



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

ETHIOPIA

IAA reference: IAA18/06104

Date and time of decision: 18 January 2019 09:24:00

B Mericourt, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The applicant is a national of Ethiopia. On 21 December 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV). In a decision dated 5 December 2018 the delegate of the Minister of Immigration and Border Protection (the delegate) refused to grant the visa.
2. The delegate accepted the applicant is of Oromo ethnicity, an Orthodox Christian and that he departed Ethiopia illegally. He accepted the applicant was a low level supporter of the Oromo Liberation Front (OLF) in Ethiopia. However, the delegate was not satisfied there was any real chance or real risk the applicant will suffer serious or significant harm if he returns to Ethiopia now or in the reasonably foreseeable future for reasons of his ethnicity, actual or imputed political opinion or activities or as a returned asylum seeker who departed Ethiopia illegally.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The IAA received a submission from the applicant's representative on 17 December 2018. To the extent that this engaged in argument with the delegate's decision based on information which was before the delegate, I have had regard to it.
5. The submission included a copy of a work cover certificate dated 27 August 2018 relating to an injury to the applicant's left shoulder at his workplace and a report from [a named], Psychologist, dated 21 June 2018 stating the applicant had consulted him on one occasion and presented with symptoms of anxiety, stress and depression. This is new information not before the delegate. Both are dated prior to the delegate's decision and no explanation has been provided as to why the information could not be provided before the delegate made his decision. Although the information is personal credible information, I do not consider the work cover certificate to be relevant to the applicant's claims. The applicant's representative stated the applicant has been attending a psychologist for counselling "as a result of the decision to refuse to grant him a SHEV". As there is no suggestion the applicant's mental health condition is relevant to consideration of his claims, no explanation has been provided as to why the information about his mental condition was not provided to the delegate before he made his decision and the letter from the psychologist makes no reference to the applicant's experiences in Ethiopia, the applicant has not satisfied me that there are any exceptional circumstances to justify consideration of the new information. I find that the new information does not meet the requirements of s.473DD.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - The applicant fears harm for reasons of his ethnicity as an Oromo;
 - The applicant fears harm for reasons of his actual/imputed political opinions as a consequence of his support for the OLF and for reasons related to the appropriation of his family's land on the outskirts of Addis Ababa;

- The applicant fears harm for reasons of his identification as a person who departed Ethiopia illegally;
- The applicant does not believe he can relocate to anywhere in Ethiopia to avoid the harm he fears.

Factual findings

7. The applicant's claims as to his identity and nationality have been consistent since his arrival in Australia. He conducted interviews in the Amharic language and has submitted his Ethiopian driver's licence and a Baptismal certificate from the Tewahido Ethiopian Orthodox Church in Addis Ababa together with English translations. I accept the applicant's nationality, identity and religion are as claimed and find Ethiopia to be the receiving country for the purpose of the application. There is no evidence before me to suggest that the applicant has a right to enter and reside in any country other than Ethiopia and I am satisfied he does not: s.36(3).
8. I am satisfied the applicant departed Ethiopia illegally over the land border with [Country 1] and then flew to [Country 2] in December 2011. I am satisfied he then travelled to [Country 3] where he remained until late May 2013 when he departed by boat for Australia, arriving on 5 June 2013.

