is also in jail at this moment.

Besides, most of my relatives live in Australia. Therefore I would like to live in Australia which I found beautiful and where human right is respected. If I were to go back to Ethiopia I would be faced with torture, interrogation, beating and prison. My aunt whom I live with at the moment, is a member and [official] of Oromo women's Association in Australia - south pacific region Inc. Similarly, my aunt, [Ms A], was being persecuted while in Ethiopia. She and her family got resettlement to live in Australia back in 1998. If I were to go back to Ethiopia, they would interrogate me about OLF members living in Australia and specifically about my aunt who was also [an official] of Oromo women under the umbrella of OLF back in 1991 before OLF was banned from Ethiopia.

The other reason I am applying to remain in Australia is because the EPRDF officials ransacked my residence while I am in Australia. Since they know I am OLF supporter and sympathizer (member), the current government of Ethiopia will try to jail, torture, and even imprison me if I go back to Ethiopia.

Several thousands of Oromo in Ethiopia are detained, persecuted and tortured. Killing, and extra judicial killings are very common. I have witnessed this torturing committed against me

and killings against other members of the Oromo Liberation Front members merely because they were members of OLF. So if I go back I will be faced with torture and Jail. There are many Oromo detainees all over Ethiopian jails. There is a Human Right violation in Ethiopia including large scale of women, men and youngsters in detention

The Ethiopian government accuses the Oromo people of being OLF Supporters and jails, tortures and threatens them. They also kill those whom they suspect are members of the Oromo Liberation Front (OLF). Thousands of Oromo people are now in Prisons, and some have disappeared without a trace.

Therefore in light of the above, I would like to appeal to your esteemed organization DIMIA, to allow me to remain in this beautiful country, Australia, where human rights are respected, on Humanitarian grounds”.

27. The delegate summarised the applicant’s claims as follows:

In the applicant’s first statement accompanying her application for a protection visa, she stated that she was imprisoned incommunicado from February 2005 to March 2007 (Gregorian Calendar) and was accused of being a sympathizer and member of the Oromo Liberation Front (OLF). She also claims that during her imprisonment she was tortured, interrogated, beaten and threatened so that she would reveal her father's whereabouts. She claims that her father was also a member of the OLF and that he had been jailed on several occasions and was currently in jail. The applicant claims that her father was detained in 1998 according to the Ethiopian Calendar. During his first year of detention the applicant claims that she sometimes accompanied her family to visit him.

The applicant also stated that as most of her relatives live in Australia she would like to live here too. She claims that if she was to return to Ethiopia she would face torture, interrogation, beating and imprisonment. She claims that she is currently staying with her aunt who is a member and [official] of the Oromo Women's Association in Australia, south pacific region and that her aunt had been persecuted while in Ethiopia.

The applicant claims that her aunt was granted asylum in Australia in 1998 and that she was [an official] under the umbrella of the OLF in 1991 before the OLF was banned. The applicant also claims that the EPRDF officials ransacked her residence since her arrival in Australia because they know she is an OLF supporter. In the form 866C the applicant claims to have worked at [Employer 2] as a Cashier earning \$400.00 per month from September 2002 to January 2005 (Gregorian calendar).

After seeking advice from a migration agent the applicant submitted the following claims: She completed the protection visa application with the assistance of her aunt and was not aware of the legal services available that could assist her. She also lodged her application quickly so she may have misinterpreted certain questions.

The applicant claims that her family are Oromo, they speak Oromo and they do not have freedom like other ethnic groups. She claims that Oromo people are arrested and treated badly by the government and police and that it is difficult to obtain a job and a good education.

The applicant claims her father was an active member of the OLF although he did not have an official role. He collected and donated money and almost daily attended the OLF office in [location deleted]. When the applicant was approximately [age deleted] she started attending monthly OLF meetings.

The applicant claims that in 1998 (Ethiopian Calendar) her father was detained due to being an OLF member and on the suspicion of having a weapon and ammunition at home. After her father's arrest the applicant claims that her family stopped attending OLF meetings.

In the first year that her father was in prison the applicant would sometimes go with other members of the family to visit him. Someone visited him every week but on one occasion someone went to visit him and he wasn't there anymore. No one at the prison would tell the family anything and they have not seen him since.

The applicant claims that her father had been arrested and released several times in the past for being an OLF supporter but she did not know for how long. She also claims that she had been told by her step-mother that he had been arrested under the old regime because of his political opinion.

The applicant claims that her eldest sister was arrested in 1999 (Ethiopian Calendar) for approximately 3 months. After her sister was released her brother-in-law was arrested and he remains in custody. The applicant claims that she has documents relating to her sister and brother-in-law's arrest but has not supplied this evidence to support her claims. When asked why she didn't have any documents to show that she had been detained, she stated that she didn't ask for a document.

The applicant claims that she was arrested in February 2005 (Gregorian Calendar) and that she was taken to Zeway prison which is in a small city outside Addis Ababa. The applicant claims that every third day she was tortured and interrogated for approximately 5-6 months. At this time the questioning almost stopped but the torture and beatings continued until she was released without explanation in March 2007 (Gregorian Calendar).

After her release the applicant claims to have moved around staying with different relatives. She claims she didn't stay in the one place for long because she was scared. Not long after being released she applied for a passport as she felt like she was "trapped in a hole". The applicant claims her uncle helped her obtain a passport which was issued six months after her release from prison and then she waited for an opportunity to leave the country.

After a year and a half of moving between relatives, the applicant enrolled in a private [course] to "take her mind off her situation". Since her release the applicant states that she has not come into contact with any government officials, however, on the day she came to Australia government officials came to her family home and asked about her whereabouts. Her family stated that they didn't know where she was and after searching the house, the authorities left. The applicant departed Ethiopia via the international airport without incident. Since arriving in Australia, the applicant claims that government officials have visited her sister asking about her whereabouts. When asked at interview why she thought the authorities would want to find her if she had no problem for three years and she hasn't had anything to do with the OLF for years. The applicant stated that, "she worried a lot, lived with her aunty, had been beaten in prison and that nothing happened to her but she worried that something would happen".

The applicant came to Australia with her [uncle] to attend a conference in Australia. The applicant came as her uncle's interpreter and she claims he helped her obtain a visa. The applicant claims that the information about working in a [company] for four years was untrue as was the claim and evidence showing that she owned approximately \$6000 AUD and this information was provided in order to leave Ethiopia.

The applicant claims that she had no trouble sending her passport to Kenya to obtain the visa and that her uncle bribed someone at the airport so she could leave safely. When asked why her uncle would have to pay a bribe when she had obtained a passport without incident, the applicant advised that it was common practice for people who have been arrested in the past to pay a bribe or they can't get through the airport. The applicant also states that she fears that living with her aunt in Australia, has placed her in danger if she is to return to Ethiopia.

In support of her application the applicant has supplied a supporting letter from [an official] of the South Eastern Region of Melbourne Oromo Community Association in Victoria - Australia. When asked how applicant knew [the official], the applicant stated that she thought he knew her father and that she had known of him for some time through her aunt. She confirmed that she had only met him personally when she arrived in Australia and that he knew about her situation because she had told him what happened. I therefore cannot consider this information as independent evidence by an eye witness as it is a statement summarising

the applicant's own account of her situation.

The applicant also supplied a copy of her aunt's OLF membership card dated [date] October 2004 to [date] September 2006 and a copy of an award given to her aunt in Australia for "raising and maintaining awareness of the problems faced by Oromo women and as an interpreter to assist her community".

A letter from [doctor's name], volunteer GP at [Agency 1] has also been provided and states amongst other things that, "an examination of her mental state suggests symptoms of post traumatic stress disorder. She has severe nightmares, flashbacks, daytime anxiety and startles easily. She is also depressed, sleeps poorly and cries often. I recommend a psychiatric assessment of [the applicant]."

#### The delegate's decision

- The delegate records that in her first interview the applicant contradicted her statement by claiming to be in two places at the same time. She stated that her father had been detained in 1998( Ethiopian Calendar - EC) and that she had visited him occasionally with her family during his first year of detention. The applicant also stated that she had been detained herself from February 2005 to March 2007 (Gregorian Calendar - GC). When it was brought to her attention that she could not have visited her father during his first year of incarceration at the same time she was detained in another town, the applicant was unable to provide any explanation for the discrepancy repeating her previous statements.
- To clarify the situation, the delegate asked the applicant to refrain from using the two different calendars and to provide details of her detention only using the Ethiopian Calendar. When the applicant was unable to do this the delegate offered her a pen and paper and despite writing the Ethiopian years from 1998 to 2002, she was unable to tell him which years she had been detained using the Ethiopian Calendar.
- The delegate then asked the applicant to ignore all calendars and tell him how long after her father's detention, she had been detained. The applicant was unable to provide an answer continuing to repeat her previous responses. Considering that the applicant was contradicting a vital piece of her story, the delegate records that he then offered a natural justice break so that the applicant could seek the advice of her migration agent. He records "the applicant took thirty minutes to discuss this issue before informing (him) that she had been detained six months after her father's detention.
- The interview was reconvened four days later. During the second interview, the applicant confirmed that she had been detained six months after her father and that he had been detained in 1998 (EC). She also stated that she had been detained in 1998 (EC) and released in 1999 (EC) and that this equated to a period of 24 months. Despite the applicant's assertion that she was detained for a period of 24 months the dates given relate to a shorter period of approximately 12 months.
- The delegate records that the Ethiopian calendar is approximately 7-8 years behind the Gregorian Calendar. The last Ethiopian election was held on Ginbot 7, 1997 which equates to 15 May 2005 in the Gregorian Calendar.
- The delegate states that if as claimed, the applicant's father had been detained six months prior to her detention he would have been detained in 1997(EC) irrespective of the date used for the applicant's detention. This is clearly a different year to that claimed by the applicant and is the same year that the election was held. When asked whether her father was detained before or after the election, the applicant stated that she didn't know.

- The delegate found it implausible that the applicant could claim to have been a supporter of the OLF since she was [age deleted] and not know whether her father had been detained before or after the election. This is of particular importance because country information shows that supporters of the OLF took to the streets to protest over the election results and that many OLF supporters were detained by the authorities.
- In her first written statement, prior to receiving assistance from a migration agent, the applicant claims that she had been tortured because the authorities wanted to know her father's whereabouts. It is not plausible that the applicant was tortured specifically for the purposes of locating her father when, according to the applicant, her father was already in prison.
- The applicant has not provided any explanation for why she has provided conflicting information other than her agent claiming that she was confusing the two calendars and identifying events using different calendars. The delegate did not accept this explanation as he records he gave the applicant multiple opportunities to only use the Ethiopian calendar and she was unable to provide dates or an explanation for the discrepancy. The applicant also had four days in between interviews to think about her answers and provide a plausible explanation but she failed to do so.
- The delegate acknowledged the contents of a letter written by a doctor who volunteers at [Agency 1], during both interviews the applicant was very clear about the dates and did not detract from her statement. The applicant responded to every question and appeared calm despite becoming teary at times. The delegate did not accept the claim that the applicant was getting the dates wrong because of trauma.
- The applicant claims to be from the Oromo ethnic group. She speaks Oromo and has provided documentary evidence to support her claim. The delegate therefore accepted that the applicant is from the Oromo ethnic group which is the major ethnic group in Ethiopia.
- The applicant claims to be discriminated against due to her ethnicity but when asked at interview to provide an example of how she was discriminated against, she replied that she had not been successful in applying for jobs as a cleaner and messenger at the government organisation that promotes Oromo culture and language. When asked why she didn't get either job the applicant replied that she wasn't provided with a reason.
- The applicant has provided evidence that she studied the Oromo language during year 12 and has completed two post secondary courses. At interview the applicant stated that she had lived with her uncle and aunt from January to September 2008 (GC) where she was provided with board and lodging in return for interpreting for her uncle. While the delegate accepted country information that indicates that Oromo people are discriminated against, he found that this did not appear to apply to the applicant as her failure to obtain work may have been as a result of better applicants rather than discrimination. She has been educated, permitted to study her own language at school and has been employed in several family owned businesses. The delegate found that the applicant had not been persecuted due to her ethnicity.
- As stated above the applicant has provided conflicting information about when and why she was detained. The applicant also claims that the documentary evidence provided with her tourist application about working at the [employer deleted] was provided by a family member and is false. This document clearly shows that the applicant was employed at the time she claims she was in prison.
- The delegate noted that the applicant has not provided any evidence that she has been detained despite making these claims in her application and reiterating them



at interview. The applicant claims that her father, sister and brother-in-law have also been detained and that her family were targeted by the authorities despite the family not attending OLF meetings for approximately five years and none of them being high profile OLF supporters.

