

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76311

AT AUCKLAND

Before: A R Mackey (Chairman)

Counsel for the Appellant: C Curtis

Appearing for the Department of Labour: No Appearance

Dates of Hearing: 26 & 27 May 2009

Date of Decision: 18 June 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 (DOL), declining the grant of refugee status to the appellant, who claims he is a national of Somalia from the Tunj Torre tribe and Shanta Gamaas sub-tribe.

INTRODUCTION

[2] The appellant states that he was born in Mogadishu in 1985. He lived in Mogadishu, with his mother and a step-father, all of his life until 2007, when he travelled, in fear of serious harm in Mogadishu, to Bassaso in the north of Somalia. Soon after he went to Ethiopia where he obtained an Ethiopian passport and later a New Zealand Certificate of Identity.

[3] The Certificate of Identity and a limited purpose visa to enter New Zealand were granted in 2008. They were issued on the basis that the appellant was to come to New Zealand for medical reasons.

[4] The appellant arrived in New Zealand in May 2008. He was issued with a limited purposes permit valid until November 2008. In October 2008, the appellant lodged a confirmation of claim for refugee status with the RSB. He was interviewed later in October 2008 by the RSB. A decision to decline his application was made by the RSB in January 2009. The RSB did not accept his credibility on several aspects of his claim. The officer considered there was evidence that the appellant was an Ethiopian citizen although ethnically Somali.

[5] The appellant then appealed to this Authority. He appeared at the hearing and gave evidence. He was supported by three witnesses: his father (AA), WW who is a respected member of the New Zealand Somali community, and MM, a co-ordinator in Auckland.

[6] The appellant predicts being persecuted on return to his home district of Mogadishu due to his being a member of a minority clan and having no ability to access protection from a majority clan. He does not consider he could relocate with safety.

[7] The essential issue to be determined is one of the credibility of the appellant and his three witnesses on the core issues of the appellant's claim.

DOCUMENTS RECEIVED

[8] In addition to the statements by AA and WW (p167 and 168 of the file) and the appellant's statement (p165 of the file), which had all been provided to the RSB, the Authority also received a memorandum, dated March 2009, and country information from counsel relating to recent issues and activities in Somalia. The Authority was also assisted by country information supplied by the Refugee Research and Information Branch (RRIB) of the DOL, a UK decision in *AN (Tuni Torre)* [2004] UK IAT 00270 and *Refugee Appeal No 76062* (15 October 2007).

THE APPELLANT'S CASE

[9] What follows is a summary of the evidence given by the appellant, his father, AA, and the two other witnesses at the hearing. All that evidence has been assessed, along with relevant country information, to reach conclusions on the appellant's credibility, later in this decision.

[10] The appellant was born in Mogadishu, Somalia in 1985. He is a single man of the Sunni Muslim faith. His parents are his father, AA, now aged approximately 49 and his mother, SS, aged approximately 48. She remains in Mogadishu with her fourth husband, GG, who is a member of the majority Hawiye tribe in Mogadishu. The appellant has two maternal half-brothers. The first is HH, who is two years younger than the appellant and with whom the appellant has had very little contact. He apparently lives in the northern Puntland/Somaliland area of Somalia. His second maternal half-brother is YY. He is five years younger than the appellant. Until the appellant left Mogadishu in 2007, he had lived in a family unit comprising his step-father, GG, his mother, SS, and younger half-brother, YY.

[11] The appellant's mother is from the Darod (Marehan) tribe. She and his father, AA, were divorced when the appellant was very young. His parents had separated as a couple prior to the appellant being born. The extent of the appellant's knowledge of his tribal background is limited because he lived with his step-father and mother. He knows that he is from the Shanta Gamaas sub-tribe of the Tunj Torre and that that tribe originated from the Shabelle Hoose area in southern Somalia near the coast and the town of Marka. He had never been instructed in his full lineage as he had only come into direct contact with his father over very recent times, since he has been in New Zealand. His mother, however, had passed on some details of her background and the Darod tribal history.

