

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76250

REFUGEE APPEAL NO 76251

AT AUCKLAND

Before: J Baddeley (Member)

Counsel for the Appellant: I Uca

Appearing for the Department of Labour: No Appearance

Date of Hearing: 1 & 2 September 2008

Date of Decision: 1 December 2008

DECISION

[1] These are appeals against the declines of refugee status to a mother and her daughter. The mother (“the appellant”) is a national of Saudi Arabia. Her daughter (“the appellant daughter”) is a little over a year old. She was born in New Zealand and her father is a Somali national who has been residing in Saudi Arabia.

INTRODUCTION

[2] The appellant arrived in New Zealand on 26 August 2007. On 1 September 2007 the appellant daughter was born in New Zealand. On 15 October 2007 both appellants lodged a claim to refugee status. The appellant has, throughout these proceedings, acted as the responsible adult for the appellant daughter pursuant to s141B of the Immigration Act 1987 (“the Act”). On 29 November 2007, 5 February 2008 and 28 March 2008 the appellant was interviewed by the Refugee Status Branch of the Department of Labour. On 18 June 2008 decisions were published declining the grant of refugee status to both appellants. It is against these

decisions that their appeals have been lodged.

THE APPELLANT'S CASE

[3] The appellant's family in Saudi Arabia consists of her mother, two brothers and five sisters. Her father's family was originally from Somalia. He was born in Saudi Arabia and was a citizen of Saudi Arabia. In addition, she has one brother in the United Arab Emirates and a sister in the United Kingdom. The appellant moved from her birth place in the south of Saudi Arabia, at the time of her parents' divorce, when she was 8 years old. She moved to live with her father. The appellant had witnessed her father physically and verbally abusing her mother. It was he who initiated the divorce and the appellant believes that he also caused her mother to be imprisoned for a period.

[4] Her father was wealthy; he owned hotels in several countries. After the divorce the appellant travelled extensively with her father in Europe, the United States of America and the Gulf States. Although she knew that he had mistreated her mother, her father was good to the appellant and managed to persuade her that her mother was the one who had been at fault.

[5] Her father had traditional attitudes. He arranged the marriages of all his daughters. He did not encourage his daughters to be well educated but neither did he prevent them studying. One of her sisters became a psychologist and the others are nurses. Her father allowed the appellant to complete a one year course in computer studies in Syria in 1999 when she was 21 years old. After her return from Syria her father arranged her marriage to his friend who was much older than the appellant. The appellant agreed to the marriage (legally she could have withheld her consent) because she was frightened of her father and it would be disrespectful after her father had already promised her to his friend. She was still under her father's legal guardianship and control and he could have made her life miserable. She was unable to leave the house without her father or a suitable male relative such as a brother, nephew or brother-in-law.

[6] Her first husband was very wealthy. She enjoyed a luxurious lifestyle and he allowed her more freedom than her father had. She studied psychology for a year at the University in Cairo. She reluctantly gave up her studies at her father's insistence. She wanted to have children but could not fall pregnant. She and her husband sought medical advice which her husband then refused to follow. He

already had children and grandchildren and was not prepared to change his lifestyle.

[7] In October 2003, the appellant and her husband travelled to Canada. Some of her husband's children lived there and he owned a business in Toronto. Her husband, realising that the appellant was unhappy in the marriage, offered to divorce her. She agreed and they divorced amicably. He returned her dowry along with some additional money which she kept. Her father was not happy with the divorce. The appellant knew that it would be better to divorce in Canada where she would be free of her father's direct control.

[8] After the divorce, the appellant went to stay with a distant paternal relative and his wife for several weeks. It was from them she learnt of the possibility of applying for refugee status in Canada. She met many Somali people who had been granted refugee status. Her relative introduced her to a Somali man who worked as a secretary for a lawyer. The secretary advised her how to fabricate a claim for refugee status. He invented an identity for her as a Somali woman and provided her with a story on which to base her refugee claim. She learnt the story by heart and presented it at the interview with the Canadian immigration authorities. She was granted refugee status in May 2004.