Refugee assessment

9. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

10. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

11. Real chance is a substantial chance as distinct from a remote or far-fetched possibility.¹
12. The applicant claims to have been born in [Village 1] in Bale Province in the south of Ethiopia in [year]. He was baptised as an infant in [Church 1]. He and his family moved to the outskirts of Addis Ababa in 1988 where his father bought rural land. The applicant attended school up to year 10 in [High] School, Addis Ababa. After he left school in [year] he worked in [a certain role] until 2006 when he took [another position] with a company in Addis Ababa. He has provided a baptismal certificate dated 29 April 2009 to the Department confirming his baptism in [Village 1] and 'membership' of the Ethiopian Orthodox church in Addis Ababa and a copy of his Ethiopian drivers licence issued in 2007 indicating he was licenced to drive [certain types] vehicles.
13. I had regard to the delegate's observations about the applicant's [social media] page. The delegate only included a screenshot of the first page which indicates he is "from Addis Ababa and attended [Town 1] high school". [Town 1] is a city in the north of Ethiopia in Gondar province. No other screenshots of the applicant's [social media] page are available to the IAA. The delegate noted that 66 of the applicant's 653 friends were also from [Town 1] High School and put to the applicant that this was where he attended high school and he lived in that area. The applicant claimed his [social media] account was initiated by a friend as he did not know how to create an account for himself. The information was not correct about his high school. He stated that he accepted all requests that came to him to be friends on [social media] and this was his explanation for the 66 'friends' who attended [Town 1] High school. The delegate also put to the applicant that the first money he transferred to Ethiopia (in 2013) was also to [Town 1] and to a person with the same name as his sister. The applicant claimed there are many people with this name and he had transferred funds to a friend with the same name as his sister and he had only done so once to help her out.
14. Whilst I had some concerns about the issues raised by the delegate, given the applicant's evidence has been consistent since his entry interview about where he lived, went to school and was employed and that his sister had died in childbirth in 2013 when he was living in [Country 3], and given there are no other screenshots of the applicant's [social media] posts, I am prepared to accept his evidence that he lived, went to school and worked in Addis Ababa from 1988.
15. The applicant stated that his father was killed in 2006 in a dispute with the Government officials who were trying to confiscate the family's land. His mother had died two years earlier of natural causes. He and his older sister and her husband continued to live in the family home after his father's death. The applicant has consistently stated that he heard from a friend that his sister had died in childbirth. The applicant has been reasonably consistent that his sister died sometime in early 2013 whilst he was in [Country 3]. He has been unable to locate his sister's husband and does not know whether the child lived. Whilst I am cognisant of the delegate's concerns about the applicant's first transfer of funds in late 2013 to someone with the same name as his sister, I am willing to accept this was a coincidence given he has only transferred funds once to this person, and whether his sister is alive or died in childbirth is irrelevant to his claims for protection.
16. As discussed above I am satisfied the applicant is of Oromo ethnicity. The UK Home Office reports that Oromos represent about one third of Ethiopia's population and is the largest

¹ *Chan v MIEA*, (1989) 169 CLR 379 at 389.

ethnic group in the country numbering about 35 million out of a total population of 100 million.² Article 25 of the Ethiopian Constitution provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.³

17. The UK Home Office report of 2016 states that “despite experiencing long-standing political and socio-economic marginalisation, the level of societal discrimination on account of ethnicity alone - even when considered cumulatively - is unlikely to meet the threshold required to constitute persecution or serious harm.”⁴ Similarly, the 2016 Department of Foreign Affairs and Trade (DFAT) country report on Ethiopia states “while the government actively targets Oromos with links - real or perceived - to the OLF, there is no credible evidence that this extends to people being targeted solely because of their Oromo ethnicity in the absence of any political element.”⁵
18. The applicant has claimed that he suffered serious harm in Ethiopia as a consequence of his imputed political opinion and imputed support of the OLF and his Oromo ethnicity. He claims to have been arrested in 2010 and imprisoned in [Prison 1] in Addis Ababa for almost two years. He was beaten and tortured during his imprisonment and escaped in December 2011 when he was sent from the prison to an external health clinic / hospital for medical treatment. However, the reasons he has given for his imprisonment have varied.
19. At his entry interview in July 2013 the applicant stated he was arrested and detained because the police accused him of belonging to the Oromo movement. The applicant lodged two statutory declarations both dated 15 December 2016 when he made his application for protection with the Department. In one statement he said he was forced to leave Ethiopia for several reasons. The family land and house was taken by the government with the assistance of the police. There were about 25 houses in the village which was an Oromo area. They all had to leave and he was arrested with about 10 other men. He was never charged with an offence but was imprisoned for two years. He was regularly beaten and interrogated whilst in prison when he was “unable to give them any information or agree to say that I had been part of the group Oromo Liberation Front” (OLF). In his second statutory declaration the applicant said he was a sympathiser to the OLF and its armed struggle objectives. He secretly campaigned against persecution by the Ethiopian totalitarian regime and mobilised the Oromo people. He was targeted as a result of “simply supporting the OLF” and being a member of the Oromo ethnic group. He was constantly under scrutiny and was then arrested by security officials. He was tortured to force him to admit that he was a member of the OLF. In this statutory declaration the applicant also mentioned that his land and house were taken by force and ‘nationalised’.
20. At his protection interview conducted on 19 September 2018, the applicant confirmed that the family house and land had been forcibly appropriated by the government with the assistance of the police. He claimed about 25 family homes were appropriated and he was arrested together with 10 other men. He also claimed to be a supporter of the OLF although not a member. He claimed that he handed out pamphlets and talked to other people about the situation for Oromo people and OLF objectives. Due to his moving around in his work as a

