

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76293

AT AUCKLAND

<u>Before:</u>	B A Dingle (Member)
<u>Counsel for the Appellant:</u>	J Hindman
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	7 April 2009
<u>Date of Decision:</u>	4 August 2009

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour, declining the grant of refugee status to the appellant, a national of Somalia.

INTRODUCTION

[2] The appellant is a married man in his mid-30s with one child. Neither his wife nor their child is present in New Zealand.

[3] The crux of his claim is that he cannot return to Somalia for fear of being persecuted for reasons of his clan affiliation. The appellant claims to have lived in South Africa since 2000 and gained recognition as a refugee there. He believes that violence in South Africa against non-citizens, particularly Somali and Zimbabwean nationals, means that he is at risk of serious harm in South Africa. In

particular, he claims that should he be required to return to South Africa, he will not be able to access sufficient employment opportunities to ensure his basic living needs are met and that he will be at risk of serious physical harm in the form of anti-refugee or anti-Somali violence.

[4] The issue to be determined in this case is whether or not the appellant has given a credible account.

THE APPELLANT'S CASE

[5] The account which follows is a summary of the evidence given by the appellant in support of his claim to refugee status. The credibility of the evidence is assessed later in this decision.

[6] The appellant is one of five children born to his parents and he has two step-sisters who were born to his father and his second wife. He was born in Mogadishu and lived there with his parents until he was approximately 17 years of age. The family follow the Sunni Muslim faith. On his father's side, the appellant is affiliated with the Darod clan, Ogaden sub-clan, Reer Abdile sub-sub-clan, which originates from the Afmadow area in southern Somalia. His mother's family shared those clan affiliations and was also from the same area in southern Somalia.

[7] For the purposes of this decision, the appellant's life between 1973 and late 1990 was unremarkable.

[8] In early 1991 when the civil war broke out in Somalia, the appellant's family found themselves in the midst of sustained inter-clan fighting. The appellant's father was a police officer and the family resided in government housing. Because much of the early violence in Mogadishu was targeted at government buildings, the area around the appellant's family home was hit hard.

[9] Within weeks of the outbreak of violence, the appellant's father resolved to take the family out of Mogadishu and travel to his clan area in southern Somalia which was, at that time, relatively peaceful. The family travelled by truck with another family, taking with them only few personal belongings. As they headed south through Mogadishu, the appellant's mother was hit by cross-fire and she

died within hours. The family buried her once they escaped Mogadishu and then immediately continued their journey south.

[10] When they reached Afmadow, the family's clan welcomed them and provided them with accommodation in a house near the mosque. At that time, Afmadow was under Ogaden clan control. The family subsisted on rations supplied by aid organisations and two of the appellant's brothers found employment.

[11] In October 1997, the appellant returned to Mogadishu on his father's direction to collect his two half-sisters. The appellant travelled to Jilib, which marked the control line between the Darod and the Hawiye clans. In order to facilitate his travel through the Hawiye clan area, the appellant met with the step-mother's brother in Jilib who was to act as his protector. They travelled in goods trucks to Mogadishu. The appellant was then delayed in leaving Mogadishu because of renewed fighting. While there, he met and married his first wife, FF. The marriage was held secretly because FF's family had not been consulted. Neither did the appellant inform his family because he believed they would be disapproving of his wife's clan affiliations which were not aligned with their own. The appellant did, however, tell his step-mother and two half-sisters of the union.

[12] At the end of January 1998, the appellant returned to Afmadow with his two step-sisters. Again, they were accompanied by the step-mother's brother as far as Jilib. Once home, the appellant was unable to contact his wife because the only method of communication was by radio telephone and the appellant did not want his father to know about the marriage.

[13] In early 1999, the appellant again travelled to Mogadishu, this time to try and see his wife and bring her back to Afmadow. He told his father that he was travelling to Jilib to see relatives and did not disclose his true intention. As with the previous trip, the appellant used his step-mother's brother to travel with him as his protector. The appellant stayed with his step-mother in Mogadishu but was unable to make contact with his wife. Her family had heard rumours of the marriage and had contacted the step-mother to express their anger about it. FF had been taken from her family home to another area and could not be located by the appellant. The appellant remained in Mogadishu for approximately 10 months because fighting obstructed his travel route.