[9] The appellant was prepared to lie to the Canadian immigration authorities in order to avoid returning to her father's control in Saudi Arabia. Her sisters advised her that he had planned another marriage for her. She remained living in Canada, attended an English language course and worked unofficially for a catering company.

[10] The appellant initiated the process of applying for permanent residence in Canada. On instructions from the lawyer's secretary she completed forms and paid \$500. After this she expected further communication from the Canadian immigration authorities but she received none.

[11] In March or April 2005, her sister in Saudi Arabia told her that her father was terminally ill with cancer and his death was imminent. The appellant had been in sporadic telephone contact with her family but had spoken to her father only once since arriving in Canada. She was overwhelmed by this news and left for Saudi Arabia three days later although she knew that she still had no legal right to return and remain in Canada.

[12] Her father died before she arrived home in Saudi. As a result of his death she came under the control of her three brothers. One of them Y became her legal guardian. She went to live with her mother and another of her sisters but her brother Y made all the important decisions for her in accordance with Saudi law and custom. Y would not allow her to work. She was financially dependant on her mother and sister. In order to work she had to obtain Y's consent. Some employers would disregard this requirement and she managed to obtain part-time work in a children's play centre without Y's knowledge.

[13] Towards the end of 2006, Y arranged the appellant's marriage to his friend F a Somali national (also a paternal cousin). He is a member of the *Isaaq* clan in Somalia. The appellant had met F previously. She did not like him and told Y that she did not want to marry F. Y ignored her. She could have maintained her refusal to marry F because the marriage could not proceed without her consent. Her mother was sympathetic to her predicament but reminded her that Y could make things a lot worse for her such as imposing even more restrictions on her movements. Marriage to F might be a better alternative to her. Reluctantly she agreed to the marriage and they were married in November 2006.

[14] The appellant's husband is a long distance truck driver. He was away from home three days at a time. She was left alone. He did not allow her to leave the house unaccompanied and did not like her to have visitors when he was not present. Their neighbours would advise him if she went out alone. She became bored and lonely. In defiance of her husband and without his knowledge she obtained part-time work at a women's branch of a bank with the help of her sister's friend who also worked there. Her sister's friend was able to circumvent the requirement that the appellant had to have her guardian's consent to be employed. Her days of work coincided with her husband's absences on his long distance driving job. She travelled to work in a chauffeur driven car with her sister's friend who had written permission from her father to do this.

[15] The appellant had been working at the bank for about a month when F came home unexpectedly to find her returning from work. He was furious, slapped her face and hit her with a wooden spoon causing her to lose balance and fall, breaking her ankle. F took her to a doctor. On their return home he confiscated her mobile phone and locked her in the house when he went to work taking away her keys to the front door which was the only exit from the home. Like other buildings in the neighbourhood their windows were barred to prevent access into

the house. He also took documents relating to her employment at the bank with him in a case in which he kept his own personal documents.

[16] After a few weeks her sister and nephew came to visit the appellant. They were shocked by her predicament and agreed to help her. They planned to obtain another set of keys by taking F's keys when he had returned to work and was sleeping after his long shifts. The appellant took F's keys as arranged and threw them out of a window to the nephew A who had them copied and returned the copies and the originals to the appellant within a short time. Their plan succeeded and she kept the copied keys hidden from her husband.

[17] When he was away she visited her sisters. The appellant and her sisters belonged to a group of woman who pooled their money and each month one member of the group was allocated the pool of money. When it was her turn the appellant used the money she received to help her to purchase tickets to leave Saudi Arabia. She also had her own savings. She decided that this was the only way she could escape her unhappy marriage and her brother's control. Her husband refused to divorce her and she was afraid that he would again be violent towards her.

[18] When she had complained to her brothers about F's violence her brothers M and Y asked F about this. Y believed that F was justified in hitting her because she had been disobedient. Her third brother in the United Arab Emirates left the matter to Y and M. M told F not to lock her inside the house but F disregarded this and M was too preoccupied with his own affairs to assist the appellant any further. Although her mother and sisters were sympathetic to her they could not oppose her guardian brother. They themselves were in unhappy marriages but chose to remain with their husbands rather than revert to the guardianship of their brother Y. Divorce would mean that they would be likely to lose their children who by law would revert to their father's sole custody.