² UK Home office, “Country Information and Guidance Note – Ethiopia: Oromos and the ‘Oromo Protests’”, 5 December 2016, p.7, OGD7C848D102

³ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Ethiopia”, 28 September 2017, CISEDB50AD5795

⁴ UK Home office, “Country Information and Guidance Note – Ethiopia: Oromos and the ‘Oromo Protests’”, 5 December 2016, pp.7-8, OGD7C848D102

⁵ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Ethiopia”, 1 April 2016, CIS38A8012568

truck driver he was able to pass messages and distribute pamphlets to members of the group. He claimed the government found out about this and then he was imprisoned. During his imprisonment he was beaten and tortured and they tried to get him to admit that he was involved with the OLF. At the interview the applicant claimed that his house and land were appropriated about two or three months before he was arrested on suspicion of being involved with the OLF.

21. The applicant's evidence has been confused and lacking in clarity. However, I am satisfied there is a general consistency in the applicant's evidence about his family's land and house being appropriated, his arrest for some reason and his interrogation whilst in prison about OLF activities and his suspected involvement in these. Country information confirms that there was significant land appropriation of Oromo land on the outskirts of Addis Ababa by the government in 2011, with little or no compensation paid and, on occasion police arrested those who objected to forcible confiscation of their land⁶. Country information also confirms that during 2011 a significant number of people were arbitrarily arrested, particularly students, on suspicion of being involved in OLF protests and activities.⁷
22. In 2014 Amnesty International (AI) interviewed 176 Oromo refugees who had fled Ethiopia. AI reported that a range of behaviours or factors were interpreted as indicating dissent or arousing suspicion of hostility towards individuals. These included doing work that involves regular contact or influence with local communities and movement around or in and out of the region. Some targeting was geographical - based on areas where the OLF had been active. The significant majority of people interviewed by AI were individuals targeted on suspicion of holding dissenting opinions and who were accused of supporting the OLF⁸. Large-scale arrests took place in 2011.⁹
23. Based on the above country information and the applicant's reasonably consistent evidence that he was arbitrarily arrested, I am prepared to accept his evidence that his family home and land was appropriated at some time in 2010, and he was arrested and arbitrarily detained the same year or in 2011. I accept the applicant's evidence that he was not a member of the OLF, but that he discussed concerns about the treatment of Oromo people with others in the community, and [in his job] he moved around local communities. Given his statutory declarations made no mention of his activities of handing out pamphlets or passing messages to members of the OLF and he only raised this claim at his protection interview, I do not accept that he was actively involved in any activities relating to the OLF. However, based on the country information, I consider it is plausible that in 2010 or 2011 he came under suspicion of supporting or being involved with the OLF and was arbitrarily arrested and detained for reasons of his imputed political opinion.
24. The applicant claims to have been jailed [for] almost 2 years without any charges being laid against him and to have been beaten and tortured regularly during the period of his imprisonment. The delegate put to the applicant that at that time, when police arrested people on suspicion of being involved with the OLF, country information indicates that they were usually charged, taken to court and sentenced. The applicant stated that the police could do whatever they liked and did not need to formally charge anyone if they didn't want