- The delegate records that despite attending OLF meetings for approximately ten years, the applicant exhibited limited knowledge about the OLF or what occurred at the monthly meetings. The delegate found it implausible that someone could attend meetings for such a long period of time and know very little about the organisation.
- The delegate notes that the applicant also stated at interview that her sister and brother-in-law didn't attend OLF meetings so she didn't know why they were detained but she thought they were detained because they supported the OLF. She also advised that she had documentary evidence of their detention but has not provided this information to support her claims. When questioned over why she didn't have any evidence of her imprisonment if this information could be obtained, the applicant advised that she hadn't sought this information
- When asked if the applicant had any evidence or knew of any reports that would support her claim that there was a prison in Zeway, the applicant said she did not.
- The Tribunal notes the delegate found no country information that mentions a prison in Zeway.
- The delegate noted that despite claiming to be incarcerated with other women for two years the applicant was only able to tell him the name of one other person with whom she had been detained.
- The delegate states that based on the applicant's contradictory evidence, both written and verbal, he was not satisfied that the applicant was detained and tortured or persecuted or discriminated against due to her actual or imputed political opinion.
- The delegate refers to documentation in support of the applicant's claim that her aunt in Australia is women's affairs OLF official, the applicant has provided a copy of her aunt's OLF membership card which expired [in] September 2006 (Gregorian Calendar). The applicant's aunt has lived in Australia since 1998 (Gregorian Calendar) which is approximately seven years prior to the last Ethiopian election. Apart from an expired OLF membership card, no evidence has been provided to support the claim that her aunt is an active member of the OLF or that she has a profile in Ethiopia that would cause the applicant any difficulties on her return.
- The delegate found based on the evidence before him that living with her aunt would not place the applicant in any danger.
- The delegate noted that country information indicates that Ethiopian refugees in Eritrea have been repatriated to Ethiopia with the assistance of the International Committee of the Red Cross in 2006, 2007 and 2008. While a minority of those repatriated were civilians it does indicate that the government and community are used to people, who have sought asylum outside the country, returning home.
- The delegate found that on the evidence before him that the authorities would not be able to identify the applicant as a failed asylum seeker and that she would not suffer persecution on this basis.
- The delegate noted that according to information from the Post the Federal Police, Security Service and Immigration officials are stationed at the airport in Ethiopia. While bribery does occur in Ethiopia, it is not as institutionalised as in other African countries. All exits and entries from Ethiopia are recorded in a database, including the name of the immigration officer checking the passport. Passports are scanned and cross checks are made when entering the country as the previous exit

pops up in the computer. Data is entered accurately as officers are punished if mistakes are made (CX2401 58).

- The delegate did not accept the applicant's claims that the authorities visited her sister since she left Ethiopia in order to determine her whereabouts because she would be on their database as leaving the country. He also did not consider it plausible that the authorities, after having no interest in the applicant for three years would approach the family and search their house in order to determine her whereabouts on the day she left Ethiopia. He noted that in his view if the authorities did not want the applicant to leave the country it seems reasonable that with all the security measures at the airport that she would not be able to exit the country without incident.
- The delegate noted that the applicant claims she was granted a passport six months after her release from detention in 2007 (Gregorian Calendar ) and made no attempt to flee the country. If the applicant was wanted by the authorities it seems reasonable that they would not have issued a passport.
- The delegate noted that the applicant waited for 3 years before leaving Ethiopia during which time she did not have any problems with the authorities. Instead of fleeing the country the applicant studied and worked for the family. The applicant only left Ethiopia when an opportunity arose to accompany her uncle on a business trip. As the applicant has stated that her family falsified documents in order to obtain an Australian visa, it would seem plausible that they would not have waited three years to do this in order to save a member of their family.
- The delegate found there was no evidence before him to support the applicant's claims which did not appear credible when placed under scrutiny. He found that the applicant's fear of persecution, as defined under the Refugees Convention, was not well-founded.

28. The delegate was not satisfied that the applicant is owed protection obligations for the purposes of [section 36](#) of the [Migration Act](#) accordingly refused to grant her a Protection visa.

29. The applicant applied to the Tribunal [in] April 2010 for review of the delegate's decision.

## The Review

30. Documentation submitted to the Tribunal for the review includes the following:
- A Statutory Declarations, dated [in] August 2010, by the applicant's aunt [Ms A]
  - A letter to the Tribunal by the applicant's representative dated [in] August 2010 which indicates the following:

“It was hoped that the applicant's aunt [Ms A] would be available to give evidence at the hearing in September either in person or by phone. The letter states that “there is a possibility that she will be too unwell to give evidence that day. As a result, “we are writing to request the Tribunal set aside some time to take evidence from [Ms A] a few weeks after [the applicant]'s hearing on [date] September in order to give her a chance to recover and be well enough to give evidence”.

- A report by the applicant's [Agency 3] Counsellor Advocate, [Ms B], B.A, Grad Dip. Social Work, CQSW (U.K) Grad Dip Psychotherapy, dated [in] May 2010;
- A further statement by the applicant which states as follows:

“I, [the applicant], of [address], unemployed, in the State of Victoria, do solemnly and sincerely declare as follows:

I make this Statutory Declaration in support of my application for a Protection Visa with the

Department of Immigration and Citizenship.

I am an Ethiopian citizen and I have been in Australia since [date] October 2009. I cannot return to Ethiopia because from February 2005 until March 2007 (Gregorian calendar) I was imprisoned by the Ethiopian government. They believed that I was an Oromo Liberation Front (OLF) supporter. I fear that if I return I will be put in prison again.

In Ethiopia, we use a different calendar. I sometimes have problems translating dates to the Gregorian calendar; sometimes the dates in the Ethiopian Calendar are 7 or 10 years different. In this statement I have tried to use the Gregorian calendar. Otherwise, there are some dates that I do not recall clearly and can only provide them in the Ethiopian calendar. I will say whether the date is in the Ethiopian or the Gregorian Calendars. In Ethiopia there is not much cultural emphasis on remembering dates and for this reason also it is difficult for me to remember some dates.

I completed the forms for my protection visa application with the help of my aunt. I did not have any legal assistance and at that time I was unaware that there were services that could assist me. I also wanted to apply as soon as possible. For these reasons I may have misinterpreted some questions. I am now receiving legal assistance from [Agency 1] and we are working to rectify these errors. I would like to clarify some issues in my interview.

I was born on [date] in [Town 4], Ethiopia (Gregorian calendar). I moved with my family to Addis Ababa when I was very young, I do not know the dates. I am the second eldest child of my father, he has ten children altogether. I grew up with my father and my step mother and their ten children. I know my mother but I was raised by my step-mother. My mother also has three other children. I didn't get to know my mother's other children until I was older, about eight years ago. My step-mother passed away about 10 years ago.

I started my schooling in Addis Ababa and completed year 12 in [location]. After I finished year 12 I helped my uncle in a family business. He has a [business] called [Employer 2] (this is a translation from Oromo), and I used to help where I could. I went to [college] in Addis Ababa for 10 months to become a [teacher]. I finished my course and was presented with a certificate on [date] July 2009 (Gregorian calendar). About three months after I finished my [course] I came to Australia.

I am Oromo and my whole family is Oromo. We all speak Oromo. It is not good for Oromo people in Ethiopia. The Oromo people don't have freedom like the other ethnic groups. Oromo people are arrested and treated badly by the government and police in Ethiopia. It is difficult to find work and to get a good education. Growing up we would talk about these differences with my family and how it affected our lives.

My whole family supported the Oromo Liberation Front (OLF). The OLF has now separated but before that we all supported OLF. My father has been a very active supporter of OLF for as long as I can remember and he would talk to my family about OLF when we were growing up. He didn't have an official role but he was an official member and he would attend the OLF office in [Town 5] almost every day. My father and my step-mother would always attend OLF meetings as well.

As I got older my father explained to me what happened at the OLF meetings and told me that they were trying to bring freedom for the Oromo people. I decided that I also wanted to be involved and I began attending these meetings when I was around [age]. When my brothers and sisters were old enough to decide they also attended the meetings. The meetings were about once a month and at that time they were very big, with around 300 people attending each month. The meetings were held in a hall in [Town 5] and were for the people who lived in [Town 5] or around it. At that time the government did not interfere with the meetings and I did not feel like I was in danger by attending. A man called [name] used to lead the meetings that I would attend. He has left Ethiopia now and I think he is in America now. [Name] had the most direct connection to OLF and he would tell the people at the meetings what plans

OLF had. My father's role was to collect money from the people who attended the meetings. He would also give money.

At the meetings we would talk about the freedom of the Oromo people and about freedom for the country. We would talk about the Oromo people that had been killed by the government. I did not have an official role at these meetings but sometimes I was asked to let people know when a new meeting had been organised. I would find people who had been involved in the past and let them know the details for the next meeting. I also attended concerts and other events organised by the OLF.

In 1998 (Ethiopian Calendar) my father was arrested and he is still in prison now, nearly 5 years later. After my father was arrested my whole family stopped going to the OLF meetings. We had not been afraid about our involvement with the OLF before that time but now we were all very worried. The government said that my father was a member of the OLF, that he gave the OLF money, and that he had a weapon. My whole family was home the day that they arrested him. Around 4 or 6 men came to the house dressed in military uniforms and carrying guns. They broke down the door and some of them came inside. Most of them waited outside though because they wanted to check who came out of the house and to look around outside. They said that my father had a weapon and some ammunition and they looked around the house everywhere looking for something but they didn't find anything. After they stopped looking they took my father away. My father tried to run away but there were too many of them and there was nothing he could do. They got him onto the ground and pointed a gun at his head and told him to stop trying to get away. All of us were fighting and trying to stop them but they got us all into a corner. We were shaking and scared. We were all very shocked. For the first year that my father was in prison my family was able to visit him. He was in a prison in Addis Ababa. Members of my family would visit him every week and I would often go with them. Whenever we visited the guards would watch us for the whole visit so we could never have a private conversation or find out what was really going on. One week my family went to visit him and he wasn't at that prison anymore. They asked the guards where they had taken by father but they wouldn't tell them where he was. We have not seen him since that first year. No one knows what has happened to him and we have not heard anything about him.

My father had been jailed and released several times before this however I do not know when or for how long. But each time he was arrested it was always because he was a member of the OLF. I heard from my step-mother that he was even arrested by the old regime, Derg, Tonder Mengistu Haile Mariam. This was also for his political opinion.

As I have said all of my brothers and sisters support the OLF, especially the ones on my father's side. My eldest sister, [Ms C], has been arrested as well. She was arrested in 1999 (Ethiopian calendar), nearly three years ago and was held in prison for about three or four months. [Ms C] has three sons. The eldest is [age] and she also has [ages]. At the time of her arrest she was [pregnant]. She was arrested at her home in [Town 4] while her husband was out, so there was no one there to see what happened. No one knew where she was at that time. We thought she had been arrested but we were not sure and it would have been dangerous for us to try and find out.

When my sister was arrested, her husband [Mr D], went into hiding because he was afraid he would also be arrested. My aunt looked after [Mr D] and [Ms C]'s son at that time. After three or four months [Mr D] was found and was arrested. By then [Ms C] had become quite sick as she was pregnant and she was released.

After she was released she told me that she suffered a lot while she was in prison, they hit her and asked her about her involvement with OLF. She told them that she didn't know anything about OLF. We think she was arrested because she and her husband are both supporters of OLF and also because of our father's involvement with OLF. I have a statement from the

[Town 4] Police written in Oromo with her arrest details.

[Mr D] is still in prison, nearly three years later. I have a police report in Amaharic that says my brother in law met [name], the leader of our OLF group at my father's house in relation to OLF activities. [Mr D] was first taken to a prison in Addis Ababa called Kaliti and after that he was moved to a prison called Zeway. I am not sure if [Ms C] has seen [Mr D] since he was arrested but the prison, Zeway is very far away and it is difficult for her to get there. It is in a different region. My sister still fears for her safety, and worries always that she might be arrested again. When she was in prison the guards told her that she had to watch herself and be careful of all her moves and she is now afraid that she is being followed. She also told, one that government officials go to her home to check on her. I don't know how often or what they say to her but I know she is very afraid of them and she thinks they report back to the government.

I was in prison from February 2005 until March 2007. I was arrested by the government at my father's house. More than two men dressed in military clothes came to my father's house at about 8.00 pm and broke the door open. They came into my house. I was sitting down and they told me not to move. They looked around the house but they didn't find anything. There was no one else in the house. They grabbed me and then they left. They came into the house. They hit me on the back of the neck and kicked me in the back. They took me outside and put me in an army car. I don't know if the neighbours heard anything. There were around six people in the car. They put a sack over my head and started driving. I couldn't see anything. On the way there I couldn't breathe anymore because of the sack so they took it off after a while. By that time it was very dark outside so I couldn't see much.

They took me to Zeway a small city outside of Addis Ababa. They took me to a big building and through a front entrance. They put me in a small room with about 25 other women. The room was built of cement and at the top of one of the wall there was one small window. The floor was a mess, with rats and insects and it was very smelly. We all had to sleep on this floor. We were only allowed to go to the toilet 2 times per day and you had to wait your turn. It was a wooden toilet and it smelt very bad. At morning tea time we would be given some dry bread and again in the afternoon, at around 2.10 pm or 3.00 pm we would be given some bread again. We were never allowed to go outside or to go for a walk, other than to go to the toilet.