[19] The appellant decided that her only way of escaping her marriage and the guardianship of her brother Y was to leave Saudi Arabia. She was aware that she faced difficulties in leaving the country. She was unable to leave without the written consent of a male relative or her guardian. By this time the appellant was eight months pregnant with her first child and she wanted to leave Saudi Arabia before her child was born. Her nephew A was willing to help her. He is an adult and a Saudi Arabian citizen. He purchased her air tickets. They planned that she should leave immediately prior to Ramadan when the airport was very busy with

travellers coming to celebrate the holidays. When the appellant and A arrived at the airport A introduced himself as the appellant's nephew and advised the official that he consented to the appellant leaving Saudi Arabia. The official did not require him to give his consent in writing. The appellant was aware that the usually strict procedures followed at the airport were likely to be relaxed prior to Ramadan when the officials were very busy. Her sister had experienced this when she returned to Saudi from abroad.

[20] The appellant left Riyadh airport legally on her own passport and without incident. The appellant arrived in New Zealand on 26 August 2007. She travelled to X by bus where she had made contact with some Somali people. They took her to Immigration New Zealand. She was then taken to hospital where her daughter was born on 1 September 2007.

[21] While still in hospital she was interviewed by a lawyer and a Confirmation of Claim form was completed. In the Confirmation of Claim form and accompanying statement the appellant gave a false account (as she had previously done in Canada) representing herself as a Somali citizen who had come from Somalia via Kenya. She did not reveal her Saudi citizenship or the correct account of her life in Saudi Arabia.

[22] The appellant produced a copy of her daughter's birth certificate. The certificate bears the appellant's false name and Somali nationality which was the identity under which she initially claimed refugee status. She also included a false name for her husband and her daughter. She did this because she did not want her husband to be able to trace her through official records. She has recently, since presenting her second and true claim to refugee status, filed an application for a second birth certificate containing the correct names of herself, her daughter and her husband. This documentation was produced to the Authority.

[23] The appellant relocated to Auckland where she lived in a women's refuge. There she discussed her situation with other refugees and learnt that the true account of her predicament could furnish the grounds for a claim to refugee status. She had received her Refugee Status Branch interview report in which various discrepancies and concerns were indicated and the refugee status officer had advised that a further interview was required. The appellant instructed her second lawyer to give the true version of events and filed a revised statement on 5 February 2008 which is the basis of the claim to refugee status as presented to the Authority.

[24] Since arriving in New Zealand the appellant has telephoned her siblings, mother and husband in Saudi Arabia. She has twice telephoned F asking for a divorce. He has refused and told her to return to Saudi Arabia. Her sister has told her that F married a second wife in October 2007. Her brother Y has told her to return to Saudi Arabia. He supports his friend F against the appellant and does not support her in seeking a divorce. If F did divorce her the appellant would revert to the guardianship of her brother Y and his strict control over her. Now she also has her daughter to consider.

[25] If she were divorced her daughter would legally be able to remain with her until the age of 7 years. After that, or in the event of the appellant's earlier marriage, her daughter would come under the custody of F.

[26] Furthermore, the daughter is not a Saudi citizen because her father is a Somali. She has no rights legally to enter or remain permanently in Saudi but like her father she might be granted renewable residence there. The appellant fears that F might take her child out of Saudi Arabia to Somalia.

[27] The appellant objects to the discrimination which she will be subjected to as a woman. She will have to obey either her husband or brother and comply with their restrictions over her movements, her ability to work, socialise and the custody and upbringing of her child. These restrictions, she contends, are serious violations of her human rights amounting to being persecuted. There is no state protection available from these breaches of her fundamental rights all of which are either enforced or condoned by the Saudi authorities.

[28] The Authority received submissions dated 28 August 2008, 10 October 2008 and 20 November 2008 together with attached statements and country information. This has been taken into account in reaching this decision.