[14] In early January 2000, the appellant heard through his step-mother that his father was ill and receiving medical treatment in Kismayo. The appellant immediately travelled to where his father was staying at a relative's house. The appellant stayed for two days but on the third day, when the appellant was in the central city, fighting broke out between the Ogaden and Mareehan clans. The outbreak of violence prevented the appellant from returning to his relative's house and he was forced to flee in the direction of Kismayo port. At the port, people were boarding boats to escape the violence. The appellant boarded a small transport boat, along with approximately 20 others. The boat left the port and travelled towards Zanzibar where the boat was originally from. At the Zanzibar port, neither the goods being shipped nor the Somalis were able to be unloaded. They remained in port for approximately two weeks during which time they survived by eating some of the cargo onboard.

[15] After two weeks, the owner of the cargo decided to travel on to Mozambique, where he had trading contacts and intended to off-load his cargo. The boat reached Bidra port in Mozambique, where the Somali asylum-seekers and the cargo were offloaded. The appellant and his fellow travellers were taken by other Somalis into the town with the intention that they would apply for refugee status in Mozambique. However, several of them discussed the possibility of immediately travelling on to South Africa where they had relatives. The appellant heard them talking about employment opportunities in South Africa and decided to accompany them there.

[16] The following day, on about 22 February 2000, the appellant and five other Somalis arrived in Maputo, the capital of Mozambique. They made their way to a community of Somali people and were introduced to a people smuggler who agreed to arrange for their transfer across the South African border for the sum of US\$50.

[17] The next day, they made the trip to Johannesburg. They travelled in vans to the border, crossed the border illegally and boarded more vans for travel to Johannesburg. There, the appellant was taken to another Somali community where people explained that applying for refugee status in Cape Town would be a much faster process. The appellant was then provided with a bus ticket to Cape Town, leaving the following day. When he arrived in Cape Town, he was met by two Somali men who had been alerted to his arrival by those in Johannesburg. He

was taken to an address in Belleville in Cape Town where the men lived and the appellant lived there with them for the following four years.

[18] The day after his arrival in Cape Town, the appellant applied for refugee status. He filled in a small application form with his name, nationality and the reason he had travelled to South Africa, whereupon he was provided with an asylum-seeker permit. After three months, the appellant attended an interview for refugee status at the Department of Home Affairs office. At the end of the interview, he received an extension for a further three months to his permit.

[19] In September 2000, the appellant was formally recognised as a refugee and provided with a refugee identity document which was renewed several times during his stay in South Africa. The appellant has provided his most recent recognition of refugee status document from South Africa which is valid from 2 January 2007 to 1 January 2009.

[20] Between 2001 and 2004, the appellant was employed by a fellow Somali who owned a shop. During that time the appellant was subjected to various forms of harassment and intimidation by South Africans. He frequently received verbal abuse relating to his Somali nationality and his temporary immigration status in South Africa. On one occasion, he was spat at while travelling in a train. The appellant did not respond to these actions because he feared if he did, he would be seriously physically harmed.

[21] In mid-2004, having saved approximately 5,000 South African rand, the appellant joined with another Somali man, BB, from the same sub-clan and they established a grocery store in M town approximately 65km from Cape Town. When the shop opened, there were incidents of harassment, including stones and eggs being thrown at the shop or verbal abuse being directed at the appellant and his business partner. They rarely took any action in response to the harassment because they believed that they would be at risk of more serious problems if they did so. On occasions when they did telephone the police, they would take hours to respond and then would be unable to take any action because the perpetrators had long since departed the scene.

[22] In approximately mid-2004, the appellant was informed by his brother, HH, that his wife, FF, had been killed during fighting in Somalia.

[23] In early 2005, the appellant met his second wife, AA, who was also from the Ogaden sub-clan of the Darod clan. AA had come to South Africa from Kenya where her mother still lived in Nairobi. In November 2005, the appellant and AA were married in a Muslim ceremony, after which they returned to live in M town.