[12] All of his life, until he left Mogadishu, he had lived in the same house owned by GG. It was a fairly small two-roomed home in the Medina district of Mogadishu. He did not have a good relationship with his step-father, GG, but understood that he was in the Hawiye militia as he carried a gun at all times. As he understood it, his mother was not paid anything towards the appellant's upkeep or education. It was only when his biological father, AA, started sending money from New Zealand, in the late 1990s, that his mother was able to arrange for him to be educated. He has no idea of what other money came into the household and it appeared to him that any money received by GG was spent on "*qad*" which GG chewed endlessly.

[13] The area where he and his family unit lived was one that was controlled by the Hawiye tribe and militia and so the house was never directly attacked by other tribes. His mother, because she was Darod, had been at risk in earlier times but when she married GG from the Hawiye, she was able to obtain some form of protection. The only other relative he had in the Mogadishu/Medina area was a

grandmother who came to visit them from time to time. The appellant's home was located near the airport and it took some 20 minutes on two buses to get to his grandmother's house. His grandmother was a meat vendor from the same tribe as his own mother but, as he understood it, his maternal great-grandmother came from a Hawiye family.

[14] The appellant stated that he went to both primary and secondary schools in the Medina area between approximately 1996 and 2006. It was a private education which was interrupted from time to time when there were civil wars and like disruption. The appellant thought he was about 12 years old when money started coming from his father in New Zealand. He attended the ZZ primary and secondary schools, using money paid by his father which was sent to his mother by way of money transfer. The appellant himself was not supplied with any money as it was impossible for him to use the money and would have put him at risk of theft. All the money was controlled by his mother who carried out shopping, clothing and the payment of his fees. The appellant did not know if any money had been passed on by her to his step-father. If she did, she had not told him. He was aware that AA had sent approximately US\$200 per month which placed him in a position to be well-educated.

[15] Although his friends knew that he was from a Tuni sub-tribe, he did not tell them much about his background and, at the school, teachers discouraged the students from talking about their tribal backgrounds because it only encouraged "Somalis to kill each other". The school was a largely secular one, although the students were 100% Muslim and did study Islamic subjects and traditions. At high school he had studied some 10 subjects including three languages - Somali, English and Arabic - along with four sciences and Islamic studies. He considered the school was not one that was influenced by fundamentalist Islamists but was run more as a business. He stayed at school until he was approximately 22 years of age. Remaining at school for such a period of time was relatively common as students stayed on until they could pass all of their examinations and there was no tertiary study to go on to.

[16] When the appellant was approximately 12, in about 1997, his mother informed him that his father had asked to be in contact with his son. She then spoke on the telephone to AA in New Zealand. After that, the appellant spoke to his father on a few occasions but, at that time, the telephone calls were expensive. They spoke about the appellant's studies, the possibility of him going on to

perhaps study overseas (in India) and arranging a marriage for him.

[17] The appellant was told by his father that he had some health problems but the details were not disclosed to the appellant until he had actually left Mogadishu and was based in Bassaso for a few months in 2007. Even when the appellant was in Bassaso, and there was quite regular contact with his father, his father never asked him to assist, although the appellant stated that he wished to help him in any way that he could. His offer to assist his father was not discussed with his mother as he had already left Mogadishu at the time he became fully aware of his father's problems.

[18] He left Mogadishu in 2007 for safety reasons. In the latter part of 2006, while travelling to and from school, he passed an Ethiopian military base, near the airport, which had been established after Ethiopian troops moved into Mogadishu to overthrow the Islamic Courts Union administration. As he passed the Ethiopian military base each day, the appellant would try to talk to the Ethiopians as a method of improving his English.

[19] One day in February 2007, when the appellant had gone to a cafeteria with two of his friends, a four-wheel drive jeep with five gunmen and a driver pulled up beside them. The men appeared, from their dress, to be Islamists. The group came over to where the appellant and his friends were seated and called out his name, telling him to get into the open jeep. The appellant was then driven away with this group of armed men. A blindfold was put over his face and his head was held down while they drove for some 40 minutes. When the vehicle stopped, the blindfold was taken off. The appellant noted they were in an open area outside the city, although he was not exactly aware of his location. He was told that he had been spying on government troops by talking to the Ethiopian military and that they wanted to give him a warning. He protested that he had not done anything like this but was told to keep quiet, that this was a first warning and the next time he would be shot as "you are in real trouble".