Every third morning, one by one, we would be taken out of the room to be tortured and interrogated. A guard would come to the room, call out a name and take that person to a different room. For different people they then did different things. For some women they would ask her to take off her clothes and then they would rape her. At that time I was very skinny and I think because of that they didn't try to rape me. Instead they would ask me questions about my involvement with politics. For between thirty minutes and an hour one guard would hit me and whip me and ask me questions over and over again. In that room there was a big container of water and sometimes they would hold my neck and dunk my head into the cold water. They would do this repeatedly and then ask me more questions. While this was going on there would be about three more guards in the room watching and laughing at me. They would accuse me of being a supporter of the OLF. They would say that my father gave money to the OLF and that I was now going to send money to the OLF. Also they said that my father was an OLF supporter and that he had a weapon and ammunition at home. They told me to tell them where it was. I told them that I wasn't a member of the OLF, that I have never sent money, and that I don't have any money to send. And I said that I don't know anything about a weapon in my father's home. I didn't know anything so I couldn't answer their questions. One of these times they broke my little finger on my left hand in the process. After they were done they would put me back in the small cement room with the other women.

This happened to me every three days for about five or six months, however I am unsure exactly for how long. There were many sick women in that room. One woman was kicked in the stomach and she was raped so much that she didn't stop bleeding all the time. Another woman wouldn't stop talking and screaming, she was always talking but she didn't know what she was saying. She also couldn't control her bladder. Eventually they released her. But for the other women they never took us to see a doctor to look at our injuries. I was in shock and couldn't stop crying. I was so worried about what would happen. I thought that maybe I would have to be like that woman who was talking all the time to get out of there.

After five or six months they moved me to another room that was very much the same as the first. Again there were around 25 women who were in very bad conditions. The questioning almost stopped after that but the torture and beatings continued. They continued to do the same things to me every three days until the time I was released.

In March 2007 (Gregorian calendar) I was released. I had been in prison by that time for over two years. I was released without being given any reason and nothing was said to me. I didn't have to sign anything either.

After I was released I begged for some money on the street and got enough money that day to get a mini-bus to Addis Ababa. Once I got to Addis Ababa I stayed with my aunt and uncle, who is my father's brother. I contacted the rest of my family so they knew that I was safe. I decided to stay in Addis Ababa because I was scared that if I went back to my home I would be arrested again or something would happen to me.

In Addis Ababa I never felt safe. I was holding all the secrets about what had happened to me in my mind and in my heart and I was always afraid. I didn't feel safe with my aunt and uncle for long and I kept moving to stay with different family around Addis Ababa. I can't remember how long I spent in each place. I was in fear all the time, I just kept moving and hiding. Soon after I was released I decided that I would get a passport. Before I did this I felt like I was in a hole, like I was trapped. I was always having nightmares with this feeling. My uncle helped me get my passport as it is difficult in these times to get a passport in Ethiopia. My uncle paid some people 350 in Ethiopian currency to get passport for me. After I got the passport my feeling of being trapped eased a little bit because now I had hope that I would get out of Ethiopia. I just had to wait for the opportunity.

After about a year and a half of moving I decided to enrol in a private course to become a [teacher]. My uncle told me that it was a good course and I think he saw how worried and scared I was all the time that he thought this might take my mind off it all. I was scared to do the course but I had to do something different.

I have not come into contact with any government officials after the time I was released. However, on [date] November 2009 (Gregorian calendar), the day I came to Australia, some government officials came to my family home and asked where I was. My family said they didn't know where I was. The officials looked through the house and after that they left. Since I have been in Australia government officials have also visited my sister, [Ms C], and asked her where I was. I am not sure what date this happened on though.

Ever since I was arrested I have been trying to leave Ethiopia but I never had the opportunity. My uncle who I stayed with in Addis Ababa is [deleted] and was invited to come to Australia to attend a [conference]. He invited me to attend the conference with him as his interpreter.

This was my first opportunity to leave Ethiopia and I took it.

My uncle helped me to get my visa. As part of the business visa application I said that I had worked for a [company] for four years. However, this is untrue and I wrote it so that I would be given a visa and I could get out of Ethiopia. I had to send my passport via DHL, which is a safer express post, to Kenya to get my visa. I had no trouble doing this. On the day I had to catch my flight my uncle paid some people at the airport so that I could leave safely. I also wore different clothes to my normal clothes. Usually I wear a long Ethiopian style skirt and a

shirt but when I went to the airport I wore more western style clothes, with pants and a shirt. I am staying with my aunt in Australia, who is [an] OLF official who was expelled from Ethiopia. I fear that staying with her will put me in danger if I am forced to return to Ethiopia. I am afraid to return to Ethiopia after what I have experienced there. I know that I am of interest to the government because of my family's history with OLF. My father is still in prison. My brother in law is still in prison. I was in prison for over two years. I am afraid that if they arrest me again maybe they will kill me. Now that I have left Ethiopia I think I will be of even more interest to the government.

The government will be able to find me no matter where I go in Ethiopia. There is no place for me to hide and no place where I will be safe”.

31. The Tribunal notes no submission was made in regard to any particular evidence the applicant or her representative wished the applicant’s aunt to give or of its potential relevance.

32. The representative also provided the Tribunal with a further submission [in] June 2010, ( between hearing dates) which stated it was a “response to the [s.424AA](#) material raised during the hearing on [date] June 2010”. The submission states as follows:

“We refer to the above matter and confirm we act for [the applicant] on a pro bono basis. We write in response to the [s424AA](#) material raised during the hearing on [date] June 2010. We note that issues were raised in respect of two key areas:

#### [THE APPLICANT]’S CREDIBILITY AS A WITNESS.

[The applicant]’s exit from Ethiopia and the suggestion that the Ethiopian authorities would have known this.

Please find enclosed the statutory declaration of [the applicant] dated [date] June 2010 which was declared in response to the issues raised during the hearing. [The applicant] has addressed those issues she was able to within that statutory declaration. Additional submissions in response follow in this document.

#### CREDIBILITY

We note that the Tribunal raised a number of concerns with respect to [the applicant]’s credibility. The issues raised were:

[The applicant]’s application for a business visa said that she came as a [interpreter]. At the hearing she said she had no role at the conference.

[The applicant] gives years in different calendars in response to questions about dates, but says that she cannot convert between the two.

[The applicant] said during the hearing that she didn't work. Previously she had said that she did work. During the hearing [the applicant] said she worked for 8 months at [Employer 2]. In her application she said 2 years.

[The applicant] gave evidence that some information in the visa application was true and some was not true. This raised concerns about whether [the applicant] is a reliable Witness. As a starting point we ask that the Tribunal have regard to the Tribunal's own guidance notes on Credibility, Gender and Vulnerability when considering [the applicant]’s matter and before drawing any adverse inference against her as a result of her evidence during the hearing.

#### THE GUIDANCE ON THE ASSESSMENT OF CREDIBILITY AND ON VULNERABLE PERSONS

The Tribunal's Guidance on Vulnerable persons at paragraph 4.3 states:

Members need to be mindful that a person may be anxious or nervous due to the environment of a hearing and the significance of the outcome. A person from a different social and cultural environment may experience bewilderment and anxiety. The educational, social and cultural background of a person may affect the manner in which a person provides his or her evidence and the depth of understanding of particular concepts. A person may have had traumatic experiences or be suffering from a disorder or illness which may affect his or her ability to give evidence, his or her memory or ability to observe and recall specific events or details. There may also be mistrust in speaking freely to people in positions of authority. (emphasis added)

This section of the guidance is particularly relevant in [the applicant]'s case. The Tribunal has before it a report from [the applicant]'s counsellor, [Ms B] of [Agency 3] dated May [date] 2010. [Ms B] goes into some detail about [the applicant]'s background, her experience of torture and trauma and the impacts of this on her current level of functioning. In the conclusion of her report, [Ms B] states:

"The losses and life threatening experiences she has endured have resulted in extreme anxiety and symptoms characteristic of post traumatic stress disorder. Her anxiety levels clearly interfere with her concentration and memory and her self esteem is very low."

It is clear then that [the applicant] fits the profile of a Vulnerable person under the Tribunal's Guidance on Vulnerable Persons.

We also refer to [the applicant]'s statutory declaration dated [date] June 2010 in which she talks about her problems with memory and cognitive functioning as a result of the torture and trauma she experienced in prison:

"Since I was imprisoned I have real problems with mental disturbance and with my mental state. I'm always feeling fear and I can't remember anything and then all the time I am worrying. I never had these problems remembering before".

We further note the large body of existing research highlighting the link between torture and trauma and impairment in a person's memory and cognitive functioning. [The applicant] describes her experience in prison and the torture and trauma she suffered in her original statutory declaration dated [date] January 2010. In addition we note the report of [Ms B] confirming [the applicant]'s account of the torture and trauma she suffered and confirming that [the applicant]'s presentation is consistent with someone who has suffered torture and trauma.

The guidance on the assessment of credibility goes on to state in [section 5](#) relating to contradictions, inconsistencies and omissions in an applicant's evidence:

Contradictions, inconsistencies and omissions may arise in the evidence before the Tribunal. The Tribunal will consider all the evidence before it to assess whether contradictions or inconsistencies are material to an Applicant's claims and would lead to an adverse credibility finding; then, forming a view on the credibility of claims, the Tribunal should consider the overall consistency and coherence of an Applicants account.

Traumatic experiences including torture may impact upon a number of aspects of an Applicant's case including the timeliness of an application, compliance with immigration laws, or the consistency of statements since arrival in Australia. They may also impact adversely on an Applicant's capacity in providing testimony of such events.

A person may not be able to remember all the details of his or her personal history or reconstruct the chronological order of particular events. A person may remember events that affected him or her most in emotional or physical terms but not the time sequence. Such confusion and forgetfulness do not necessarily imply that a person is not telling the truth. However, contradictions, inconsistencies and omissions in evidence may, although not necessarily, mean that a person's evidence is unreliable and, therefore, lacks credibility. The



lack of credibility of a person's account because it is unreliable does not necessarily imply that the person is dishonest.

A person may forget dates, locations, distances, events and personal experiences due to lapse of time or other reasons. A person may not reveal the whole of his or her story because of feelings of shame, for fear of endangering relatives or friends or because of mistrust of persons in positions of authority. (emphasis added)

The Tribunals Guidance on Vulnerable persons in [section 7](#) states:

Vulnerable persons may find it difficult to participate in the review process. Depending upon the nature of the vulnerable person's impairment, he or she may find it difficult to compile and present documentary evidence relevant to the claims. A vulnerable person may also find it difficult to give evidence or present arguments at a Tribunal hearing.

Difficulties faced by vulnerable persons may include but are not limited to

- inability to communicate effectively;
- impaired memory or behaviour or impaired ability to recount relevant events;
- symptoms that have an impact on the consistency and coherence of testimony;
- a fear of persons in a position of authority and associating the Tribunal's review process with that fear (especially in the case of persons who are survivors of torture or trauma),
- mobility or health issues which may make attending a Tribunal hearing at its premises very difficult; in the case of a child, the inability of the child to present evidence particularly relating to context, timing, importance and details, with the same degree of precision and specificity as an adult (emphasis added)

[The applicant] discusses her memory problems at length under the heading Memory Problems in her statutory declaration. She describes the fear, worry and anxiety she feels as a result of the refugee determination process and the impact of that worry on her answers:

“Now I have trouble remembering things. I especially have real problems related to the dates, Any specific things relating to dates I can't remember. I especially have problems with the calendar and with specific dates. I just can't remember dates.

I felt really worried when I forgot the dates. I thought I would be in trouble if I couldn't remember the dates. I feel like I am in trouble because I can't remember. Every time I can't remember about a date I worry more about the application. I am worried about the rejection of the application and worried because I don't want to go back. I prefer to be killed here than going back to be killed back there.

I am worried about the suffering I will face if I go back. These are the things I think about when answering questions. I have thought these things during the DIAC interview and the RRT hearing when I was being asked questions. It's not easy to explain what was in my mind during the hearings. I was in a complicated situation at that time. I tried to express myself but couldn't express my thoughts and feelings”.

It is clear from these passages that [the applicant]'s anxiety and response to the trauma she has faced as well as anxiety over the refugee determination process has impacted on her ability to respond appropriately to questions at various stages of the process.

We urge the Tribunal to take into account the consistency of [the applicant]'s core refugee claims when making an assessment as to her credibility and ask that no finding as to credibility is made based on facts and details which are not directly relevant to her claims. This is particularly important given the impacts of torture and trauma on [the applicant]'s ability to remember dates and respond effectively to questions in stressful situations such as during the Tribunal hearing.

We note the Tribunal's understanding of and sensitivity to these issues as evidenced by the existence of the guidance notes on credibility and vulnerability discussed above. In our submission those guidance notes were designed to be applied in relation to people in exactly

[the applicant]'s situation; namely a vulnerable young woman suffering as a result of the effects of the torture and trauma she has experienced with impaired memory and cognitive functioning and heightened anxiety.

We further note that [the applicant]'s presentation during the Tribunal hearing was consistent with that of a vulnerable person and someone who has experienced torture and trauma. She became easily confused and overwhelmed by the questions and had trouble providing full and clear answers. This was evident at the outset of the hearing when [the applicant] became confused and gave an incorrect answer when asked to state her date of birth and attempted to refer to notes to assist her to answer this very basic question.

We urge the Tribunal to apply the guidance's on credibility and vulnerability and to continue to be sensitive to these issues in his [the applicant]'s case, both in the running of the hearing and in any assessment made as to the evidence provided.