[24] On 19 December 2006, the appellant's daughter was born.

[25] Also in December 2006, the appellant made contact with a South African immigration officer whom he had been told was able to provide South African travel identity documents to individuals. He provided a photograph and photocopies of his refugee identity certificate and paid the officer US\$1,000. In July 2007 he was issued with a refugee travel document, a document which was no longer being officially issued by the South African government.

[26] In February 2007, the appellant was attacked one evening while minding the shop. Three men entered the shop and one of them produced a handgun and threatened the appellant with violence if he did not give them money. The appellant handed over what money he had, at which time the attackers started beating him, saying that he must have more money and should hand it to them immediately. He was hit with the butt of the handgun and sustained a broken tooth and broken rib as a result of the attack. The men then looted the shop, taking meat and cigarettes, before they left.

[27] The appellant rang his business partner who then arrived with several other Somali shop owners. They transported him to the hospital where he received medical treatment. The appellant did not report the incident to the police because he feared that if he did so, there may be further repercussions against him or his family.

[28] The appellant and his business partner began closing their shop at 6pm to try and minimise the risk of further violence against them. However, this reduced the turnover and the shop became much less profitable.

[29] As a result of the attack on the appellant, his wife became extremely concerned about their safety and wanted to return to Kenya. It took the appellant some months to save sufficient funds to send her back, at which time he took her to Johannesburg and arranged with an agent for her to travel to Kenya overland. On arrival in Kenya, the wife and child stayed with the wife's mother in Nairobi. At

some stage after that, however, the wife and child travelled to the Hagadera refugee camp in the Dadaab region, near the Somali border, where they remain. They travel twice a month by bus to Nairobi to access medical treatment. Sometimes the wife's mother lives in the refugee camp and sometimes she stays in Nairobi. The wife's brother lives in the camp.

[30] The appellant continued running the shop until April 2008. During the intervening period, incidents of verbal harassment and stone-throwing continued, but there were no further violent attacks

[31] By April 2008, the appellant had accumulated sufficient funds to finance his travel overseas. Using his South African travel document, he departed South Africa for Beijing from where he hoped to be able to travel to Europe. He had no difficulty departing South Africa or entering China. He arrived in Beijing on 22 April 2008 and went to an hotel. The next morning, he met a Somali student at the reception area who gave him information about arranging travel to Europe. He tried to purchase airline tickets for France and The Netherlands but both embassies of those countries refused to issue visas when they saw that he was travelling on a temporary South African travel document and was a refugee (noted in the document). On further research, he found that he could travel to Brazil and New Zealand on a South African passport.

[32] The next day, on 23 April 2008, the appellant was contacted by BB who informed him that the shop had been looted and ransacked the previous day. He told him that there was nothing left in the shop and that his own life was in danger. BB said that he had stayed in a police station due to the breakdown of law and order. Because of the problems with the shop, the appellant realised that he would no longer be receiving his share of money from the shop to fund his ongoing travel. He therefore contacted a cousin, CC, in the United States and requested financial help to fund the next part of his journey.

[33] Some time in May 2008, CC sent the appellant US\$1,900 which he used to buy a ticket to Fiji. He planned to buy his ticket from Fiji to New Zealand once he arrived in Fiji in an attempt to avoid questions from immigration officials about why he was travelling to New Zealand.

[34] In early June 2008, he departed China and flew to Fiji where he stayed at a back-packers' hostel in Nadi. The appellant then purchased a one-way ticket for Auckland, New Zealand.

[35] On 22 June 2008, he departed Fiji, having lied to officials about his intentions to buy a ticket from New Zealand to South Africa once he arrived here. En route to New Zealand, he disposed of his South African travel document for fear that, if he kept it, he would be returned to South Africa.

[36] The appellant claimed refugee status at Auckland International Airport upon arrival. He was detained pursuant to s128 of the Immigration Act 1987 and transferred to the Mangere Refugee Resettlement Centre. During his arrival interview at the airport, he claimed to have left Somalia very recently and to be at risk of being persecuted there because he had worked as an interpreter in Mogadishu.