[20] The appellant was then put back into the vehicle and the blindfold was replaced. After being driven for a further 10 minutes, he was put off the truck in a place that fortunately was a part of the city which he knew. He was then able to walk for some 20 minutes and catch a bus to his home area.

[21] After returning to his home following the abduction, the appellant explained the situation to his mother. Both of them were very frightened by the incident

although they did not know specifically who the people were who had abducted him. His mother suggested he should again be in touch with his father in New Zealand to see what he should do. At the time of his abduction, his step-father, GG, was away with his militia. He understood that his mother reported the situation to GG at a later time.

[22] In the next discussions he had with his father in New Zealand by telephone, AA suggested that the appellant should go to the northern Puntland area of Somalia as there was less risk from fundamentalists in that part of the country. Steps were then taken to prepare him to go to Bassaso, using funds that had been sent to him by his father. It was arranged with a friend, KK, whose family lived in Bassaso, for the appellant to travel with KK to the north. The journey took approximately three days and had to be undertaken in several stages. KK was the son of a neighbour with whom his mother made the arrangements.

[23] Once they arrived in Bassaso, the appellant stayed with KK's family and started to attend a school for a few months. Although he knew that his own parents and other family members had lived in the north many years earlier, he did not know of any family members with whom to establish contact. During the three or four months that he remained in Bassaso, he had no specific problems but used to hide from the military people as he was afraid that they might think that he was part of one of the southern militia and he could then be returned to the south.

[24] While he was in Bassaso, his father sent him some more money. It was during this time that his father explained that he was very ill and eventually that he needed help. It was at this time that the appellant suggested that he should help. After insisting that he wished to assist his father, his father finally accepted and plans were put in place for the appellant to travel, initially to India but later, when that was found to be impractical by his father, it was agreed that the appellant should try to come to New Zealand.

[25] In his discussions with his father, while he was in Bassaso, the appellant was told that there was no embassy in Somalia from which the appellant could obtain papers to travel to either India or New Zealand and that he would have to travel to Ethiopia to obtain the documentation and also to have an assessment of his own health. It was explained to the appellant that in New Zealand, people were putting together money to assist his father. Initially the funds were being raised for AA to have the treatment in India.

[26] In order to get a passport to travel to India, the appellant was put in touch with a man who was able to obtain passports from Kenya for people to travel from Bassaso to India. However, after discussing possible arrangements with this man on the telephone, it was ascertained that he had stopped doing this work. It was then decided that the appellant would have to travel to Ethiopia in order to obtain the necessary passport and papers. Again using funds supplied by his father, the appellant was able to get transport from Bassaso to the town of Hargeysa near the Ethiopian border. Once in Hargeysa, the appellant made contact with a people-smuggler who arranged for him to cross the border into Ethiopia and go to the town of Jijiga. From there, the appellant took a bus to Addis Ababa, the capital of Ethiopia. The appellant knew no-one in Addis Ababa but quickly, after staying in an hotel for a few days, was able to rent accommodation with a Somali couple.

[27] Arrangements were made between the appellant and his father, by telephone, for medical forms to be sent to the appellant in Ethiopia. The appellant then contacted the doctor so that he could proceed with the required tests.

[28] After being in Addis Ababa for a short while, he met a Somali student who advised and assisted him on how to obtain an Ethiopian passport. He wanted to obtain the passport both for reasons of his security in Ethiopia and for possible use in going to India. Together with his new friend and another student, he travelled to the south-eastern zone of Ethiopia (Zone 5) in order to obtain an identity card and then, from that, a passport. His friend had been before and knew the route. They made their way to the chief or head of the Zone 5 area of Ethiopia who, after payment of a bribe, made out an identity card for the appellant and his friends. They were handed some documentation in a sealed envelope and told to return to Addis Ababa where processing could take place with the Ethiopian immigration office to obtain a passport. At one checkpoint on their return trip they were caught by guards who asked for their papers but fortunately they were able to bribe their way through.

[29] On return to Addis Ababa, they took the envelopes to the major Ethiopian immigration office and everything was processed for them, using an identity card which was in the sealed envelope. As he understood it, Ethiopia was a country made up of zones that were partly self-governing and thus a lot of the paper work had to be done in the village in the south-east zone to which he had travelled. After processing and completing and forms on the first day at the immigration office he was asked to return some five days later when a fee was paid and he

handed over photographs. The following day he obtained his passport.

