

**ASYLUM AND IMMIGRATION TRIBUNAL**

**HA (Conduct of hearing: evidence required) Somalia [2009] UKAIT 00018**

Heard at Field House: 05.03.2009

**THE IMMIGRATION ACTS**

Before:

**Senior Immigration Judge Freeman**

Between:

HA

Appellant

and

Secretary of State for the Home Department

Respondent

**Representation**

For the Appellant: James Collins (counsel instructed by Sheikh & Co)

For the Respondent: Mr S Kandola

*Where a party who was represented at the hearing seeks reconsideration on the basis of the way it was conducted, reconsideration will not normally be granted without evidence on the point in question by way of a statement of truth from the representative, to which should be attached either a copy of any note on the point made by the representative at or near the time of the hearing, or an explanation of why no such note is available.*

**DETERMINATION AND REASONS**

1. The Tribunal has ordered reconsideration of a decision of Immigration Judge Pullig, sitting at Hatton Cross on 22 September 2008, allowing an asylum and human rights appeal by a citizen of Somalia, who claimed to be at risk on return as a member of the minority Ashraf clan. The Tribunal thought the judge might have made an error of law in dealing with the case on the basis that the presenting officer before him had conceded that the appellant was an Ashraf.

The judge's typed record of proceedings makes it quite clear that the presenting officer *did* concede this, and Mr Kandola did not argue otherwise before me. There is no need to say any more about this case than that the judge's decision is upheld.

2. However, Mr Collins expressed understandable disquiet that this reconsideration had got as far as it has. The senior immigration judge who granted it on the papers had before her an assurance in the grounds that no such concession had been made. The author of those grounds was clearly acting on the contents of the typed memorandum of hearing by the presenting officer dated 23 September, which Mr Kandola produced before me. However that memorandum was not borne out by what actually happened.
3. Problems of this kind are said by Mr Collins to be appearing more and more often. One reason may be the short time allowed for applications for reconsideration. However, any party who suggests that something was said, or not said at the hearing, contrary to what appears in the judge's decision, needs to support that suggestion with evidence, if it is to be the basis of an order for reconsideration. An unsupported claim, by either side, in the grounds for review, is likely to be rejected without further inquiry. A party who was represented before the judge, when applying for reconsideration on a ground such as this should file with their application a statement of truth as to the facts claimed, together with either:
  - a) a photocopy of a contemporaneous note by their representative; or
  - b) an explanation as to why no contemporaneous (or near-contemporaneous) note is available.
4. Reconsideration is likely only to be granted in a case where this material appears to bear out the claim: the comments of the judge who heard the case will then normally be sought and circulated to the parties. If, following this or at any other stage, it becomes clear that the statement is not borne out by the facts, then the application for reconsideration, or the claim in question should at once be withdrawn. If that is not done, or if it appears that the claim should never have been made in the first place, then there is likely to be further investigation by the Tribunal, which may result in a report being made to the appropriate disciplinary authority.
5. If withdrawal of the claim in question effectively disposes of the basis for reconsideration after that has already been granted, then the Tribunal may be invited to deal with the reconsideration without a hearing.
6. In this case the original Tribunal did not make a material error of law and the original determination of the appeal stands.

A handwritten signature in black ink, appearing to read 'J. L. Freeman'. The signature is stylized with large, sweeping letters and a long horizontal tail on the final 'n'.

Signed  
Senior Immigration Judge Freeman