

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76120**

**REFUGEE APPEAL NO 76121**

**REFUGEE APPEAL NO 76122**

**REFUGEE APPEAL NO 76123**

**AT WELLINGTON**

<b><u>Before:</u></b>	A N Molloy (Member)
<b><u>Counsel for the Appellants:</u></b>	R Woods
<b><u>Appearing for the Department of Labour :</u></b>	No Appearance
<b><u>Dates of Hearing:</u></b>	8, 9, 10, 11 October 2007 & 20 November 2007
<b><u>Date of Decision:</u></b>	19 March 2008

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**DECISION**

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**INTRODUCTION**

[1] The appellants, nationals of Somalia, are four young men who claim to be brothers. They appeal against decisions of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining their applications for refugee status. They each claim to be at risk of serious harm in Somalia for reason of their ethnicity in that they belong to the Midgan sub-tribe.

[2] Because the four appeals turn on broadly similar facts they have been heard concurrently. A summary of the claims presented to the Authority by the

appellants is set out below. Their appeals turn upon the credibility of their claims, which is assessed later.

[3] For convenience, the appellants are referred to as YY, WW, VV and TT respectively.

#### Adjournment application

[4] In correspondence forwarded to the Authority shortly before the joint appeal interview, Mr Woods sought an adjournment. In accordance with its usual practice, the Secretariat of the Authority had identified the scheduled dates for the interviews in notices which appear at the front of the appeal files, which were delivered to Mr Woods' offices in August 2007. Mr Woods stated that unfortunately his office had failed to take note of the interview dates. As a result of that oversight, the dates of the interviews were only brought to his attention during the week prior to the scheduled interviews.

[5] Given Mr Woods' longstanding involvement with the appellants and his intimate knowledge of the issues, there was no evidence that the appellants were disadvantaged by the oversight within his office. The Authority declined the application for an adjournment and the appeal interviews proceeded as scheduled.

### **THE APPELLANTS' ACCOUNTS**

#### CR

[6] The appellants entered New Zealand in 2004 on the basis of their professed familial relationship with CR. CR is also a Somali national. He came to New Zealand in 1996 and was granted refugee status by the RSB in March 2000. He claimed to be a member of the Midgan clan and said that members of that clan were at risk of being persecuted in Somalia. He said that his wife was deceased and that his four sons remained in Somalia.

[7] CR was subsequently granted permanent residence in New Zealand in November 2000 and New Zealand citizenship in August 2001. His New Zealand passport was issued in early September 2001. He then applied for residence for the four appellants whom he claimed to be his sons.

### General background

[8] It was originally claimed by CR in the residence applications that the appellants were CR's biological sons. However he has since admitted that they are not. The appellants now claim to have been orphaned at different times as a result of fighting during the civil war in Somalia. They each state that CR and his wife, HJ, adopted and raised them in difficult circumstances in Mogadishu.

### Life in Mogadishu

[9] By 1996 conditions in Mogadishu had deteriorated to the point that the family decided to leave. The appellants boarded a truck bound for a UNHCR camp in Ethiopia with their mother and grandmother. CR did not accompany them. Tragedy struck as the family left the city. HJ was killed and others on the truck were injured when their truck came under fire. The brothers and their grandmother survived unharmed and continued on their way.

[10] They arrived at Rabasso refugee camp in Ethiopia. Conditions in the camp were basic and all four of the appellants experienced problems during their time there because they were members of the Midgan sub-tribe. The Midgans are low in status and the boys were continually bullied and harassed by other Somalis within the camp. For example YY, who worked at a small eatery in an adjacent village, was frequently robbed of his earnings. There was nothing the appellants could do about such ill-treatment.

[11] The grandmother cared for the appellants until her death in 2004, by which time CR had begun to make arrangements for them to join him in New Zealand.

### Travel to New Zealand

[12] In late 2002, after CR had obtained New Zealand citizenship, the appellants lodged applications for permanent residence in New Zealand from Ethiopia, on the basis that they were CR's children. They were granted temporary visas to enable them to come to New Zealand on temporary permits while their applications for residence were processed.

[13] The appellants travelled to northern Somalia to collect travel documents from the Red Cross. They also travelled to Deridaba in Ethiopia to undergo medical examinations for the purposes of their residence applications. The

appellants were eventually provided with airline tickets to come to New Zealand, where they arrived in mid-2004. Their applications for residence were subsequently declined by Immigration New Zealand (INZ) after CR was forced to concede that the appellants were not his biological children.