⁶ UK Home Office, "Country Policy and Guidance Note: Ethiopia: Oromos including the 'Oromo Protests'", 27 November 2017, OG6E7028866

⁷ Human Rights Watch (HRW), "Ethiopia's Invisible Crisis", 22 January 2016, CX6A26A6E20472; Amnesty International, "'Because I am Oromo' Sweeping Repression in the Oromia Region of Ethiopia", 28 October 2014, CISA447F084839

⁸ Amnesty International, "'Because I am Oromo' Sweeping Repression in the Oromia Region of Ethiopia", 28 October 2014, pp.25-26, 45-46, CISA447F084839

⁹ Ibid, p.40

to. I have had regard to the 2014 Amnesty International (AI) report which states that there were numerous violations of the due process rights of detainees including detention without charge, trial or judicial review. AI reported that a significant majority of people they interviewed were not brought to court, charged or tried. Their political opinion or, more specifically, their alleged support for the OLF, the level and nature of that support, remained unproven. Nevertheless, people were detained for months or even years on this basis.¹⁰ The US Department of State also reported there were multiple reports of arbitrary arrest and detention by police and security forces throughout the country.¹¹ Based on this country information I am prepared to accept the applicant was arbitrarily detained and imprisoned without being formally charged or sentenced.

25. Detainees interviewed by AI often reported that torture took place during interrogation to extract confessions or other information. A high proportion of former detainees were never charged or taken to court but almost all were interrogated in detention and were regularly tortured.¹² Similarly, the US Department of State quotes the UN Committee against Torture as stating in 2010 that it was deeply concerned about numerous ongoing and consistent allegations concerning the routine use of torture by police, prison officers and other members of the security forces against political dissidents and alleged supporters of violent separatist groups including the OLF¹³. I am therefore prepared to accept the applicant was physically abused and mistreated during his period of imprisonment.
26. The applicant claimed that he was able to escape when he was taken for medical treatment to a health clinic outside the jail for his cough and/or eye problems. Again his evidence is somewhat confused in both his statutory declarations and at his protection interview. In one statutory declaration the applicant said that he had been taken to the hospital /health clinic twice for treatment of a cough and an eye condition and escaped the second time, and in the other statutory declaration he only mentioned one visit to the hospital outside the prison. At his protection interview he stated he was taken to the clinic because he was coughing a lot and had to have x-rays of his lungs. The delegate put to him that the UN Office on Drugs and Crime (UNODC) stated that health facilities in [Prison 1] were reasonable and there were doctors and interns present, and therefore his evidence that he had to leave the prison for medical treatment did not appear plausible. The applicant stated that whenever people were sick or critically ill they were taken to hospitals in the city and he was only saying what happened to him.
27. I had regard to the fact that the UNODC published its statement about health facilities in [Prison 1] in 2018¹⁴. The US Department of State reported that medical care in 2013 was unreliable in Ethiopian federal prisons and many prisoners had serious health problems in detention but received little treatment.¹⁵ DFAT states in its most recent country report that “access to detention centres for independent bodies for monitoring purposes is severely restricted”. It referenced a 2010 report stating that the UNHCR Country of Origin Research and Information (CORI) country report on Ethiopia notes that there are some reports of deaths in prison due to illness and poor health care. The 2014 Amnesty International report

¹⁰ Ibid, p.46

¹¹ US Department of State (USDOS), “Ethiopia Country Reports on Human Rights Practices for 2013”, 27 February 2014, p.5, OG1F18C9058

¹² Ibid, p.80

¹³ US Department of State, “Ethiopia Country Reports on Human Rights Practices for 2013”, 27 February 2014, p.3, OG1F18C9058

¹⁴ [Source deleted]

¹⁵ US Department of State, “Ethiopia Country Reports on Human Rights Practices for 2013”, 27 February 2014, p.4, OG1F18C9058

also refers to the lack, deprivation or denial of medical treatment to prisoners within the Oromia region. As the applicant claims he was transferred to a health facility from prison at the end of 2011, I place more weight on these reports than the UNODC statement of 2018 about health care within Ethiopian prisons. I am prepared to accept the applicant was able to escape [Prison 1] at the end of 2011 with the assistance of a friend who paid a bribe to the hospital staff.

