

Political asylum claims in the united kingdom



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The Case of Amanuel and His Political Asylum Claim in The United Kingdom

I. Introduction

This paper will establish that Amanuel has an appropriate case for refugee status in the United Kingdom on the basis of a legitimate claim for political asylum. The analysis that shall provide the underpinning for this legal conclusion is developed upon the following framework - a summary of the salient facts extracted from the scenario as presented; a review of the applicable international, European Community and United Kingdom conventions, statutes, regulations and case law that govern such claims; a critique of the Home Office position that is provided as the UK government opposition to Amanuel's claim; the consideration of any further circumstances not specifically noted in the scenario that are submitted as operative in similar applications.

It is also submitted that were an appropriately constituted UK immigration tribunal to deny Amanuel's claim for refugee status based on his asylum claim, Amanuel would properly qualify for the alternative relief of a temporary stay based upon humanitarian reasons in accordance with UK law.

It is noted that while there is a graphic quality to the facts, care as been taken to approach the issues as clinically and as dispassionately as possible.

There is merit in the Home Office representation that on an international scale, the present case is not nearly the most serious of matters; asylum applications generally fit between a range of pure 'political' disagreements with a particular regime, to the wholesale displacement of peoples, acts of genocide and systematic abuses directed at identified groups within a particular country. Notwithstanding the relative lesser degree of physical

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harm experienced by Amanuel and his hear family, it is contended that the cumulative effect of the events presented provide an appropriate basis for asylum in the UK.

II. The relevant facts

The following facts are extracted from the scenario and presented as those essential to the legal issues framed by the statutes and the accompanying jurisprudence. Where an element of the scenario is not highlighted, such as Amanuel's status as a law student, it is presumed to be irrelevant to the asylum analysis.

(1) Ethiopia has a lengthy history of political unrest, prolonged sectarian violence and general national disharmony. It is a nation of extreme poverty where ruling parties are dictatorships that have generally have maintained control either as direct instruments of the military or otherwise backed by military rule. Amanuel's claim must be assessed in the context of this history; it is not an isolated example. The ongoing conflicts in neighbouring Eritrea have produced an additional humanitarian burden, as thousands of Eritreans fleeing their nation's civil war have fled to Ethiopia as refugees.

(2) Political asylum as a component of refugee claims has become an increasingly common aspect of this process throughout the world. The UK and European case law cited in this paper are only a representative sampling of the larger body of jurisprudence that considers this complex issue.

Further, Ethiopian refugee claims made to the UK have been a subject of specific Parliamentary concern; over 450 Ethiopian claimants were denied status in 2007.

(3) For the purposes of the present analysis, the Ethiopian Democratic Party (EDP) is presumed to be a legitimate political organization, i. e. one that is democratically constituted, with a party constitution or similar normal position that disavows terrorism or similar methods that are contrary to international law. Amanuel is not an applicant whose background or political involvement would otherwise disqualify him from the accepted definition of refugee.

(4) It is accepted that the EDP constitute a political opposition target for the Ethiopian government. Amanuel and his family are bona fide members of the EDP and their personal political convictions are legitimate self-expression; the actions undertaken by Amanuel in the course of his dealings with the government and its police arms are not a contrivance created to secure asylum; as noted below, some of the actions such as attending at a police station to complain may have been foolhardy, but they were not manufactured asylum seeking grounds.

The circumstances surrounding the disappearance of Saleh are consistent with this position. However, these particular facts only corroborate Amanuel's position (recognising they are largely hearsay assertions) , as opposed to constituting ' stand alone' persuasive evidence of the risks faced by Amanuel and his family in Ethiopia.

(3) The cumulative effect of the events in 2006 concerning the house search by the Ethiopian police is also supportive of Amanuel's position. As with the poorly corroborated evidence of Saleh's disappearance, the weight to be attached to the single incident involving the search of Amanuel's family is

limited. This proposition is advanced in recognition that the official reason for the search is a seemingly dubious pretext, but the acts of threatened and actual violence directed to Amanuel, his mother Mary and his young sister are themselves not sufficient grounds on which to build a refugee claim. The totality of the circumstances is important to the analysis provided below.

(4) The arrest and beating of Amanuel for his comments concerning the Ethiopian Constitution are relevant on two distinct bases. The first is that Amanuel's ability to freely express himself concerning the scope of constitutional protection is very limited; the statements that he made were legitimate self-expression in any Western democracy, a fact that is also not determinative of the issues. However, by being labeled a criminal and opponent of the governing regime is evidence that Amanuel's long term safety is directly related to his political views.

There is a second and insidious element to this portion of the scenario. It may be concluded that given the swift official response to Amanuel's comments made in the relative obscurity of a law class, the government are monitoring his words and actions. This circumstance is consistent with someone who is now a targeted political opponent, and when taken together with the other facts identified in the scenario, these circumstances provide a compelling prima facie factual basis on which to consider the legal elements of the asylum application.

III. The Legal Framework

As noted in the Introduction, the legal framework against which the identified facts must be applied has three constituent elements, the relative

importance of each to a UK application is considered below. These elements are the International law; the applicable EU provisions; UK statutes and related case law.