[14] They then appealed to the Residence Review Board (RRB). The RRB in turn declined their appeals in a decision dated 18 November 2005 (*Residence Appeal Nos AAS14696, AAS14702, AAS14703 and AAS14704*) (the RRB decision).

[15] The RRB relied upon numerous discrepancies in the evidence given by CR, for example in connection with the dates of birth of the sons and irregularities in documents produced in support of his claim to have adopted the appellants.

[16] CR left New Zealand abruptly in December 2005, a month after the RRB published its decision. The appellants had been undertaking seasonal work elsewhere in New Zealand. When they returned to Wellington they found the flat in which they had been living with CR to be vacant. A number of unpaid bills had accumulated. The appellants believe that CR travelled to Saudi Arabia to undertake the *Haj*, but have had no contact with him since his departure.

[17] The appellants were by then in New Zealand unlawfully, and were suddenly without the support of their "father". In the circumstances, they decided to apply for refugee status. They lodged separate written applications dated 14 March 2006.

[18] After interviewing each of the appellants consecutively in May 2006, a refugee status officer of the DOL issued decisions dated 29 June 2007, declining their applications.

[19] In part, the DOL relied upon adverse information which had been obtained in connection with CR and which had been put to the appellants for their comment. The allegations included assertions that CR had previously obtained refugee status in the United States of America in 1991, having arrived there in 1989. He had been granted refugee status there on the basis of a claim arising out of his membership of the Isaaq tribe. If true, it contradicted the basis upon which CR sought and was granted refugee status in New Zealand in 1996, when he claimed to have been a member of the Midgan tribe. In addition, CR had never disclosed having made a previous claim in another country.

[20] The appellants appeal against the RSB decisions. They claim that they cannot return safely to Somalia. They say that they are particularly vulnerable to serious harm at the hands of competing tribal factions in Somalia because of their membership of the lowly Midgan clan.

## **EVIDENCE OF WITNESSES**

[21] Five other witnesses gave evidence in support of the appellants.

### Evidence of ZP

[22] ZP was born in Mogadishu in 1977. He arrived in New Zealand as a refugee in 1997 and is now a New Zealand citizen. He recalled that when he was 12 or 13 years old he played football with a young boy with the same surname as the appellants in Mogadishu. When ZP met YY at a function run by the local Somali community in Wellington he recognised YY's surname. When ZP asked if YY was related to his footballing friend from the past, YY had told ZP that the person in question was his cousin.

### Evidence of XC

[23] XC was born in Mogadishu during the early 1980s. She fled from Somalia in 1991, and was subsequently accepted as a refugee in New Zealand under the Family Reunification policy.

[24] XC said that when she was a child living in Mogadishu her parents took her to visit her aunt every Friday. She remembered that HJ lived with her four sons opposite her aunt's house. She remembers playing with the oldest boy, but did not recognise him among the appellants.

### Evidence of QB

[25] QB was born in Burao in the north of Somalia in 1965. She moved to Mogadishu in 1981 and married in 1985. She came to New Zealand under the Family Reunification policy in 2002 and is now a New Zealand citizen.

[26] QB knew HJ and her four young sons in Mogadishu in 1989 and 1990. She became friendly with HJ, although they were not close personal friends, through meeting at the mosque where they were taking their respective young children for

religious studies. QB never met CR, but said that his name was familiar as HJ's children used his surname.

[27] QB said that she was in a refugee camp in Ethiopia in 1997 when she learned of HJ's death. She had not heard what happened to HJ's sons. However she believes that she recognises YY, the oldest of the appellants, on the basis that he still looks much like he did when she last saw him in 1990, when he would have been five years old.

#### Evidence of DW

[28] DW is a Somali national who has been living in New Zealand for several years. He left Somalia in 1988 because of the civil war. He then went to Ethiopia before receiving a UNHCR scholarship to study in Sudan. DW gave evidence in person before the Authority, and also provided a letter after the hearing, which was forwarded by Mr Woods on 11 March 2008.

[29] He gave evidence with respect to the influence of major tribes within the Somali Republic and in Somaliland. He confirmed that members of most tribes have little difficulty in identifying each other in Somalia in terms of their dialect, the way they socialise and the manner in which they do business.