28. In summary, I accept the applicant's family house and land were appropriated by the Ethiopian government sometime in 2010 and the applicant was arrested on suspicion of being a supporter or having involvement in the OLF and arbitrarily detained without trial in [Prison 1] for a substantial period of time up until the end of 2011. The applicant has not claimed to have been involved in any armed struggles against the government or political protests. I am not satisfied he was actively engaged in any OLF activities, or that he handed out pamphlets or acted as a messenger for the OLF, but find he was imputed with support for the OLF in the context of the situation in Oromia areas of Addis Ababa for Oromos at the time.
29. Although I have accepted the applicant suffered serious harm in 2011 for reasons of his imputed political opinion together with his Oromo ethnicity, I must assess whether there is a real chance the applicant will suffer serious harm now or in the reasonably foreseeable future. The situation for ethnic Oromos and for members and supporters of the OLF in Ethiopia has changed significantly since the April 2018 election of President Abiy Ahmed who is an ethnic Oromo himself.
30. Amnesty International, previously highly critical of the Ethiopian government, noted in February 2018 that President Abiy Ahmed had used his first parliamentary speech to make a promise to uphold the rule of law, ensure respect for human rights and usher in a new chapter for Ethiopia. There have been numerous media reports in 2018 about the political reforms progressed by President Abiy Ahmed, including the release of political prisoners, the lifting of the State of Emergency that had been imposed in Ethiopia in October 2016, the removal of designation of the OLF and other organisations as terrorist organisations in July 2018 and the provision of amnesty to individuals and groups who had been involved in armed struggle against the government.¹⁶ In response, the OLF declared a ceasefire and many OLF leaders returned to Ethiopia from Eritrea in July and August 2018 apparently without any negative consequences.¹⁷
31. Given leaders of the OLF and other opposition groups and individuals who had been involved in armed struggle against the government have been provided with amnesty and returned safely to Ethiopia, and the fact that I have found the applicant himself was never engaged in armed struggle or actively involved with any opposition group in Ethiopia prior to his arrest and imprisonment, I am satisfied, even if the applicant is identified as having escaped from prison, as no charges were laid and he was never sentenced by the courts there is no real risk he will be rearrested or imprisoned on his return to Ethiopia. Consequently, I am satisfied there is no real chance the applicant will suffer serious harm for reasons of his imputed or

¹⁶ Aljazeera, "Ethiopia's Abiy Ahmed and the survival of the ruling EPRDF", 29 May 2018, CXBB8A1DA28356; CNN, "Ethiopia lifts state of emergency two months early", 5 June 2018, CXBB8A1DA30860; Addis Standard, "Ethiopian Parliament Passes Amnesty Bill Into Law", 28 June 2018, CXBB8A1DA30438; *Council on Foreign Relations*, "Ethiopia's Long Political Transition Is a Lesson for Others", 08 May 2018, CXBB8A1DA28357; Aljazeera, "Ethiopia lifts state of emergency imposed in February", 5 June 2018, CXBB8A1DA30859; Aljazeera, "Ethiopia removes OLF, ONLF and Ginbot 7 from terror list", 5 July 2018, CXBB8A1DA30979; Aljazeera, "Ethiopia signs deal with Oromo rebels to end hostilities", 8 August 2018, CXBB8A1DA33218; *Deutsche Welle*, "Ethiopia signs peace deal with rebel group in oil-rich region", 24 October 2018, CXBB8A1DA37244; *Reuters*, "Ethiopian rebel group declares ceasefire in wake of reforms", 13 July 2018, CXBB8A1DA31524

¹⁷ *Reuters*, "Ethiopian rebel group declares ceasefire in wake of reforms", 13 July 2018, CXBB8A1DA31524

actual political opinion and/or his Oromo ethnicity if he returns to Ethiopia now or in the reasonably foreseeable future.