[37] On 25 June 2008, the appellant lodged his Confirmation of Claim to refugee status with the RSB.

[38] On 27 June 2008, the appellant's business partner, BB, made a formal complaint to the South African police in M town, reporting the robbery of the shop on 22 April 2008. He had delayed making a complaint because he had been transferred from the M town police station to a temporary refugee safety camp in Cape Town for some weeks.

[39] The appellant keeps in contact with his wife by mobile telephone. He also has intermittent contact with his brother, HH, who lives in one of the refugee camps and who tells him about the rest of the family.

[40] On 31 July and 1 August 2008, the appellant was interviewed by a refugee status officer. A decision declining his application was issued on 21 November 2008 and it is from that decision that he now appeals.

Other material submitted

[41] The Authority and the appellant have been provided with the files of the RSB, including copies of all documents submitted by the appellant at first instance.

[42] On appeal, the appellant also submits the following:

- (a) A marriage certificate, issued under the auspices of the Muslim Judicial Council, dated 6 November 2005;
- (b) A photocopy of a South African driving license bearing the appellant's name;
- (c) A copy of an email request sent by counsel to UNHCR, Kenya, requesting information about the appellant's family in the refugee camps. Counsel informs that no reply to her email has been received;
- (d) A copy of a document (and the email to which it was attached) purporting to be UNHCR Certification that the appellant's wife and daughter "are refugees under the UNHCR Mandate in Kenya" (dated 17 March 2009). Although the document appears to be from the Dadaab sub-office it does not state whether they are in a refugee camp or simply registered as refugees;
- (e) Three envelopes; two from the appellant's wife in Kenya and one from an associate in South Africa.

[43] Under cover of a letter on 25 February 2009, the Authority received a Memorandum of Counsel with attached items of country information. A further Memorandum was submitted on 11 May 2009 along with a DVD of audio-visual material recorded from *YouTube* and relating to xenophobic attacks in South Africa.

[44] All of this material has been considered and, where relevant, will be referred to below.

THE ISSUES

[45] 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."

[46] 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

[47] Before turning to address the principal issues identified, it is necessary to determine whether the appellant has given a credible account. In this regard, the Authority concludes that the account given cannot be believed, for the reasons which follow.

Living and working in M town

[48] The appellant was unable to give any meaningful detail about the areas of M town where he lived and worked despite his claim to have lived there for nearly four years.

[49] On the first day of the hearing, he told the Authority, without hesitation, that the address of his shop was No 121 "K Street". On the second day of hearing, he changed his evidence and said it was at No 112 "T Street" – a totally different and dissimilar street name. When asked to explain the discrepancy he stated that he was confused on the first hearing day and he had mixed it up with another street. He could not explain what "other" street he had become confused with or why. He explained his street number inconsistency by saying that he had got the numbers back to front. The Authority finds that, given his ability to understand a reasonable level of English (confirmed by his own indication in the Confirmation of Claim form and at the outset of his RSB interview that he speaks, reads and writes English) and his length of residence in M town, his lack of knowledge indicates that his claim to have lived there is not true.

[50] The inconsistencies in the street name were compounded by other discrepancies in his evidence about the area. On the first day of the hearing the

appellant drew a map indicating the location of his shop and the various streets which led from it onto the nearby main X road. The map clearly indicated that from the shop there were three turns (onto other streets) before reaching X road. He later contradicted his map when he said that the street on which the shop was located joined directly with X road. His map was also inconsistent with an aerial view of the town sourced by the Authority from Google Earth (which satellite photographs were taken during the claimed tenure of the appellant in M town). When shown the Google Earth view the appellant agreed it was accurate and could not explain his earlier map.

[51] The appellant was also unable to give accurate evidence about the location of his flat. On the first day of hearing he insisted that the block of flats in which he lived was not located on or near a street with a name. When pressed to provide the name of the nearest street he gave vague answers such as: it was the road the buses travelled down; that the flats were known by all the locals (impliedly that there was no need for a street name); there were no signs in the area or that he just did not really take any notice of the street signs. When the Authority produced the Google Earth view which indicated street names, including that which bordered the block of flats he claimed to live in, the appellant did not dispute the name of the road but could not explain his ignorance of it. Again he tried to explain it by saying that the street names were written down at pavement level and therefore he was not aware of them.