#### IN RELATION TO THE SPECIFIC ISSUES RAISED, PLEASE FIND OUR RESPONSES BELOW:

[The applicant]'s role at the conference

The Tribunal raised concerns that [the applicant]'s application for a business visa said that she came as a [interpreter]. At the hearing she said she had no role at the conference. [The applicant] has explained the answer given to the Tribunal in further detail in her statutory declaration. Essentially, [the applicant] arrived in Australia planning to assist her uncle as [an interpreter]; but then she arrived there she discovered that [interpreters] were already arranged for the participants and her assistance was not required:

"I said in my RRT hearing that I had no role at the conference. It took some time for us to receive our visas. As a result, we arrived late for the conference, and could only attend the last day. The only reason why I was allowed to attend the conference was that I was considered to be an interpreter for my uncle. I thought when I attended I would be [interpreting] for my uncle. However; when I arrived, there were already interpreters there to interpret for him. I did not know who they were. I just found them there. Even though I did not interpret for him. I still attended the conference with him for the one day. This is why I said I had no role".

[The applicant]'s answer to the Tribunal in this instance is indicative of her evidence generally. Her presentation is consistent with what is known about women from her country who are considered inferior to men and who lack empowerment in their communities. It is further exacerbated by her vulnerability and the psychological impacts of the torture and trauma she has suffered. [The applicant] has a tendency to give short answers and finds it difficult to adequately explain herself. This problem is only heightened in the highly stressful environment of a hearing. We note that outside of this environment when able to think more clearly and respond with less pressure, [the applicant] was able to give a full answer to the question of her participation at the conference in her statutory declaration. She found it difficult to do this during the hearing. We ask that the Tribunal continue to be sensitive to these issues when questioning [the applicant] and assessing her responses and overall credibility as per the Tribunal's guidance on assessment of credibility and guidance on vulnerable persons.

#### USE OF DIFFERENT CALENDARS

Throughout the process, [the applicant] gives years in different calendars in response to questions about dates, but says that she cannot convert between the two. [The applicant] provides an explanation for this in her statutory declaration:

It is difficult to convert, from the Ethiopian calendar to the Gregorian calendar, and from the

Gregorian calendar to the Ethiopian calendar. That is why I know certain dates in one calendar, and other dates in the other calendar. I am unable to simply add or subtract 7 – 8 years from one calendar to the other, to get the correct date. I can't convert between the two. I can only remember the date in the particular calendar that I know it in.

The length of the Ethiopian calendar year changes from year to year. A google search reveals that conversion charts exist to make the conversion between the two calendars which supports [the applicant]'s claim that it is not a matter of simply adding and subtracting to make the appropriate conversions between the calendars. We further note that many Oromo people use a calendar very similar to the Gregorian calendar, while the Ethiopian calendar is widely used in Ethiopia. This provides a further explanation about why [the applicant] often knows dates in one calendar or the other without necessarily being able to easily convert between the two.

#### LENGTH OF TIME WORKING AT [EMPLOYER 2]

The Tribunal noted that [the applicant] said during the hearing that she didn't work. Previously she had said that she did work. During the hearing [the applicant] said she worked for 8 months at [Employer 2]. In her application she said 2 years. We ask that the Tribunal have regard to the credibility and vulnerability guidelines in this regard. [The applicant] now feels quite certain that she worked for 8 months. She can't say for sure why the length of time was incorrect on the application form, however we note that she received assistance with the form and further note the anxiety and worry she felt when she arrived, which she describes in her statutory declaration. These factors may have impacted on why the information in the protection visa application form contained an error with respect to the date. We ask the Tribunal to consider that the [the applicant] has remained consistent in relation to the fact that she worked at [Employer 2] and the fact that she described it during the hearing as family work.

#### ORIGINAL VISA APPLICATION

During the hearing [the applicant] gave evidence that some information in the visa application was true and some was not true. This raised concerns about whether [the applicant] is a reliable witness. We note [the applicant]'s response to this issue in her statutory declaration. She says:

“It was important that I got the visa. The purpose of getting the visa was to help me to escape from the country. We did what we had to do to ensure that I would get the visa because I was at risk if I stayed in Ethiopia”.

In our submission, as [the applicant] stated, it was the desperation at the risk to [the applicant] if she remained in Ethiopia that prompted the family to bolster the information contained in the visa application. We further note the influence other members of the family had in that application process. Again these are matters which are not at the heart of [the applicant]'s refugee claims and we urge the Tribunal to separate the issue of any inconsistencies in the original visa application from the issue of [the applicant]'s overall credibility”.

#### EXIT FROM ETHIOPIA

[The applicant] has maintained that the authorities came to look for her after her departure from the country. Her uncle was instrumental in applying for the visa and arranging [the applicant]'s exit from the country. It is possible that he assisted to ensure that news of [the applicant]'s exit from the country did not spread to other parts of the government who were interested in [the applicant]. [The applicant] does not know exactly what transpired with

regard to her exit, but suspects that her uncle may have had some influence. Even if her uncle did not have any influence, it is possible in our submission that in a country like Ethiopia where there is a fair amount of chaos and where the systems are still developing, news of a person's exit through a busy airport may take some time to filter through to other government agencies or authorities who may have an interest in that person, if it ever makes it at all”.

33. The applicant appeared before the Tribunal [in] June 2010, [in] September 2010 and [in] October 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Amharic and English languages.

34. The applicant was represented in relation to the review by her registered migration agent.

## SUMMARY OF EVIDENCE AT THE HEARING

35. The applicant stated her full name and gave her date of birth as [date deleted]. She told the Tribunal that she has never married. She arrived in Australia [in] October 2009 on a Business Visa. It was her sworn evidence that she had no problems obtaining it. The applicant told the Tribunal that her stated reason for coming to Australia was to attend a [conference]. The Tribunal asked if she had any specific role. She replied she had no role; she just came with her uncle.

36. The applicant said she was a Christian and of Oromo ethnicity.

37. The applicant said she had attended school until Year 12 and after that she had completed some courses of study. It was her evidence that she did a [teaching] course for 10 months in 2009. She told the Tribunal she had also [studied] at [Course Provider A]. The Tribunal asked what year she did this and she said it was 1994 in the Ethiopian calendar. The Tribunal seeking to clarify the date asked if she could convert that date into a Gregorian calendar date and she said she could not. The Tribunal asked the applicant what she did when she left school. She replied she didn't do anything until she started [training] at [Course Provider A]. The Tribunal asked the applicant if she could convert 1996 to the Ethiopian calendar. The Tribunal had calculated that if the applicant was born in [year deleted] and if she left school approximately [age deleted] it would be 1996, and so asked her if she would convert this into the Ethiopian calendar. She said she could not. The Tribunal asked the applicant how many years there were between when she left school and started her course at [Course Provider A]. She replied about three years.

38. The Tribunal asked the applicant if she had ever worked. She replied she had only done housework, but no other work.

39. The Tribunal asked her about the composition of her family. She said she had six brothers and four sisters. Her brothers were all younger than she; however, she had one older sister. She and her brothers and sisters all had the same father, but different mothers. She told the Tribunal that her mother was alive. She said her father had married twice more; that her first stepmother was deceased and that she currently had a stepmother. The Tribunal asked the applicant when it was that her father married her first stepmother. She said she didn't remember. The Tribunal asked when her first stepmother died. She replied about 10 years ago. The Tribunal asked her when her father married her second stepmother. She said she didn't remember the date. The Tribunal asked her how many years ago it was and she said she didn't remember. The Tribunal asked the applicant how old her brothers were. She replied that she didn't know the dates of their birth. The Tribunal asked if any of her six brothers were at school. She said that four of them were at school and two had completed school. They

had been at school until Grade 12. She said her two brothers who had been at school until Grade 12, and who had now left school, were not employed. She said one of her brothers was [disabled] and had no job, but had completed Year 12. She could not remember when the other brother left school. The Tribunal asked if either of these brothers worked for the family. In response she said they lived in the one home.

40. The Tribunal asked the applicant about her passport. She produced it. It was issued [in] November 2007 by the Department for Immigration and National Affairs. The Tribunal asked the applicant if she knew where it was issued as it did not state where it was issued. She said it was issued in Addis Ababa. The Tribunal asked if she had applied for it herself. She replied that her uncle helped her to get it. The Tribunal asked why she hadn't applied herself. She replied she didn't think they would give it to her.

41. The Tribunal asked if she filled in her Protection visa application and she said it was not filled in by her, and that a cousin had assisted her.

42. The Tribunal asked the applicant if the contents of her application were true and correct and she said that they were. The Tribunal asked if she signed a declaration to that effect and she said that she did. The Tribunal asked if she could speak, read and write Oromo, Amharic and English and she said she could, but only a little bit of English.

43. The Tribunal put to the applicant that in her application for protection she states that she worked as a [cashier]. She replied she did put that in, but she was working for the family, for her uncle. The Tribunal asked her how long she worked for him. She replied about eight months. The Tribunal asked when this was and she said she didn't remember the exact year.

44. The Tribunal asked the applicant about her statement in her application for protection that she worked as a cashier from September 2002 until January 2005. The Tribunal asked if this was true. She replied "no, the eight months was true" The Tribunal asked her why she had put that she had worked for over two years if it was not true. She replied probably it was a mistake due to pressure and stress.

45. The Tribunal asked the applicant the name of the [business] she worked at. She said it was [Employer 2]. The Tribunal then asked the applicant if when she applied for a Business Visa she said she had worked there. She replied she had not. The Tribunal asked why she didn't include this. She said she had put in information about work and the company she worked for, and that using that information she got the visa.

46. The Tribunal asked the applicant if she could [interpret] and she said she could. She said [details deleted], but that she could do it. Under [s.424AA](#) of the Act, the Tribunal then proceeded to put particulars of adverse information to the applicant which it believed were directly relevant to her credibility, and explained that the information was about her reliability as a witness and whether or not the Tribunal could rely on what she was saying as being the truth and if it didn't that this may be a reason or part of the reason for the Tribunal affirming the decision under review. The Tribunal then put to the applicant a number of matters and asked if she wished to comment. The matters put to the applicant were in relation to her evidence of not having any problems obtaining a Business Visa; that in her evidence she did not indicate that she had any role when she applied for her Business Visa to come to Australia with her uncle, (she had said she came to [interpret] for him) and issues in relation to the dates that she said she did her [studies]. The next matter concerned her evidence to the Tribunal about work which was inconsistent with information in her application for protection which had included working as a cashier. The Tribunal put

to her that the inconsistency between working as a cashier for eight months and working for over two years may lead the Tribunal to think that she was not a reliable witness. The Tribunal asked the applicant if she wished time to comment on these matters. After a short adjournment the applicant said she did want time, and her representative asked if they could reply in writing to these matters and the Tribunal extended to them the right to reply in writing and allowed time for this.

47. The representative indicated to the Tribunal that in her view the applicant was feeling panicked and stressed. The Tribunal asked the applicant if she was happy to continue and she said she was. The Tribunal asked if she understood the questions that were being asked of her and she said she did.

48. The Tribunal asked the applicant if it was the case that today she was saying that she didn't ever work for the [company] that she had put down on her original visa. She said that was so. She said when she applied for the visa she put information that her uncle said to put there in order to get the visa.

49. The Tribunal asked the applicant if she remembered putting information about her finances down. In particular, the Tribunal asked if she owned shares in the Awash Bank. The applicant said she did own shares. The Tribunal asked how many. She said her father had bought them for her and she wasn't sure how many there were. The Tribunal asked her if what she stated in her visa application was true. She said that was true. The Tribunal asked her if at that time she had money in the bank and she said she did. She said her uncle put the money in the bank and then later withdrew it. The Tribunal then asked some questions about the names of people who had signed documents for her, in particular [names deleted]. She did not know those names. The Tribunal then put to the applicant, under 424AA, that it was having some difficulty because some of her information was true, but some was not true. The Tribunal put to her that if the Tribunal could not rely 100 percent on her evidence it may lead the Tribunal to think she was not a reliable witness. She said she didn't understand. The Tribunal then carefully explained its concerns to the applicant again.

50. The Tribunal asked the applicant about any difficulties caused to her by her Oromo ethnicity. She said she was imprisoned and that her father was still in prison. She said Oromo people have many problems. She said her brother-in-law was still in prison. She said they went to her place and her sister's place looking for her. The Tribunal asked her who she meant by they. She said the government. The Tribunal asked her how she knew this. She said she had called her sister [in] November 2009 and that her sister told her that "they" were looking for her. The Tribunal then put to her that the Ethiopian authorities check departures at the airport and keep records, and if this was the case why would they need to go to her sisters to look for her. She replied she obtained a visa with money and that it how she got a passport. The Tribunal asked her if she obtained her passport before she applied for her visa. She said she paid money to obtain her visa. She said the major issue to get a passport in Ethiopia was to bribe "and to get a visa". The applicant then contradicted herself or clarified saying she didn't pay a bribe for the visa, but only "a fee" The Tribunal asked if it was the usual fee and she said it was the normal thing. She said she had paid money for the passport. She said she misinterpreted the question.

51. The representative then suggested to the Tribunal that the applicant may not want to continue and asked the Tribunal if it would ask the applicant whether she wished to continue.