[30] He confirmed further that members of the Midgan tribe do not fit within the tribal hierarchy in Somalia. They are unable to marry within the other tribes, they have no land or geographical areas in which they are dominant, and they are effectively devoid of power. He confirmed that they are, as such, vulnerable to whichever warlords are in power in their area, and they otherwise lack any tribal affiliation or the protection which comes with that.

[31] DW did not purport to be well-acquainted with the appellants. He met them (and CR) for the first time in New Zealand. DW said that they were the only people he knew who claimed to be Midgan. He said that most people would hide the fact.

#### Evidence of FG

[32] FG was born in Somalia and lived in the same suburb as HJ in Mogadishu. They had known each other, although he had never heard of CR until they met in New Zealand in 1999. FG knew that HJ had four sons but had no real contact

with them in Somalia because of the relatively significant difference between their ages and his.

[33] The civil war forced FG to leave Somalia for Ethiopia in 1996. He registered at Rabasso Camp, where he spent several days before leaving for a city elsewhere in Ethiopia. FG recalls meeting the appellants' grandmother at Rabasso and saw the appellants as well, but he did not recognise them at that time. After he left the camp FG had no further contact with the appellants or their grandmother until he met them in New Zealand.

[34] FG met CR through the Somali community in New Zealand. They flatted together in 2003 for about a year and shared flats in Hastings and Wellington before FG moved to Australia in late 2003. FG said that CR did not manage his money or his life in general particularly well and frequently seemed disorientated. He sometimes felt that CR might be a bit unwell.

[35] When FG met the appellants in New Zealand through CR, he did not recognise them as they were all significantly older than they had been when he saw them in Somalia.

## **MATERIAL PROVIDED TO THE AUTHORITY**

[36] After the appeal interviews counsel lodged closing submissions in writing under cover of a letter dated 27 November 2007. The submissions were accompanied by a copy of a letter from Newtown Union Health Services in connection with CR, dated 3 June 2003; a copy of the UNHCR *Advisory on the Return of Somali Nationals to Somalia* (November 2005) and a copy of a document entitled *Statement to the Committee on the Elimination of Racial Discrimination*; Professor Asha A Samad (August 2002). Mr Woods also wrote to the Authority on 11 March 2008, enclosing a letter from DW dated 10 March 2008.

## **THE ISSUES**

[37] 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."

[38] 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 APPELLANTS' CASE**

### **CREDIBILITY**

[39] The Authority has heard and observed all four appellants giving evidence. It has also had the benefit of a considerable amount of additional material. This has included oral testimony given by witnesses in person as well as a considerable amount of documentary evidence in connection with CR.



[40] After taking all of the evidence into account the Authority is in no doubt that the core account advanced by and on behalf of the appellants is untrue.

[41] The appellants' passage to New Zealand was procured by CR, whose accounts proved over time to be continually evolving, highly inconsistent and mobile. He has been exposed as a sophisticated liar. The appellants' own testimony has been implausible, materially inconsistent and opportunistic. The Authority finds that they have fabricated large parts of their evidence. At first this was done in an attempt to obtain residence in New Zealand. When that attempt failed, they have perpetuated their untruthful accounts in the hope of obtaining refugee status.

[42] For whatever reason, the appellants have chosen not to divulge the truth about their past. The evidence as a whole leaves the Authority in no doubt that it cannot rely upon any substantive part of the appellants' accounts, with the exception that they speak Somali and that they appear to be of Somali ethnicity.

[43] The basis for the Authority's findings is outlined below. It is arranged broadly in terms of the appellants' evidence, the evidence relating to CR and the evidence given on their behalf by the various witnesses. This is simply a convenient means of identifying particular concerns. The Authority's findings are made in respect of the evidence in its totality.

#### The appellants' testimony

##### *Whether the appellants lived in Rabasso refugee camp*

[44] From the time they arrived in New Zealand, the appellants have claimed that they were resident at the Rabasso Refugee Camp. However none of the appellants could point to any physical evidence to corroborate their claim. They had no documents, photographs, letters or certificates to support their account. FG, the one witness who claimed to have seen the appellants at the camp in 1996, said that he did not recognise the appellants in 1996, but knew them because of their grandmother.

[45] In addition, much of their testimony relating to the camp was vague. For example WW drew a map of the camp showing a school in close proximity to the family hut, yet YY was unable to identify the location of the school near to which his family is said to have lived for eight years.

[46] Each of the appellants referred to a ration card issued by the UNHCR to the family upon their arrival at Rabasso. They claimed that their grandmother used it to collect food which was distributed by UNHCR about once a month. None of the appellants knew what had become of the card. They claimed that after the death of their grandmother in 2004, it had been given to F, a neighbour at the camp, who then began to collect food for the appellants.