[52] Furthermore, on the first day of the hearing he stated that the shop closest to his was 300 metres away. In contrast, he had told the RSB that the closest shop was only 10 to 15 metres from his shop. When asked about the discrepancy he said that he was just 'estimating' the distances and did not count how far it was, impliedly asserting that there was no material difference between the two stated distances. The Authority rejects the explanation because throughout his evidence the appellant displayed a clear understanding of compass direction, distance and space. In this context there is a significant discrepancy between 15 and 300 metres and the appellant could not sensibly explain it.

[53] The appellant was in fact unable to name any of the roads in the suburb of his house or shop and could only name the main road which went through another part of town. When asked to provide any street names in his suburb his answers became demonstrably evasive. He variously stated that the suburb was a small

place (implying that therefore there were no streets with names), that the roads were only small narrow roads (an assertion not borne out by the Google Earth view) and that he did not really walk about the place. Finally, he blamed his ignorance on the fact that he was a refugee and the ethnic and other tensions in the area meant that he mostly stayed in his house or shop. The Authority rejects all of these responses as weak attempts to explain his unfamiliarity with the suburbs in which he claimed to live and work. Furthermore, his claim not to walk around the area was inconsistent with his evidence to the RSB that he walked from his flat to the shop every day. He could not sensibly explain that discrepancy either.

[54] Considered in the context of his claimed length of residence in the area (some four years), and his evidence to have driven about town to purchase goods for the shop, the Authority finds his lack of any meaningful knowledge of the area undermines his claim to have lived and worked there from 2004 to 2008. While he did appear to have a rudimentary knowledge of the area (such as might have been gleaned on a short visit or by looking at a map), that knowledge was more detailed on the second day of hearing, giving the clear impression that he had undertaken some of his own research between the hearing days in order to present plausible evidence. The Authority has no doubt that the appellant has not lived or worked for any number of years in M town. It necessarily follows therefore that he did not own and run a shop there and was not subject to xenophobic attacks at the shop. The appellant's account of his life in M town from 2004 to 2008 is wholly rejected.

Claim that wife lives in refugee camp

[55] The appellant's claim that his wife lives in a refugee camp in Kenya is undermined by several aspects of his account.

Documents sent by wife from Kenya

[56] The appellant has submitted several items sent by his wife in Kenya including a document purported to be from the UNHCR sub-office in Dadaab confirming that she (the wife) and the daughter are registered refugees with UNHCR (a copy of the same document had been earlier sent as an email attachment and submitted to the Authority).

[57] The Authority has several concerns with the document and envelope

submitted. First, as the appellant himself pointed out, the following personal details of his wife and daughter are incorrect: the wife's birth date and birthplace and the daughter's birth date. The appellant was not able to explain why these details were inconsistent with those he had previously given. He simply asserted that somehow the UNHCR office had mistakenly entered the incorrect details.

[58] The appellant also submitted an envelope (Exhibit "D") which he claimed had contained the original UNHCR documents sent by his wife. He claimed that the envelope proved that his wife was resident in the Hagadera Refugee Camp because the back of the envelope contained the following information:

From: [wife's name]
Hagadera Refugee Camp
P O Box 12
Daadab Kenya

[59] He said that the wife had sent the envelope from a town nearby the Daadab camp where she was living. However, the stamp bore the same cancellation as another envelope that she had sent from Nairobi. When the Authority asked him to explain why the two envelopes had exactly the same cancellation on them, indicating that they had been sent from the same post office, he claimed not to know how the Kenyan postal system worked. The Authority's research establishes that the cancellation is that of a particular post office in Nairobi. When the Authority disclosed this to the appellant and suggested that his wife had sent the envelope from Nairobi and not the refugee camp, his evidence became mobile. He suggested that there were two ways of sending letters and that as an alternative to his wife sending the letter from Dadaab town, she could also give the letter to someone travelling to Nairobi and get them to send it from there because that might be a faster method. He said that he thought that was what his wife had done.