52. The Tribunal asked the applicant if she was happy to continue with the proceedings. She said she preferred not to continue. The Tribunal asked her why this was. She said she felt pressure in her head. The Tribunal indicated that as she did not

wish to proceed today it was happy to allow her request to adjourn the proceedings .The Tribunal then raised with the applicant that when the hearing did continue there would be a need for the Tribunal to listen to her evidence and to test her evidence.

## INTERPRETER ISSUES

53. The hearing of the review before the Tribunal was to be continued [in] July 2010. On that date the Tribunal engaged the services of an Amharic interpreter. The applicant speaks Amharic however she said her first language was Oromo. The Tribunal wished to ensure the applicant had the opportunity to give her evidence in the language she would be most comfortable using and for this reason again adjourned the further hearing of the review.

54. [In] September 2010 the applicant had difficulty with the Oromo interpreter. She said he spoke in the “Hara” dialect and she could not understand all his words and the nuances of certain words. The Tribunal discussed with the applicant and the representative that the applicant had indicated in her application for a Protection visa that she read, spoke and could write Amharic, Oromo and some English and for this reason sought some clarification of the applicant’s difficulties with the interpreter provided. The representative addressed the Tribunal’s question in this regard saying that the applicant had later requested an Oromo interpreter. The representative said the applicant understood the “Walaga” and “Jema” dialects and was familiar with “Shawa” as it is commonly used in Addis Ababa, where she grew up. The representative indicated the applicant would be pleased to have the interpreter who had been engaged by the Tribunal at the first hearing.

55. The hearing was adjourned.

56. At the outset of the continued [October] 2010 hearing the Tribunal checked in particular with the applicant that she understood the interpreter. She said she did.

57. The Tribunal asked the applicant when she first became involved in the OLF. She replied her father was a member and from [age deleted] she supported the OLF. She said all her family were supporters of the OLF. She grew up and started supporting the OLF as well. She said she had seen the problems faced by Oromo people and the problems that she and her family faced, and because of those difficulties she started supporting the OLF. She gave evidence that she and family members were imprisoned and stated this as a further reason for her support of the OLF. She said she left her country for the same reasons.

58. The Tribunal asked the applicant how many siblings she had and she again said she had 10 siblings. The Tribunal asked the applicant who she was talking about when she said “all the family supported the OLF” She replied herself, her father, her sister, and her brother-in-law. The Tribunal asked if they were the only family members who supported the OLF and in response to this she said she had an aunt in Australia who was also a supporter. She told the Tribunal her father went to prison and was still in prison. The Tribunal asked when it was that he went to prison. She replied he had been many times on and off, but the last time was in 1998 (Ethiopian calendar).

59. The Tribunal asked the applicant what role, if any, her father had in the OLF. She replied he was responsible for the OLF in his local area. She said he organised meetings and activities underground. She said this was in the local area where he lived. The Tribunal asked what prison he was in. She said he was in Kaliti Prison. The Tribunal asked if she had visited her father in prison. She said some six weeks before she was imprisoned she had visited him.

60. The Tribunal asked the applicant which other family members of hers were in prison. She said her brother-in-law was in prison and that he had been transferred to Zeway Prison. The Tribunal asked when he was transferred there. She replied she did not remember the exact date. She said he used to live in [Town 4], but was transferred to Zeway. The Tribunal asked the applicant how long he had been in prison. In response she said she had memory problems; she had difficulty remembering numbers as well, including converting the Ethiopian calendar.

61. The Tribunal asked the applicant to tell it about her difficulties in February 2005 when she was arrested. She said she was at home, it was in the evening and the military came and took her away. The Tribunal asked how many people took her away. She said four came to her house and arrested her. No-one else was arrested. The Tribunal asked how she was taken away. She replied in a car. The Tribunal asked where she was taken to. She said she didn't know; she was put in a room in a place that she didn't know and then transferred to Zeway Prison. The Tribunal asked how long it took to take her to the place she did not know and she said it took about an hour. The Tribunal asked if anyone spoke to her or told her why she had been arrested. She said they asked some questions, for example, "where is your father; tell us".

62. The Tribunal suggested to the applicant that her father was in prison at the time and asked if they did not know that. She said they knew he was in prison, but they intentionally asked her about him. She said the timing of her arrest coincided with the election period. The Tribunal asked the applicant how long she was in the first detention area before being transferred to Zeway. She said she was taken there and she spent the evening there and the following day she was taken to Zeway.

63. The Tribunal asked the applicant how she was transferred to Zeway Prison. She said she was transferred in a car. The Tribunal asked how long it took to get there. She replied about two hours. The Tribunal asked if she was the only person being transferred in the car and she said she was. She said she was accompanied by the same four people who had arrested her at home. The Tribunal asked the applicant if when she was taken to Zeway Prison the four arresting military left her. She said they did.

64. The Tribunal asked the applicant what she meant by saying she was taken by force from her home. She said they held her and put her in the car. The Tribunal asked if they told her why they were arresting her. She said it was because she would be a problem for the election, her father had a gun and she was an OLF supporter. The Tribunal asked the applicant if there was any paperwork in relation to the first area she was detained in. She said there was not.

65. The Tribunal asked the applicant what the first thing she saw was when she arrived at Zeway Prison. In response she said they asked questions and put her in with other prisoners. The Tribunal asked again where the car she was travelling in was parked and what she first saw. She said they drove into the prison. The Tribunal asked if anyone from the prison came out to meet her. She said a man who worked in the prison came out. The Tribunal asked if he took her name. She said he took her name, but didn't write it down. The Tribunal asked her what happened next. She said they asked some questions in a room in the prison. The Tribunal asked who it was who asked the questions. She said it was both the four people who took her to the prison and the one man who came out to meet them at the prison. She said she was repeatedly asked questions. The Tribunal asked how long she was questioned. She said for an hour or more, she didn't know. She said the questions were on one day and they were repetitive questions.



66. The Tribunal asked the applicant what happened next. She said she was put in with other prisoners by the person who worked at the prison. The Tribunal asked the applicant if she ever saw the four military people again and she said she did not.

67. The Tribunal asked the applicant when she next spoke to the authorities. In response she said there were three other occasions when she was questioned over the two years she was imprisoned.

68. The Tribunal asked the applicant what she did when she was in prison for the two years. She replied she didn't do anything; however, she added that she sometimes washed dishes. The Tribunal asked her if she learned anything about the local area where the prison was. In response she said there was no schooling or education.

69. The Tribunal asked the applicant how the authorities at the prison communicated with the prisoners. In response she said "we communicated amongst each other". The Tribunal asked her again how the authorities communicated with prisoners. She said they were called as individuals if they wanted to talk to them.

70. The Tribunal asked the applicant what time she arrived at Zeway Prison. She said it was in the afternoon. The Tribunal asked what landscape she had seen driving there. She replied it was an all weather road. It was far away. She said she did drive through some towns getting there. The Tribunal asked if she noticed farms or factories or houses or schools or animals. She said she only remembered houses and she didn't remember the rest.

71. The Tribunal asked the applicant what happened to her in prison. She replied they beat her, they kicked her and they broke her finger. She said they also tried to scare the prisoners. The Tribunal asked the applicant how often in the two years she had been beaten. She said there were three beatings, but there was continuous harassment over the two years. The Tribunal asked what the harassment was. She said they kept asking her to give the name of people in the OLF; they would threaten her and scare her that if she didn't give the information they would kill her.

72. It was the applicant's evidence that she was in a cell with 25 other women. The Tribunal asked her if she ever saw other prisoners in the prison. She replied she was not supposed to meet other prisoners because she was a political prisoner. The Tribunal asked if she and the prisoners she was with were ever let out into an exercise yard. She said the 25 of them did not mingle with others because they were all political. The Tribunal asked if she ever saw other prisoners in the two years. She said she did not. The Tribunal asked if she was together with the same 25 people for two years. She said she was. The Tribunal asked the applicant if she knew if there were any men in the prison. She said there could possibly be, but they would be kept in a different department. She said she didn't see any. She said she had no visitors.

73. The Tribunal asked the applicant how her finger was broken. She replied they pulled her finger and broke it. The Tribunal asked when this happened. She said when she was in prison. The Tribunal asked her again when during her time in prison this happened. She replied at the beginning of her time in prison. The Tribunal asked if she was given any medical assistance. She said she was not. The Tribunal asked if she bandaged her finger herself. She replied she had no bandaids. The Tribunal asked the applicant if she requested help from the other women she was in the cell with. She replied one woman helped her out and that person was [Ms E]. The Tribunal asked the applicant if she formed any friendships in the same cell with the same 25 other people for two years. She said the only one was [Ms E] and that she was close to her. The Tribunal asked if she was close to anyone else. In response she said some of the women had mental problems; they talked to themselves. The Tribunal asked if she remembered the names of any of the women who talked to themselves. She said she

didn't remember their names. The Tribunal asked if she remembered the names of any of the women other than [Ms E]. She said she was only close to [Ms E]. The Tribunal asked the applicant why [Ms E] was in prison. In response she said she had the same problem. She was an OLF supporter. The Tribunal asked how old [Ms E] was. The applicant said she estimated she was 35 years.

74. The Tribunal asked the applicant to describe the routine of a day in prison. She replied most times she didn't do anything, but sometimes she worked in the kitchen in the morning. She said someone would come and take her out to work. She said that maybe two or three others were taken to work in the kitchen at a time. The Tribunal asked what work she did in the kitchen. She replied cleaning and dishwashing. The Tribunal asked how many dishes she would wash. She said she didn't remember.

75. The Tribunal asked how the kitchen was set up. She replied that she washed dishes on the ground and there was a fireplace on the ground to cook. The Tribunal asked if she did the cooking. She said she did not; that there was a woman who did the cooking. The Tribunal asked if the woman who did the cooking was a prisoner. The applicant said she didn't know whether the woman was a prisoner. The Tribunal asked if she had ever asked the woman whether she was a prisoner and the applicant said she did not talk to her.

76. The Tribunal asked the applicant where the 25 women ate. The applicant replied they ate in their prison cell. She said they would go and pick up their food and take it back to the room. The Tribunal asked if when she went to pick up her food she saw others. She replied she didn't interact with others. The Tribunal asked the applicant if she and the other 25 were the only political prisoners in Zeway and she said they were. The Tribunal asked how she knew this. She replied [Ms E] told her. The Tribunal asked the applicant if [Ms E] told her anything else. She replied that they were all political prisoners; all similar. The Tribunal asked if this included the people she described as having mental problems. She said it did.

77. The Tribunal asked the applicant about the three times during her two years that she said she was questioned. The Tribunal asked what sorts of questions were asked of her. She replied she was asked to give the names of the OLF. The Tribunal asked if the other 25 women were questioned. She replied they were questioned too. The Tribunal asked what they were asked. She replied she didn't know the questions they were asked. The Tribunal asked the applicant if she asked the other women what they were questioned about. She replied "you don't tell unless you are close to someone".

78. The Tribunal asked the applicant how big the room was that she and the 25 other women were held in for two years. She said a bit larger than the hearing room. It was agreed with the applicant and the applicant's representative that the room therefore would have been a little larger than six metres by seven metres, which is the approximate size of the hearing room. The Tribunal asked the applicant how the 25 people in the same room for two years slept. She said they slept on a small mat on the floor. Again the Tribunal asked if there was any exercise or if they were ever taken outside. She replied the only other place they went was to the kitchen.

79. The Tribunal then asked if there was somewhere else they were taken to be questioned. She said they were taken to another room for questioning. They walked there. The Tribunal asked the applicant what she saw walking there. She said "table and chairs". The Tribunal then asked the applicant if the kitchen was a main kitchen. She replied she didn't see others. The Tribunal suggested to the applicant that surely she would know if the kitchen she was working in was used by others. She replied

with a question, how would she know? The Tribunal suggested that she might look at the pots and plates. In response she said they were “all ours”.

80. The Tribunal asked the applicant if at the time she was released anyone else was released with her. She replied she didn't know about the rest of the women.

81. The Tribunal asked the applicant how she knew she was in Zeway Prison. She said when she was there they told her. The Tribunal asked if she was saying she learnt it there. She then said [Ms E] told her as well. The Tribunal asked if the four men who drove her there told her. She said they did not.

82. The Tribunal asked the applicant what, if anything, she knew about Zeway Prison. She said it was far away from the place she used to live. The Tribunal asked if she knew how many prisoners were there altogether. She replied it is big, but she didn't know how many. The Tribunal asked how she knew it was big. She said the compound is big.

83. The Tribunal asked the applicant about her claim that she feared the authorities would think she had provided information about Zeway Prison and would harm her if she returned to Ethiopia. In response she said “who would harm her”? The Tribunal indicated again that she had stated she feared the authorities. In response she said she was scared for her life. She said her sister had told her the authorities were looking for her since she came to Australia. She said all the people who fled the country, “they are waiting for them”.

84. In relation to Zeway Prison, the Tribunal then put to the applicant country information under [s.424AA](#). In doing so it indicated to the applicant that it was going to raise adverse information with her and give her an opportunity to respond to it. The Tribunal explained that the information related to Zeway Prison and the consequences of it being that it might be information that would be the reason or part of the reason for the Tribunal affirming the decision it is reviewing. The Tribunal then read to the applicant information contained in a report dated March 2004 by the African Commission on Human and People's Rights Special Rapporteur on Prisons and Conditions of Detention in Africa.