[30] The work on obtaining the Ethiopian passport was done concurrently with his preparing papers and health checks in respect of being a possible donor for his father. In the ultimate, he did not use the Ethiopian passport because he was able to obtain a New Zealand Certificate of Identity and a limited purpose visa. He left the Ethiopian passport with another man who promised to take it to a friend of the appellant who was based in Hargeysa and who was to hold it for safe custody.

[31] The appellant had been told by his mother that his father had been born in the EE area in northern Somalia, although his grandfather was a Tuni from the southern coastal area of Somalia. The grandfather had been posted to the north when he became part of the British army and they were trying to re-occupy Somalia, which was then over-run by Italian troops.

[32] As he understood it, his mother and father had met and married in Mogadishu but separated before he was born. His father returned to the north and then had entered into a second marriage. In 1997, as part of a family reunification with mandated refugees from Somalia, his father's second wife had been able to come to New Zealand and bring AA with her. However, AA had divorced his second wife when in New Zealand and later married his current (third) wife in New Zealand. There are now four young children of that marriage. The appellant now lives in a home with his father, step-mother and four half-siblings. His father, as he understood it, has no other children apart from himself and the four younger children in New Zealand.

[33] Since he has been in New Zealand, his maternal half-brother, HH, has been in contact with him on one occasion. HH was enquiring to see whether he could come to New Zealand. The appellant has had no other association with him.

[34] The appellant has, while in New Zealand, spoken to his mother and his maternal grandmother in Mogadishu. He advised his mother that he was in good health in New Zealand. His mother reported to him that the situation in Mogadishu had got worse and that there was now constant strife going on between the Islamists and the transitional government, who were supported by African Union troops.

[35] The appellant considers that the major risks to him if he returns are from fundamentalist Islamists who are still based in the Medina area and continue

fighting amongst themselves and also with the transitional government. He considers he would be at particular risk as he was coming from a western country (because it would be perceived that he had money) and also, without any major tribal or other support system, he would be targeted to join one of the militia, or at serious risk if he did not join them.

[36] The appellant did not consider he could return to the home of his mother and GG. He was only tolerated while he was a student and now GG, because of the different tribal background, would not accept him in the house at all, even if his mother did wish to see him.

[37] The appellant provided some details from payment voucher forms that he said had been used to send money to him while he was in Bassaso. These had been completed either by his father, when he had been well enough to do so, or by his step-mother who had carried out the transactions when AA was unwell.

[38] The appellant explained that after he came to New Zealand, it was found that he was not able to assist his father, as there was a problem. Fortunately, however, at approximately the same time this was discovered, his father was able to be treated.

Evidence of the father, AA

[39] At the outset, AA explained that because of his recent illness, coupled with the fact that he had now been in New Zealand for some 13 years, there could be specific facts or details that he did not recall.

[40] AA is from a small village near EE in the north, in an area between the two northern districts of Somaliland and Puntland. He was born in 1960. His father had joined the British army when he was young and lived in southern Somalia. He had been transferred by the British to the EE area in the north then, after Somalia regained its independence, he had stayed on in EE and became a member of the Somali police force. His father was from the small Tuni Torre tribe who lived in coastal areas near Marka and Baraawe to the south of Mogadishu. This was a small tribe who were mainly involved in fishing, craft work and making clothes. The Tuni Torre tribe had a relatively low status in Somali society. There were two branches of the Tuni tribe, the first of whom had married smaller Bantu people.

Thereafter, that group did not tend to inter-marry with “more Somali-like people”. His family were members of the latter group.

[41] AA explained that his own father was in fact still alive and now approximately 85 years of age, living on a small property near EE.

[42] AA lived in the EE area until the age of approximately 14 or 15 and hence spoke Somali with a northern accent. In approximately 1975 or 1976, a friend of his father who owned an optical shop in Mogadishu offered employment to AA. This friend had a similar police/military background. It was then arranged for AA to move to Mogadishu where he stayed for approximately 10 years. After a short while, he left the optical business and commenced his own small business, trading between Mogadishu, EE and some coastal areas of Somalia. He became involved in the trading of livestock and clothing, some of which he sourced from Dubai.