THE ISSUES

[29] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[30] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[31] Before deciding the abovementioned issues, an assessment must be made of the appellant's credibility. The Authority is cautious in assessing the credibility of someone who has twice fabricated an identity and a history on which to base a claim to refugee status. However, it is also mindful that there may be valid explanations as to why an appellant has lied in the past. The Authority may be assisted in assessing credibility by considering the explanations for the previous fabrications, the way in which the previous fabrication was revealed, and whether there is documentary or other verification of the claim now being asserted.

Previous claims to refugee status

[32] The appellant made her first claim to refugee status at the suggestion of an older relative and in order to remain in Canada away from her father's pervasive control over her life and the restrictions imposed by the Saudi State. It was not suggested to her that she could apply for refugee status under her true Saudi identity. Her adviser provided her with a ready made and successful avenue for gaining refugee status. Having succeeded once, it occurred to the appellant that she could successfully use the same formula in New Zealand. It must be acknowledged that although the refugee status officer voiced concerns about aspects of her story it was she herself who disclosed that it was untrue. She did so after she had been in New Zealand for some months and when she felt secure enough in the women's refuge and in the company of other women refugees to reveal her true identity. In the course of revealing to the refugee status officer at the second interview her true identity and personal history she also volunteered the fact that she had previously been granted refugee status in Canada and provided an authority to allow the refugee status officer to make enquiries of the

Canadian immigration authorities. The refugee status officer had no other evidence to suggest that the appellant might have previously been granted refugee status.

The appellant's identity

[33] The appellant provided the following documentary evidence to the Authority in support of her claim to be a Saudi citizen:

- (a) A Saudi civil status card issued by the Ministry of Internal Affairs of Saudi Arabia dated 23 July 2006 recording her birth place, date of birth and bearing her photograph. It records her citizenship as Saudi.
- (b) A family booklet issued by the Ministry of Internal Affairs of Saudi Arabia on 8 August 2006. It records the membership of the appellant's mother's household where she was living prior to her marriage to F. Her father is noted as deceased and the names of his two wives, the appellant, three of her sisters and her younger brother aged 6 are included in the booklet.
- (c) Her marriage certificate; a three page document dated 22 May 2007. It shows her spouse F as being Somali and herself as a Saudi citizen. Her brother Y is described as a Saudi citizen and noted as her guardian. The marriage is described on the certificate as having "taken place under the guardianship of the brother". It is also recorded that her previous "divorce receipt" was issued on 10 November 2002 and makes directions as to her inheritance. The certificate further records: "It has been communicated to the husband and the wife that marriage does not mean permanent residence in the Kingdom is granted to the husband, and that he is exposed to travel (deportation) as required by the general welfare". (*sic*) This marriage certificate was not available to the refugee status officer.
- (d) Various certificates from educational institutions in Saudi Arabia and one from Syria which confirm the account she gave of her education.

[34] These documents confirm: the appellant's identity, her citizenship, her family details, the guardianship of her brother Y, her marriage to F a Somali and

her father's death. The education records confirm her account of her education in Syria and Saudi Arabia from 1990 to 1999.

[35] The Authority accepts that she is a Saudi citizen previously divorced and now married to F, a Somali and that her guardian is her brother Y who assumed guardianship of the appellant on the death of her father. The Authority is prepared to extend to the appellant the benefit of the doubt in respect of the mistreatment she experienced from her husband and the circumstances and reasons for her departure from Saudi.

Country information

[36] Women in Saudi Arabia suffer from pervasive gender based discrimination. They are not equal before the law. Restrictions are placed on their movement, dress, ability to work, rights over their children and legal status. As reported in Freedom House, *The Worst of the World – Saudi Arabia* (5 May 2008):

“Women are not treated as equal members of society and many laws discriminate against them. They may not legally drive cars, and their use of public facilities is restricted when men are present [...] according to interpretations of Shari'a (Islamic Law) in Saudi Arabia daughters receive half the inheritance awarded to their brothers. The testimony of one man is equal to that of two women in Shari'a courts. Unlike Saudi man Saudi women who marry non Saudis are not permitted to pass their nationality on to their children and their spouses cannot receive Saudi nationality. Saudi woman are not permitted to serve as lawyers and women seeking access to the courts must work with a male. The Committee to Prevent Vice and Promote Virtue, a semi-autonomous religious police force, commonly known as the Mutawa'een, enforces a strict policy of segregation between men and women and often uses physical punishment to ensure that woman meet conservative standards of dress in public. ...