85. The Tribunal read that Zeway Prison is a Federal prison in the Addis Ababa region situated about 150 kilometres from the capital Addis Ababa. It is made up of about 635 inmates, all male.

86. The Tribunal also indicated that there was a Zeway Prison Farm located a few metres away from the Zeway Prison which covered almost 90 hectares of land.

87. The Tribunal asked the applicant if she wished to consult her representative before responding. The applicant indicated that she wished to have some time to respond to the 424AA information given by the Tribunal, and the Tribunal allowed her some two weeks to respond in writing.

88. Under 424AA, the Tribunal then raised two other issues relating to the Zeway Prison: first, that country information indicated it contained a school for inmates and second that country information referred to a broadcasting or PA system whereby the authorities communicated with the prisoners. The Tribunal asked the applicant to respond to this information. The Tribunal again allowed time for the applicant to respond.

89. The Tribunal asked the applicant about her release from prison. She said the authorities came and released her and told her they would kill her if she told anyone about her imprisonment. The Tribunal asked who told her this. She said the person in the prison. She then told the Tribunal she was taken to the city around Zeway in a car by two people and left there. In the city of Zeway she said she asked for financial assistance for money to drive back to Addis Ababa. She said she asked people for

contributions to the fare of a minibus, and then she offered the driver the money she had and asked him to take her to Addis Ababa. She did not know what the cost of the trip was and she didn't know if she paid the full fare; she just begged the driver to take her back to Addis Ababa.

90. On her return to Addis Ababa the applicant said she went to her uncle's place. She said for the next three years she lived between her uncle and her aunt. She said initially that she lived with her aunt on her father's side that came to Australia. The Tribunal then asked her when her aunt left Ethiopia and came to Australia. She replied 1992. She then corrected her evidence saying that the aunt she stayed with was a different sister, another sister on her father's side. She said she spent most of her time with her uncle.

91. The Tribunal asked the applicant when she commenced her [school training]. She replied she didn't remember and told the Tribunal that she had memory problems. She said the date was on the piece of paper and asked if she could read it. The Tribunal indicated it was trying to test her evidence and it preferred her not to read it.

92. The Tribunal then asked the applicant if she remembered when she finished her [course]. She said she finished before she left for Australia, but she can't remember. She said she got a certificate. The Tribunal asked if it was a day course or a night course. She said it was a night course. The Tribunal asked if there was any practical course with children. She said there was not. The Tribunal asked the applicant what she studied during the course. In response she said the idea came from her uncle who said it would be good for the brain. The Tribunal again asked the applicant what she studied. She replied Montessori. She said she studied how to play with children and also she studied singing.

93. The Tribunal asked the applicant if it was the case that she applied for a passport about six months after she was released from prison. She agreed that was so. The Tribunal asked if it was easy for her to obtain the passport. She said it was not easy and her uncle assisted her. The Tribunal asked the applicant if with her father in prison, her high profile aunt (in Australia) and her own two years spent in prison, if it may have been difficult for her to obtain a passport and leave. In response she said her uncle gave bribes to the authorities; she didn't know how much.

94. The Tribunal then asked the applicant about her claim to be afraid to return to Ethiopia, having applied for asylum, and asked her what concerns she had in this regard. She replied that "people who left or go back, some get killed and the same fate would be waiting" for her.

95. The Tribunal asked the applicant what else she feared if she were to return to Ethiopia. She replied death and imprisonment. The Tribunal asked her why she feared death and imprisonment. She replied because she was Oromo and a supporter of OLF. She said since she came to Australia her sister had informed her that the authorities had been around looking for her. The Tribunal asked the applicant why three years after she had been in prison, and 10 months after she did her [course], why she thought the authorities would be looking for her. She replied to put her in prison because she was Oromo and supporting the OLF.

96. The Tribunal raised with the applicant that in her written statement in support of her Protection Visa she said that her father had no official role in the OLF, whereas today she had told the Tribunal that he was in charge of his local area and organised meetings and other activities. She replied she meant he had no official role by comparison to her aunt now in Australia who had a high profile.

97. The Tribunal asked the applicant if she knew [name deleted]. She said she heard about him but she didn't know him, but her aunt, her uncle and her father knew

him. The Tribunal asked who organised for him to provide an affidavit in support of her application. She said her aunt organised it. The Tribunal asked how [name deleted] knows about her. She replied he knows about her from her aunt and her father. The Tribunal indicated to her that in his affidavit he says his information is based on reliable OLF sources, and asked the applicant who he might have meant by reliable OFL sources. In response she said people who know her maybe.

98. The Tribunal asked the applicant how long her aunt had been in Australia. She replied 11 years. The Tribunal asked the applicant if she told her aunt about being in Zeway Prison for two years. She said she did. The Tribunal asked the applicant if the most significant thing that had happened to her was being put in prison for two years and if this was so, did she tell her aunt. She said she did tell her aunt and she also told her aunt about her sister and father as well. The Tribunal then referred to the affidavit of her aunt in which she states, "I remember hearing about [the applicant]'s imprisonment some time ago. I heard about [the applicant]'s imprisonment and about other things that were happening back in Ethiopia through friends and other OLF sympathisers who would come from Ethiopia to visit their family here in Australia. I am not sure of the exact dates of [the applicant]'s imprisonment but I remember being told that she was in prison." The Tribunal pointed out to the applicant that in the affidavit her aunt does not mention Zeway prison, nor that she was there for two years. The Tribunal indicated to the applicant that again under 424AA she may wish to comment on this information, explained the relevance and allowed the applicant time to comment in this regard.

99. The Tribunal asked the applicant if there was anything further that she wished to put to the Tribunal in relation to her application. She replied she had a lot of tears in her heart and could not express it out. She said she was living in terrible conditions which have created a big problem for her and she can't sleep properly. She referred to her counsellor at [Agency 3] and the Tribunal indicated it was aware of the report. She said she could not articulate or express everything in words.

100. The Tribunal asked the applicant's representative if she wished to make any submission. She replied the key aspects of the application were the country context in which the application was made; the treatment by Ethiopia of political dissidents, and despite the face that Ethiopia puts on it or on the surface that there are still pressures within the country which particularly surface around election time. She said anyone accused of speaking out against the government is at risk. She said in the period between March 2007 and December 2009 when the applicant came to Australia, the applicant was living effectively in hiding. She submitted the applicant took steps to protect herself; she felt she had to do something and did the [course]. She said the applicant's association with other OLF high profile people should be taken into account; not just her profile, but the Tribunal should look at the whole family. The representative referred to the issue of failed asylum seekers, indicating that since the applicant had been in Australia she had heard the authorities were looking for her. The representative indicated the situation in Ethiopia was unstable. She said the instability ebbs and flows, but heightens before election.

101. The representative referred to the applicant's presentation saying the Tribunal should have witnessed that the applicant was not "savvy or street smart", and that it would be difficult for her to take steps to protect herself if she returned to Ethiopia, and that she was extremely vulnerable. The representative undertook to address the issue of Zeway prison, the aunt's statement and the role of the applicant's father. She reiterated at the heart of the matter of the applicant's case was her father's imprisonment; her aunt's profile and the applicant's family. She said whilst the

applicant was not outspoken making political speeches, nevertheless there is enough for her to come to the attention of the authorities to be imprisoned, and if she returned there was a risk or a possibility that she would be harmed.

#### Post hearing Submission

The Tribunal received a submission addressing the [s424AA](#) material raised during the last Tribunal Hearing [in] October 2010 and a further Statutory Declaration sworn by the applicant dated [in] October 2010:

The further Statutory declaration by the applicant states as follows:

“I wish to provide some further information about my claims in response to some of the issues raised by the Member during my hearing at the Tribunal.

#### Zeway Prison

As I explained during the hearing, I did not see any other prisoners while I was in Zeway prison, other than the other women in my room. All the women in my room were political prisoners like me. My experience was that the political prisoners in Zeway were kept separately because we were detained illegally. I believe this is why anyone visiting the prison does not have access to them. After my release I was told by relatives that the Red Cross usually visit Zeway regularly. They asked me if I had seen them but I never saw them because we were kept in a separate place.

After I was released I was given a warning not to talk to anyone about my detention and what had happened to me and what I had seen during my detention. I think this is because I was detained illegally and without trial, this is why they didn't want me to talk to anyone about it. If I return to Ethiopia I fear the authorities will suspect me of talking about Zeway to other people. I have left my country and this makes the authorities very suspicious, they will never believe I have not talked to anyone about Zeway.

When the OLF was part of the government, my father worked in the [details deleted], which is like part of the local government. He participated in meetings and invited others to do the same.

After the OLF was made illegal my father remained a member but he did not have an official role, he just continued as a member and supporter of the OLF in secret. He has been arrested and imprisoned many times, accused of being an OLF supporter and of planning to disrupt the elections.

At my hearing the Member asked me the last time my father went to prison and if I had visited him. I last visited my father in prison not long before I was imprisoned. However, while I was in prison my father was released from prison. He was then arrested and imprisoned again in 1998 (Ethiopian calendar). He is still in prison now and no one knows where he is so no one has visited him.

#### Leaving Ethiopia

As I explained in my first statutory declaration, I felt very unsafe living in Ethiopia after I was released from prison and was trying to find a way to leave Ethiopia to go anywhere. Coming to Australia with my uncle was the first opportunity I had to leave.

#### Country information

102. An Ethiopian Human Rights Council (EHRCO) report dated 31 October 2007 provides information on persons detained without warrant on suspicion of having links with the OLF, notwithstanding lack of sufficient evidence.

103. In this 103rd Special Report, EHRCO has compiled complaints received from families of victims on the situation of detainees who were arrested without a court warrant from different areas of the Oromo region and Addis Ababa on suspicion of having links with the Oromo Liberation Front (OLF). According to the complaints, once appearing before a judge, the detainees have been remanded in custody on several adjournments with the request of police for additional time to conduct investigation. Some of the detainees have had their files closed by courts for police could not come up with sufficient evidence to warrant their continued detention and some of them were allowed bail. However, in defiance of these court orders, police continued detaining the individuals by the time this report was being compiled.

104. The US Department of State's report on human rights practices in Ethiopia in 2007 also mentions actions by the Ethiopian authorities against persons and groups suspected of involvement with the OLF. According to the report:

“on January 3, police shot and killed two students during a raid on Gue Secondary School, Gue town, Oromiya Region. Police stormed the school in response to suspicions that supporters of the outlawed Oromo Liberation Front (OLF) were active in the school. Several other students were beaten and arrested. Some of the students were released, but others remained in detention at year's end.

Security forces arrested without warrant hundreds of persons during the year, particularly prior to the Ethiopian New Year on September 11. Security forces began arresting individuals throughout the Oromiya Region on the grounds that they were involved with the OLF and possibly planning terrorist activity. Many of those arrested were members of the opposition UEDF or OFDM parties. Approximately 450 cases of arrest were reported to opposition party offices in Addis Ababa. Three of these cases were executive committee members of EHRCO's Nekempt office. Nearly all those held were not charged with any crime or brought to court. At years end 148 remained in jail (US Department of State 2008, Country Reports on Human Rights Practices for 2007 – Ethiopia, March ).

105. The Tribunal notes there is limited specific information on the treatment of known or suspected failed asylum seekers who return to Ethiopia. However advice provided by the Australian Department of Foreign Affairs and Trade (DFAT) in February 2008 included the observation that “[i]n the current political climate, previous activity with the OLF alone would not get an individual into trouble”. The DFAT advice states:

Ethiopian authorities do pursue opposition leaders within the country and abroad (for example, Ethiopian refugees living in Sudan in August and September 2007 were refouled/deported which was most likely at the request of the Ethiopian government). However, our interlocutors are not aware of recent mass arrests of OLF supporters in the past 12 months (or major OLF demonstrations either). In fact, the government pardoned many OLF supporters, including the most high profile opposition leaders, last year. The mood between the government and the OLF remains tense, but it does not seem to be one where people are disappearing and is best characterised as a ‘war of words’ In the current political climate, previous activity with the OLF alone would not get an individual into trouble, after all the key opposition leaders have been pardoned. However, the situation might change if an individual continued to be politically active.

106. From Wikipedia, the free encyclopaedia  
Zeway or Zway (Zeway) is a town in central Ethiopia. It is located on the road connecting Addis Ababa to Nairobi in the Misraq Shewa Zone of the Oromia Region of Ethiopia. Adjacent to Lake Zeway, the economy of the town is based on fishing and horticulture. Zeway is also home to a prison and a caustic soda factory.

107. A Report dated February 2005 by the Center for International Legal Cooperation states that:

Federal Prisons are located at Addis Ababa and Dire Dawa. The Federal Prisons have branches in Zeway, Robbit and Kaliti (Addis Ababa). The number of prisoners in Federal Prisons is estimated at 6,600. Almost 600 of those prisoners are members of the former Derg regime. Women prisoners (170 women) are detained in separate units.

108. A Report dated 29 March 2004 by the African Commission on Human and People's Rights Special Rapporteur On Prisons and Conditions of Detention in Africa refers to the Special Rapporteur visiting a number of prisons in Ethiopia, including the Zeway prison in the Addis Ababa region. It refers to Zeway Prison and states:

c) Zeway Prison

The Zeway Prison is another federal prison in the Addis Ababa region situated about 150 kilometres from the capital, Addis Ababa. It is made up of about 635 inmates- **all male** The prison has about eleven large cells of different sizes. Some hold 35 inmates, some 104 inmates.