32. I accept the applicant departed Ethiopia illegally and that it is likely he will be identified as a failed asylum seeker on his return given he does not have a valid passport and will have to obtain temporary travel documents from the Ethiopian government. DFAT advises that Ethiopian authorities typically welcome voluntary returnees to Ethiopia who are not outspoken opponents of the government¹⁸. I am satisfied the applicant is not an outspoken opponent of the current government and has never been a political activist in Ethiopia and that there is no real chance he will be identified as such on his return. There is no information before me to suggest that the applicant has been involved in any political activism in Australia which may give rise to an adverse political profile in Ethiopia.
33. Although there have been some reports of authorities monitoring voluntary returnees for a period following their return, DFAT is not aware of any credible reports of voluntary returnees who are not active opponents of the government facing problems stemming from their status as failed asylum seekers.¹⁹ DFAT understands there are very few involuntary returns to Ethiopia of failed asylum seekers from Western countries and in its 2016 report states that the Ethiopian government is reportedly reluctant to accept involuntary returns²⁰. Nonetheless there is no information before me to indicate that involuntary returnees face any chance of serious harm on their return to Ethiopia, particularly under the current government since the implementation of significant political reforms and an orientation by the current President and government towards reconciliation²¹.
34. Having regard to all the applicant's specific circumstances in the context of the country information about the current situation in Ethiopia, I am not satisfied that there is a real chance of the applicant being seriously harmed by the Ethiopian authorities or by any other group or person for reasons of his actual or imputed political opinion, ethnicity, return as a failed asylum seeker or cumulative effect of any of these factors.

Refugee: conclusion

35. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

36. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

¹⁸ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Ethiopia", 28 September 2017, p.29, CISED50AD5795

¹⁹ Ibid.

²⁰ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Ethiopia", 1 April 2016, CIS38A8012568

²¹ Reuters, "Ethiopian rebel group declares ceasefire in wake of reforms", 13 July 2018, CXBB8A1DA31524

Real risk of significant harm

37. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
38. Real chance and real risk involve the same standard.²²
39. As discussed above, I am satisfied the applicant is of Oromo ethnicity, that his family land and house were appropriated by the government sometime in 2010 and that he was arrested and arbitrarily detained in [prison] for reasons relating to an imputed political opinion and suspicion of his involvement in the OLF. I accept the applicant's evidence that while he was detained he was physically harmed and mistreated and that he escaped from prison at the end of 2011. I am not satisfied the applicant was ever a member of the OLF or any other opposition group in Ethiopia, or that he engaged in any political activities with the OLF. I am satisfied that when he departed Ethiopia he was not the holder of a valid passport and as such his departure was unlawful. I am satisfied it is likely he will be identified as a failed asylum seeker on his return to Ethiopia.
40. Given the country information cited above about the recent significant political reforms and changes in Ethiopia under the current President and government, including the removal of the OLF as a designated terrorist group, the amnesty provided to OLF leaders and individuals who were involved in armed struggle against the government, I am satisfied there is no real risk the applicant will be adversely identified as a political activist, or that there is any real risk the applicant will suffer significant harm upon his return to Ethiopia. I am satisfied he will not be arbitrarily deprived of his life and that the death penalty will not be carried out on him. I am satisfied that he will not be subjected to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment on his return to Ethiopia now or in the reasonably foreseeable future notwithstanding his previous experiences in 2011.
41. I am satisfied there is no real risk the applicant will suffer significant harm on his return to Ethiopia now or in the reasonably foreseeable future as a failed asylum seeker who departed Ethiopia illegally.
42. Considering the treatment I have accepted the applicant will experience as a whole, I am not satisfied that there is a real risk that he will suffer significant harm based on the cumulative effect of his circumstances and profile.

Complementary protection: conclusion

43. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

²² *MIAC v SZQRB* (2013) 210 FCR 505

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.