The Saudi government has instituted a system whereby every Saudi woman must have a male guardian, normally a father or husband who is tasked with making a range of critical decisions on her behalf ... The Saudi authorities essentially treat adult women like legal minors who are entitled to little authority over their own lives and wellbeing. ... adult women must generally obtain permission from a guardian to work, travel, study or marry. Saudi women are similarly denied the right to make even the most trivial decisions on behalf of their children.”

[37] Country information demonstrates the necessity for women to obtain a guardian's consent to engage in even the most fundamental activities outside the domestic environment. See UN Convention on the Elimination of all forms of Discrimination Against Women (2007) Consideration of Report Submitted by States Parties: Saudi Arabia (29 March 2007) CEDAW/C/SAU/2:

“[Her] guardian is supposed to look after her, but he can also interfere in her life since his consent of whatever she is doing is, in most cases, vital. She has, for example, to get his consent for studying, work, travel, marriage, hospital admission, etc. He can also do things on her behalf such as going to government

agencies when collecting certain documents or letters, sending for drivers and domestic helpers, as well as many other things. A Saudi woman has to present a letter of consent from her guardian together with all the other needed documents when applying to an educational institution and work places.”

[38] To travel abroad a guardian’s consent is required as reported in Human Rights Watch *Perpetual Minors* (April 2008):

“No country restricts the movement of its female population more than the Kingdom of Saudi Arabia. The Ministry of Interior prohibits Saudi women from boarding a plane without the written permission of a male guardian. When travelling without a guardian the Ministry requires Saudi women to travel with yellow cards that stipulate the number of trips and for how many days their guardian has approved their travelling. The authorities also deny women the right to acquire a passport without a guardian’s permission ... Saudi Arabia remains the only country in the world that prohibits women from driving. The government’s restrictions on driving combined with limited affordable accessible public transportation options prevents Saudi women from fully participating in public life.”

[39] Although a woman’s consent is required for a marriage to be legal a woman does not have the same rights to divorce as her husband. As reported in Freedom House, *Women’s Rights in the Middle East and North Africa – Saudi Arabia* (14 October 2005):

“The husband is entitled to a divorce without explanation simply by registering a statement of his intention to the court and repeating it three times ... the wife by contrast may obtain a divorce only if her husband granted her the right of divorce at the time of the signing of their marriage contract. The majority of women in Saudi Arabia lack this right, in which case, a Muslim wife can only obtain a legal divorce by proving in court desertion or impotence on the part of her husband ... a woman is constrained in seeking a divorce or in leaving a husband who has taken a second wife because her children legally belong to the children’s father and so to leave him means to give up her children. For Saudi women nationals there are some mitigating factors such as family influence negotiating with or in some cases buying off either the court officials or the husband.”

[40] State protection is not available for victims of domestic violence or marital rape. As reported in Freedom House, *Women’s rights in the Middle East and North Africa: Saudi Arabia* (14 October 2005):

“Domestic violence and marital rape are problems that are well known in Saudi Arabia but never discussed publicly. Saudi political culture promotes a mythology of the Muslim family as the fundamental building block of society, in which each person is allocated rights and duties and derives justice through membership. At the same time the privacy of women is fused with ideals of family honour. Consequently society and media in general cannot talk about the reality of domestic violence without challenging public myths about themselves ...

There are no laws in Saudi Arabia that protect women from gender based violence, domestic violence or marital rape. These acts are not accepted grounds for divorce and one woman’s testimony of violence is often not accepted as evidence against her husband ... usually the burden to prove rape charges is on a woman victim who must produce all required witnesses. The only basis for a rape conviction is a confession with the evidence of four witnesses. Lack of government

support services and shelters for women victims of domestic violence and the absence of proper laws discourage women from coming forward with such cases.”