There is a small clinic and a poorly equipped laboratory. It also has a school and a media center where information and news is broadcasted to all the prisoners.

d) Zeway Prison Farm

The Zeway Federal Prison Farm is located a few meters away from the Zeway Prison and covers almost 90 hectares of land. Irrigation water is derived from the Zeway lake. The farm produces cash crops such as such as banana, pawpaw, pepper, orange, guava, mangoes and also rears cattle. It also produces food crops such as maize, Onion, tomatoes and cabbage. The cultivation is done by the prisoners and this is done as part of the reformation and reintegration policy of the prison. Farming is not done as part of punishment. The prisoners are trained from soil preparation in the nursery to crop transplant in the main farm.

The prisoners are paid for the work they do in the farms and depending on the nature and duration of the work, they may be given 0.75 Birr, or 1 Birr or 1.5 Birr (\$ 1 = 8 Birr). They are paid a fraction of this money each month and the rest is kept by the administration and given to them when they are released.

The report includes a photograph of the Special Rapporteur at the Zeway Prison Farm. The report notes that “[p]risoners in the Zeway prison complain that the pay they receive is not commensurate to the work they do.”

The report also indicates that “[a]ll the detention centres visited, except Zeway Prison and the Awasa Woreda I Police Station, have female inmates.”

[http://www.achpr.org/english/Mission\\_reports/Special%20Rap%20\\_Prisons\\_Ethopia.pdf](http://www.achpr.org/english/Mission_reports/Special%20Rap%20_Prisons_Ethopia.pdf) – Accessed 7 April 2009 – Attachment 29).

109. Sources indicate that a number of the protesters arrested following demonstrations held in June and November 2005 in relation to the May 2005 elections in Ethiopia, were taken to Ziwai prison, Zeway detention camp, or Ziwai military camp. The Amnesty International report dated 23 June 2005 refers to 3,130 detainees being “held at Ziwai military camp, 225km south of Addis Ababa.” According to the report:

The Police Commissioner stated that 3,130 detainees are held at Ziwai military camp, 225km south of Addis Ababa. He said that the International Committee of the Red Cross (ICRC), the Ethiopian Red Cross and family members would be immediately allowed access to these detainees. Conditions at Ziwai army camp, which is not an officially-designated place of custody, are known to be harsh, with overcrowding, poor hygiene, a high risk of malaria and very poor medical facilities. Police have said the Ziwai detainees are being “screened” (interrogated), and those found to have been involved in violence would be prosecuted. On 22 June foreign diplomats were allowed to visit Ziwai army camp and expressed concern over



the lack of transparency in “screening” prisoners (Amnesty International 2005, Ethiopia: Further information on: Fear of torture / Prisoners of conscience, 23 June, AFR 25/004/2005 <http://www.amnesty.org/en/library/asset/AFR25/004/2005/en/d7da6711-d4d5-11dd-8a23-d58a49c0d652/afr250042005en.html> - Accessed 6 April 2009 – Attachment 24).

## FINDINGS AND REASONS

110. In both her Protection Visa application and her review application, the applicant described herself as a national of Ethiopia. She arrived in Australia on an Ethiopian passport issued at Addis Ababa [in] October 2009. There being no evidence to the contrary the Tribunal finds the applicant to be a national of Ethiopia and has assessed her claims against Ethiopia as her country of nationality.

111. Australia owes protection obligations under the refugee convention to a person who has a well-founded fear of persecution “for reasons of race, religion, nationality membership of a particular social group or political opinion”.

112. The applicant claims to fear serious harm and persecution on the basis of her ethnicity as an Oromo person, her political opinion, actual and imputed political opinion because of her alleged political activities as an OLF supporter and membership of a particular social group being “failed asylum seekers” and a person returning from a Western country.

113. Furthermore the applicant claims a well-founded fear of persecution on the basis of her inability to subsist due to her imputed political profile and ethnicity. She fears the authorities can not protect her as they are the perpetrators of the harm she claims to fear and to have suffered from. However the mere fact that a person claims to fear persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is ‘well-founded’ or that it is for the reason claimed. A fear of persecution is not ‘well-founded’ if it is merely assumed or if it is mere speculation. A decision maker is not required to make the applicant's case for him or her. Nor is a decision maker required to accept uncritically any or all the allegations made by an applicant. In *MIEA v Guo* (1997) 191 CLR 559 at 572 and also in *MIEA v Wu* (1996) 185 CLR 259 at 293, the court found that conjecture or surmise had no part to play in determining whether a fear was ‘well-founded’.

114. In determining whether an applicant is entitled to protection in Australia the Tribunal has to make findings of fact in regard to the applicant’s claims. This frequently involves assessing the credibility of the applicant. In doing this, the Tribunal acknowledges the difficulties that an asylum seeker may face. The benefit of the doubt should be given to an asylum seeker who is generally credible but unable to substantiate all of his or her claims.

115. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant’s country of nationality (See *Randhawa v MILGEO* [1994] FCA 1253; (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* [1994] FCA 1105; (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* [1998] FCA 1126; (1998) 86 FCR 547). If the Tribunal makes an adverse finding in relation to a material claim made by an applicant but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* [1999] FCA 719; (1999) 93 FCR 220).

116. The Tribunal has carefully considered all the applicant's claims and submissions made on her behalf. This includes the Tribunal being asked, in conducting the review, to have regard to its own guidance notes on Credibility, Gender and Vulnerability "before drawing any adverse inference against (the applicant) as a result of her evidence during the hearing".

117. The Tribunal acceded to requests on behalf of the applicant to ensure her comfort in every way possible within the confines of its charge to conduct a merits review and particularly having regard to the submissions made on behalf of the applicant.

118. The Tribunal has gone to some lengths to afford procedural fairness, patience and understanding to the applicant. It has allowed the applicant an adjournment of the first day's hearing as requested; it organised for the most appropriate interpreter to be available for the applicant on two occasions. The Tribunal allowed an extension of time for the applicant to respond to and comment on 424AA.

119. The Tribunal accepts that applicant is a [age deleted] female who is single having never married. The Tribunal accepts that she is educated having completed her secondary school to the equivalent of Australia's year 12; the Tribunal accepts she has trained as a [teacher] and holds a certificate in this area. The Tribunal accepts she also undertook [studies] at [Course Provider A] when she left school. The Tribunal accepts that the applicant has worked as a cashier. The Tribunal accepts that the applicant is able to [interpret] and that she first arrived in Australia accompanying her [uncle] as an interpreter for him.

120. At the outset the Tribunal must record its finding that the applicant is not a reliable or credible witness. Whilst the Tribunal acknowledges submissions on her behalf, in particular that she is a vulnerable person, never the less the Tribunal finds that the applicant was able to participate effectively in the hearing.

121. Despite her education and her ability to speak and write in a number of languages, the applicant had a great deal of difficulty detailing the dates of significant events she claimed occurred. The Tribunal notes and has considered the representatives submissions in regard to the applicant's difficulties regarding the conversion of dates from the Ethiopian calendar to the Gregorian calendar. In particular the Tribunal notes the submission:

"The length of the Ethiopian calendar year changes from year to year. A google search reveals that conversion charts exist to make the conversion between the two calendars which supports [the applicant]'s claim that it is not a matter of simply adding and subtracting to make the appropriate conversions between the calendars We further note that many Oromo people use a calendar very similar to the Gregorian calendar, while the Ethiopian calendar is widely used in Ethiopia. This provides a further explanation about why [the applicant] often knows dates in one calendar or the other without necessarily being able to easily convert between the two.

122. The Tribunal is of the view that any memory failure on behalf of the applicant in relation to dates and events was convenient for her own purposes.

123. The Tribunal finds the applicant to be an immature [age deleted] whose evidence was riddled with inconsistencies such to detract from the plausibility of her claims and for the reasons that follow the Tribunal is unable to be satisfied that Australia has protection obligations to her.

## ETHNICITY

124. The applicant claims to be of Oromo ethnicity. The Tribunal accepts that the applicant and her family are of Oromo ethnicity. The Tribunal accepts that some

Oromo people are discriminated against and that the applicant and her family may have experienced some discrimination. She claims that Oromo people are treated badly and experience difficulty in obtaining education and work.

125. The applicant claims as a person of Oromo ethnicity she has suffered discrimination in education and employment as have members of her family. The *World Directory of Minorities* states that the “Oromo are the largest ethnic minority group in Ethiopia... [and] are predominant in southern, south-eastern and south-western Ethiopia” (Minority Rights Group 1997, *World Directory of Minorities*, Minority Rights Group International, London, p.413).

126. The applicant claims that Oromo people are discriminated against and that she and her siblings have experienced discrimination. She further claims that as an Oromo person she was arrested and detained for two years in Zeway prison accused of an imputed political opinion, because of her father and other supporters of the OLF.

127. Whilst the Tribunal accepts country information that indicates that people of Oromo ethnicity may be detained arbitrarily for suspicion of links with the OLF for the reasons that follow the Tribunal finds the applicant was not so detained. The Tribunal notes the following particular issues of concern in regard to the review applicant’s evidence.

128. In relation to the applicant’s claims of discrimination because of her ethnicity and that of her family, the Tribunal finds the applicant’s evidence of discrimination to be extremely vague, generalised and lacking in detail. At the same time as claiming discrimination the applicant gave evidence that she and other siblings had attended school until Year 12. She has completed tertiary [studies] at [Course Provider A] and later in 2009 she had completed a [teaching] course for which she has a certificate. Whilst there may be an element of discrimination in obtaining education the Tribunal does not accept that in the applicant’s case it amounts to serious harm as required by [s. 91R \(2\)](#). The Tribunal is unable to be satisfied that the applicant has suffered discrimination or harm as a person of Oromo ethnicity in relation to her education.

129. In her documentary evidence to the Department and in her oral evidence to the Tribunal the applicant claims she has suffered discrimination in employment opportunities and that others of her siblings have no chance of employment. At the same time the applicant gave various accounts of work she had done and employment she had engaged in. There were inconsistencies in this evidence. Initially at the hearing when asked if she had worked she said she had “only done housework, but no other work”. Other evidence she gave includes that she worked as a [cashier]. And that she was working for her uncle in a [company]. She gave evidence of deposits of money in the bank and of shares she owned. She said in her visa application she was [interpreting] and accompanied her [uncle] to Australia.

130. Whilst it may be true that the applicant’s siblings have had difficulties in finding employment, in the circumstances outlined in the evidence, the Tribunal does not accept that there is any evidence that supports the reason for this being their Oromo ethnicity.

131. Overall the Tribunal finds the applicant’s evidence of discrimination in relation to employment to be extremely vague, generalised and lacking in detail. The Tribunal is unable to rely upon the applicant’s evidence in relation to her work history, but finds she has been at times in the work force.

132. The Tribunal finds that the applicant has embellished her claims in relation to harm she fears due to her ethnicity in order to enhance her claims to be a refugee. The Tribunal finds her claimed fear of being persecuted is not well-founded and that there

is not a real chance of being persecuted now or in the reasonably foreseeable future should she return to Ethiopia.

133. The Tribunal has considered country information that supports the view that being ethnically Oromo no longer automatically subjects a person to oppression and discrimination in Ethiopia. The Tribunal notes the qualifications the applicant has been able to obtain. The Tribunal is unable to be satisfied that the applicant will be unable to work and subsist in the future should she return to Ethiopia now or in the reasonably foreseeable future.

134. The Tribunal is unable to find the applicant would be unable to work and subsist because of her Oromo ethnicity should she return to Ethiopia now or in the reasonably foreseeable future.

## POLITICAL OPINION, IMPUTED POLITICAL OPINION

135. The applicant claims persecution of herself and her family. She claims she was accused of being a supporter and sympathiser of the OLF and that she was imprisoned from February 2005 to March 2007. The applicant claims that she was arrested in February 2005 and that she was taken to Zeway prison.

136. The applicant has claimed that since she was 16 or 18 she became a supporter of the OLF. She claims her father was a supporter of OLF. She claims he had no particular role in the OLF however at the hearing she amended this claim stating she meant he had no role by comparison with her aunt who now lives in Australia.

137. The applicant gives various and inconsistent accounts of her arrest, transfer to Zeway, and of what happened to her whilst she was in prison.

138. In dependent country information before the Tribunal contained in a Report dated February 2005, by the Centre for International Legal Cooperation, states that: Federal Prisons are located at Addis Ababa and Dire Dawa. The Federal Prisons have branches in Zeway, Robbit and Kaliti (Addis Ababa). The number of prisoners in Federal Prisons is estimated at 6,600. Almost 600 of those prisoners are members of the former Derg regime. Women prisoners (170 women) are detained in separate units.

139. A Report dated 29 March 2004 by the African Commission on Human and People's Rights Special Rapporteur On Prisons and Conditions of Detention in Africa refers to the Special Rapporteur visiting a number of prisons in Ethiopia, including the Zeway prison in the Addis Ababa region. It refers to Zeway Prison and states:

### “c) Zeway Prison

The Zeway Prison is another federal prison in the Addis Ababa region situated about 150 kilometres from the capital, Addis Ababa. It is made up of about 635 inmates- all male. The prison has about eleven large cells of different sizes. Some hold 35 inmates, some 104 inmates.