[43] In 1983, AA married the appellant’s mother, SS, a member of the Darod (Marehan) tribe. She had originally come from the tribal district of the Marehan and moved to Mogadishu. AA and SS lived together for approximately one year. The separation came about when AA told SS that he needed to move around the country to do his work and she would need to go with him. However, she did not wish to move. After they had separated as a couple, AA found out, when he was in Dubai on business in 1985, that SS was pregnant and then later that she had had a baby boy. AA saw the appellant only once, when he was four years old. AA went by plane to Mogadishu and met with SS and the appellant briefly. Travel was very difficult at that time because the war was going on and many routes were closed between EE and Mogadishu. AA was aware that SS had married again on two occasions and that her second husband had died.

[44] In the mid-1990s, because of the problems from the civil war in most parts of Somalia, AA left the EE area and moved to Ethiopia. While in Ethiopia he met his second wife. In approximately 1997, she was approved to join other members of her family in New Zealand who had come here as mandated refugees. He accompanied her as her spouse. There were no children of that marriage.

[45] AA had had no contact with the appellant or his mother in Mogadishu until 1997, after he had arrived in New Zealand and spoken with a friend who worked for an humanitarian NGO. He asked that friend to see if they could find the appellant and provided details of the appellant’s mother and approximately where she lived. The friend from the NGO was able to make contact with her and she

then rang him in New Zealand. From those telephone contacts, AA started to send money to her so she could pay for the appellant's upkeep and schooling. He stated that he sent approximately US\$200 per month and then additional money as and when it was needed. They used a traditional Somali system of money transfer, "*musfhfal*".

[46] In the initial stages of contact with the appellant and his mother, AA did not explain his health problems, but merely stated he was sick and that they should not worry about him. It was only after the appellant had moved to Bassaso that eventually AA told the appellant the full details about his problems. The appellant was shocked and volunteered to assist.

[47] Discussions between AA and the appellant during his time in Mogadishu had often related to schooling. AA had told the appellant that he should try to complete his schooling and get a final certificate so that he could go on to tertiary study, perhaps in India. The appellant told him that in order to finish his schooling, he would need to go to Bassaso so that he could get a final certificate.

[48] After it had been agreed between AA and the appellant that the appellant could possibly assist, detailed arrangements were discussed and put in place between them so that the appellant could travel to Ethiopia and undergo the necessary tests. The appellant, after he had travelled to Ethiopia, was found able to assist so the arrangements were made for him to come to New Zealand. It was only after detailed and thorough checking in New Zealand, after the appellant arrived here, that it was discovered it was impossible for the appellant to assist. Fortunately for AA, at approximately the same time as this was discovered, assistance was found.

[49] AA wanted to get the appellant some form of residence in New Zealand so that he could join his siblings here and all of the family could be together. The relationship between the appellant and his New Zealand family was a happy and loving one.

[50] AA explained that when the appellant was kidnapped by Islamists in Mogadishu, he needed to send US\$300 to him as the appellant's mother explained to him that the situation was very bad for the appellant, particularly as he was a member of a minority tribe and there was no-one available to look after him. The appellant's mother explained that boys of the appellant's age were being taken under the control of the Islamists and used as suicide bombers. After hearing this,

AA said he took every step possible to ensure he could see his son again.

[51] AA considered, from the information told to him by members of the Somali community and news reports, that there were, every day, risks to the appellant should he return to Mogadishu where he would either be forced into one militant faction or another and killed in an instant or bombing as a result of that.

[52] AA was asked to clarify why he had stated in his original application for the sponsorship of his son (the appellant) that he had been born in Mogadishu, rather than EE as was now stated. He explained that he could not read and that there may have been some misunderstanding in what was written down. The forms had been completed with the assistance of a helper.

Evidence of WW

[53] WW adopted a statement he had given to the RSB, dated 10 November 2008. This stated that he supported the appellant's case, noting that he was the son of AA, an important member of their community. It also noted that the current situation in Somalia was "terrible with war and hunger part of everyday life".

[54] He explained that he had returned to Puntland in Somalia for a period of three weeks in February 2009, after the death of his father who came from that area. WW came to New Zealand in 1997 from Ethiopia after fleeing there as a refugee, having previously lived in Mogadishu. He was a member of the Darod tribe who had been driven from Mogadishu in the early 1990s.