[47] It was put to VV that country information indicated that Rabasso Camp was closed by UNHCR in 2002, two years before his grandmother supposedly died; "UNHCR to close Rabasso Camp in Ethiopia after repatriation" *Panafrican News Agency* (9 August 2002). The Authority suggested to VV that there would have been no point in anyone taking the UNHCR card to obtain rations in 2004, because UNHCR was no longer administering the camp at that time.

[48] VV's response was that he had not told the Authority *when* the card had been given to F. He said it *could* have been two, three or five years before his grandmother died. VV prevaricated further and claimed that he was not necessarily saying that the card *was* given to F before the grandmother's death, but that it *could* have been.

[49] The Authority is satisfied that VV's first answer was unequivocally intended to convey that the card was given to F after the grandmother died so that F could look after the family in her place. At least one of the other appellants gave evidence to the same effect. VV's response was mobile and evasive.

[50] Prior to coming to New Zealand, the appellants each submitted INZ medical and x-ray certificates drawn up by a doctor after medical examinations in Deridaba, Ethiopia. The documents for each appellant are identical in all relevant respects. The documents are notable in particular for two reasons.

[51] First, the doctor has reported in respect of each appellant that their mother was "killed by a bullet in 1993". That is three years earlier than the appellants have subsequently claimed. VV suggested that the date was mistakenly recorded because of a problem of communication with the Ethiopian doctors. However the doctor does not appear to have been in any difficulty in understanding the large amount of information which must be obtained in the course of completing these documents. This includes, for example, the dates of birth which are apparently accurately recorded as to the day, month and year of birth for each of the appellants.

[52] Second, the two medical certificates list the “full home address” of each appellant as the “Daroor Refugee Camp”. The appellants have always maintained that they lived at Rabasso camp. All four deny ever having been to Daroor.

[53] Various explanations were offered for this discrepancy.

[54] TT stated that the doctors must have referred to Daroor as a postal address because Daroor was a larger camp than Rabasso and therefore may have had a postal service.

[55] However it is clear from the face of the medical certificates that the detail sought is the full home address, not a postal address. In any event, country information obtained by the Authority indicates that Daroor refugee camp (which had a population in excess of 30,000 in 1998) was closed by UNHCR at the end of 2001, the year before the appellants’ medical certificates were completed. According to the same country information, Rabasso camp reportedly had a population in excess of 9,000 at that time; see UNHCR Evaluation and Policy Analysis Unit working paper No 65 *Pastoral society and transnational refugees: population movements in Somaliland and eastern Ethiopia 1988-2000* (August 2002) Table 5, p 20. It is implausible that the doctors would have given the address of a defunct camp, whether as a postal address or indeed at all.

[56] When giving his evidence in this connection, TT admitted that he was speculating, and that he did not know anything about Daroor. That is significant because VV gave the same answer about a “postal address” when giving evidence later that day. The Authority does not accept that VV made the same “guess” by coincidence. There is no doubt that he did so after discussing this aspect of his evidence with TT, and that TT and VV colluded in order to give consistent answers.

[57] Mr Woods submitted that the handwriting on the front page of the medical form appeared to differ from the handwriting within. He suggested that this may indicate that an administrator filled in the dates, while the Doctors did the rest. However that explanation is entirely speculative and is contradicted by the clear recollection of at least one of the appellants (VV) that he supplied the information recorded on the front of the form (including the address) to the doctor by whom he was interviewed. In any event, there is no reason why an administrator would be more likely to mistakenly record the address than a doctor.

*Red Cross documents*

[58] The medical certificates are not the only unreliable documents tendered by the appellants. All of the appellants came to New Zealand using travel documents provided by the Red Cross, as they claim that they do not have passports. It is worth noting that each Red Cross travel document attests that :

“It is not an identification document.”

and states that:

“This document is no proof of the bearer’s nationality ...”

[59] At the hearing before the Authority, all four appellants claimed that they travelled by truck from Rabasso Camp to Hargeysa in the north of Somalia in order to collect the Red Cross documents. They did so with the help of Abdi, a family friend. The appellants each said that they spent three days staying at Abdi’s home with Abdi, his wife and his children before returning to Rabasso. However, their recollections of that trip were markedly inconsistent.