[41] Of particular relevance to this case are the restrictions on a woman’s ability to make decisions relating to her children as reported by Human Rights Watch in *Perpetual Minors – Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia* (20 April 2008):

“The Saudi government deprives women of the right not only to act as their own guardian but also to be the legal guardian of their children during marriage and following divorce. In the event of divorce the law automatically transfers legal and physical custody to fathers when boys are nine and girls are seven; even when women succeed in getting a court to grant them physical custody of their children (for example because the father is found unfit) fathers always retain legal custody and the right to make every decision for the children. Married and divorced Saudi woman alike told Human Rights Watch that they cannot open bank accounts for their children, enrol them in school, obtain school files or travel with their children without written permission from their children’s father.”

[42] Children of a Saudi woman and non Saudi father do not automatically inherit their mother’s Saudi nationality. They must petition for it as reported in Amnesty International *Saudi Arabia “Gross Human Rights Abuses Against Woman”* (27 September) (MDE 23057/2000):

“Discrimination is apparent in other aspects of family law ... in addition if a Saudi Arabian woman married a foreign national, the children must petition for Saudi Arabian nationality.”

[43] The Saudi authorities do not readily grant citizenship. In *Saudi Arabia: Information on laissez passer and the Al Enezi Bedouins* UNHCR (14 February 2001) it states:

“It is very difficult to get Saudi citizenship because the Saudi government is reluctant to provide the enormous benefits that Saudi citizenship entails eg tax benefits and health care.”

[44] Recent amendments to the Nationality Act passed in 2004 have liberalised the situation but these amendments are directed to systemise residency for the working expatriate community in Saudi Arabia. The appellant daughter does not have the relevant attributes to qualify under the new 2004 criteria (10 years residence, desirable skills and qualifications etc).

[45] The appellant daughter does not inherit nationality from her mother. She inherits her nationality (Somali) from her father. This poses obvious difficulties for the appellant daughter’s return to Saudi with her mother. Counsel for the appellant attempted to obtain information from the Saudi Embassy in Australia and the New Zealand Embassy in Dubai concerning this matter. The responses

received advise that the appellant daughter was not entitled to a Saudi passport. She would have to apply for a visa to travel with her mother to Saudi or alternatively possibly a transfer of the Somali father's residency for the daughter to enter Saudi.

[46] The appellant has a right of return to Saudi Arabia only. Her daughter, a Somali national, has no such right. It is possible that the appellant daughter would be granted a visa to enter Saudi Arabia but its renewal is not guaranteed. Neither research by the Authority nor enquiries by the appellant's counsel have resulted in any definite resolution to the issue of the appellant daughter's ability to return and remain with her mother in Saudi Arabia. This raises the prospect of the appellant daughter being removed from her mother (if she were able to accompany her to Saudi Arabia) at some undetermined date in the future.

[47] The country information cited above confirms the appellant's account of the restrictions she experienced on her travel, her ability to work, her movements within Saudi Arabia, her ability to make decisions affecting her child or to return to Saudi Arabia with her child or to seek protection from her husband's abuse.

Well-foundedness

[48] On return to Saudi Arabia the appellant will once again come under her husband's control (unless he grants her a divorce which he has refused to do). Because of the aforementioned restrictions on her ability to divorce him (see [39] above) it is unlikely that there will be a divorce. His control over her is not absolute. When he hit her and confined her to the house she complained to her family. The only individuals who could effectively intervene on her behalf were her two brothers. Although her brother M remonstrated with F he was too preoccupied with his own family's affairs to prevent F re-imposing the restrictions on her movement. Her other brother Y who had the greater authority (previously being her legal guardian) was more sympathetic to F than to the appellant because according to his strict traditional outlook the appellant deserved punishment for having disobeyed her husband. On return to Saudi Arabia she will be unable to leave her marital home without her husband's permission. If she does so in his absence she still has to be accompanied by an appropriate male relative. This severely restricts her ability to socialise or to take her daughter outside the home.

[49] She will be unable to obtain employment without her husband's consent and his past conduct shows that it would be extremely unlikely that this would be

forthcoming. She is essentially trapped in an unhappy marriage and could be subjected to further physical abuse from which she would be unable to obtain State protection and is unlikely to obtain any effective intervention from her family.

[50] If she were divorced she would be returned to the predicament from which she sought to escape through marriage; the restrictive control of her authoritarian and traditional brother. When her daughter reaches the age of 7 she will revert to the husband's legal custody.