(1) International law - the United Nations Convention

The convention is a component of international law that has been incorporated by specific reference into EU and UK law. The definition of 'refugee' is central to Amanuel's position; he must establish that he has a "well-founded fear" of persecution that is a result of his political opinions; he must also establish that he is unable to obtain the requisite protection of his rights in Ethiopia from the domestic authorities.

(2) European Union refugee provisions

The EU provisions concerning asylum and refugee status are consistent with the general UN approach. In recent years, a significant body of EU case law has developed concerning the distinction between an asylum seeker and economic migrants. The Hague Programme has four distinct elements, of which the 'qualification Directive' is the most pertinent to Amanuel's case. The central theme of this jurisprudence has been the stated fear that bogus asylum seekers will subvert the legitimate asylum claims; the EU approach is therefore directed to the prevention of illegal immigration that is cloaked in refugee clothing.

The ECHR provides a clear prohibition against the forced return of any person to their country of origin by a member state where the subject may

be detained or tortured for their political views. By virtue of the Human Rights Act, 1998, this provision is submitted as operative in UK law.

(3) The UK Nationality, Immigration and Asylum Act (NIA) and the relevant case law

As a general proposition, the UK applies the UN Convention definition of refugee as stated above. The NIA also provides that an asylum claim must be made as soon as reasonably possible upon the claimant's arrival in the UK. It is noted that not only has Amanuel evidently complied with this provision, he brings proverbial 'clean hands' to his application, in contrast to asylum seekers who make their applications based on false travel documents or whose application is advanced after they are held by UK authorities for failing to comply with entry provisions.

A large subset of the UK case law decided in the past 15 years on refugee issues has centred on the overarching question of 'asylum overload' as a threat to the general stability of UK society. In particular, the Court of Appeal has noted that the often stated "right" to asylum is nothing of the sort. The Court has emphatically determined in a series of decisions that refugee status is not the equivalent of an international passport in the UK, the right extends only to the ability to apply, not the acceptance of the claim by the state.

The UK cases have also delineated the distinction between certain torture and imprisonment for one's political views on return to the country of origin, versus the degree of risk faced by the applicant of such a consequence. It is noted that as with all other elements of refugee claims, the UK courts do not

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assess the evidence to an absolute standard. The House of Lord's definitions as established in the 1988 decision of *Sivakumuran* are applicable – the fear of persecution must be “well founded”, with a “reasonable degree of likelihood” that the applicant will be subjected to such treatment, not proof beyond a reasonable doubt. The standard must apply whether the subject's return is voluntary or involuntary.

IV. The Home Office position – a critique

The Home Office position as expressed in the scenario requires careful attention. There are aspects of the position that are frankly illogical; these are specifically noted below. However, as with the general thrust of Amanuel's claim, the best approach to the Home Office views is to determine whether its cumulative effect, like that of the Amanuel claim, provides a persuasive basis on which to reject the asylum application.

The Home Office position at its highest may be summarised as one that acknowledges that Amanuel and his family face a difficult time in Ethiopia given their political views. The Home Office position must not be taken as a sanction or otherwise endorse the methods employed by the Ethiopian government to quell apparent legitimate dissent. For the Home Office, the matter is clearly one of degree. Amanuel's case, while regrettable in the extreme, does not in its eyes approach the stark circumstances necessary to grant the powerful remedy of asylum.

Implicit in the Home Office position is a recognition that asylum cases are plagued by a lack of third party verification or other independent evidence; it is generally the word of Amanuel as to the degree of his and his families'

difficulties with the government that are at the heart of his case. This is a legitimate concern but not an insurmountable barrier in the present application.

This observation is made in the notwithstanding the patent illogic of elements of the Home Office position. The most obvious of these are:

(i) The Ethiopian governmental ability to keep records is not proof of anything; if an enemy of the state were detained in contravention of international law, it is logical that the prisoner not be listed on an official record

(ii) Amanuel went looking for trouble by attending the police station, yet his pursuit of a complaint is evidence that Ethiopia provides a meaningful complaints process to its citizens

(iii) The apparent acceptance of 'normal police activity' in Ethiopia as including a beating or threats of physical violence

However, even with such circumstances stripped away from the Home Office position, the totality of the evidence and the conclusion that Amanuel's case falls short of the requisite legal standard cannot be rejected out of hand.

IV. Other Circumstances

This paper establishes that Amanuel's application must fall within the ambit of current UK refugee law. In the alternative, if he were to be unsuccessful in his application on the basis that the evidence tendered is not sufficiently compelling or it otherwise lacks sufficient third party verification, Amanuel

has established that on a humanitarian basis he ought to be permitted a temporary stay on humanitarian grounds.

Taken in totality, notwithstanding questions of sufficiency, there is no question that Amanuel faces a threat to his personal safety if he were compelled to return to Ethiopia. The immediate government response to his in-class opinions concerning the Ethiopian Constitution is powerful evidence in this respect.

V. Conclusion

It is submitted that no single incident as alleged by Amanuel in the present scenario will provide a sufficient factual basis on which a viable asylum application can be advanced under UK law, a jurisprudence that encompasses the relevant provisions of UN and EU asylum law.

When the facts are assessed in totality, it is submitted that Amanuel should succeed with his refugee claim. Whether his action in provoking the local government as discussed were foolhardy is not a disqualification of his claim. A plain and uninterrupted linkage can be made between his political views and the likely harm that will befall him if he must return to Ethiopia.