[60] For example, YY had told the RSB that the trip had not been to Hargeysa in Somalia but to Addis Ababa in Ethiopia. In explanation, he told the Authority that he had simply been mistaken when he said this to the RSB. It is a difficult mistake to understand.

[61] For his part, VV had told the RSB that he and his brothers had stayed at a small hotel, paid for by Abdi. When the Authority put that version of events to VV during the appeal interview he contradicted his earlier testimony and claimed that his reason for saying so to the RSB was that he could not tell whether the place he stayed was Abdi’s private residence or a hotel. The presence of Abdi, his wife and their children would have made the distinction obvious.

[62] On the final day of the hearing, TT suggested that VV’s inconsistency was due to VV’s personal characteristics. TT suggested that VV had found it difficult having to live in a single room with his three brothers in Hargeysa. As a result, TT explained, Abdi had arranged for VV to be accommodated at the house next door, on his own.

[63] The Authority does not believe that explanation either. VV had made no such suggestion.

[64] It is also somewhat surprising that VV should find it difficult to spend three nights with his brothers at a house in Hargeysa, given that for the previous eight years he had supposedly lived with his brothers and his grandmother in a small hut in a refugee camp.

[65] Even putting that to one side, this issue had previously been the subject of enquiry and explanation before the RSB. Following the RSB interviews with the appellants in May 2006, the RSB forwarded interview reports to their counsel, setting out its understanding of the appellants' claims and inviting comment on various issues. One of those issues concerned the inconsistent versions given by the various appellants in this connection.

[66] The appellants' response was forwarded in a lengthy submission from Mr Woods, dated 28 November 2006. In the course of that submission, the appellants explained that YY had simply "forgotten" that he had gone to Hargeysa rather than Addis Ababa. The submission continued:

"While they were in Hargeysa, WW and TT stayed at Abdi's house. However, the house was very small and for this reason, YY and VV stayed at a local hotel."

[67] That explanation is quite different from both the evidence given spontaneously by the appellants to the Authority during the appeal interviews, and the explanations subsequently proffered by VV and TT, after the inconsistency was put to them for comment.

### Problems with evidence relating to CR

[68] The Authority has not heard directly from CR. He was not available to give evidence in person during the appeal interviews as he left New Zealand in December 2005. His present whereabouts is unknown.

[69] However, the Authority has had access to a significant amount of evidence provided by CR since he arrived in New Zealand. Much of this information was provided in the course of applications for residence made on behalf of the four appellants in these appeals and is directly relevant to a consideration of the appellants' claims for refugee status. It is quite clear that the integrity of the information attributable to CR has been fundamentally undermined.

### *Paternity*

[70] At some point the DOL received information which indicated that CR was not, as he had previously claimed, the biological father of the appellants. CR was subsequently investigated by the Fraud Investigation Unit of the DOL, as a result of which it was suggested to CR that DNA analysis should be undertaken in order to determine whether CR was the father.

[71] Mr Woods, who had previously acted for CR, was at the time acting on instructions from CR in connection with the applications for residence for the appellants. Mr Woods wrote to the DOL on CR's behalf on 23 November 2004, conceding that CR is not the biological father of any of the appellants.

[72] One month later, in December 2004, the DOL wrote to each of the appellants to inform them that their applications for residence were declined. The appellants then appealed to the RRB.

### *The RRB decision*

[73] While the appellants are obviously aware of the RRB decision, counsel was provided with a further copy during the course of the hearing. The appellants have not sought to challenge its findings or concerns.

[74] The RRB decision sets out the history of the appellants' attempts to obtain New Zealand residence on Family Reunification grounds and identifies several contradictory versions of events given by CR at various times since his arrival in New Zealand. Some of these are set out below.

*Difficulties with dates*

[75] Having claimed for the purposes of his refugee status claim that he was born in 1958, CR subsequently described that as a mistake and told INZ that he was born in 1940, some 18 years earlier. He blamed the error on an interpreter.

[76] Currently the appellants claim that they were born in the consecutive years 1985, 1986, 1987, and 1988. In short, at the time of the appeal interviews they claimed to be approximately 22, 21, 20 and 19.

[77] This contrasts markedly with the content of the application for residence lodged by CR in which he claimed that he had four “children” born in 1969, 1972, 1981 and 1983 respectively.

[78] Mr Woods stated in his written submissions dated 27 November 2007 that it is not surprising that conflicting evidence has been given concerning the appellants’ birth dates because the Somali government does not keep birth records or issue birth certificates.