[60] The Authority rejects this suggestion. It is inconsistent with his earlier unequivocal evidence that she had sent the letter from the town near the refugee camp. Further, the coincidence that the unknown person who had transported the letter to Nairobi would then send it from the very post office that all of the wife's previous mail had been sent from is too convenient to be believed. The Authority also finds it highly unlikely that the wife would have entrusted these important documents to someone to carry overland and send in Nairobi when she could send them herself from the nearby town.

[61] The fact that the envelope contains the address of the refugee camp when it was clearly sent from Nairobi indicates that the intention of providing the envelope was to mislead the Authority as to the location of the wife. The Authority finds that the envelope was sent from Nairobi and that it cannot rely on the content of the documents in any respect. This finding supports the Authority's view that the wife does not live in a refugee camp and is likely to be residing in Nairobi with other family members.

The wife's travel within Kenya

[62] Further underlining the view that the wife does not live in a refugee camp is the implausible claim that she is able to travel to and from Nairobi at least twice a month, with her daughter, and sometimes her mother, to facilitate all three of them receiving medical care. The appellant claims that his daughter suffers from serious asthma and needs medical attention on a regular basis. His wife and her mother also require frequent medical care. The Authority finds this claimed travel inherently unlikely for several reasons.

[63] First, the country information indicates that it is difficult for refugees residing in the camps to travel throughout Kenya. An individual must obtain a "movement pass" which is provided by UNHCR and authorized by the District Officer. The movement passes are time-limited and, according to the information, are typically issued for one month when issued on the basis of medical necessity. (See UNHCR "Analysis of Refugee Protection Capacity: Kenya" April 2005, para [180]-[183]). They are difficult to obtain and sometimes are not issued at all. The country information cannot be reconciled with the appellant's evidence. When first asked (and before the country information was obtained and disclosed) he said that the wife and daughter travelled freely between the camp and Nairobi using the public bus system. He stated that they did not have or need a travel or movement pass and nor did they have any difficulties during their frequent travels. When the country information was disclosed, he became vague about his wife's particular situation and said that he did not know whether she had a movement pass or not. However, he was able to give detailed information about how his wife caught the bus from Dadaab to Nairobi and that the buses were operating specifically so that camp residents could travel, indicating that information about the trips was shared between them. He could not explain why he did not know whether she had to obtain a movement pass or why he had earlier stated that she did not have one

and did not need one.

[64] Second, the distances involved in travelling between the refugee camps and Nairobi are considerable – it is approximately 500 kilometres from the refugee camp to Nairobi on a road regularly affected by floods and bandits and which is rough in places. A UNHCR advisory to journalists advises that for vehicle travel between Nairobi and the camps, a four-wheel drive vehicle is necessary, indicating that the roads are difficult to negotiate. The sheer logistics of having to travel with a small sick child on a return trip of that distance twice a month are immense, particularly in light of the need to obtain a movement pass to facilitate the travel. The claimed travel is even more surprising when medical care, including a hospital, is available in the refugee camp. Further, the notion that the mother would travel when the child has a seizure and that somehow she could complete the trip (made on a public bus) in time for the seizure to be treated at a Nairobi hospital as asserted by the appellant is not plausible. A much more likely scenario is that the wife lives in Nairobi and obtains medical attention for the daughter there.

The notebook

[65] On arrival in New Zealand, the appellant was in possession of a notebook containing names and numbers. He said that he had compiled the notebook from a larger contact list he and his wife shared in South Africa. Notably, one of the entries in the book consists of the word “father” (underlined) followed by a Somali telephone number. It will be recalled that the appellant claims that his father left Somalia in 2001 and has, since then, lived in one or other of the refugee camps in Kenya.