[55] During his visit to Puntland, he was advised that an Islamist group "Al Shabah", a group with strong links to Al-Qaeda, now had more than a thousand fighters operating in Mogadishu and that accordingly, the tribal problems that existed over the last 20 years had now become more complicated because of the overlaying activities of the Islamist militants. He explained that Al Shabah were a different group from the United Church of Islam that had controlled Mogadishu for a short period some two years back. The Islamist group were ruthless in their recruiting and treatment of anyone they considered to be spies or against their principles.

[56] WW stated that he had known AA for some 10 years and that AA had spoken about his son, the appellant, and his desire to sponsor him to come to New Zealand. He also explained how it was relatively simple for people with a Somali ethnic background to get Ethiopian passports. This involved obtaining an identification card from the Zone area of Ethiopia where there were many ethnic Somalis. Using this identity card, the holders were then able to go to the Ethiopian capital and obtain passports which enabled them to travel. Many Somali businessmen used such Ethiopian passports so that they can carry on their business in the north of Africa and the Middle East. There were also similar arrangements for Kenyan passports for ethnic Somalis.

[57] He advised that there had been a recent programme on the BBC which showed that there were now some 2,000 Somali students studying in India, 95% of whom had Ethiopian passports.

[58] WW considered that AA was from the Tuni tribe and must have grown up in

northern Somalia because of his accent. The Tuni tribe was a small one and was not very powerful, being at a level just above the “untouchables”. The tribe were not fighters and thus had no protectors available for them. As he understood it, some Tuni had inter-married with the Bantu people and this had split the tribe as Tuni people of Somali ethnic background do not now inter-marry with the Bantu Tuni.

[59] Since the appellant had been in New Zealand, he had been involved with him and his father in Somali activities. WW considered that the appellant’s Mogadishu accent was different from that of his father and he gave the impression of somebody who had perhaps grown up in a war-torn area without detailed knowledge of the wider Somali community. He said he was aware that AA had sent money to the appellant over a period of many years.

Evidence of MM

[60] MM, a New Zealand citizen, stated that he had been born in Mogadishu in 1972. His family was from the Puntland area. He explained in some detail how it was possible for Somalis to obtain Ethiopian passports by travelling to the Zone 5 area of Ethiopia (a large area near the western border of Somalia with Ethiopia) that had previously been part of Somalia. In the post-colonial era, this formerly Somali territory had become part of Ethiopia. The nine Zones of Ethiopia had a federal system of government where each Zone or “*caballi*” has its own chief. The chief is entitled to identify the background of members of their own tribes or ethnicity and to give them identity cards “*mustawaka*”. With such a *mustawaka*, it is then possible to file an application for a passport with the immigration service in Addis Ababa. There are special agents who will simplify the procedures in return for a fee. MM explained how he had gone to Zone 5 to get an identity card, then a passport, by firstly making contact with some people from his own tribal background who then assisted him to get the necessary identification card.

THE ISSUES

[61] 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."

[62] 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

[63] At the outset, it is necessary to determine the credibility of the appellant and his witnesses.

[64] The Authority accepts the credibility of the three witnesses, AA, WW and MM. The evidence from the appellant's father, AA, who, perhaps unfortunately, had not been offered the chance to present evidence to the RSB, gave a detailed, comprehensive and internally consistent explanation for his own situation and how he came to New Zealand and also the manner in which he had been able to re-establish contact with his son and eventually assist him financially in coming to New Zealand. The Authority accepts the only minor inconsistency relating to his sponsorship statement, which said he was born in Mogadishu, has been explained on the basis that he did not complete the form himself as he was illiterate and therefore not able to check the details. His evidence was also largely consistent with that of the appellant, except in some aspects of the appellant's claim that he had been abducted by a group of Islamists for a short period of time and that this had caused him to flee Mogadishu.