[79] Even if that is so, it would not explain the extraordinary contradiction between the information initially provided by CR and the evidence subsequently given by four appellants with whom he is supposedly intimately connected. The years of birth initially provided by CR are not even consecutive and the dates he gave initially meant that by the time of the appeal interviews before the Authority the appellants would have been approximately 38, 35, 26 and 24 years old.

[80] In addition, it might be expected that CR would be somewhat vigilant in respect of the dates of birth of his “children” if, as he had claimed, he had previously had difficulties with interpreters in this country. On the contrary, the resulting discrepancy in ages ranges between five and 16 years.

*False adoption papers*

[81] Further concerns over the appellant’s familial relationship with CR were raised when the matter came before the RRB. For the purposes of the appeal to the RRB, CR supplied documents which he claimed were issued by a District Court in Somaliland in the north of Somalia. According to those documents, each of the four appellants had been adopted by CR in 1989, following the death of their biological father (who was said to be the father of each of the four appellants, albeit that they had different biological mothers).

[82] The RRB rejected the veracity of the adoption papers and found that they could be given no weight. It observed that the documents were obtained in 2004 in respect of adoptions which purportedly took place 15 years earlier. No evidence was adduced as to the applications said to have been made in respect of those adoptions, or the petitions supposedly made which led to the orders being sealed. The RRB doubted whether a District Court in Somaliland would have jurisdiction to make such orders in respect of appellants born in Mogadishu.

[83] Overall, the RRB concluded that:

“Given the [...] statements and untruths which have been put forward over an extended period, not even the appellants’ identities can be accepted with any confidence, let alone the truth or nature of any relationship to [CR].” [para [97]]

[84] The Authority is not bound by the RRB decision and acknowledges that the RRB did not have the benefit of hearing from and observing the appellants in person. Nevertheless the Authority finds the conclusions arrived at by the RRB to be persuasive when taken into account as part of all of the available evidence.

*Appellants’ testimony inconsistent with CR’s evidence*

[85] The appellants’ accounts are markedly different from CR’s account in other respects. The obvious concerns recorded in the RRB decision are augmented by numerous other inconsistencies and discrepancies which came to light either during the appellants’ applications for refugee status or during the course of their subsequent appeals to this Authority. It is appropriate to refer to some of these.

[86] The appellants all claim to have been born and raised in Mogadishu, where they lived until fleeing to Ethiopia in 1996.

[87] In contrast, CR lodged a declaration in December 2002 in which he stated that each of the appellants was born in the town of Burao, in the north of Somalia. CR had made the same claim a month earlier when completing applications for residence in respect of each of the appellants. The appellants all told the Authority that they had never been to Burao.

[88] It was a fundamental aspect of the appellants’ accounts on applying for residence that they regarded CR and his wife HJ as their parents. They claimed that CR and HJ raised them as their own children from the time that the appellants were very young. The appellants claim that CR only informed them that he was



not their biological father after they arrived in New Zealand, and said that they still regard him as a parent.

[89] Yet it is apparent from the RRB decision that during the course of his own claim for refugee status CR told the RSB that, while he had spoken with HJ occasionally by telephone, he had never met her. CR subsequently stated that he married HJ at a distance by telephone from New Zealand in 1997. According to the appellants, that is a year after she was killed in Mogadishu. Despite this, for the purposes of his application for residence in 2000, CR referred to HJ as being alive and well.

[90] The Authority also notes that when he claimed refugee status, CR stated that his wife was named AH (not HJ). He claimed that AH was killed in crossfire in Mogadishu in 1992 while in a truck, which bears a suspicious similarity to the claimed manner of HJ's death in 1996.

[91] It is now conceded that the appellants are not the biological children of CR, and that the claim to that effect was quite untrue. The inconsistencies outlined also undermine the appellants' claims to have been raised by HJ and CR, and their claims that HJ was killed in 1996.

[92] Adding to such concerns is the varied recollection of each of the appellants in connection with the day to day presence of CR while they were growing up in Mogadishu.

[93] YY said that CR came to see the family "from time to time", but claimed that he did not spend much time with CR before leaving Somalia in 1996. WW said he had believed that CR and HJ were married and said that CR lived with the family in the same house in Mogadishu; however he did not know what CR did for a living. VV said that CR lived at the house sometimes, but not often. TT initially said that CR used to come to the house "every other day", but later reneged to some extent and became more equivocal.