[66] When asked why the notebook contained what appeared to be his father’s telephone number in Somalia the appellant said the entry related to the wife’s father who had been living in Somalia until 2005 when he was killed. When asked to explain why he had the telephone number for his dead father-in-law whom he had never met, talked to or otherwise interacted with, the appellant claimed that he had entered the name and number “out of respect” for his father-in-law. The Authority is not persuaded that this is a truthful explanation. This was a new compilation of numbers that he made just prior to leaving South Africa. There is no sensible reason why he would have included the number of his father-in-law

who had died before the appellant had even met his wife. The Authority rejects the evidence and finds that it is another facet of his false account.

Events in Somalia prior to leaving

[67] The Authority also has concerns about the appellant's evidence as to events before he left Somalia. The appellant told the RSB that after leaving Mogadishu permanently in 1991 he returned twice: once to collect his half-sisters in October 1997 and again in February 1999 at which time he stayed there until January 2000. On this second trip back, he claims, he was attempting to make contact with his wife, whom he had married on his first return. He told the RSB he stayed all that time because the inter-clan fighting made it dangerous for him to leave. To the Authority, he said that he stayed only two months, from December 1999 to January 2000. The Authority asked a series of questions to encourage him to spontaneously recall the RSB evidence that he had stayed for almost a year, in case he was momentarily mistaken. He repeatedly confirmed the dates of his stay as being December 1999-January 2000 and for the duration of two months. When reminded of his RSB evidence he then changed his evidence and said that he had been mistaken and that he had stayed in Mogadishu from February 1999 to January 2000. He could not explain his mistake.

False claims on arrival and in Confirmation of Claim form

[68] On arrival in New Zealand the appellant was interviewed by an Immigration New Zealand (INZ) officer about his refugee claim and his method of travel to New Zealand. He was interviewed with the assistance of a Somali interpreter and was informed that the information he provided would be taken into consideration in the assessment of his refugee claim. He provided false information in that interview including saying that: he had left Somalia in January 2008; his wife and child were in Somalia; and that he was at risk of harm in Somalia because he had refused to work as an interpreter for the Ethiopian Army. When asked by the RSB to explain why he had provided this false information he said that it was because he was frightened of being returned to South Africa where he would be killed on return.

[69] In his Confirmation of Claim form ("the claim form"), he also gave false information as to the events in South Africa which led to his departure. In the claim form he twice stated (in E2 and again in E3) that his shop had been looted

on 22 May 2008 and that as a result he had gone to the police station where he slept for two nights. He then left South Africa because the police could not guarantee his security. This is inconsistent with his later evidence that he left South Africa in April 2008 and travelled to New Zealand via China and Fiji. He now claims that his business partner was attacked at the shop on 22 May 2008 and had to stay at the police station for two days.

[70] When asked to explain the inconsistent information he provided in the claim form, the appellant was unable to give a sensible explanation. He variously said that he did not have a lawyer, that he “was not thinking on the right track” and that he later corrected the information. In answer to a further question he said that he had not intended to give false information but had made a genuine mistake. When then asked to explain how he could make a genuine mistake about events which never occurred to him he simply repeated his assertion to have made a mistake. When the Authority put to him that he had changed his evidence about his departure date from South Africa once he realised that INZ might be able to have that information verified, he did not directly answer the question but said that he decided that the only way he would survive was if he told the truth. The Authority finds that the false information provided on arrival and then later in the claim form (at which point he no longer denied having been in South Africa and therefore had no discernible motivation to lie about his departure date from there) illustrates his willingness to use false information to support his created claim. It strengthens the overall finding that no part of his account can be believed.

Conclusion on credibility

[71] For all of the reasons given the Authority concludes that the narrative advanced by the appellant as to events in Somalia which caused him to leave and his subsequent life in South Africa is not truthful. The Authority does not accept that all of the appellant’s family have left Somalia and are residing in a refugee camp in Kenya. Nor, in the context of his false account of life in Somalia, does the Authority accept his assertions to belong to the Reer Abdile sub-sub-clan of the Ogaden sub-clan.

[72] In summary then, the Authority finds that the appellant, at the time of determination, is a male Somali national who would be returning there unaccompanied. In the absence of credible evidence, no other findings as to the

profile or circumstances of the appellant on return to Somalia can be made.