[65] The evidence from WW and MM, particularly in respect of the relative ease with which Ethiopian passports can be obtained by ethnic Somalis, was fully consistent with the evidence given by the appellant. The Authority is satisfied that the appellant obtained an Ethiopian passport after he had travelled to Ethiopia from Somalia. That passport had been obtained so that he could travel either to India or to New Zealand. The Authority is also satisfied that the appellant is a Somali who has spent a large part of his life in Mogadishu. This is confirmed by the evidence of the witnesses, an unsolicited statement that he had a Mogadishu

accent and the evidence of his father.

[66] The appellant's own credibility is also largely accepted. The only exception to this is in the area of the appellant's claim that he was abducted by a small group of Islamists and given a warning. When this evidence was compared to that of his father, with whom he claimed he had been in contact immediately after it took place, it was found not as consistent or alarming as it would have been expected for such an event. The appellant claimed that he and his mother were so scared by the abduction that immediately they tried to contact AA and raise money so that the appellant could leave Mogadishu because of risks to him from Islamists who were trying to recruit him or threaten him as a possible spy for the transitional government. AA, in his evidence, referred only briefly to an abduction. He placed far more stress on the joint desire of he and the appellant for him to travel to Bassaso to complete his education and then ultimately to leave Somalia to undertake tertiary education in India. In the circumstances, the Authority considers that the appellant has exaggerated or possibly invented the abduction story. In the ultimate however, this does not impact significantly on the assessment of risk on return.

[67] In all other respects, however, the appellant's evidence was credible and consistent with both country information and the evidence of the other witnesses. His predicament therefore at this time, should he be returned to Mogadishu, his home district, is that he is a member of the minority Tuni Torre tribe, Shanta Gamaas sub-tribe; he has no home or support system available to him in Mogadishu and would not be able to stay with his mother and step-father, now that he has completed his education and left Mogadishu.

WELL-FOUNDED FEAR

[68] The terms of Article 1A(2) of the Refugee Convention, as noted, refer to a well-founded fear of being persecuted which establishes an objective test for determining refugee status. Commenting on this in *Refugee Appeal No 71427/99* (16 August 2000), the Authority held that in establishing, on the facts as found, whether a claimant has established that risk of "being persecuted", the following formula can usefully be applied:

"Persecution = serious harm + the failure of state protection."

[69] Applying this to the profile of this appellant, as established above and the finding that he is a member of a minority tribe who would be returning from a

western country, firstly it must be noted that there is no recognisable state in Somalia available to the appellant and to whom he could look for any form of state protection. Secondly, on the evidence, he would be at a real chance of serious harm not only from militia of majority tribes due to his minority tribal background, but also as a target for recruitment by the Islamist groups, such as Al Shabah, which operate in the Medina area of Mogadishu.

[70] The Authority is satisfied, on the totality of the evidence presented, that the appellant does have a well-founded fear of being persecuted for reasons of his ethnicity and opposition to fundamentalist Islamic beliefs. A useful review of the country information and risks to minority tribes, in particular the Tuni, is set out in *Refugee Appeal No 76062* (15 October 2007). That decision, between [55] and [77], gives a detailed consideration to country information and expert evidence provided in United Kingdom Asylum and Immigration Tribunal determinations. The Authority has been greatly assisted in reaching its conclusions by the analysis set out in *Refugee Appeal No 76062*.

[71] The decision in *Refugee Appeal No 76062* related to an appellant who was found to be at risk by being a member of the minority Tuni clan. The evidence, particularly from AA and WW in this case, confirmed the analysis set out in *Refugee Appeal No 76062* that the Tuni clan or tribal group have split into two sub-groups, the first being a group that historically inter-married with Bantu people in southern Somalia, and the second (Tuni Torre) being a group that is descended from a group of vassals or clients of the wider Tuni clan who clearly have a solely Somali/negroid ethnic background. The two sub-groups are now quite separate and do not inter-marry. The evidence given in the UK Immigration and Asylum Tribunal in *AN (Tuni Torre) Somalia* [2004] UK AIT 00270 by a well-known UK expert on the subject of Somali clans, Dr Luling, was consistent with the evidence provided by AA.

CONVENTION GROUND AND NEXUS

[72] The Authority accepts that the appellant has a well-founded fear of being persecuted and thus the first issue is answered in the affirmative. The Convention reasons are race and/or religion. The second issue is also answered in the affirmative.

CONCLUSION

[73] For the reasons set out above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"A R Mackey"
A R Mackey
Chairman