*Weight to be given to concerns about CR*

[94] The appellants all say that they have lost all contact with CR. They have not seen him since December 2005, when he left New Zealand, apparently bound for the *Haj* in Saudi Arabia.

[95] More than nine years after coming to New Zealand and four years after becoming a New Zealand citizen, but little more than one month after the delivery of the RRB decision, CR left New Zealand. The appellants claim that they have not heard from him since.

[96] In the context of these appeals the Authority infers that CR has chosen to leave the country in which he had sought refuge (and the “children” whom he brought here) in order to avoid being held to account for his apparent dishonesty.

[97] The appellants now seek to distance themselves from him. In his written submissions to the RSB dated 5 April 2007, Mr Woods stated that:

“...[CR] has previously been discredited by Immigration New Zealand and his affiliation with the appellants has been refuted. Therefore the information supplied by [CR] should be deemed irrelevant to the current claims.”

[98] Mr Woods has subsequently suggested in his closing submissions dated 27 November 2007 that most of the inconsistencies in the appellants’ accounts came from CR and that:

“It would be grossly harsh and unjust to visit on the appellants the consequences of any sins of commission or omission that may or may not have been committed by [CR].”

[99] It is worth noting that these submissions are far removed from the position adopted by the appellants after their applications for residence were declined by INZ in December 2004. The grounds of their appeal against those decisions are set out in an undated letter in which they stated that:

“[CR] ... loves us and we love him, and we respect him and we trust him. For us he is our only ‘family’ and he is the person who is keeping us together as a family.

... it would be a terrible thing for us if we were now to become separated from [CR] and made to return to Somalia, where we have no family.”

[100] The Authority rejects this attempt to distance the appellants from the false and misleading information previously advanced by CR on the appellants’ behalf. From the time they first sought to come to New Zealand, the appellants have associated themselves with CR as part of his family. Their claimed predicament has been fundamentally inter-linked with his. CR was the catalyst for their entry into New Zealand and they have sought to benefit from their association with him as someone who had obtained New Zealand citizenship.

[101] At first it was claimed that the appellants were CR’s biological sons. When that was revealed to be untrue, the appellants claimed to be his adopted sons.

When that claim was also debunked, they claimed to have been his *de facto* children. CR raised them, they claim, and they have always believed themselves to be his children. The Authority is unable to consider the evidence of the appellants in isolation from the concerns raised in connection with CR. His account is intimately connected to the appellants and it would be entirely artificial to excise him from any consideration of these appeals.

[102] The Authority is conscious that CR has not been present to explain or defend himself; however the existence of substantial concerns relating to CR cannot be ignored. The RRB decision is part of the totality of the evidence available to the Authority and in all the circumstances of these appeals it is appropriate to take it into account.

#### CR's mental health

[103] On the fourth day of the appeal interviews (11 October 2007) the appellants suggested that the various discrepancies within CR's evidence may be explicable by virtue of CR's impaired mental health. They then claimed that CR had behaved erratically after they arrived in New Zealand, and stated that they believed his mental health had been poor for some time before he left New Zealand in 2005.

[104] In four years of prior interaction between the appellants, CR and Immigration New Zealand, no previous suggestion to this effect had been made.

[105] It was not suggested in explanation for the numerous matters highlighted by the RRB prior to publishing its decision. Nor was any such suggestion made during the course of the appellants' applications for refugee status; in response to concerns outlined by the RSB in its interview reports, or at any time during the first three days of testimony advanced on behalf of the appellants before the Authority.

[106] The Authority notes that Mr Woods has acted as counsel for the appellants since their arrival in New Zealand in 2004, and acted for CR for some time prior to that. He had never previously sought to explain the various concerns identified during the residence and refugee processes by reference to CR's mental health.

[107] In his written submissions dated 27 November 2007 Mr Woods referred to a letter dated 3 June 2003 from the Newtown Union Health Service to INZ. He now submits that this letter is evidence that CR had suffered from mental health problems.

[108] That letter, which was signed by a “primary health care nurse”, was written in connection with the residence applications submitted by CR on behalf of the appellants. It indicates that CR has been “visibly distressed” on several occasions because of his concerns about “his four children”, and states that “[CR]’s mental health will benefit greatly from having his children living with him in New Zealand”. As a result, Mr Woods submits, it is “unreasonable to besmirch the credibility of the appellants on the grounds of inconsistencies arising from statements made by or attributed to [CR]”.