[73] This decision now turns to assess whether these facts as found are sufficient to establish that the appellant has a well-founded fear of being persecuted for a Convention reason if he were now to return to Somalia.

Well-founded fear of being persecuted in Somalia

[74] While the country information about the general situation facing some civilians in Somalia, particularly around the capital of Mogadishu and further south, paints a picture of violence, displacement, poor health, unsanitary living conditions and food shortages, such information does not establish a risk of being persecuted to the real chance level for every individual who returns to Somalia, regardless of individual circumstances. In other words, while there is a risk of serious harm for some individuals in Somalia, for others (such as those with familial or clan connections that can provide safety and support) there is no such risk.

[75] This view is confirmed by a recent Operational Guidance Note ("OGN") published by the UK Border Agency which evaluates the general, political and human rights situation in Somalia as at December 2008. While the OGN details areas of Somalia and profiles certain groups within Somalia who may be at particular risk of serious harm, it also reports on the stability of various areas within Somalia and the ability of citizens to ensure their personal safety by residing in the home areas of their clan where they can seek and receive adequate protection from their kinship group (paragraph 3.7.6). It notes that internal relocation for major clan affiliates is possible because there will be clan affiliated groups living in many other areas of Somalia in addition to their traditional homeland (paragraph 3.7.6). The OGN also notes that "large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership" (paragraph 3.7.8). The Authority is not aware of any more recent country information which displaces these conclusions.

[76] The appropriate question to be considered is whether considering the totality of the evidence, an individual, having all of the appellant's characteristics, would face a real chance of serious harm for a Convention reason if he were sent to Somalia. See *A v RSAA* (CIV 2004-4-4-6314, 19 October 2005, HC, Auckland, Winkelmann J) at [38].

[77] The Authority has no information before it to support a finding that all Somali men who return from abroad are at risk of being persecuted for a Convention reason.

[78] Ms Hindman submits that the specific characteristics of the appellant which exacerbate his risk of being persecuted to the real chance level are: that the appellant has no protection or family in Somalia; he cannot return to Afmadow because of clan violence; and, his membership of the Reer Abdile sub-sub-clan. However, these characteristics relied upon have not been established before this Authority. As already noted, the Authority has found that there is no credible evidence to establish that the appellant lacks protection or familial connections in Somalia or is a member of the Reer Abdile sub-sub-clan. Neither is there any credible evidence that he would be an internally displaced person or would settle in an area of Somalia which suffers from ongoing violence. These assertions are unsubstantiated by any credible evidence and therefore cannot form the basis of a well-founded assessment.

[79] Ms Hindman has also provided the Authority with country information detailing the risks of serious harm to various groups of people within Somalia. Again, while the information details a potentially dire situation for those to whom it relates, there is no credible evidence in this case to establish that the appellant would face any one of those predicaments were he to now return to Somalia. In the absence of any credible evidence as to the particular circumstances which the appellant would face on return to Somalia, the Authority has no basis on which to determine that he is at risk of being persecuted for a Convention reason.

[80] As to the appellant's recognition in South Africa as a refugee, the Authority finds that that recognition adds no weight to the assertions the appellant now makes as to his predicament. He has produced no evidence of the account he gave to the South African authorities in support of his claim there and, even if it were the same account as that provided here, that does not, of itself, make it true. This Authority is not bound by the recognition of refugee status in other jurisdictions and has had the advantage of hearing from the appellant in a lengthy hearing in appellate circumstances – a forum far removed from the brief consideration which a busy first-instance immigration officer would have given it in Cape Town. It follows that his recognition as a refugee in South Africa does not inform the issue as to whether he now has a real chance of being persecuted in

Somalia.

[81] For the sake of completeness the Authority notes that the appellant may have an ongoing right to reside in South Africa as a result of his previous recognition of refugee status there. However, the outcome of the appeal in relation to Somalia means that it unnecessary for the Authority to reach any formal conclusion on that matter.

[82] For these reasons, the Authority finds that the appellant answers the first principal issue in the negative. The need to consider the second issue as framed does not, therefore, arise.

CONCLUSION

[83] For the reasons mentioned above, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"B A Dingle"

B A Dingle
Member