[51] The Authority concludes that the pervasive gender-based discrimination which results in the appellant's inability to have any meaningful control over essential aspects of her life is a serious violation of her core human rights. There is a real chance that she will be subjected to this discrimination amounting to serious harm on return.

The Convention ground

[52] Country information provided by the appellant demonstrates that the *Isaaq* clan to which the appellant daughter's father belongs is a dominant clan in Somalia. She would inherit her father's clan membership. For many *Isaaq* there is no well-founded fear of persecution in Somalia. However, the appellant daughter is one year old. She is unable to travel anywhere by herself or even communicate her clan identity. Her mother has no right to enter and remain in Somalia with her. She has no other kin or other support networks available to her. For over a decade Somalia has been in a state of often violent civil unrest. There is no central government from which she could gain protection. As a very young female child without family or other protective networks she would be at risk of physical harm, abuse and neglect. The reasons for her predicament lie in her membership of a particular social group: an unaccompanied infant female without any family or other support network and unable to access State protection.

[53] The appellant is a woman who will not accept the control her male relatives (whether husband or brothers) have asserted over her in the past and will continue to exercise over her on her return to Saudi. In particular, she refuses to accept their control over her choice of spouse, her movements outside her home, her ability to work and travel and make decisions for her child. She objects to her brothers' and husband's view that she can legitimately be punished for refusing to obey them. Their attitudes (and her inability to seek redress or to avoid the

imposition of the restrictions imposed on her) is condoned and actively enforced by the Saudi authorities.

[54] The Authority has recently considered the predicament of women who belong to a society in which women's fundamental roles, rights, duties and status are determined by her gender. Where a woman such as the appellant refuses to accept the rights and duties ascribed to her and where these are enforced or condoned by the State her objection may be construed as her political opinion, depending on the context of the case. In *Refugee Appeal No 76044* (11 September 2008) the Authority states at [84]:

“Account must also be taken of how power is distributed and exercised in the particular society. The political opinion ground must be oriented to reflect the reality of women's experiences and the way in which gender is constructed in the specific geographical, historical, political and socio-cultural context of the country of origin. In the particular context, a woman's actual or implied assertion of her right to autonomy and the right to control her own life may be seen as a challenge to the unequal distribution of power in her society and the structures which underpin that inequality. In our view such situation is properly characterised as “political.”

[55] In *Refugee Appeal No 76044* the Authority acknowledges that it is following an earlier line of cases where the Authority had followed a gendered interpretation of political opinion (refer *Refugee Appeal No 20393/93 re NM* (12 February 1996) and *Refugee Appeal No 71427/99* (16 August 2000)).

[56] Following the same gendered interpretation of the political opinion ground, the Authority finds that the appellant's well-founded fear of being persecuted arises from her political opinion.

[57] While the previous finding that the appellant's claim succeeds on the political opinion ground, makes it unnecessary to consider any further grounds, the Authority also finds that the claim succeeds on the particular social group ground. As a woman in Saudi Arabia the appellant is assigned an inferior social status which limits her life in the ways described above. This amounts to pervasive discrimination which breaches her fundamental rights. The reason for this discrimination is her gender. The particular social group relevant to the claim is that of women in Saudi Arabia.

[58] Having established a well-founded fear of being persecuted for a Convention reason, recognition as a refugee can only be withheld from the appellants if they can genuinely access domestic protection which is meaningful. The first step in this enquiry is to establish whether the appellant can practically

access domestic protection that is safe and legal. In Somalia there is no effective government and therefore no State protection available to the appellant daughter. In Saudi Arabia the appellant does not have freedom of movement. Were the appellant to circumvent her guardians' control (as she has in the past) there is nowhere in Saudi Arabia where protection exists from the very practices she is fleeing which are the cornerstone of Saudi society and enforced or condoned by the authorities. There is no internal protection available for either appellant.

[59] The Authority finds that both appellants have a well-founded fear of being persecuted for Convention grounds.

CONCLUSION

[60] For the reasons mentioned above, the Authority finds the appellants are refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeals are allowed.

J Baddeley

J Baddeley
Member