[109] However the letter was not written for the purpose for which the appellants’ now seek to rely upon it and does not purport to provide an analysis of CR’s mental health in anything other than a general sense. The letter does not support the assertion that CR was experiencing mental health problems of a nature which might cause him to make inconsistent statements or extravagant claims. To interpret it in such a manner would be to take it entirely out of context.

[110] In any event the reliability of the nurse’s evaluation of CR’s mental health is fundamentally undermined by its reliance upon a central premise which has subsequently been revealed to be a lie; that CR was the father of the appellants.

[111] The Authority has not overlooked FG’s suggestion that CR acted erratically at times and that he “might have brain problems”. However, in the context of the evidence as a whole, the Authority rejects the extraordinarily belated allegation of mental illness advanced by the appellants. It is an entirely self-serving attempt by them to retrospectively justify clear and compelling examples of dishonesty on the part of CR, from which the appellants have at all times up to now sought to benefit.

#### Evidence of witnesses

[112] The Authority does not overlook the testimony given by the five supporting witnesses.

[113] No criticism of DW or his evidence is to be inferred from the fact that the Authority finds that his testimony cannot outweigh the overwhelming evidence pointing to the appellant’s lack of credibility. His evidence about the workings of Somali society and about the importance of tribal affiliation is accepted.

[114] However, DW did not know the appellants personally before they came to New Zealand and has no first-hand knowledge of their background. The reason

DW believes that the appellants are Migdan is because the appellants have told him so. Given that their refugee claims are predicated upon that premise, they could not very well tell him anything else.

[115] Likewise, the Authority does not doubt ZP's evidence that YY had claimed to be related to a person whom ZP had known in Mogadishu with the same surname. However the fact that YY responded affirmatively to a direct enquiry does not mean that he was being truthful when doing so. Given the lacklustre nature of most of YY's testimony and in light of the evidence as a whole, the Authority gives YY's reply no weight. Again, this does not reflect upon ZP, who appeared to be a sincere and well-intentioned witness.

[116] Both XC and QB claimed that they knew HJ in Mogadishu and that she had four children at the time. However QB left Mogadishu in 1990 and XC left in 1991. The adoption papers lodged by CR in support of the appellants' residence files indicate that YY's mother died in 1992 and VV's in 1994. If those dates are authentic then HJ could not have adopted them by the time that XC and QB left Somalia.

[117] The Authority has of course rejected the authenticity of the adoption papers, however this simply emphasises the fact that concerns arise about the appellants' accounts no matter how the evidence is considered.

[118] Of the five witnesses called on behalf of the appellants, none had met CR before coming to New Zealand and only one, QB, claimed to recognise any of the appellants. She said that she recognised YY on the basis that he still looks much like he did when she last saw him in 1990, when he would have been five years old. While the Authority accepts the sincerity of that evidence, in all of the circumstances of these appeals the Authority gives it no weight.

[119] Nor does the Authority derive any assistance from the evidence of FG. While he claimed that he met the appellants at Rabasso camp in 1996, he also conceded that he did not recognise them as the children of HJ at that time. He also said that he did not recognise any of them when he met them through CR in New Zealand.

[120] While there is no reason to doubt the sincerity of the testimony given by the five supporting witnesses, their evidence does not outweigh the cumulative effect of all of the credibility concerns outlined. In short, even if there was a woman

named HJ who lived in Mogadishu with her four sons during the 1980s and 1990s, the Authority is in no doubt that these appellants have no connection with them.

### Summary

[121] The Authority is unable to rely upon any of the evidence advanced by the appellants. The Authority is in no doubt that a convoluted account has been fabricated by CR and the appellants in order to bring them to New Zealand, and that it has been perpetuated in its evolving forms to enable them to remain here.

[122] The Authority rejects their claims to have left Somalia in 1996 in the circumstances that they claimed, and to have spent time in a refugee camp in Ethiopia. The Authority also rejects their claim to be of Midgan ethnicity, given that the only evidence to that effect comes from the appellants themselves, and CR. It is satisfied that they are not related to CR in any way.

### **CONCLUSION**

[123] Turning to the principal issues, the Authority finds that objectively, on the facts as found, there is no evidence before the Authority on which it could conclude that there is a real chance of any of the appellants being persecuted if returned to Somalia. Given that the first issue is answered the negative, the second issue does not fall to be considered in respect of any of the appellants.

[124] For these reasons the Authority finds that the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. Their appeals are dismissed.

"A N Molloy"  
A N Molloy  
Member