There is a small clinic and a poorly equipped laboratory. It also has a school and a media center where information and news is broadcasted to all the prisoners.

### d) Zeway Prison Farm

The report also indicates that “[a]ll the detention centres visited, except Zeway Prison and the Awasa Woreda I Police Station, have female inmates.”

The Zeway Federal Prison Farm is located a few meters away from the Zeway Prison and covers almost 90 hectares of land. Irrigation water is derived from the Zeway Lake. The farm produces cash crops such as such as banana, pawpaw, pepper, orange, guava, mangoes and also rears cattle. It also produces food crops such as maize, Onion, tomatoes and cabbage..”

140. The Tribunal put to the applicant under 424AA that Zeway Prison was according to country information an all male prison. The Tribunal raised two other matters contained in the same report one that the report mentions that there is a school for inmates in Zeway Prison and that there is a public announcement system for communicating with prisoners.

141. The Tribunal also raised concerns under 424AA with the applicant that as central to her claims that she was imprisoned for two years it had concerns that her aunt had not referred specifically to her two years in Zeway in her evidence.

142. In her further Statutory Declaration in response to 424AA matters the applicant gives the following response:

“Zeway Prison

As I explained during the hearing, I did not see any other prisoners while I was in Zeway prison, other than the other women in my room. All the women in my room were political prisoners like me. My experience was that the political prisoners in Zeway were kept separately because we were detained illegally. I believe this is why anyone visiting the prison does not have access to them. After my release I was told by my relatives that the Red Cross usually visit Zeway regularly. They asked me if I had seen them but I never saw them because we were kept in a separate place.”

143. The applicant’s representative submitted a reply to the 424AA material and the Tribunal has considered it. In particular the Tribunal notes the submission that: “there is also a very real possibility that the actual situation in Ethiopia with respect to prisons and prison conditions actually changed between the visit of the Special Rapporteur in March of 2004 and the period when [the applicant] was actually imprisoned the following year”; and “Although no specific reference to the inclusion of women in the prison population in Zeway was found during our research, the country information makes it clear that:

- Huge numbers of people were rounded up and detained during the post election period in Ethiopia;
- Thousands of those prisoners were sent to Zeway prison;
- Political prisoners were for the most part arbitrarily and illegally detained;
- Political prisoners face different treatment to other prisoners within the Ethiopian prison system;

144. The Tribunal notes the applicant has not claimed to have been a political prisoner rounded up and detained during the post election period. The Tribunal notes she claims to have been arrested at home, before the elections. The Tribunal notes that she claims she was put into a cell with 25 women who were already there and that she claims no change to the 25 cell mates throughout the two years of her claimed detention.

145. The Tribunal notes that in her first interview with the Department the applicant contradicted her statement by claiming to be in two places at the same time. She stated that her father had been detained in 1998 ( Ethiopian Calendar ) and that she had visited him occasionally with her family during his first year of detention. The applicant also stated that she had been detained herself from February 2005 to March 2007 (Gregorian Calendar ). When it was brought to her attention that she could not have visited her father during his first year of incarceration at the same time she was detained in another town, the applicant was unable to provide any explanation for the discrepancy repeating her previous statements.

POLITICAL OPINION (ACTUAL)

146. The Tribunal accepts the applicant may have, as a 16 year old attended OLF meetings, concerts and events. The Tribunal has also considered the applicant's family members whom she claims are OLF supporters and accepts they may have been OLF supporters however it is unable to be satisfied that she had any official or supporting role in the OLF.

147. The Tribunal notes the applicant sometimes claims she was interrogated about her father's whereabouts, sometimes about his gun and ammunition and sometimes about other members of the OLF. The Tribunal does not accept this evidence. The Tribunal has already found the applicant is not a credible witness. The Tribunal finds it implausible that the applicant would be specifically interrogated about her father's whereabouts as claimed, when, according to the applicant, her father was already in prison. The Tribunal finds the applicant does not have a profile as an OLF supporter as claimed for this reason the Tribunal finds she was not interrogated about other OLF supporters.

148. Furthermore whilst the Tribunal accepts the applicant may be sympathetic to the OLF based on inconsistencies in her evidence the Tribunal is unable to be satisfied that the applicant is a member of OLF. The Tribunal finds the applicant was not arrested and imprisoned for two years in Zeway prison as claimed. The Tribunal finds the applicant does not have a profile as an OLF supporter as claimed. The Tribunal finds the applicant is not a credible or truthful witness.

#### POLITICAL OPINION (IMPUTED)

149. The applicant claims, in addition to having her own political opinion, to be imputed with the political opinion of her family, particularly her father and her aunt.

150. Whilst the Tribunal accepts that the applicant's aunt is or has been [an official] of the Oromo Women's Association in Australia, south pacific region and that her aunt was [an official] under the umbrella of the OLF in 1991 before the OLF was banned the Tribunal notes the applicant's aunt has been living in Australia since 1998 and for this reason is unable to be satisfied that any family relationship to the applicant would provide a real chance that she would be imputed by any political opinion or targeted because of her aunt.

151. The Tribunal also finds that the applicant on return to Ethiopia will not be targeted due to any imputed political opinion because of her family as the Tribunal is unable to be satisfied that her father, sister or brother in law, though they may have been sympathetic to OLF have ever had roles or profiles as supporters of OLF.

152. The Tribunal finds the applicant will not suffer persecution for reason of any imputed political opinion arising from family relationships.

153. The applicant has claimed that though some years passed between her claimed release from Zeway prison in 2007 and her departure for Australia that EPRDF officials ransacked her residence and have approached her sister in regard to her whereabouts because they know she is an OLF supporter. The Tribunal has found the applicant is not a credible witness and does not accept this evidence as reliable.

154. Whilst the Tribunal accepts that the applicant has "a fixed deformity at the proximal interphalangeal joint and is unable to fully flex this joint". The Tribunal has found the applicant is not a credible witness and the Tribunal is unable to be satisfied that this injury resulted from ill treatment whilst in prison as claimed.

155. The Tribunal accepts that examination of the mental state of the applicant may suggest symptoms of post traumatic stress disorder. However the Tribunal is unable to

be satisfied that this condition resulted from any ill treatment whilst in prison as claimed.

156. The Tribunal has considered a letter in support of her application supplied from [an official] of the South Eastern Region of Melbourne Oromo Community Association in Victoria .The Tribunal gives little weight to this letter in light of its findings set out above and because when the Tribunal asked how applicant knew [the official], she replied she thought he knew her father and that she had known of him for some time through her aunt. She confirmed that she had only met him personally when she arrived in Australia and that he knew about her situation because she had told him what happened.

157. The Tribunal does not accept that the applicant has suffered serious harm amounting to persecution in the past for reason of her imputed or actual political opinion. As the Tribunal does not accept that the applicant has ever been arrested, detained, physically abused in prison, and as she has said she has no interest in politics, it does not accept that she will be involved in political activities in Ethiopia on her return, or that she will be imputed with political opinion on her return.

#### POLITICAL SOCIAL GROUP FAMILY UNIT OF OLF SUPPORTERS

158. The applicant claims she is at risk as part of a family unit of OLF supporters. She claims her family including her father has been arrested many times; that her sister has been to prison and that her brother in law has been imprisoned.

159. The applicant claims her aunt in Australia has a high profile as an OLF supporter. The applicant claims her aunt is a member and [official] of the Oromo Women's Association in Australia, south pacific region and that her aunt had been persecuted while in Ethiopia.

160. The UNHCR Guidelines on International Protection define “particular social group” as:

“a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights”.

161. A test for determining whether a group falls within the definition of a ‘particular social group’ in Article I A(2) of the Convention was formulated in the High Court case of *Applicant S v MINIA* [2004] HCS 25. This was summarised by Gleeson C7, Gummow and Kirby JJ at [36]:

“First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A* ... a group that fulfils the first two propositions, but not the third, is merely a ‘social group, and not a particular social group’.

162. It is well established that “family may constitute a particular social group.” However, it is not enough to belong to a particular social group. It is necessary that the member of such group must also have a well-founded fear of persecution for reason of their membership of the particular social group.

163. The applicant claims that her father, sister and brother-in-law have also been detained and that her family were targeted by the authorities despite the family not attending OLF meetings for approximately five years and none of them being high

profile OLF supporters. She claims her father was a member of the OLF although he did not have an official role. She claims he was imprisoned in 1998 (Ethiopian calendar) as a member of the OLF and on several other occasions and that he remains in prison. The applicant claims that her eldest sister was arrested in 1999 (Ethiopian Calendar) for approximately 3 months. After her sister was released her brother-in-law was arrested. She claims he remains in custody.

164. The applicant's claims in regard to her father, eldest sister and brother in law were particularly vague and confusing and provided little plausible explanation demonstrating that her family had defied the authorities in any particular way. This is particularly so as, despite later evidence, she clearly states none of them have a high profile with the OLF. Later the applicant sought to water this down claiming in relation to her father, that she meant he did not have role in the OLF compared to her aunt who lives in Australia.

165. The applicant supplied a copy of her aunt's OLF membership card [of a date in] October 2004 to [a date in] September 2006 and a copy of an award given to her aunt in Australia for "raising and maintaining awareness of the problems faced by Oromo women and as an interpreter to assist her community".

166. The Tribunal accepts that the applicant's aunt is or has been [an official] of the Oromo Women's Association in Australia, south pacific region and that her aunt was the [an official] under the umbrella of the OLF in 1991 before the OLF was banned. The Tribunal accepts that the applicant's aunt has been granted asylum in Australia. However, the Tribunal notes the applicant's aunt has been living in Australia since 1998.

167. The Tribunal finds that the applicant on return to Ethiopia will not be targeted due to her family's political profile because it does not accept that her father, sister or brother in law, though they may have been sympathetic to OLF have never had roles or profiles as supporters of OLF. The Tribunal finds there is not a real chance that the applicant's family relationship to her aunt who has been living in Australia for some 12 years would put the applicant at risk should she return to Ethiopia now or in the reasonably foreseeable future. The Tribunal finds the applicant will not suffer persecution for reason of her membership of a particular social group being "family of OLF supports".

#### PARTICULAR SOCIAL GROUP "FAILED ASYLUM SEEKERS".

168. The applicant has claimed that she fears she will be jailed on her return to Ethiopia as a member of a particular social group being "failed asylum seekers".

169. The Tribunal is of the view that failed asylum seekers do not have a common attribute distinguishing them from society at large. There is not a binding element that brings the group together or that identifies them as a group. Furthermore, their history as failed asylum seekers is not evident to society at large and does not distinguish them from society at large. Furthermore the Tribunal considers that "failed asylum seekers" do not constitute a particular social group because it may be argued that the only shared feature of such a group is a shared fear of persecution.

170. In *Applicant S* the High Court emphasized the relevance of cultural, social, religious and legal factors or norms in a particular society in determining whether a posited group is a particular social group in the society. In *Khawar (MIMA v Khawar)* (2002) 210 CLR, for example, McHugh & Gummow JJ stated:

The membership of the potential social groups which have been mentioned earlier in these reasons would reflect the operation of cultural, social, religious and legal factors bearing upon



the position of women in Pakistani society and upon their particular situation in family and other domestic relationships. The alleged systemic failure of enforcement of the criminal law in certain situations does not dictate the finding of membership of a particular social group.

171. Taking these matters into consideration the Tribunal does not accept that “failed asylum seekers” constitute a particular social group for the purpose of the Refugees Convention.

## ETHIOPIANS WHO HAVE BEEN RESIDING IN WESTERN COUNTRIES

172. The applicant claims she is at risk as a member of the particular social group “Ethiopians who have been residing in Western countries” because of her presence in Australia since October 2009. The applicant has claimed that if she were to go back to Ethiopia, the authorities would interrogate her about OLF members living in Australia and specifically about her aunt.

173. The Tribunal accepts that people who have lived in a western country for a significant period of time could possess common characteristics which would be apparent and may provide a binding element that brings the group together or that identifies them as a group. The Tribunal finds that in such circumstances “Ethiopians who have been residing in Western countries” constitute a particular social group for the purpose of the Refugees Convention.

174. However, the Tribunal finds that the applicant has been in Australia a relatively short time and certainly not for a significant period. The Tribunal finds there is no reason for the authorities to view the purpose of her stay in Australia as anything other than legitimate. The Tribunal finds that the applicant is not at risk of serious harm on return because she has lived for a short period in the West or because she has resided with her aunt [Ms A], who departed Zimbabwe many years ago.

175. Having considered the applicant’s claims cumulatively and singularly the Tribunal does not accept that there is a real chance that she will be persecuted for reasons of political opinion or imputed political opinion, membership of a particular social group, family, her ethnicity or any other Convention based reason if she returns to Ethiopia now or in the reasonably foreseeable future. As a result, the Tribunal is not satisfied that the applicant holds any well-founded fear of any harm for a Convention reason should she return to Ethiopia.

## CONCLUSIONS

176. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in [s.36 \(2\)\(a\)](#) for a protection visa.

## DECISION

177. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.